



Insurance

Quarterly Legal and Regulatory Update

Period covered: 1 April 2021 – 30 June 2021

TABLE OF CONTENTS

<u>SOLVENCY II</u>	<u>EIOPA</u>	<u>INSURANCE DISTRIBUTION DIRECTIVE (IDD)</u>	<u>CENTRAL BANK OF IRELAND</u>
<u>ANTI-MONEY LAUNDERING (AML) AND COUNTERING THE FINANCING OF TERRORISM (CFT)</u>	<u>DATA PROTECTION</u>	<u>SUSTAINABILITY</u>	<u>MISCELLANEOUS</u>

1. SOLVENCY II

1.1 EIOPA issues opinion on the supervision of the use of climate change risk scenarios in the ORSA

On 19 April 2021, the European Insurance and Occupational Pensions Authority (**EIOPA**) published its opinion on the supervision of the use of climate change risk scenarios in the Own Risk and Solvency Assessment (**ORSA**). This opinion is addressed to national competent authorities (**NCA**s) and sets out EIOPA's expectations relating to the supervision of the integration of climate change risk scenarios by insurers into their ORSA.

The opinion follows a risk-based and proportionate approach, recognising that methodologies are still developing and insurers need to gain experience. The opinion provides practical guidance on how to select and use climate change scenarios and expects NCAs to collect qualitative and quantitative data to perform a supervisory review of the analysis of short and long-term climate change risks in the ORSA.

EIOPA will start monitoring the application of the opinion by the NCAs two years after its publication.

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

1.2 Commission Implementing Regulation published in the Official Journal of the European Union

On 7 May 2021, Commission Implementing Regulation (EU) 2021/744 regarding technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March 2021 until 29 June 2021 under the Solvency II Directive (2009/138/EC) (**Solvency II Directive**) was published in the Official Journal of the European Union.

The Commission Implementing Regulation entered into force on 8 May 2021 and it applies from 31 March 2021.

The Commission Implementing Regulation can be accessed [here](#).

1.3 European Union (Insurance and Reinsurance) (Amendment) Regulations 2021

On 30 June 2021, the European Union (Insurance and Reinsurance) (Amendment) Regulations 2021 (S.I. No. 240 of 2021) (the **2021 Regulations**) came into operation.

The 2021 Regulations amend the European Union (Insurance and Reinsurance) Regulations (S.I. No. 485 of 2015) (the **Solvency II Regulations**) to require the Central Bank of Ireland (**Central Bank**) to notify EIOPA and the supervisory authorities in host Member States of certain matters regarding insurance undertakings authorised by the Central Bank and operating on a freedom of services basis. The 2021 Regulations also provide for the establishment of collaboration platforms between the Central Bank, EIOPA and other supervisory authorities to enhance collaboration and strengthen the exchange of information between such authorities.

The 2021 Regulations can be accessed [here](#).

1.4 Updated Questions and Answers on Regulation

During the second quarter of 2021, EIOPA published updated Questions and Answers (**Q&As**) relating to the following topics under Solvency II:

- Reinsurance – [Question ID 1898](#);

- Technical Provisions - [Question ID 2115](#), [Question ID 2029](#);
- Captives - [Question ID 1760](#);
- Solvency Capital Requirement (**SCR**) – [Question ID 2174](#), [Question ID 2124](#), [Question ID 2086](#), [Question ID 1424](#), [Question ID 984](#), [Question ID 1863](#), [Question ID 1894](#), [Question ID 1857](#), [Question ID 1848](#), [Question ID 1484](#), [Question ID 1991](#), [Question ID 2026](#), [Question ID 1885](#), [Question ID 1315](#), [Question ID 1852](#), [Question ID 1867](#), [Question ID 2007](#);
- Risk Free Rate (**RFR**) – [Question ID 2118](#), [Question ID 1433](#);
- Disclosure Templates – [Question ID 1171](#); and
- Other topics – [Question ID 2052](#), [Question ID 1211](#), [Question ID 1525](#), [Question ID 1693](#), [Question ID 1833](#), [Question ID 2081](#), [Question ID 2089](#), [Question ID 2061](#), [Question ID 2052](#), [Question ID 2032](#), [Question ID 2016](#), [Question ID 1974](#), [Question ID 2258](#), [Question ID 1925](#), [Question ID 1861](#), [Question ID 2014](#), [Question ID 1706](#), [Question ID 1314](#), [Question ID 1720](#), [Question ID 1502](#) and [Question ID 1543](#);

2. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

2.1 EIOPA launches consultation on framework to address value for money risk in the European unit-linked market

On 13 April 2021, EIOPA launched a consultation on a framework to address value for money risk in the European unit-linked market.

The consultation is a response to EIOPA's concerns that, while unit-linked products can and often offer important benefits for policyholders, the costs of some unit-linked products continue to remain too high. The COVID-19 pandemic has heightened these concerns as the low interest rate coupled with market shocks and the risk that households will need increased access to liquidity underline how important it is that unit-linked products always offer value to consumers.

The aim of this consultation is to seek views on the proposed framework that should serve as the basis to assist insurance product manufacturers in assessing whether their unit-linked (and hybrid) products offer value for money and whether adequate measures are taken to mitigate risks relating to product complexity.

EIOPA invites feedback from stakeholders on the proposed framework until 16 July 2021.

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

2.2 EIOPA publishes a discussion paper on blockchain and smart contracts in insurance

On 29 April 2021, EIOPA published a discussion paper on blockchain and smart contracts in insurance (the **Discussion Paper**).

The Discussion Paper provides a high-level overview of risks and benefits of blockchain and smart contracts in insurance from a supervisory perspective and aims to gather feedback from stakeholders on these matters.

EIOPA invites stakeholders to provide feedback on the Discussion Paper by 29 July and will assess the feedback to better understand and address blockchain developments in the insurance sector, including the risks and benefits related to them.

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

2.3 EIOPA launches consultation on the proposal for Interbank Offered Rates transitions

On 30 April 2021, EIOPA launched a consultation on the Interbank Offered Rates (**IBOR**) transitions.

The consultation considers adjustments to EIOPA's risk-free rate (**RFR**) methodology and production due to the EU Benchmark Regulation which requires financial benchmarks to be transparent and to measure the underlying economic reality in a representative way. EIOPA seeks to adjust its RFR production to the new reality by adopting a common approach for all currencies on the transition to the new rates in order to continue producing consistent RFR term structures.

The consultation closes on 23 July 2021 and can be accessed [here](#).

2.4 Information request from national supervisory authorities on the impact of IBOR transitions

On 30 April 2021, EIOPA issued an information request on the impact of IBOR transitions as part of its work to incorporate the new Overnight Indexed Swap (**OIS**) reference rates in the RFR production.

A representative sample of insurance and reinsurance undertakings subject to Solvency II were requested to provide information on the impact of IBOR transitions on the solvency position of undertakings with reference date 31 March 2021 and submit the completed reporting template to the respective national supervisory authority by 25 June 2021.

The information request can be accessed [here](#).

2.5 EIOPA launches Insurance Stress Test 2021

On 7 May 2021, EIOPA launched the European Union wide insurance sector stress test 2021.

The aim of the stress test is to assess the resilience of the participants to the adverse scenarios by a capital and liquidity perspective in order to provide supervisors with information on whether these insurers are able to withstand severe but plausible shocks. The 2021 stress test focuses on a prolonged COVID-19 scenario in a "lower for longer" interest rate environment. The 2021 stress test will allow EIOPA to make recommendations to the insurance industry and enables supervisors to require insurers to take remedial actions, where necessary, in order to improve their resilience.

The deadline for submission of the results to the NCAs is 13 August 2021. From Mid-August to October, participants may be asked to provide clarifications or resubmit part of the results for quality assurance during the validation phase.

The outcome of the 2021 Stress Test will be published in December.

The EIOPA webpage which contains the fact sheet, background documents, stress test specifications and questions and answers can be accessed [here](#).

2.6 EIOPA publishes report on artificial intelligence governance principles

On 17 June 2021, EIOPA's Consultative Expert Group on Digital Ethics in Insurance published a report on Artificial Intelligence (**AI**) governance principles: towards ethical and trustworthy AI in the European insurance sector (the **Report**).

The Report highlights the pivotal role of AI in insurance, given its potential to increase the efficiency of operational processes and reduce costs. However, there are also growing concerns about the impact that the increasing use of AI could have on the financial inclusion of certain consumers such as protected classes or vulnerable consumers or on our society as a whole.

The Report sets out the six AI governance principles developed by EIOPA's multidisciplinary stakeholder group to promote an ethical and trustworthy AI in the European insurance sector. These governance principles relate to proportionality, fairness and non-discrimination, transparency and explainability, human oversight, data governance of record keeping and robustness and performance.

These AI principles consider the specificities of the insurance sector and lay down the key governance pillars for ethical and trustworthy AI in insurance. They are also accompanied by additional guidance for insurance firms on how to implement them in practice throughout the AI system's lifecycle. The guidance is non-binding and illustrative.

EIOPA will use the findings in the Report to identify possible supervisory initiatives in this area, taking into account the on-going developments at EU level related to digitalisation and AI.

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

3. INSURANCE DISTRIBUTION DIRECTIVE (IDD)

3.1 EIOPA launches Insurance Distribution Directive Single Rulebook

On 8 April 2021, EIOPA launched its Insurance Distribution Directive ((EU) 2016/97) Single Rulebook.

The Single Rulebook is an online tool that promotes the consistent implementation of the regulatory framework and enables the navigation across different legal acts such as the IDD, the related Delegated and Implementing Regulations, as well as EIOPA Guidelines and IDD questions and answers submitted via a dedicated Q&A process.

The IDD Single Rulebook can be accessed [here](#).

3.2 Updated Questions and Answers on Regulation

During the second quarter of 2021, EIOPA published updated Questions and Answers (**Q&As**) relating to the following topics under IDD:

- Insurance-based investment products (**IBIPs**) Suitability Assessment – [Question ID 2270](#);
- Registration – [Question ID 2269](#);
- Product oversight and governance (**POG**) – [Question ID 2268](#), [Question ID 2267](#), [Question ID 2266](#) and [Question ID 2265](#); and
- IBIPs Assessment of Appropriateness – [Question ID 2264](#);

4. CENTRAL BANK OF IRELAND

4.1 CP140 - Consultation on Cross Industry Guidance on Operational Resilience

On 9 April 2021, the Central Bank published its Consultation Paper 136 on Cross Industry Guidance on Operational Resilience (**CP140**). The draft guidance is contained in Schedule 1 to CP140 (**Guidance**). The Guidance, once finalised, will be cross-sectoral and will apply to all regulated financial services providers regulated by the Central Bank.

The Guidance is intended to outline the Central Bank's expectations of the design and management of operational resilience and to outline the responsibilities of the boards and senior management of regulated firms to consider and appropriately manage operational risk and will focus on risk management, business continuity, incident management, third party risk management, ICT and cyber risk and recovery and resolution planning.

It will supplement (rather than replace) any existing sectoral legislation or guidance and the Central Bank notes that it should be read in conjunction with its existing guidance on cybersecurity and IT risk management as well as its proposed guidance on outsourcing, once finalised.

Under CP140, the Central Bank has proposed that firms will be required to be in a position to demonstrate compliance with the Guidance within two years of the finalised Guidance being issued.

The Central Bank is inviting stakeholders to submit feedback on the Guidance. The consultation period closes on 9 July 2021, and feedback may be submitted by email to Opresilience@centralbank.ie.

Please see the Dillon Eustace briefing paper entitled "Central Bank Consultation on Cross Industry Guidance on Operational Resilience". The Dillon Eustace briefing paper can be accessed [here](#).

CP140 can be accessed [here](#).

4.2 Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Recovery Plan Requirements for Insurers) Regulations 2021

On 19 April 2021, the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Recovery Plan Requirements for Insurers) Regulations 2021 (S.I. No. 184 of 2021) (the **Regulations**) came into force. The Regulations set out certain requirements in respect of recovery plans for (re)insurers authorised by the Central Bank with the aim of:

- promoting awareness and allowing (re)insurers to prepare for a range of possible adverse situations;
- enabling (re)insurers to consider and evaluate the most appropriate and effective mitigation without the resulting pressures of actual severe stress; and
- enabling (re)insurers to take more effective, comprehensive and thoughtful measures to ensure their timely implementation, if required.

More specifically, the Regulations require (re)insurers to:

- prepare a pre-emptive recovery plan that addresses a number of areas;
- review and, where necessary, update the recovery plan at least every 12 months for High and Medium-High impact firms and at least every 24 months for Medium-Low and Low impact firms or after any material change to the legal or organisational structure of the (re)insurer, its business or its financial position; and
- provide a copy of the recovery plan to the Central Bank on request.

(Re)insurers are required to prepare the recovery plan by 31 March 2022. Where a (re)insurer is newly authorised on or after 19 April 2021, the deadline for preparation of the plan is within 12 months of authorisation.

The Regulations commenced on 19 April 2021 and can be accessed [here](#).

In April 2021, the Central Bank published the Recovery Plan Guidelines for Insurers (the **Guidelines**) to assist (re)insurers in preparing the recovery plan required by the Regulations. The Guidelines set out the expectations of the Central Bank regarding the content and format of the recovery plan and the factors that (re)insurers should take into account when developing a recovery plan that is appropriate to the nature, scale and complexity of their business.

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

4.3 Central Bank publishes the results of its Understanding the Future of Insurance: Climate & Emerging Risk Survey

By way of background, the Central Bank launched a Climate & Emerging Risk Survey (**Survey**) to a sample of insurance firms across all sectors (life, non-life and reinsurance) in Q4 of 2020. The aim of the Survey was to assess the awareness, understanding and management of key emerging risks such as climate change and cyber underwriting risks across the Irish insurance sector.

In May 2021, the Central Bank issued the results of the Survey which reflect a rapidly evolving insurance landscape and provided valuable information on the level of exposure and preparedness of Irish insurance firms to emerging risks in climate change and cyber underwriting risk. In the Survey, the Central Bank notes that insurance firms can expect an increasingly active approach to the supervision of emerging risks with its supervisory engagement, individual inspections and analysis which will assess the progress insurance firms are making in developing risk identification, measurement and product oversight approaches.

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

4.4 Central Bank publishes updated Consumer Protection Code 2012 Guidance

On 24 May 2021, the Central Bank published a revised version of the “Consumer Protection Code – Guidance” (**Guidance**). The Guidance has been updated at the following sections:

- Section 3.4: To amend the clarification provided in relation to the use of the term “broker” in provision 4.18;
- Sections 3.10 – 3.13: To provide additional information and clarification regarding the provision of information on remuneration under Provision 4.58A of the Consumer Protection Code; and
- Section 9.2: To amend the clarification provided on the exclusion of moneylending from the scope of the Consumer Protection Code 2012.

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

4.5 Central Bank publishes the Fitness & Probity Interview Guide

In June 2021, the Central Bank launched a new publication, the Fitness & Probity (**F&P**) Interview Guide, to assist applicants for certain senior roles who have been called to attend an F&P interview with the Central Bank. The Guide sets out for Pre-Approval Controlled Function (**PCF**) applicants and firms the practicalities around attending both assessment and specific interviews.

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

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

5.1 Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 (Commencement) Order published

On 13 April 2021, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 (Commencement) Order 2021 (S.I. No. 188 of 2021) was published (**Order**). The Order brings the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 (**Act**) into operation, effective from 23 April 2021, with the exception of Section 8, which is effective from 24 April 2021.

The purpose of the Act is to transpose the criminal justice elements of Directive (EU) 2018/843 (Fifth EU Anti-Money Laundering Directive or AMLD 5) by amending the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (**CJA 2010**) in line with AMLD 5.

In addition, following commencement of the Act, crypto-asset services have become, for the first time, subject to regulation in Ireland.

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

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

5.2 European Commissioner speech on AML and CFT Action Plan

On 17 May 2021, the European Commissioner for Financial Services, Financial Stability and Capital Markets Union, Mairead McGuinness gave a speech at the AML Intelligence Boardroom Series, outlining elements of the European Commission's AML and CFT action plan. Central to the action plan is the increased harmonisation of AML rules and a new AML authority at EU level. The European Commissioner explained that the publication of details regarding the proposed new EU AML and CFT framework would be delayed until Q3 2021 due to technical issues and the volume of measures. In the speech, the European Commissioner addressed:

- the single AML and CFT rulebook;
- the new AML and CFT authority, which is expected to start carrying out direct supervision in 2026;
- consultation on information exchange and public-private partnerships;
- international co-operation with FATF and a European Union coordination on global AML issues;
- enforcement of AML framework implementation in each Member State; and
- cross-border connection between national beneficial ownership registers.

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

5.3 Central Bank publishes Guidance for completion of the AML/CFT Risk Evaluation Questionnaire

In May 2021, the Central Bank published Instructions and Guidance for Completion of the AML, CFT and Financial Sanctions (**FS**) Risk Evaluation Questionnaire (**REQ**) (**Guidance**). The REQ seeks to gather:

- information on the way in which a firm has assessed the AML/CFT/FS risks posed by its business model (based on high level information provided by the firm); and

- information on the AML/CFT/FS framework put in place by the firm.

The purpose of the Guidance is to provide information to firms who are required by the Central Bank to file a REQ using the ONR. The Guidance focuses on the structure and content of the REQ and provides clarity for relevant fields contained within the REQ. The Guidance also provides information on accessing and submitting the REQ via ONR.

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

5.4 Updated Central Bank AML/CFT Guidelines for the financial sector

On 23 June 2021, the Central Bank published updated AML/CFT guidelines for the financial sector (**Guidelines**). The updated Guidelines seek to highlight where the CJA 2010 has been materially amended since the initial publication of the Guidelines on 6 September 2019.

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

6. DATA PROTECTION

6.1 European Commission adopts new standard contractual clauses in respect of third-country transfers and controller-processor arrangements

On 4 June 2021, the European Commission, adopted two separate decisions adopting two new sets of standard contractual clauses (**SCCs**) as follows:

- Commission Implementing Decision (EU) 2021/914 containing SCCs for transferring personal data to non-EU countries in the absence of an adequacy decision under Article 46 of the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) (**Third Country SCCs**); and
- Commission Implementing Decision (EU) 2021/915 containing SCCs for use between controllers and processors located in the EU in accordance with the requirements of Article 28 (**Controller-Processor SCCs**).

The European Commission's decisions adopting the final sets of SCCs were published in the OJ on 7 June 2021.

These "new" SCCs are intended to replace the "old" SCCs, which were developed under the predecessor of the GDPR, the European Union Directive 95/46/EC. The new types of SCCs address (i) Controller-to-Controller, (ii) Controller-to-Processor, (iii) Processor-to-(Sub)Processor and (iv) Processor-to-Controller transfers and incorporate the various types of data transfers in a modular concept. It should be possible for more than two parties to adhere to the SCCs. Additional data controllers and processors should be allowed to accede to the SCCs as data exporters or importers from time to time as appropriate.

Controller-Processor SCCs

These became effective on 27 June 2021.

The Controller-Processor SCCs can be accessed [here](#).

The Third Country SCCs

The Third Country SCCs incorporate elements of the Schrems II decision of the European Court of Justice (*Data Protection Commissioner v Facebook Ireland Limited, Maximilian Schrems*). The SCCs impose an obligation on the data exporter (assisted by the data importer)

to consider the level of protection of personal data in the third country. The European Commission's decision makes it clear that the transfer and processing of personal data under SCCs should not take place if the laws and practices of the third country of destination prevent the data importer from complying with the clauses in the SCCs. The SCCs also contain an obligation on the data importer to notify the data exporter of any inability on the part of the data importer to comply with the SCCs (whereupon the exporter must suspend/terminate the agreement). The new SCCs also contain additional provisions, such as the requirement that transfer impact assessments shall be carried out by the data exporter and made available to the competent supervisory authority on request, as well as setting out the factors that the data exporter (with the mandated help of the data importer) must consider in a transfer impact assessment.

From 27 June 2021 the new Third Country SCCs became effective and can be used. Parties can choose to continue to use the old Third Country SCCs until 27 September 2021 provided that (i) the processing operations remain unchanged and (ii) by relying on such clauses, this ensures that the transfer of personal data is subject to appropriate safeguards. After that date, parties must use the new Third Country SCCs. For contracts concluded before 27 September 2021, the parties can continue to rely on the old Third Country SCCs until 27 December 2022. However, as and from that date the new Third Country SCCs must be adopted to comply with Chapter V of GDPR.

The Third-Country SCCs decision can be accessed [here](#).

On 24 June 2021, the European Union (Enforcement of data subjects' rights on transfer of personal data outside the European Union) Regulations 2021 were adopted (**Regulations**). The Regulations insert a new Section 117A into the Data Protection Act 2018. Section 117A provides an express right on the part of individuals to enforce third party beneficiary rights conferred on data subjects under SCCs adopted by the Commission. Prior to this, Irish law did not provide for third party beneficiary rights for data subjects.

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

6.2 EDPB adopts final Recommendations on 'supplementary measures' relating to third country transfers

On 18 June 2021, the EDPB adopted the final version of its Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data following public consultation (Volume 2.0) (**Recommendations**). The Recommendations were subject to a public consultation, which closed on 21 December 2020.

The Recommendations 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 recent "Schrems II" ruling (*Case C-311/18 Data Protection Commissioner v Facebook Ireland Ltd and Maximilian Schrems*).

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

6.3 European Commission publishes adequacy decisions for transfers of personal data to the UK

On 28 June 2021, the European Commission adopted two adequacy decisions for transfers of personal data to the UK under the GDPR and the Law Enforcement Directive ((EU) 2016/680).

The Decisions conclude, following assessment by the European Commission that the UK ensures an essentially equivalent level of protection to that guaranteed under the GDPR and the Law Enforcement Directive. Personal data can now flow freely from the European Union to the UK.

Both adequacy decisions contain a 'sunset clause' which limits the duration of adequacy to four years. After four years, it will be possible to renew the adequacy finding if the level of protection in the UK continues to be adequate.

The adequacy decision concerning GDPR can be accessed [here](#).

The adequacy decision concerning the Law Enforcement Directive can be accessed [here](#).

7. SUSTAINABILITY

7.1 European Commission adopts a package of measures to introduce greater sustainability requirements

On 21 April 2021, the European Commission adopted a package of measures to help re-orient investments towards sustainable technologies and businesses. The package comprises:

- the [EU Taxonomy Climate Delegated Act](#), which was formally adopted on 4 June 2021 for scrutiny by the co-legislators (see section 7.3 below for more detail), supplements the EU Taxonomy Regulation ((EU) 2020/852) by defining the technical screening criteria for economic activities that can make a substantial contribution to climate change mitigation and climate change adaptation;
- a proposal for a [Corporate Sustainability Reporting Directive \(CSRD\)](#) proposes to extend the reporting rules introduced by the Non-Financial Reporting Directive (2014/95/EU) to include all large companies, whether they are listed or not and without the previous 500-employee threshold. The CSRD also proposes to extend the rules to listed SMEs. The aim of the CSRD is to improve the flow of sustainability information in the corporate world and make sustainability reporting by companies more consistent, comparable and reliable;
- six amending Delegated Regulations and Directives, two of which relate to the Solvency II Directive and IDD frameworks as set out below:
 - **Solvency II:** Commission Delegated Regulation amending Delegated Regulation (EU) 2015/35 as regards the integration of sustainability risks in the governance of insurance and reinsurance undertakings ([C\(2021\) 2628 final](#)) – the Delegated Regulation amends the Solvency II Delegated Regulation by requiring insurers to reflect sustainability risks in their risk management processes, requiring remuneration policies to be consistent with the integration of sustainability risks and by requiring that sustainability risks are taken into account in the implementation of the prudent person principle; and
 - **IDD:** Commission Delegated Regulation amending Delegated Regulation (EU) 2017/2358 and Delegated Regulation (EU) 2017/2359 as regards the integration of sustainability factors and preferences into the product oversight and governance requirements for insurance undertakings and insurance distributors and into the rules on conduct of business and investment advice for insurance-based investment products ([C\(2021\) 2614 final](#)) – the Delegated Regulation amends the IDD Delegated Regulations by integrating sustainability factors in suitability assessments and by integrating sustainability risks into the product oversight and governance requirements and into the rules on conflicts of interest.

The Delegated Regulations will enter into force 20 days after their publication in the Official Journal of the European Union and will apply 12 months after publication in the Official Journal of the European Union.

The European Commission press release can be accessed [here](#) and the website can be accessed [here](#).

7.2 European Commission consults on draft Delegated Regulation containing disclosure obligations under Taxonomy Regulation for public interest entities

On 7 May 2021, the European Commission issued a public consultation on a draft Commission Delegated Regulation (**Draft Commission Delegated Regulation**) supplementing Article 8 of the Taxonomy Regulation. Article 8 of the Taxonomy Regulation requires entities

falling within the scope of Article 19a or 29a of Directive 2014/95/EU (**Non-Financial Reporting Directive** or **NFRD**) to disclose information on how and to what extent their activities are associated with environmentally sustainable economic activities.

The Draft Commission Delegated Regulation sets down proposals relating to the specific content, methodology and presentation of information which must be disclosed by both non-financial undertakings and financial undertakings falling within the scope of the NFRD under Article 8 of the Taxonomy Regulation, including the key performance indicators which should be used by in-scope financial undertakings such as large banks, asset managers, investment firms and insurers/reinsurers. The Draft Commission Delegated Regulation, once finalised, is intended to require in-scope issuers to provide taxonomy-related information in their annual non-financial statements. This information should assist financial market participants who invest in in-scope issuers in complying with their own disclosure obligations arising under RTS to be issued under the Sustainable Finance Disclosures Regulation ((EU)2019/2088) (**SFDR**).

The consultation on the Draft Commission Delegated Regulation closed on 2 June 2021. According to an FAQ published by the European Commission, the intention was that a finalised version of the Draft Commission Delegated Regulation was to be adopted by the Commission by end of June 2021 with the obligations thereunder applying from 1 January 2022.

The Draft Commission Delegated Regulation can be accessed [here](#).

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

7.3 European Commission adopts Taxonomy Climate Delegated Act

On 4 June 2021, the European Commission adopted a Delegated Regulation supplementing the Taxonomy Regulation by establishing 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 (**Taxonomy Climate Delegated Act**).

The Taxonomy Climate Delegated Act contains a set of technical screening criteria that define which activities contribute to environmental objectives contained in the Taxonomy Regulation (climate change adaptation and climate change mitigation).

The Taxonomy Climate Delegated Act will enter into force twenty days following its publication in the OJ. It will apply from 1 January 2022.

The Taxonomy Climate Delegated Act can be accessed [here](#). Its accompanying Annex 1, and Annex 2, can be accessed [here](#) and [here](#). A Q&A on the Taxonomy Climate Delegated Act can be accessed [here](#).

7.4 European Commission launches its EU Taxonomy Compass

On 16 June 2021, the European Commission launched its EU Taxonomy Compass which is intended to assist financial market participants and issuers who fall within the scope of disclosure obligations under the Taxonomy Regulation in navigating the delegated acts which set down in-scope activities and applicable technical screening criteria.

The tool currently contains the technical screening criteria for both substantial contribution and substantial contribution and “Do No Significant Harm” tests for (i) climate change mitigation and (ii) climate change adaptation. It will be updated as and when the delegated acts setting down the technical screening criteria relating to the remaining four environmental objectives have been adopted by the European Commission.

The European Commission explains that it allows users to check “which activities are included in the EU Taxonomy (taxonomy-eligible activities), to which objectives they substantially contribute and what criteria they have to meet. It is important to note that minimum

safeguards (social standards) have to be met for an economic activity to be considered taxonomy-aligned. The EU Taxonomy Compass also aims to make it easier to integrate the criteria into business databases and other IT systems”.

The EU Taxonomy Compass can be accessed [here](#). Further information on the tool can be accessed [here](#).

8. MISCELLANEOUS

8.1 European Commission launches consultation on a retail investment strategy for Europe

On 11 May 2021, the European Commission launched a consultation on a retail investment strategy for the European Union. The European Commission is assessing how the current framework for retail investments can be improved and is seeking stakeholders' views on:

- the limited comparability of similar investment products that are regulated by different legislation and different disclosure requirements, which prevents individual investors from making informed investment decisions for their needs;
- ensuring access to fair advice under current inducement practices;
- the lack of sufficient financial literacy by individual retail investors to make good decisions about personal finances;
- the impact of increased digitalisation of financial services; and
- sustainable investing.

The deadline for comments on the consultation is 3 August 2021 and the responses received will provide guidance to the European Commission when preparing a formal proposal on the retail investment strategy for the first half of 2022.

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

8.2 European Commission issues preliminary findings of its investigation into anti-competitive practices in the Irish motor insurance market

On 18 June 2021, the European Commission informed Insurance Ireland, through a Statement of Objections, of its preliminary view that it breached EU antitrust rules by restricting competition in the Irish motor vehicle insurance market. More specifically, the European Commission considers that Insurance Ireland arbitrarily delayed or de facto denied access to the Insurance Link platform to companies that had a legitimate interest in joining it. The European Commission also considers that hurdles remain in place that might affect companies seeking to enter the Irish motor insurance market.

Insurance Ireland also made a statement noting the European Commission's preliminary findings but also noting that it is not the European Commission's final decision. Insurance Ireland will have the opportunity to respond to the Statement of Objections.

The Minister of State with responsibility for Financial Services, Credit Unions and Insurance and Chairperson of the Office to Promote Competition in the Insurance Market, Sean Fleming TD, noted the preliminary findings of the European Commission's antitrust investigation into competition in the Irish motor vehicle insurance market and the comments made by Insurance Ireland. The Minister of State awaits the conclusion of the investigation.

The European Commission's Statement of Objections can be found [here](#).

The Insurance Ireland statement can be accessed [here](#).

The Minister of State's statement can be accessed [here](#).

8.3 European Commission launches consultation on Distance Marketing Directive

On 22 June 2021, the European Commission published a webpage announcing the launch of a public consultation on the Distance Marketing of Consumer Financial Services Directive (**DMD**).

The DMD aims to ensure the free movement of financial services by harmonising consumer protection rules in the single market. Under the DMD, financial services are defined as “any service of a banking, credit, insurance, personal pension, investment or payment nature.”

Since the entry into force of the DMD, the retail financial sector has become increasingly digitised and the progressive introduction of product-specific legislation has reduced its relevance. The Commission is therefore seeking stakeholder views with a view to future-proofing the DMD.

Comments can be made on the DMD by submitting a completed questionnaire. The closing date for participation is 28 September 2021. The Commission intends to publish its proposals for reform in the first quarter of 2022.

Prior to the launch of the consultation, in May 2021, the European Commission published an inception impact assessment on its review of the DMD, in which it explained it was assessing a number of policy options.

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

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

8.4 COREPER endorses provisional agreement to amend motor insurance directive

On 28 June 2021, the Council of the EU's Permanent Representatives Committee (**COREPER**) endorsed the political agreement reached between the Council of the EU and the European Parliament during the trilogue on 22 June 2021 on the amendment to the Motor Insurance Directive (2009/103/EC) (the **Revised Directive**).

The provisionally agreed text will strengthen the protection of injured parties in motor vehicle accidents and improve the rights of policyholders by:

- amending the scope of the Motor Insurance Directive, following the European Court of Justice (**ECJ**) rulings, including new definitions of 'vehicle' and 'use of vehicle';
- providing Member States with new possibilities for national derogations from the insurance obligation;
- excluding the use of a vehicle in motorsport events and activities from the Revised Directive, provided that there is alternative insurance;
- ensuring the establishment of bodies in each in each Member State to compensate injured parties in a timely manner, in the event that the insurance undertaking in question becomes insolvent;
- establishing an EU-harmonised claims history statement which will contain standardised information for cross border situations;

- providing for new rules to avoid discrimination in the treatment of policyholders on the basis of their nationality or previous Member State of residence;
- reinforcing rules regarding checks on insurance;
- increasing harmonised minimum protection amounts for personal injury and material damage across the EU; and
- including targeted amendments to the framework for dispatched vehicles and provisions on accidents involving a trailer towed by a vehicle, independent motor insurance price comparison tools, information centres and information for injured parties.

The European Parliament and the Council of the EU are expected to adopt the Revised Directive in Q3. Once the Revised Directive has been signed and published in the Official Journal of the EU, the text will be transposed into national law within 24 months from the date of entry into force.

The Council of the EU's press release can be accessed [here](#) and the Revised Directive's progress can be followed [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.

Keith Waine

E-mail: keith.waine@dilloneustace.ie

Tel : + 353 1 673 1822

Fax: + 353 1 667 0042

Karen Jennings

E-mail: karen.jennings@dilloneustace.ie

Tel : + 353 1 673 1810

Fax: + 353 1 667 0042

Rose McKillen

E-mail: rose.mckillen@dilloneustace.ie

Tel : + 353 1 673 1754

Fax: + 353 1 667 0042

Laura Twomey

E-mail: laura.twomey@dilloneustace.ie

Tel : + 353 1 673 1848

Fax: + 353 1 667 0042

Seán Mahon

E-mail: sean.mahon@dilloneustace.ie

Tel : + 353 1 673 1707

Fax: + 353 1 667 0042

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace LLP.