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Insurance

Quarterly Legal and Regulatory Update

Period covered: 1 January 2022 – 31 March 2022

TABLE OF CONTENTS

1. SOLVENCY II

1.1 Council of the EU publishes progress report on proposed Solvency II amending Directive and IRRD

On 4 January 2022, the Council of the EU published a progress report, dated 16 December 2021, on its work on the European Commission's package of insurance reforms (**Progress Report**).

In the Progress Report, the Council of the EU sets out details of work undertaken on the legislative proposals for a Directive containing amendments to Directive (EU) 2009/138 (**Solvency II Directive**) (the **Solvency II amending Directive**) and a Directive on recovery and resolution of insurers (**Insurance Recovery and Resolution Directive** or **IRRD**) adopted by the European Commission in September 2021, being:

- **Solvency II amending Directive**: The Presidency has drafted a number of compromise text proposals on three chapters of the proposed Directive: proportionality, reporting and disclosure, and quality of supervision; and

- **IRRD:** Numerous topics emerged where further work to reach a compromise would be needed. These include resolution goals and triggers, market coverage, the valuation of assets and liabilities, the interaction with groups, the potential interaction with national bankruptcy proceedings, resolution financing and the role of EIOPA in a minimum harmonisation context.

A copy of the Progress Report can be accessed here.

A copy of the proposed Solvency II amending Directive can be accessed here.

A copy of the proposed IRRD can be accessed here.

1.2 Updated Questions and Answers on Regulation

During the first quarter of 2022, EIOPA published updated Questions and Answers (**Q&As**) relating to the following topics under the Solvency II Directive:

- Solvency Capital Requirement – Question ID 2348, Question ID 1901, Question ID 2064, Question ID 1250;

- Reinsurance – Question ID 1979;

- Technical Provisions – Question ID 2102, Question ID 1770, Question ID 1683, Question ID 2056; and

- Other topics – Question ID 2350, Question ID 1489, Question ID 2381.

2. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

2.1 EIOPA launches consultation on advice to European Commission on Retail Investment Strategy

On 28 January 2022, EIOPA published a consultation paper on retail investor protection relating to the sale of insurance-based investment products (**IBIPs**) (**Consultation Paper**). The Consultation Paper is a response to the European Commission's call for advice, relating to its Retail Investment Strategy for the EU, sent to EIOPA in July 2021.

In the Consultation Paper, EIOPA consults on the following five areas:

- Addressing and enhancing investor engagement with disclosures and drawing out the benefits of digital disclosures;
- Assessing the risks and opportunities presented by new digital tools & channels;
- Tackling damaging conflicts of interest in the sales process;
- Promoting an affordable and efficient sales process; and
- Assessing the impact of complexity in the retail investment product market.

The consultation process closed on 25 February 2022 in order to facilitate the delivery of final advice to the European Commission by 30 April 2022.

A copy of the Consultation Paper can be accessed here.

2.2 EIOPA publishes revised single programming document 2022-2024

On 8 February 2022, EIOPA published its revised Single Programming Document 2022-2024 which sets out EIOPA's strategy and work programme for the coming years.

EIOPA identified the following strategic activities as areas for focus in its Annual Work Programme for 2022:

- Integrating sustainable finance considerations across all areas of work;
- Supporting the market and supervisory community through digital transformation;
- Enhancing the quality and effectiveness of supervision;
- Ensuring technically sound prudential and conduct of business policy;
- Identifying, assessing, monitoring and reporting on risks to the financial stability and conduct of business and promoting preventative policies and mitigating actions; and
- Providing effective recruitment, management, and development of EIOPA's human capital.

The Single Programming Document 2022-2024 can be accessed here.

2.3 EIOPA publishes supervisory convergence plan for 2022

On 9 February 2022, EIOPA published its Supervisory Convergence Plan for 2022 which, in line with EIOPA's mandate to build a common supervisory culture and consistent supervisory practices in the EU, identifies priorities to enhance supervisory convergence.

EIOPA's priorities over the course of 2022 revolve around the following three main areas:

- Common supervisory culture and tools, including the supervisory approach to environmental, social and governance (**ESG**) risks;

- Risks to the internal market and level playing field, including work on the calculation of technical provisions; and

- Supervision of emerging risks, including work relating to digital transformation.

EIOPA added some new priorities for 2022 in the plan, covering areas such as exclusions from insurance cover and the lack of clarity in insurance contracts revealed by the COVID-19 pandemic, the supervision of captives and issues related to digital transformation.

A copy of EIOPA's Supervisory Convergence Plan for 2022 can be accessed here.

2.4 EIOPA issues recommendations to NCAs following 2021 insurance sector stress test results

On 16 March 2022, EIOPA published its recommendations to supervisors and insurers based on the results of its 2021 Insurance Stress Test (the **Recommendations**) in accordance with Article 21(2)(b) of Regulation (EU) 1094/2010 (**EIOPA Regulation**).

The Recommendations define a series of actions addressed to National Competent Authorities (**NCAs**) that, once implemented, will result in a more resilient insurance sector in Europe and are grouped into three different subject matters as follows:

- Recommendations on identified vulnerabilities;
- Recommendations on availability of actions to manage adverse conditions; and
- Individual undertaking-specific recommendation.

EIOPA will undertake a co-ordinating role in following up on the recommendations, with the aim of enhancing future stress test exercises and contributing to a more resilient insurance sector in Europe and will ensure that the rate of publication of communication relating to the stress test will increase in future exercises.

A copy of the Recommendations can be accessed here.

2.5 EIOPA publishes feedback statement on amendments to ITS on supervisory reporting and disclosure under Solvency II

On 31 March 2022, EIOPA published a feedback statement, dated 18 March 2022, to the European Commission on proposed amendments to the implementing technical standards (**ITS**) on supervisory reporting and disclosure requirements under the Solvency II Directive (the **Feedback Statement**), following consultation in July 2021.

The Feedback Statement sets out a summary of feedback received from the consultation and EIOPA's responses. Based on such feedback, EIOPA has further reviewed proposed amendments to the ITS to include the following benefits within the final draft ITS:

- Simplification of quarterly reporting for all undertakings;
- Elimination of some annual reporting templates for all undertakings; and
- New thresholds to better promote risk-based and proportionate reporting requirements, leading to exemptions of reporting certain templates for many undertakings.

EIOPA advises that the proposed amended ITS will lead to better fit-for-purpose reporting requirements, a reduction of reporting costs for the majority of insurance undertakings and better supervision through the inclusion of some new information relating to emerging risks and new areas for which supervisors identified a number of data gaps.

Furthermore, the reporting requirements have been adjusted to take account of the nature, scale and complexity of captive (re)insurance undertakings' business.

In addition, EIOPA has published an impact assessment on the proposed ITS amendments (**Impact Assessment**) to supplement the Feedback Statement.

The Feedback Statement, the Impact Assessment and the final draft amended ITS which have been submitted to the European Commission for endorsement can be accessed here.

3. INSURANCE DISTRIBUTION DIRECTIVE (IDD)

3.1 EIOPA publishes report on the application of IDD

On 6 January 2022, EIOPA published a report on the application of Directive (EU) 2016/97 (**Insurance Distribution Directive** or **IDD**) (the **Report**), with the Annexes to the report published separately.

The Report examines changes in the EU insurance distribution market structure, the impact of the new regulatory framework and the impact on the supervisory framework with the objective of providing a preliminary assessment of the impact of the IDD on consumers, insurance distributors and supervisory activities. Its findings include:

- The IDD has generally had a positive impact on the distribution of insurance. However, EIOPA has identified some difficulties in applying the demands and needs test and it continues to raise concerns related to the sale of unit-linked life insurance products and mortgage and consumer credit protection policies;
- The application of the IDD rules on the form and timing of disclosures in a digital context was challenging for insurance distributors and NCAs because of a lack of additional guidance. By way of example, the IDD requires by default, certain disclosures to be made to consumers on paper and this rule has not been able to keep pace with digital developments; and
- Not all NCAs have sufficient powers to carry out effective conduct of business supervision, with some NCAs lacking intermediate powers between taking adequate remedial measures and product intervention powers.

A copy of the Report can be accessed here.

A copy of the Annexes to the Report can be accessed here.

3.2 Updated Questions and Answers on Regulation

During the first quarter of 2022, EIOPA published updated Q&As relating to the following topics under IDD:

- Product Oversight and Governance Arrangements for Distributors – Question ID 2358;
- Professional Requirements – Question ID 1847;
- Scope – Question ID 1870, Question ID 1795;
- Definitions – Question ID 1971, Question ID 1596, Question ID 2006; and
- Insurance-based Investment Products (**IBIPs**) – Question ID 2100.

4. PRIIPS

4.1 Proposed Extension to Application Date of PRIIPS Revised Level 2 Measures

On 17 March 2022, the European Commission adopted a Delegated Regulation (the **Delegated Regulation**) which proposes to delay the application of Delegated Regulation (EU) 2021/2268 containing revised Level 2 measures issued under Regulation (EU) No 1286/2014 (**PRIIPS Regulation**) (**Revised Level 2 Measures**) until 1 January 2023.

The Revised Level 2 Measures amend the Delegated Regulation (EU) 2017/653 (**Original Level 2 Measures**) to revise some of the existing requirements relating to the presentation and content of the KID.

If the Delegated Regulation is implemented in its current form, this will mean that all PRIIPS KIDs currently published will need to be updated to comply with the Revised Level 2 Measures from the same date, being 1 January 2023.

The Delegated Regulation must now be scrutinised by the European Parliament and the Council. If neither object, it will enter into force 20 days after its publication in the OJ.

A copy of the Delegated Regulation can be accessed here.

A copy of the Revised Level 2 Measures can be accessed here.

A copy of the Original Level 2 Measures can be accessed here.

5. CENTRAL BANK OF IRELAND

5.1 Central Bank publishes Guidance on the Use of Service Companies for Staffing Purposes in the Insurance Sector

On 31 January 2022, the Central Bank of Ireland (**Central Bank**) published its final Guidance on the Use of Service Companies for Staffing Purposes in the Insurance Sector (the **Guidance**), following publication of Consultation Paper 144 (**CP 144**) in August 2021. The Guidance was accompanied by a feedback statement (the **Feedback Statement**) setting out the Central Bank's views on submissions received from CP 144 on its 2021 Guidance (the **draft guidance**).

The Guidance remains largely unchanged from the Central Bank draft guidance. However, one important change is a perceived dilution of the requirement of an undertaking to allocate 6 months' working capital within the service company.

The Central Bank expects undertakings to conduct a review of existing staffing arrangements and amend where necessary to align with the expectations set out in the Guidance by 31 January 2023.

A copy of the Guidance can be accessed here.

A copy of the Feedback Statement can be accessed here.

A copy of the draft guidance can be accessed here.

5.2 Central Bank Director General sets out 2022 financial regulation priorities

On 11 March 2022, the Central Bank published a press release setting out its financial regulation priorities for 2022 (the **Press Release**) with the objective of creating the regulatory context in which the potential benefits of innovation for consumers, businesses and society can be realised, while effectively managing risks.

The Press Release notes that the Central Bank will continue to operate a forward-looking approach to the authorisation of financial services firms, being clear about its expectations to prospective and applicant firms noting that "*where the authorisation process is done well, it mitigates risks which can emerge in supervision*".

The Press Release also notes that the Central Bank "*will continue to step up work on climate change to ensure that the financial system can support the transition to a carbon neutral economy and is suitably resilient to the risks*".

A copy of the Press Release can be accessed here.

5.3 Central Bank implements new 'Price Walking' Insurance Regulations

On 15 March 2022, the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Requirements) Regulations 2022 (the **Regulations**) were published in Iris Oifigiúil.

Following a comprehensive review assessing how differential pricing is used in the motor and home insurance markets in Ireland and its impact on consumers and having concluded a consultation process (**Consultation Paper 143**), the Central Bank published the Regulations with the aim of protecting consumers and making the process of buying car and home insurance fairer.

The Regulations introduce several requirements for insurance undertakings and insurance intermediaries, the key requirements being:

- **Price walking:** The Central Bank is banning the practice known as "price walking". Therefore, an insurance undertaking or insurance intermediary cannot charge relevant renewing customers a premium that is higher than they would have charged an equivalent year one consumer renewing their policy. However, it is noted that to support competition and switching, new customer discounts will be allowed;

- **Pricing practices and processes**: All insurance undertakings and insurance intermediaries shall carry out an annual review of their insurance pricing policies and processes to ensure sound practices; and

- **Auto-renewal of insurance policies**: The Regulations set out the information that must now be provided to consumers in advance of the automatic renewal of an insurance policy and also provides that an insurance undertaking or insurance intermediary shall allow a consumer to exercise the right to cancel the automatic renewal of an insurance policy at any time during the duration of the insurance policy for no charge.

The Central Bank also published a Differential Pricing Q&A (the **Q&A**) along with an updated version of their Differential Pricing Customer FAQs (the **FAQs**) to assist insurance undertakings and insurance intermediaries' understanding of the Regulations.

The Regulations will come into force on 1 July 2022 and can be accessed here.

Further information on the Regulations including the Q&A and the FAQ can be accessed here.

5.4 Central Bank updates list of Pre-Approval Controlled Functions

Further to its Notice of Intention informing industry of its intention to make certain changes to the Pre-Approval Controlled Functions (**PCF**) under the PCF regime published in September 2021, the Central Bank has now published the Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2022 (**Amending Regulations**) together with a Feedback Statement.

Changes introduced following publication of the Amending Regulations include:

- Separation of the PCF-2 role into two roles, namely PCF-2A for the role of non-executive director and PCF-2B for the newly specified role of independent non-executive director (INED);

- Removal of PCF-15 (Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation) and introduction of PCF-52 (Head of Anti-Money Laundering and Counter Terrorist Financing Compliance);

- Expansion of the PCF-16 (Branch Manager of branches in other EEA countries) role to include branch managers of regulated firms in non-EEA countries; and

- Removal of PCF-31 (Head of Investment). Individuals that hold the role of PCF-31 will be automatically re-designated as PCF-30 (Chief Investment Officer).

For a detailed analysis of the Central Bank's updates to the PCF regime, please refer to our separate client briefing on the topic. The Amending Regulations can be accessed here.

The Central Bank's Feedback Statement can be accessed here.

The Central Bank's Notice of Intention can be accessed here.

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

6.1 EBA launches AML and CFT central database

On 31 January 2022, the European Banking Authority (**EBA**) published a press release announcing the launch of the European Reporting System for material CFT/AML weaknesses (**EuReCA**) following the publication of a final report on draft RTS on EuReCA (**draft RTS**) in December 2021.

EuReCA is an AML and CFT central database which will contain information on material weaknesses in individual financial institutions within the EU as identified by competent authorities as well as information on the measures imposed on financial institutions to rectify material weaknesses. EuReCA will also include internal audit findings identified during on-site inspections by prudential authorities.

The EBA will use information from EuReCA to inform its view of AML and CFT risks affecting the EU financial sector and will also share information from EuReCA with competent authorities, including if specific AML and CFT risks or trends emerge.

EuReCA will not commence the process of collecting personal data until the approval of the draft RTS by the European Commission.

A copy of the press release can be accessed here.

A copy of the draft RTS can be accessed here.

6.2 European Commission publishes revised list of high-risk third countries under MLD4 (AML Blacklist)

On 21 February 2022, Commission Delegated Regulation (EU) 2022/229 that amends the list of high-risk third countries with strategic AML and counter-terrorist financing (**CTF**) deficiencies produced under Article 9(2) of Directive (EU) 2015/849 (as amended) (the **Fourth Money Laundering Directive** or **MLD4**) (the **Delegated Regulation**) was published in the OJ, following adoption by the European Commission on 7 January 2022.

The Delegated Regulation amends Delegated Regulation (EU) 2016/1675 by adding nine countries; Burkina Faso, Cayman Islands, Haiti, Jordan, Mali, Morocco, the Philippines, Senegal, and South Sudan, to the list of countries which have been identified as having strategic AML and CFT deficiencies. The Delegated Regulation also removes from the list countries that no longer present strategic AML and CFT deficiencies, such as the Bahamas and Iraq. The AML blacklist is largely aligned with, but not identical to, FATF's Ongoing Monitoring (or '**Grey**') List.

Certain implications arise as a result of such blacklisting, including;

- Where a customer is established or resident in a jurisdiction on the AML blacklist, any entity which is subject to the EU's AML laws must apply enhanced DD for that customer and put in place ongoing monitoring processes.
- Under Article 4 of Regulation (EU) 2017/2402 (as amended) (the **Securitisation Regulation**), securitisation special purpose entities (**SSPEs**) cannot be established in any third country which appears on the European Commission's "blacklist" published under MLD4.

The Delegated Regulation entered into force on 13 March 2022.

A copy of the Delegated Regulation can be accessed here.

7. DATA PROTECTION

7.1 EDPB adopts Guidelines on Right of Access and letter on cookie consent

On 28 January 2022, the European Data Protection Board (**EDPB**) published draft regulatory guidelines (the **Guidelines**) on the right of data subjects to have access to their personal data under Regulation (EU) 2016/679 (**General Data Protection Regulation** or **GDPR**), following adoption of the Guidelines on 19 January 2022, during its January plenary session.

The Guidelines aim to analyse the various aspects of the right to access to provide more precise guidance on the information the controller has to provide to the data subject, the format of the access request, the main modalities for providing access, and the notion of manifestly unfounded or excessive requests.

The deadline for public consultation responses was 11 March 2022.

In addition, the EDPB adopted a letter in reply to letters calling for a consistent interpretation of cookie consent (the **Letter**). Within the Letter, the EDPB notes its commitment to ensuring a harmonised application of data protection rules throughout the EEA. In this respect, the EDPB has recently set up a taskforce on cookie banners to coordinate the response to complaints concerning cookie banners. Furthermore, the EDPB has updated the Guidelines on consent in order to ensure a harmonised approach on the conditionality of consent and on the unambiguous indication of wishes.

A copy of the Guidelines can be accessed here.

A copy of the Letter can be accessed here.

8. SUSTAINABILITY

8.1 ESAs publish Revised Supervisory Statement on the Application of the SFDR

On 25 March 2022, the European Supervisory Authorities (**ESAs**) published a joint updated supervisory statement on the application of Regulation (EU) 2019/2088 (**Sustainable Finance Disclosure Regulation** or **SFDR**) in light of the postponement of the entry into force of the related Level 2 Measures, to be published under SFDR, until 1 January 2023 (the **Statement**).

The ESAs indicate that until the finalised Level 2 measures, to be published under the SFDR, enter into force on 1 January 2023 (the **Interim Period**), the draft Level 2 measures can be used as a reference for the purposes of applying the disclosure obligations set down under the SFDR itself, noting, however, that the draft Level 2 measures may be subject to further change and that financial market participants should be encouraged by NCAs to use the Interim Period to prepare for the application of these measures.

The ESAs also clarify that they expect disclosures made by financial products falling within the scope of Article 5 or Article 6 of the Regulation (EU) 2020/852 (**Taxonomy Regulation**) during the Interim Period, to specifically include a percentage figure of the extent to which the investments underlying the financial product are taxonomy-aligned.

Separately, the Statement confirms that estimates should not be used to calculate the taxonomy-alignment of in-scope financial products but notes that where information is not readily available from public disclosures by investee companies, financial market participants may rely on equivalent information on taxonomy alignment obtained directly from the investee companies or from third party providers.

For a detailed analysis of the ESA joint updated supervisory statement on the application of the SFDR, please refer to our separate client briefing on the topic.

A copy of the Statement can be accessed here.

8.2 EU Platform on Sustainable Finance publishes report on environmental transition taxonomy with traffic light system

On 29 March 2022, the EU Platform on Sustainable Finance (**PSF**) published its report entitled "The Extended Environmental Taxonomy: Final Report on Taxonomy extension options supporting a sustainable transition" (**Final Report**) in response to the European Commission's request for advice under the Taxonomy Regulation.

In recognition of the fact that the current Taxonomy framework leaves a wide variety of economic activities non-classified which could be mistakenly interpreted as "not green" and consequently struggle to obtain required investment to support environmental transition, the PSF has proposed extending the Taxonomy framework beyond "green activities" to classify activities using a traffic light system as follows:

- Red: Unsustainable performance requiring an urgent transition to avoid significant harm. These activities could qualify for taxonomy-recognised investment as part of a transition plan to avoid their current significantly harmful performance and move to intermediate performance levels;
- Amber: Intermediate performance activities that could qualify for taxonomy-recognised investment as part of an intermediate or amber transition plan under which they continue to improve to stay out of significantly harmful performance;
- Green: Substantial contribution activities already included in the green Taxonomy under the Climate Complementary Taxonomy Act or to be included in future delegated acts; and
- Low Environmental Impact: Activities that do not have a significant environmental impact and should not be regarded as red, amber or green.

The European Commission will now analyse the advice from the PSF as set out in the Final Report.

A copy of the Final Report can be accessed here.

9. MISCELLANEOUS

9.1 Competition and Consumer Protection Commission publishes report on private motor insurance investigation

On 8 February 2022, the Competition and Consumer Protection Commission (**CCPC**) published a report on its investigation into suspected anticompetitive conduct in the private motor insurance sector (the **Report**).

The Report follows the conclusion of this investigation in August 2021, with several industry leading organisations entering into legally binding agreements with the CCPC where they agreed to implement and maintain an appropriate competition law compliance programme, or to enhance any existing programme to include regular competition law training on pricing practices.

The Report outlines the CCPC's reasoning for opening the investigation, the behaviours which came to light and the steps taken to secure the commitments. The organisations involved denied their involvement in a breach of competition law and there was no finding of liability.

A copy of the Report can be accessed here.

9.2 Commission seeks feedback on commitments offered by Insurance Ireland concerning access to its data sharing platform

On 25 February 2022, the European Commission published a press release inviting comments on commitments offered by Insurance Ireland, an association of Irish insurers, to address competition concerns regarding access to its Insurance Link information exchange system, following a formal investigation into Insurance Ireland's conduct which opened in May 2019.

The European Commission preliminarily considered that Insurance Ireland restricted competition in arbitrarily delaying or in practice denying access to its Insurance Link information exchange system, placing certain companies at a competitive disadvantage on the Irish motor vehicle insurance market in comparison to companies that had access to the information exchange system.

To address the Commission's concerns, Insurance Ireland has offered the following commitments:

- To make the access to the Insurance Link information exchange system independent from any membership to Insurance Ireland;
- To change the access criteria to Insurance Link and make them fair, objective, transparent and non-discriminatory and to apply them uniformly to all applicants, from Ireland and other Member States;
- To establish a new Insurance Link application procedure with a defined timeline that will be handled by an independent Application Officer. Applicants who have been refused access will be able to appeal to the Oversight Committee, an independent appeal body;
- To establish a cost and usage-based fee model and to ensure that a fair, transparent, and non-discriminatory fee will be charged to Insurance Link users; and
- To ensure that the criteria for becoming member of the Insurance Ireland association will be fair, objective, transparent and non-discriminatory.

The commitments were published in the OJ on 4 April 2022 and the European Commission invites interested parties to submit their views on these by 4 May 2022.

A copy of the commitments can be accessed here.

A copy of the press release can be accessed here.

9.3 Action Plan for Insurance Reform - Implementation Report March 2022

On 1 March 2022, the Department of Finance and the Department of Enterprise, Trade and Employment published their second six-monthly progress report on implementation of the Action Plan for Insurance Reform (**Action Plan**) (the **Implementation Report**), following publication of the Action Plan for Insurance Reform in December 2020.

The Action Plan aims to reform the Irish insurance market by reducing the costs of insurance for customers and businesses. It set out 66 actions for the Government to deliver and the Implementation Plan notes that 51 of the 66 actions have been completed, with the remaining initiated.

Some of the main principal actions deemed to be complete include the following:

- The Consumer Insurance Contracts Act has commenced;
- The Personal Injuries Guidelines have been delivered;
- The Perjury and Related Offences Act has commenced which strengthens the laws on perjury;
- Establishment of the Office to Promote Competition in the Insurance Market; and
- Establishment of the Insurance Fraud Coordination Office.

Details of the remaining principal actions along with further actions expected for completion in 2022 are set out in the Implementation Report which can be accessed here.

A copy of the Action Plan can be accessed here.

9.4 EU Sanctions against Russia / Belarus

In reaction to Russia's military aggression against Ukraine, the European Union has adopted a series of packages of economic sanctions against Russia and Belarus (the **Sanctions**) which require all firms to implement appropriate procedures to ensure that they are in a position to comply with the Sanctions at all times.

The Central Bank's webpage providing further information on the Sanctions can be accessed here

The European Commission's webpage relating to the Sanctions can be accessed here.

9.5 Whistleblowing Legislation to enhance the protection afforded to whistle-blowers

On 23 March 2022, the Irish Government published an updated version of the Protected Disclosures (Amendment) Bill 2022 (**Bill**) incorporating agreed amendments following governmental debate at Committee Stage. The Bill has now progressed to its Report Stage. The updated version of the Bill contains provision for the review of the operation of the Act within five years of the date on which it is passed.

The Bill proposes to transpose Directive (EU) 2019/1937 (the **Whistleblowing Directive**) into national law, building on an already comprehensive national whistleblower protection legal framework as provided by the Protected Disclosures Act 2014 (the **Act**). The Bill will amend the Act to give effect to the Whistleblowing Directive and to broaden the provisions of the protected disclosures regime.

Key provisions under the Bill include:

- The introduction of an obligation on organisations with over 50 employees to establish internal reporting channels and procedures for their workers to make protected disclosures. Notably, organisations with between 50 and 249 employees are afforded a temporary derogation from this requirement which expires on 17 December 2023;

- Amending the definition of "relevant wrongdoing" under the Act to include a 'breach' defined as "an act or omission that is unlawful" and falls within the scope of a range of specified EU acts and to exclude from the definition any matters concerning interpersonal grievances or matters which solely concern the reporting person;

- Extending the protective scope of the Act to include volunteers, shareholders, trainees, board members and job applicants within the definition of "worker" along with a provision to protect those who make anonymous disclosures and whose identity subsequently becomes known and is penalised for having made the disclosure;

- The reversal of the burden of proof in claims for penalisation for making a protected disclosure, placing the onus of proof on the employer to prove that an alleged act of penalisation was based on duly justified grounds; and

- Introducing new offences including the attempt or act of hindering a worker in making a report, failing to establish and maintain an internal reporting channel, and penalising, threatening to penalise, or causing/permitting another to penalise or threaten penalisation. Similarly, the Bill proposes to extend the compensatory caps to provide for limited compensation for workers not in remuneration.

While the Bill is currently progressing through the stages of the Dáil and has not been finalised, the Republic of Ireland, along with many other EU Member States, has missed the December 2021 deadline for transposition of the Whistleblowing Directive. As such, the Bill is

expected to be transposed over the coming months, requiring employers to take action to ensure compliance with the changes to the Act as introduced by the Bill.

A copy of the updated version of the Bill can be accessed here.

A copy of the Bill can be accessed here.

A copy of the Whistleblowing Directive 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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