



Insurance

Quarterly Legal and Regulatory Update

Period covered: 1 October 2020 – 31 December 2020

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1. SOLVENCY II

1.1 Insurance Europe and other insurance sector bodies views on the Solvency II review

On 4 November 2020, Insurance Europe along with four other insurance sector bodies (Pan-European Insurance Forum (**PEIF**), the Association of Mutual Insurers and Insurance Cooperatives in Europe (**AMICE**), the European Insurance CFO Forum (**CFO Forum**) and the CRO Forum) published a letter headed, 'Views of the insurance industry on the review of Solvency II' (the **Letter**) to the European Commission. The Letter highlights how the Solvency II review provides the key opportunity to enhance insurers' ability to support the European Commission's growth and sustainability objectives and raises serious concerns about the approach of the European Insurance and Occupational Pensions Authority (**EIOPA**) and the European Systemic Risk Board (**ESRB**) towards the review of the Solvency II Directive (2009/138/EC) (**Solvency II Directive**).

EIOPA is currently drafting its final advice to the European Commission on the review of Solvency II and is aiming for a "balanced outcome". On the contrary, according to the Letter, EIOPA's current approach would lead to a significant increase in capital requirements for insurers, make insurers' solvency ratios even more volatile, especially during periods of crisis, and trigger more pro-cyclical behaviour.

The Letter also comments that the ESRB proposals for new macroprudential tools and measures would lead to unnecessary additional capital requirements and operational burdens for insurers, and make it harder for insurers to make the long-term investments that are needed to boost economic recovery and growth in Europe.

The Letter provides that the Solvency II review should focus on improving existing instruments to fully reflect insurers' long-term business models, mitigate artificial volatility and reduce unnecessary operational burdens.

This would avoid unnecessary costs for customers and help insurers to support the European Commission in delivering on the objectives it has set out in the European Union Green Deal and the Capital Markets Union.

A copy of the Letter can be accessed [here](#).

1.2 EIOPA published its opinion on the 2020 review of Solvency II Directive

On 17 December 2020, EIOPA submitted its opinion on the 2020 review of the Solvency II Directive to the European Commission. The measures proposed by EIOPA aim at keeping the regime fit for purpose by introducing a balanced update of the regulatory framework and EIOPA's view is that overall the Solvency II framework is working well from a prudential perspective. The proposals from EIOPA include:

- adjustments to the treatment of interest rate risk - EIOPA recommends changes to the interest rate curves used by insurers to value liabilities, specifically in respect of the method of extrapolating risk-free rates to better reflect market reality;
- improvements to volatility adjustment to better align the design to its objectives, increase its effectiveness in curbing short-term volatility and in particular rewarding insurers for holding illiquid liabilities;
- refinements to the calculation of the risk margin of insurance liabilities, recognising diversification over time, reducing its volatility and size, in particular for long-term liabilities; and
- revising the criteria for the ability to hold equity long-term, by making a link with long-term illiquid liabilities with the aim to better reflect risks and further encourage long term investments in a sound and prudent way.

EIOPA's opinion reflects the need to supplement the current micro prudential framework with a macro-prudential perspective and introduces specific tools and measures to equip supervisors with sufficient powers to address all sources of systemic risk. In the opinion, EIOPA also proposes to establish a minimum harmonised and comprehensive recovery and resolution framework and the introduction of a European network of national Insurance Guarantee Schemes that should meet a minimum set of harmonised features with the primary aim to protect policyholders, paying compensation when needed or ensuring the continuation of insurance policies.

The opinion can be accessed [here](#).

2. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

2.1 EIOPA launches study on diversification in internal models

On 1 October 2020, EIOPA launched a consultation on diversification in internal models under the Solvency II Directive. The study aims to:

- gain an overview of the current approaches in the market and analyse and compare the levels of diversification;
- facilitate a better understanding of modelling dependencies, aggregation of diversification benefits; and
- enhance quality and convergence of supervision on diversification in internal models.

The deadline for responses from insurance undertakings closes on 15 January 2020.

A copy of the consultation can be accessed [here](#).

2.2 EIOPA publishes a report on its approach to the supervision of product oversight and governance

On 8 October 2020, EIOPA published a report on its approach to the supervision of product oversight and governance (POG) requirements under the Insurance Distribution Directive (2016/97/EU) (IDD). The report aims at providing more clarity for insurance manufacturers and distributors on the supervisory approach to POG requirements. The report outlines the approach for assessing whether:

- manufacturers have developed and implemented adequate systems and controls for their POG process and properly implemented product distribution arrangements that are aligned with manufacturers' distribution strategies to ensure products are sold within the right target market;
- manufacturers have processes and procedures in place to perform an adequate target market assessment;
- manufacturers have tested the insurance product and considered the customers' interests and needs throughout the product lifecycle
- manufacturers have developed an appropriate distribution strategy for the insurance product's target market and product characteristics; and
- manufacturers adequately monitor and regularly review products ad hoc or at intervals.

The Report states that objective of POG supervision is to ensure that insurance manufacturers and distributors take a 'customer-centric' approach to their product approval, distribution, and monitoring and review processes.

A copy of the report can be accessed [here](#).

2.3 EIOPA publishes guidelines on Information and Communication Technology Security and Governance

On 12 October 2020, EIOPA published its guidelines on Information and Communication Technology (ICT) Security and Governance.

The guidelines will provide guidance to national supervisory authorities and market participants on how insurers should apply the governance requirements set out in the Solvency II Directive and the Solvency II Commission Delegated Regulation 2015/35 in the context of ICT security and governance. The guidelines aim to promote operational resilience of the digital operations of insurance and reinsurance undertakings against risks, which is key to protecting insurance and reinsurance undertakings' digital assets, systems and data. In particular, the guidelines will:

- provide clarification and transparency to market participants on minimum expected information and cyber security capabilities;
- seek to avoid potential regulatory arbitrage; and
- foster supervisory convergence in relation to ICT security and governance as a key to proper ICT and security risk management.

National supervisory authorities are expected to apply these guidelines from 1 July 2021.

A copy of the guidelines can be accessed [here](#).

2.4 EIOPA launches survey on the application of the Insurance Distribution Directive

On 12 November 2020, EIOPA launched a survey on the application of the IDD. The aim of the survey is to seek feedback from stakeholders on the experience with the application of the IDD in areas such as:

- the improvement of quality of advice and selling methods;
- the impact of the IDD on small and medium-sized enterprises; and
- further improvements identified after the application of the IDD.

The survey closes on 1 February 2021 and following the feedback received EIOPA will carry out an assessment and publish a report by the end of 2021.

The survey can be accessed [here](#).

2.5 EIOPA launches consultation on the supervisory statement relating to SCR breach under Solvency II

On 25 November 2020, EIOPA launched a consultation on the statement on supervisory practices and expectations in case of breach of the Solvency Capital Requirement (SCR).

EIOPA is seeking feedback on the statement which aims to promote supervisory convergence in the application of the supervisory ladder, which addresses the recovery plan required in case of breach of the SCR. EIOPA notes that the supervisory practices are necessarily

flexible and should consider the specific situation of the insurance or reinsurance undertaking. It is important to EIOPA that when certain triggers are reached, a minimum convergent approach is applied to ensure a similar protection of policyholders and beneficiaries across Europe.

EIOPA considers that the ongoing uncertainty linked with COVID-19 may potentially lead to breaches of SCR in the future, and therefore supervisory convergence in this area is timely. However the statement is intended to be applicable at any time and is not COVID-19 specific.

The consultation closes on 17 February 2021.

The consultation can be accessed [here](#).

2.6 EIOPA consults on Supervisory Statement on own risk and solvency assessment in the context of COVID-19

On 22 December 2020, EIOPA launched a consultation on a supervisory statement on own risk and solvency assessment (**ORSA**) in the context of COVID-19.

The ORSA was designed as an important and effective tool for risk management for undertakings and under the pandemic it is to give insight into the potential impact of the pandemic on the undertaking's risk profile. EIOPA issued a supervisory statement addressed to competent authorities to promote convergence by guiding undertakings through common supervisory expectations on ORSA triggered by the pandemic. The pandemic is identified as a new risk that needs to be assessed in the risk analysis of undertakings. Undertakings are expected to take into account the uncertainty in the duration and macroeconomic impact of the pandemic in its ORSA and to consider multiple scenarios to capture this uncertainty in an appropriate manner.

The feedback from stakeholders will be considered by EIOPA and developed into an impact assessment and final report. The consultation closes on 15 March 2021.

The consultation can be accessed [here](#).

2.7 EIOPA updates Question and Answer process on regulation

During the period 1 October 2020 to 31 December 2020, EIOPA updated its Question and Answer process (**Q&A process**) on regulation. The Q&A process is to ensure consistent and effective application of European regulation and to contribute to supervisory convergence in the EEA.

The process entails interaction between EIOPA and the European Commission to ensure that the responses to the questions submitted remain consistent with the European legislative texts. Financial institutions, supervisors and other stakeholders can use the Q&A process for submitting questions on Union law and EIOPA Guidelines within the area of insurance and pensions.

Questions can be submitted and the Q&A archive can be accessed [here](#).

3. CENTRAL BANK OF IRELAND

3.1 New Central Bank Pre-Approval Control Functions to take effect

On 9 October 2020, the Central Bank of Ireland (**Central Bank**) published the Central Bank Reform Act 2010 (Sections 20 & 22) (Amendment) Regulations 2020 (**Amending Regulations**) which expand the Pre-Approval Controlled Functions (**PCFs**) regime. Of particular relevance to the insurance sector is the introduction of the new PCF role of the Chief Information Officer PCF-49 (under the 'General' category).

The Central Bank has published an FAQ in respect of the introduction of the new and revised PCFs, which can be accessed [here](#).

The updated list of Central Bank PCF roles can be accessed [here](#).

The Amending Regulations can be accessed [here](#).

3.2 Central Bank of Ireland issues FAQ on Differential Pricing Survey

On 21 October 2020, the Central Bank issued a Frequently Asked Questions (**FAQ**) on differential pricing survey. The Central Bank is conducting a review to establish the impact of differential pricing on consumers and to understand consumer behaviours relating to private car and home insurance, including how consumers engage with their insurance providers. As part of this review, RED C the Central Bank's research partners is conducting the survey.

The FAQ can be accessed [here](#).

3.3 Central Bank issues the Second Motor Insurance Report of the National Claims Information Database

On 3 November 2020, the Central Bank published the second annual Private Motor Insurance Report of the National Claims Information Database (**Report**). The aim of the Report is to improve transparency and understanding of the issues affecting the functioning of the motor insurance industry in Ireland by providing key statistics on the market on the cost of claims, the cost of premiums, how claims are settled, and variance in and components of settlement costs. It is expected that the Report will inform policymaking.

The statistics are based on data gathered from insurance undertakings providing private motor insurance products in Ireland, including foreign companies selling into the Irish market. The Report is organised into 8 parts:

Part 1 examines claims related to motor accidents that occurred between 2009 and 2019;

Part 2 considers earned premiums for private motor insurance between 2009 and 2019;

Part 3 compares earned premiums and claims costs between 2009 and 2019;

Part 4 analyses how claims were settled between 2015 and 2019 and the various associated costs (claimant compensation, legal fees and other costs);

Part 5 gives a breakdown of insurers' income and expenditure for private motor insurance in financial years 2018 and 2019;

Part 6 analyses the change in the ultimate cost of claims from 2018 to 2019, and provides information on claim development patterns from 2009 to 2019.

Part 7 provides notes and information on the key terms and methodology employed in this report; and

The Appendices provide further information on the background to the National Claims Information Database (**NCID**), reporting population and supporting data tables.

The Report can be accessed [here](#).

3.4 Central Bank issues second “Dear CEO” letter on Fitness and Probity

On 17 November 2020, the Central Bank issued a second “Dear CEO” on fitness and probity, following thematic on-site inspections which it conducted on a sample of firms in the insurance and banking sectors (**Letter**). The Central Bank’s first “Dear CEO” letter on the topic was issued in April 2019.

The Central Bank has highlighted that it expects all firms to take appropriate action to deal with the issues addressed in the Letter, and that the Letter should be read in conjunction with its prior “Dear CEO” letter, the Fitness and Probity Standards and associated fitness and probity guidance.

Please see the Dillon Eustace briefing paper entitled “Central Bank issues second “Dear CEO” letter on fitness and probity”, which looks at some of the Central Bank’s key findings. This briefing paper can be accessed [here](#).

The Letter can be accessed [here](#).

3.5 Central Bank publishes its December Insurance Quarterly Newsletter

On 9 December 2020, the Central Bank published its December Edition of its Insurance Quarterly Newsletter (**Newsletter**). The Newsletter aims to provide relevant news and insights to key stakeholders in the insurance sector and sets out the Central Bank’s expectations and priorities around existing requirements and its views on future developments. The Newsletter is published in March, June, September and December each year.

Topics covered in the December edition include contract uncertainty in the context of the COVID-19 pandemic and LIBOR transition risk.

A copy of the Newsletter can be accessed [here](#).

3.6 Central Bank publishes Interim Report on review of Differential Pricing in the Private Car and Home Insurance Markets

On 14 December 2020, the Central Bank published its Interim Report on its Review of Differential Pricing Practices in the Private Motor and Home Insurance Markets (the **Interim Report**). The Interim Report provides a progress update and outlines new insights from the Central Bank’s ongoing market analysis and consumer research. The Interim Report has found that:

- the majority of insurance providers apply some form of differential pricing, suggesting a loyalty penalty;
- there are significant differences between what different groups of customers pay relative to their expected cost;
- customers with the longest tenure pay the most; and
- research shows consumers tend to have a negative view of insurance and prefer to stay with an existing provider.

The Central Bank states that the completion of its analysis will be essential to ensure a full market perspective, evidence-based conclusions and appropriately calibrated regulatory interventions. The Central Bank expects to publish its final report in 2021.

The Interim Report can be accessed [here](#) and the Irish Government press release welcoming the Interim Report can be accessed [here](#).

Following the release of the Interim Report, the Central Bank's Consumer FAQ on Differential Pricing in Insurance has been updated and can be accessed [here](#).

4. ANTI-MONEY LAUNDERING (AML) AND COUNTERING THE FINANCING OF TERRORISM (CFT)

4.1 Central Bank publishes sixth issue of Anti-Money Laundering Bulletin focusing on transaction monitoring

On 2 October 2020, the Central Bank published the sixth issue of its Anti-Money Laundering Bulletin focusing on transaction monitoring (**Bulletin**).

The Bulletin highlights the importance of transaction monitoring, which the Central Bank states will continue to be a key focus area in its ongoing supervision of compliance by designated persons with anti-AML and CFT requirements. The Bulletin sets out the Central Bank's findings following supervisory engagements across multiple credit and financial institutions and sets out the Central Bank's expectations with regard to the application of transaction monitoring controls.

Please see the Dillon Eustace briefing paper entitled "Central Bank issues AML Bulletin on Transaction Monitoring" which provides a detailed summary of the Bulletin.

The Dillon Eustace briefing paper can be accessed [here](#).

A copy of the sixth edition of the Bulletin can be accessed [here](#).

4.2 Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020

The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020 (**Bill**) was passed by Dáil Éireann on 17 December 2020 and is currently before Seanad Éireann, Second Stage. The purpose of the Bill is to transpose the criminal justice elements of Directive (EU) 2015/849 (**Fifth EU Anti-Money Laundering Directive** or **AMLD 5**) by amending the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 in line with AMLD 5. The Bill seeks to:

- improve the safeguards for financial transactions to and from high-risk third countries;
- bring a number of new 'designated persons' under the existing legislation (notably certain letting agents, virtual currency providers and custodian wallet providers);
- improve the transparency of beneficial ownership of legal entities. Where a designated person is entering a business relationship with another entity, the designated person must take steps to obtain the relevant information from the appropriate register of beneficial ownership prior to commencing the business relationship;
- provide for a new defence in relation to 'tipping off' where the designated person can prove that the entity to whom the information was disclosed was a specified financial institution, which is connected to the designated person or part of the same group structure;
- enhance existing customer due diligence (**CDD**) requirements;

- set new limits on the use of anonymous pre-paid cards. A person supplying such an instrument will now be required to conduct CDD when the value of the requested card is €150 or higher;
- broaden the definition of a politically exposed person (**PEP**) to include ‘any individual performing a prescribed function’;
- provide for Ministerial guidance which will clarify domestic ‘prominent public functions’ that will give rise to a person being designated as a PEP; and
- make a number of technical amendments to other provisions of Acts already in force.

The Bill's progress can be tracked [here](#).

5. DATA PROTECTION

5.1 EDPB adopts Guidelines on Data Protection by Design and Default

On 20 October 2020, the European Data Protection Board (**EDPB**) adopted a final version of its Guidelines on Data Protection by Design & Default (**Guidelines**).

The Guidelines address the obligation upon controllers, irrespective of size and complexity of processing, to effectively implement the data protection principles and data subjects' rights and freedoms by design and default, as set out in Article 25 of the General Data Protection Regulation ((EU) 2016/679) (**GDPR**).

The Guidelines offer general guidance on the obligation upon controllers, which requires the implementation of appropriate measures and necessary safeguards that provide effective implementation of the data protection principles. In addition, controllers should be able to demonstrate that the implemented measures are effective.

The Guidelines also contain guidance on how to effectively implement the data protection principles in Article 5 GDPR, listing key design and default elements as well as practical cases for illustration.

The Guidelines can be accessed [here](#).

5.2 EDPB adopts Recommendations on ‘supplementary measures’

On 10 November 2020, the EDPB adopted two sets of Recommendations, namely:

- Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data; and
- Recommendations 02/2020 on the European Essential Guarantees for surveillance measures.

Recommendations 01/2020 were adopted with the aim of assisting controllers and processors acting as data exporters comply with their duty to identify and implement appropriate “supplementary measures” and promote the consistent application of the GDPR across the EEA, particularly in light of the CJEU’s “Schrems II” ruling. The Recommendations contain a roadmap of the steps data exporters must take to find out whether they need to put in place supplementary measures to be able to transfer data outside the EEA in accordance with EU law, and help them identify those measures that could be effective.

Recommendations 02/2020 provide data exporters with guidance to determine whether the legal framework governing public authorities' access to data for surveillance purposes in third countries can be regarded as a justifiable interference with the rights to privacy and the protection of personal data, and therefore as not impinging on the commitments of the Article 46 GDPR transfer tool the data exporter and importer rely on.

Recommendations 01/2020 can be accessed [here](#).

Recommendations 02/2020 can be accessed [here](#).

5.3 European Commission publishes new draft Standard Contractual Clauses

On 12 November 2020, the European Commission published two new draft sets of standard contractual clauses (**SCC**):

- for transferring personal data to non-EU countries (**Third Country SCC**); and
- between controllers & processors located in the EU (**Controller-Processor SCC**).

The Third Country SCCs will replace the existing SCCs in place. The purpose of the Third Country SCCs is to ensure that the level of protection of personal data ensured by GDPR on the protection of natural persons with regard to the processing of personal data, when transferred to a third country, is not undermined. The Third Country SCCs have been updated to bring them in line with the requirements set out in the GDPR and the CJEU's recent "Schrems II" ruling.¹

Controllers and processors will have twelve months to implement the new Third Country SCCs from the date they come into force.

The Controller-Processor SCCs are new and aim to ensure harmonisation and legal certainty in relation to the contract between a controller and processor that a controller is obliged to impose under Article 28 GDPR. These SCCs are not mandatory and are intended to provide guidance. Parties may choose to rely on the Controller-Processor SCCs or negotiate an individual contract containing the compulsory elements laid out in Article 28(3) and (4) GDPR.

The consultation period ended on 10 December 2020. The Commission has requested a joint opinion from EDPB and the European Data Protection Supervisor (**EDPS**) on the implementing acts of both sets of SCCs. The SCCs are expected to be formally adopted by the European Commission in early 2021.

The draft Third Country SCC, and its accompanying implementing decision, can be accessed [here](#).

The draft Controller-Processor SCC, and its accompanying implementing decision, can be accessed [here](#).

5.4 EDPB issues statement on the ePrivacy Regulation and the future role of Supervisory Authorities and the EDPB

On 19 November 2020, the EDPB issued a statement on the ePrivacy Regulation and the future role of Supervisory Authorities and the EDPB (**Statement**).

The Statement concerns the proposed Regulation concerning the respect for private life and the protection of personal data in electronic communications (**ePrivacy Regulation**) which is intended to replace Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (**ePrivacy Directive**).

¹ Case C-311/18 Data Protection Commissioner v Facebook Ireland Ltd and Maximilian Schrems

In the Statement, the EDPB emphasises that the future ePrivacy Regulation must not lower the level of protection offered by the current ePrivacy Directive, noting that it should complement the GDPR by providing additional guarantees for confidentiality for all types of electronic communication.

The EDPB expresses concern regarding discussions in the Council concerning the enforcement of the future ePrivacy Regulation which could lead to fragmentation of supervision, procedural complexity and a lack of legal certainty. The EDPB notes that many provisions of the future ePrivacy Regulation concern the processing of personal data, and states that oversight should be entrusted to the same national authorities which are responsible for the enforcement of the GDPR.

The EDPB concludes by inviting the Member States to support a more effective ePrivacy Regulation, as initially proposed by the European Commission.

The Statement can be accessed [here](#).

5.5 Transfers of Personal Data to Third Countries or International Organisations

On 9 December 2020, the Data Protection Commission updated its webpage entitled “Transfers of Personal Data to Third Countries or International Organisations” (**Webpage**).

The Webpage addresses, amongst other items, Article 46 - Transfers subject to appropriate safeguards, taking into account the CJEU's recent “Schrems II” ruling (*Case C-311/18 Data Protection Commissioner v Facebook Ireland Ltd and Maximilian Schrems*) and recent publications by the EDPB.

The Webpage can be accessed [here](#).

5.6 Post Brexit - transfers of personal data from the EEA to the UK

Under the EU-UK Trade and Cooperation Agreement (**Agreement**) concluded on 24 December 2020, a “grace period” during which the transfers of personal data from EEA Member States to the UK will not be considered a “third country” transfer under the GDPR was agreed. The Agreement provides that the specified period will last for no longer than six months from 31 December 2020.

This means that during the specified period, personal data can continue to flow from the EEA to the UK without any additional safeguards, such as SCCs being required. This is subject to an important caveat: if, during this period, the UK amends the data protection laws it has in place on 31 December 2020, or exercises certain powers under the Data Protection Act 2018 or the UK GDPR without the agreement of the EU Partnership Council, the specified period shall automatically end.

Please see the Dillon Eustace briefing paper entitled “Brexit: Welcome reprieve for data transfers from the EEA to the UK” which can be accessed [here](#).

6. ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG)

6.1 Commission extends deadline for application of RTS under Disclosure Regulation

On 29 October 2020, the European Commission published a letter addressed to the ESAs on the application of Regulation 2019/2088 on the sustainability-related disclosures in the financial services sector (**Sustainable Finance Disclosure Regulation** or **SFDR**) and related regulatory technical standards (**RTS**) (**Letter**).

The original timeframe for application required the joint development by EIOPA, European Securities and Markets Authority (**ESMA**) and the European Banking Authority (**EBA**) of most of the draft RTS by 30 December 2020 and the application of the SFDR's provisions from 10 March 2021.

The Letter notes that the draft RTS will enter into force at a "a later stage", without confirming what that date will be. Further in the Letter, the European Commission acknowledges that "in terms of substance, the application of the Regulation is not conditional on the formal adoption", confirming that all application dates specified by the SFDR, with effect from 2021, will be maintained. Financial market participants and financial advisers subject to the SFDR will be required to comply with high level and principle-based requirements of the SFDR from this time.

As a result, there is now a staggered timeframe for complying with certain obligations under the SFDR. The SFDR applies to "Financial Market Participants" which includes insurance undertakings which make available insurance-based investment products.

The Letter can be accessed [here](#).

6.2 Central Bank Director of Financial Regulation Policy & Risk speech on the changing regulatory landscape of Sustainable Finance

On 3 November 2020, Mr. Gerry Cross, Central Bank Director of Financial Regulation Policy & Risk delivered a speech at Sustainable Finance Ireland's third annual environmental, social and governance (**ESG**) Day on 'Sustainable Finance: the changing regulatory landscape'.

Mr. Cross in his speech addressed the risks to regulated firms' normal functioning and to their financial stability from increasingly common occurring climate events and from the transition to a sustainable economy.

Mr. Cross also addressed conduct aspects, to ensure that investors are fully and effectively informed and where investments or financial products are described as green or sustainable, to ensure that it is meaningful and accurate and based on reliable parameters that are consistently applied both within jurisdictions and across Europe.

In relation to insurance, Mr. Cross stated that the Central Bank expects Irish insurers to give appropriate consideration to the assessment of climate change and adopt a longer-term perspective compared to current practices with typical business planning and strategy setting processes.

He noted that Insurers' ORSA has been one of the focus areas for EIOPA in their ongoing work on climate risk and sustainable finance. EIOPA launched a consultation on a draft supervisory opinion on the use of climate change risk scenarios in the ORSA and sets out its expectations, the importance of insurers considering climate change related risks using a short term one-year time horizon, taking a forward-looking view of climate change-related risk beyond the one-year time horizon through the system of governance, risk management, ORSAs and applying a risk-based and proportionate approach to material climate change risks for at least two long-term climate scenarios.

A copy of the full speech can be accessed [here](#).

6.3 European Commission consults on Delegated Regulation on climate change mitigation and adaptation under Taxonomy Regulation

On 20 November 2020, the European Commission published for consultation the text of Commission Delegated Regulation supplementing the Taxonomy Regulation ((EU) 2020/852) relating to climate change mitigation and adaptation. The Taxonomy Regulation was published in the Official Journal on 22 June 2020 and entered into force 20 days later.

The purpose of the Delegated Regulation is to establish the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives. The consultation closed on 18 December 2020. The Taxonomy Regulation requires the Delegated Regulation to be adopted before 31 December 2020.

The next steps are for the Delegated Regulation to be adopted by the Commission. Thereafter, it will be subject to a four month objection period by the European Parliament and the Council, which can be extended by two months at their request.

The text of the Commission Delegated Regulation can be accessed [here](#).

6.4 EIOPA launches consultation on advice regarding Article 8 of the Taxonomy Regulation

On 30 November 2020, EIOPA launched a consultation seeking feedback from stakeholders on the relevant ratios to be mandatorily disclosed by insurers and reinsurers falling within the scope of the Non-Financial Reporting Directive (2014/95/EU) (NFRD) as well as on the methodologies to build those ratios.

EIOPA considers whether the mandatory ratios of non-financial undertakings, set out in the Taxonomy Regulation ((EU) 2020/852), are relevant and appropriate to depict insurance and reinsurance activities or whether they need to be 'translated' to the most appropriate and comparable key performance indicators for insurance and reinsurance businesses.

The consultation closes on 12 January 2021 and, following the responses received, EIOPA will finalise its advice and submit it to the European Commission in February 2021.

The consultation can be accessed [here](#).

6.5 EIOPA launches a discussion paper on a methodology for integrating climate change in the standard formula

On 2 December 2020, EIOPA published a discussion paper on a methodology for the potential inclusion of climate change in the Solvency II standard formula when calculating natural catastrophe underwriting risk.

Ensuring financial resilience of reinsurers covering natural catastrophes, the SCR for natural catastrophe underwriting risk need to remain appropriate in light of climate change. EIOPA proposes different methodological steps and process changes to integrate climate change in the calculation of natural catastrophe risk.

The discussion paper is a follow-up to EIOPA's Opinion on Sustainability within Solvency II issued in Q3 2019, which concluded there is a need to consider if and how climate change-related dangers could be better captured in the Solvency II framework under the natural catastrophe risk submodule. The discussion paper is part of EIOPA's wider sustainability agenda to integrate ESG risk assessment in the regulatory and supervisory framework.

The consultation closes on 26 February 2021.

The consultation can be accessed [here](#).

6.6 EIOPA launches the first pilot dashboard on insurance protection gap for natural catastrophes

On 4 December 2020, EIOPA launched the first pilot dashboard which represents the insurance protection gap for natural catastrophes. The aim is to detect climate-related insurance protection gaps in order to identify measures that will help in decreasing society's losses in the event of natural catastrophes.

EIOPA is inviting stakeholders to provide comments on the methodology.

The dashboard will close on 31 March 2021.

The survey and associated documents can be accessed [here](#).

6.7 EIOPA publishes discussion paper on non-life underwriting and pricing in light of climate change

On 10 December 2020, EIOPA published a discussion paper on non-life underwriting and pricing in light of climate change. The discussion paper builds on work from EIOPA's Opinion on sustainability within the Solvency II Directive, published in 2019, and is part of EIOPA's overall sustainable finance agenda.

The discussion paper highlights challenges associated with current non-life underwriting practices and options to ensure the availability and affordability of insurance products, in the context of climate change. The discussion paper also identifies how insurers could address the protection gap issues in the context of climate change and contribute to climate change mitigation and adaptation.

Stakeholders are invited to provide comments until 26 February 2021. EIOPA will consider the feedback received and expects to publish the final report in the spring of 2021 together with a feedback statement on the consultation responses of stakeholders.

A copy of the discussion paper can be accessed [here](#).

7. MISCELLANEOUS

7.1 Publication of the Cost of Insurance Working Group's Eleventh and Final Progress Report

On 30 October 2020, the Cost of Insurance Working Group (**CIWG**) published its Eleventh and Final Progress Report (**Report**).

The reform agenda outlined in the Programme for Government will now be led by the newly established Cabinet Committee on Economic Recovery and Investment's sub-Group on Insurance Reform. This Cabinet Sub-group (**Sub Group**) will take up the residual work of the CIWG while also pursuing the necessary delivery of the Government's reform agenda. The Sub Group will also be commencing work on the work that has already been accomplished by the CIWG. The key developments the Report notes are as follows:

- The Judicial Council Act 2019 provides for the establishment of the Personal Injuries Guidelines Committee (**PIGC**), which is tasked with drawing up guidelines on the level of damages which should be awarded in personal injuries actions and which will replace the Book of Quantum. The PIGC was established on the 28 April 2020 and is expected to complete draft guidelines which will require approval by the Judicial Council;
- The Law Reform Commission (**LRC**) recently published its report in respect of the possibility of developing constitutionally sound legislation to delimit or cap the amounts of damages which a court may award in respect of some or all categories of personal injuries. This report was a result of a key recommendation of the CIWG and provides an excellent basis for the Government to consider this issue in the context of the need to reduce award levels for general damages;
- The Central Bank has determined that it is feasible to extend the NCID to include Employer Liability and Public Liability insurance. The relevant legislation to formally extend the scope of the NCID was signed by the Governor of the Central Bank on the 3 September 2020 (S.I. No 336 of 2020). It is understood that the Central Bank has commenced data collection and intends to publish the first NCID Employer Liability and Public Liability insurance report in H1 2021. The Central Bank also published the [second NCID report on private motor insurance](#).

- The Department of Justice has recently concluded a public consultation on the setting of the discount rate in personal injury actions and will provide a report once their review of the discount rate has concluded; and
- The Consumer Insurance Contracts Act 2019, another important step in increasing transparency in the insurance market, was commenced on 1 September 2020 on a phased basis.

These reforms are a significant impact with regard to private motor insurance and the implementation of the remaining recommendations of the CIWG will now be overseen by the Sub Group, who will provide updates on these and other key deliverables.

The Report can be accessed [here](#).

7.2 IAIS published three consultations on comparable outcomes, liquidity metrics and resolution

On 9 November 2020, the International Association of Insurance Supervisors (IAIS) published three consultation papers:

- consultation on the draft definition and high-level principles to inform the criteria that will be used to assess whether the Aggregation Method provides comparable outcomes to the Insurance Capital Standard (ICS). The consultation closes on 22 January 2021 and can be accessed [here](#);
- consultation on the development of Liquidity Metrics: Phase 1 – Exposure Approach. This will aid the assessment of systemic risk in the global insurance sector. The IAIS has split the development of liquidity metrics into two phases, Phase 1, will develop an Insurance Liquidity Ratio (ILR), which will use an Exposure Approach (EA) and is further defined in the consultation document and Phase 2, the development of other liquidity metrics, including a Company Projection (CP) approach. The CP approach utilises insurers' projections of cash flows to assess liquidity risk. The consultation closes on 7 February 2021 and can be accessed [here](#); and
- consultation on draft Application Paper on Resolution Powers and Planning. The consultation aims to provide guidance on supervisory practices related to resolution. The consultation closes on 5 February 2021 and can be accessed [here](#).

The related press release can be accessed [here](#).

7.3 IAIS publishes report on Cyber Risk Underwriting

In December 2020, IAIS published a report on cyber risk underwriting on the identified challenges and supervisory considerations for sustainable market development. The report sets out the findings of the IAIS' cyber underwriting small group (CUSG) which was appointed in 2019 to conduct a stock-take exercise on the development of cyber-underwriting market, the supervisory framework and guidance on cyber-risk underwriting, and the supervisory capacity for monitoring cyber-risk underwriting in different jurisdictions.

The report highlights that cyber risk for underwriting remains under-developed and lacks supervisory guidelines on cyber-risk underwriting. The CUSG recommended to the IAIS Executive Committee to pursue a strategic approach focused on facilitating the monitoring, understanding and assessment of cyber-risk underwriting exposure and impact and on assisting supervisors in building relevant capacity to review cyber-risk underwriting practices and exposure. The report also sets out its findings of supervisory practices regarding cyber risk underwriting, including that:

- supervisory assessments and specific toolbox development are proportionate to cyber underwriting market;
- there is supervisory awareness of the challenges and risks by ad hoc data collection;

- supervisors have not issued specific guidance to reinsurers on cyber risk underwriting and rely on existing guidelines and recommendations on risk management; and
- supervisory reporting on cyber underwriting is not widespread and comprehensive.

The report can be accessed [here](#).

7.4 Irish Government publishes plan to reform Insurance Sector

On 8 December 2020, the Irish Government published the first Action Plan for Insurance Reform (the **Action Plan**). The aim of this document is to make Ireland's insurance sector more competitive and consumer-friendly, supporting enterprise and job creation. The Action Plan sets out 66 actions to bring down costs for consumers and business, introduce more competition into the market, prevent fraud and to reduce the burden on business, community and voluntary organisations. The Action Plan will:

- replace the Book of Quantum with new guidelines on the appropriate level of personal injury awards;
- enhance the role of the Personal Injuries Assessment Board (**PIAB**);
- examine the duty of care to strengthen waivers and notices to increase protections for consumers, businesses, sporting clubs and community groups;
- strengthen transparency through the expansion of the National Claims Information Database;
- monitor whether personal injury award levels need to be capped;
- reduce insurance fraud including placing perjury on a statutory footing;
- strengthen the enforcement powers of the Competition and Consumer Protection Commission (**CCPC**);
- examine dual pricing; and
- establish an office within Government to encourage greater insurance market competition.

The Action Plan can be accessed [here](#).

7.5 Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 – consequences for insurance sector

On 10 December 2020, the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020 was signed into law (**Act**). The aim of the Act is to protect citizens and consumers, facilitate the sound functioning of key sectors, and ensure businesses are not disadvantaged, following the expiry of the Brexit transition period on 31 December 2021.

Part 10 of the Act is of relevance to the insurance sector. The provisions of Part 10 amend the European Union (Insurance and Reinsurance) Regulations 2015 and the European Union (Insurance Distribution) Regulations 2018 (Regulations) to provide for a temporary "run-off" regime.

An insurance undertaking authorised in the UK and/or Gibraltar and which previously passported its services into Ireland will now, subject to certain conditions outlined in the Act, be deemed to be authorised for specific purposes for a 15-year period, commencing on 1 January 2021. In order to qualify for this “run-off regime”, the insurance undertaking must:

- on or before 1 January 2021, cease to conduct new insurance contracts in Ireland;
- after 1 January 2021, exclusively administer its existing portfolio of Irish policies in order to terminate its activity in the State; and
- comply with the “general good” requirements as defined in the Regulations.

The Central Bank may issue a “withdrawal notification” to an insurance undertaking that continues to carry on insurance business in Ireland other than the administration of its existing portfolio in order to terminate its activity in the State, that has permanently ceased to carry on insurance business in the State having completed the administration of its existing portfolio, that has “failed to make sufficient progress towards permanently ceasing to carry on insurance business in the State” by the end of the 15-year period or has failed to comply with the general good requirements.

An insurance undertaking seeking to rely on these provisions must notify the Central Bank no later than months from 1 January 2021 that they will be doing so.

The text of the Act can be accessed [here](#).

7.6 Government establishes new Office to Promote Competition in the Irish Insurance Market

On 17 December 2020, it was announced that a new Office to Promote Competition in the Insurance Market had been established in the Department of Finance (**Office**). The purpose of the Office is to develop the Government’s insurance competition reform programme and provide a more co-ordinated Government policy approach to market competition aimed at bringing down the cost of insurance premiums, including for motor and home policies.

The Office is part of the Department of Finance and will be supported by the Department of Enterprise, Trade and Employment. It will seek regular input from other Departments, Agencies and stakeholders as required, including the Central Bank, the Competition and Consumer Protection Commission (**CCPC**) and the Motor Insurer’s Bureau of Ireland (**MIBI**).

A press release announcing the Office can be accessed [here](#).

The Office’s webpage can be accessed [here](#).

If you have any questions in relation to the content of this update, to request copies of our most recent newsletters, briefings or articles, or if you wish to be included on our mailing list going forward, please contact any of the team members below.

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