



Insurance

Quarterly Legal and Regulatory Update

Period covered: 1 April 2022 – 30 June 2022

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1. SOLVENCY II

1.1 Updates on the proposed Solvency II amending Directive

On 10 June 2022, the European Parliament's Economic and Monetary Affairs Committee (**ECON**) published a draft report on the European Commission's legislative proposal for a Directive amending Directive 2009/138/EC (**Solvency II Directive**) (the **Amending Directive**).

The report contains a draft European Parliament legislative resolution, setting out suggested amendments to the proposed Amending Directive which address issues including:

- Proportionality: excluding a larger number of small insurance undertakings from the scope of the Solvency II Directive by increasing thresholds appropriately;
- Supporting the Recovery and other EU policy objectives: a proposal to modify the criteria of the duration-based equity risk sub-module, to set the boundaries of the symmetric adjustment mechanism of the equity risk sub-module in accordance with actual data experience and to clarify aspects of the matching adjustment;
- The use of Level 1 and Level 2 legislation: proposal to provide more detail and political guidance directly in the Solvency II Directive in relation to topics such as the volatility adjustment and long term equity investments; and
- Co-operation between supervisors: proposal to make collaboration and information exchange between home and host supervisors mandatory.

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

On 17 June 2022, the Council of the EU announced that it has agreed its general approach on the proposed Amending Directive.

The general approach agreed, amongst other things:

- takes into account the specificities of national insurance industries when updating the capital requirements regime;
- improves the protection of insurance policyholders through enhanced co-operation between supervisory authorities and continues to prevent insurer failure;
- aims to improve proportionality, long-term guarantee measures, cross-border supervision issues and the creation of macroprudential tools; and
- assigns new tasks to EIOPA.

The general approach reached completes the negotiating mandate agreed by the Council and provides the Council Presidency with a mandate for further discussions with the European Parliament.

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

1.2 EIOPA launches consultation on the advice on the review of the securitisation prudential framework in Solvency II

On 15 June 2022, the European Insurance and Occupational Pensions Authority (**EIOPA**) launched a consultation on the advice on the review of the securitisation prudential framework in Solvency II in response to the European Commission's call for advice to the European Supervisory Authorities (**ESAs**) for the purposes of the securitisation prudential framework review in October 2021.

In relation to the insurance sector, EIOPA's consultation covers investment behaviour of insurance undertakings, assessment of the securitisation capital framework and the treatment of securitised products within Regulation (EU) 575/2013 (**Capital Requirements Regulation** or **CRR**) and comparison with Solvency II.

EIOPA welcomes comments on the proposed policy options by 13 July 2022 in order to gather information that will be included in the final advice. EIOPA will consider the feedback received from stakeholders before submitting the final proposal for adoption.

Further information on the consultation can be accessed [here](#)

2. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

2.1 EIOPA publishes report on costs and past performance of insurance and pension products

On 5 April 2022, EIOPA published its fourth report on the costs and past performance of insurance and pension products which contains analysis showing that insurance-based investment products (**IBIPs**) offered steadily positive returns in 2020.

Some of the main findings include the following:

- Unit-linked products delivered net returns of 6% on average; hybrid products a 2% return; and profit participation products a 1.4% return. The move away from profit participation products accelerated in 2020, prompted by the pandemic and the prospect of lower for longer interest rates. Expectations of rising inflation also represent a concern for consumers.
- The report also notes that higher risk classes delivered higher net returns for unit-linked and hybrid products, while longer holding periods continued to drive higher performance of profit participation products. Certain lower-risk products posted low, and even negative, net returns.
- For the first time, an analysis was conducted on a sample of products with sustainability features. These strongly outperformed standard IBIPs. This analysis predates the entry into force of the Sustainable Finance Disclosure Regulation (**SFDR**) harmonising Environmental, Social, Governance (**ESG**) products.

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

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

2.2 EIOPA issues supervisory statement on supervision of run-off undertakings

On 7 April 2022, EIOPA published a supervisory statement on supervision of run-off undertakings which aims to ensure that high-quality and convergent supervision is applied to run-off undertakings and portfolios, while accounting for their specific nature and risks, proportionality, and the prudent person principle.

While it is recognised that properly and fairly managed run-off undertakings can benefit the insurance market and policyholders by enabling cost reduction and providing for orderly exits from the market, a number of supervisory issues and challenges in supervision have been observed by EIOPA. These issues relate to:

- Businesses' risk profiles;
- Difficulties with the process of authorisation of changes of ownership or portfolio transfers; and
- The Solvency II framework not making specific provision for run-off undertakings.

The statement emphasises that the risk profile of an undertaking should be in line with its risk appetite, acquired businesses should be kept profitable, and prudent assumptions should be applied to both technical provisions and capital requirements' calculation. There should be no impact on the insurance service, or on the protection of policyholders.

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

2.3 EIOPA publishes Opinion on the disclosure of individual results in the context of insurance stress tests

On 12 April 2022, EIOPA published an Opinion on the disclosure of individual results in the context of insurance stress tests (**Opinion**). The results of stress tests assessing the resilience of the European insurance industry have traditionally been communicated based on aggregated data. EIOPA suggests that transparency can be improved by publishing individual results and the Opinion sets out the view that consistent and disciplined communication of individual stress test results would have three primary benefits to the insurance industry including:

- The enhancement of market discipline;
- An increase in participants' commitment; and
- Promotion of a level playing field among insurers and across the financial sector.

EIOPA notes industry reluctance to engage with individual disclosures, and so suggests a change in the legal framework to permit the disclosure of results of individual undertakings. The Opinion suggests a targeted amendment of the Solvency II Directive as part of the ongoing review of Solvency II as providing a straightforward solution.

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

2.4 EIOPA publishes final reports on Guidelines on Contract Boundaries and Guidelines on the Valuation of Technical Provisions

On 21 April 2022, EIOPA published two final reports on the revision of the EIOPA Guidelines on Contract Boundaries and the EIOPA Guidelines on the valuation of Technical Provisions (**Guidelines**). Several divergent practices regarding contract boundaries and also the valuation of the best estimate have been identified since 2019, and EIOPA note the corresponding need to analyse and further improve consistency in their calculation.

Subsequent to amendments proposed to the Solvency II framework in 2020, EIOPA revised the Guidelines with the aim of providing additional guidance by issuing new guidelines, and to amend some current guidelines on a limited number of topics which are seen as crucial from a supervisory convergence perspective.

The Guidelines will be applicable from 1 January 2023, unless National Competent Authorities (**NCA**s) decide otherwise.

The Final Report on the revision of the Guidelines on Contract Boundaries can be accessed [here](#).

The Final Report on the revision of the Guidelines on the valuation of Technical Provisions can be accessed [here](#).

2.5 EIOPA publishes final report on technical advice to European Commission on retail investor protection topics

On 29 April 2022, EIOPA published a final report containing technical advice to the European Commission on certain retail investor protection topics (**Report**).

In the Report, EIOPA recommends the following:

- To disapply non-personalised Solvency II pre-contractual disclosures to address duplications between Solvency II requirements and the key information document (**KID**) under Regulation EU 1286/2014 (**PRIIPs Regulation**);
- To develop an annual statement under Directive (EU) 2016/97 (**Insurance Distribution Directive** or **IDD**), with information about paid premiums, past performance and current value of the savings;
- To give NCAs power to take timely and effective action against misleading marketing practices;

- To improve existing rules on inducements under the IDD, although EIOPA has not identified all-encompassing solution in this area; and
- To revise provisions in the IDD and Commission Delegated Regulation (EU) 2017/2358 supplementing IDD with regard to product oversight and governance requirements (**POG Delegated Regulation**) in respect of the risks of the target market misunderstanding the main features, costs and risks of a product.

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

2.6 EIOPA publishes feedback statement on blockchain and smart contracts in insurance

On 6 May 2022, EIOPA published a feedback statement on blockchain and smart contracts in insurance (**Blockchain Feedback Statement**) which contains a high-level summary of the responses from stakeholders to a public consultation on the topic in April 2021, together with EIOPA's reactions.

In the Blockchain Feedback Statement, EIOPA notes that insurers see potential in blockchain, and possible use cases are being explored across the insurance value chain. The deployment of such technology remains at an early, small-scale stage.

Some potential benefits of blockchain technology such as speeding up transactions and claims handling, lowering operational costs and improving traceability are identified in the Blockchain Feedback Statement.

The Blockchain Feedback Statement also identifies inadequate staff training, encryption security issues, incorrect coding and sustainability concerns, due to high energy consumption of some blockchain solutions as some of the risks and drawbacks.

Stakeholders' responses indicated the potential for blockchain use in supervisory and regulatory processes, and that efforts should focus on lowering costs and reducing procedural burdens for both the industry and supervisors.

EIOPA has indicated that it will reflect further on the findings highlighted in the consultation and continue assessing the use of blockchain in supervisory and regulatory processes as necessary.

A copy of the Blockchain Feedback Statement can be accessed [here](#).

A copy of the corresponding press release can be accessed [here](#).

2.7 EIOPA publishes feedback statement on open insurance: accessing and sharing insurance-related data

On 15 June 2022, EIOPA published a feedback statement on open insurance: accessing and sharing insurance-related data (**Open Insurance Feedback Statement**). This follows a discussion paper and a public consultation on the topic.

A high-level summary of the responses received from stakeholders is included in the Open Insurance Feedback Statement, as well as EIOPA's reactions to them. Overall, the EIOPA public consultation results show no strong agreement amongst stakeholders on potential next steps noting that it is clear that the policy issues raised by the debate on open insurance touch upon objectives and stakeholders of broader relevance and impact than solely within the financial sector itself.

EIOPA will consider the feedback in its on-going and future work on digitalisation and aims to continue facilitating discussions on the substance of a sound open insurance framework through open dialogue with all relevant stakeholders.

A copy of the Open Insurance Feedback Statement can be accessed [here](#).

2.8 EIOPA publishes consultation on supervisory statement on management of non-affirmative cyber exposures

On 17 June 2022, EIOPA published a consultation paper on a supervisory statement on the management of non-affirmative cyber underwriting exposures.

This supervisory statement delivers on EIOPA's strategic priorities for the European cyber insurance market with specific reference to non-affirmative cyber risk and sound management of policy wording and presentation of information. Given the increase in the frequency and sophistication of cyber incidents in the financial sector over the course of the last few years, EIOPA recommends that NCAs dedicate more attention to the supervision of cyber underwriting risk, in particular to (re)insurance undertakings that have potentially significant exposure to non-affirmative cyber insurance risk and to those who have not yet developed a plan to identify and manage non-affirmative cyber underwriting risk.

In particular, EIOPA recommends engaging in supervisory dialogue with the undertakings and following a more holistic and risk based approach in the supervision of at least the following aspects:

- top-down strategy and appetite for (re)insurance undertakings to underwrite cyber risk;
- identification and measurement of risks exposure with the purpose of implementing sound cyber underwriting practices, with particular regard to the non-affirmative cyber risk; and
- cyber underwriting risk management and risk mitigation, including the reinsurance strategy.

EIOPA is delivering this supervisory statement under Articles 44(1), 45(1) and (2) and 183 to 186 of the Solvency II Directive.

EIOPA welcomes comments on the supervisory statement by 18 July 2022.

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

2.9 EIOPA launches consultation on supervisory statement on exclusions in insurance products arising from systemic events

On 17 June 2022, EIOPA published a consultation paper on a supervisory statement on exclusions in insurance products related to risks arising from systemic events.

Given EIOPA's concern that there is an increasing risk that insurance products may become unaffordable or unavailable for systemic events such as pandemics, climate change and large cyber-attacks, it has published this supervisory statement addressed to NCAs with the aim of promoting supervisory convergence on the treatment of exclusions of risks arising from systemic events in insurance contracts from a consumer protection and conduct perspective.

The supervisory statement sets out its expectations in this regard, some of which include NCAs taking into consideration:

- How insurance product manufacturers should assess whether the applicable exclusions from coverage are clear, and there is contract clarity for policyholders;
- If the risk arising from a systemic event becomes uninsurable or there is lack of clarity as to whether the risk is covered or not, insurance manufacturers are expected to make an assessment of the terms and conditions and of the scope of coverage by considering the needs, objectives and characteristics of the identified target market;
- More generally, when new products are developed, the target market's needs, objectives and characteristics need to be taken into account vis-à-vis exclusions.

EIOPA is delivering this supervisory statement on the basis of Chapter V of the IDD and the POG Delegated Regulation.

EIOPA welcomes comments on the consultation by 18 July 2022.

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

2.10 Updated Questions and Answers (Q&A) on Regulation

The aim of EIOPA's Q&A on Regulation is to ensure consistent and effective application of European regulation and to foster supervisory convergence in the EEA within EIOPA's scope of action.

The Q&A on Regulation process accepts questions relating to the practical application or implementation of the provisions of legislative acts, associated delegated and implementing acts and EIOPA's guidelines and recommendations in the field of insurance and pensions within EIOPA's competence.

During the quarter, the Q&As on Regulation which were answered relate to topics such as the Solvency Capital Requirement, Reporting Templates, the Risk Free Rate, Risk Concentration, Validations, Technical Provisions, Own Funds and Information and Communication Technology.

In relation to Information and Communication Technology, Q&A [2287](#) clarified a question in relation to outsourcing to cloud service providers. More specifically, EIOPA clarified that in cases where the undertaking outsources operational functions or activities to service providers which are not cloud service providers but rely significantly on cloud infrastructures to deliver their services (for example, where the cloud service provider is part of a sub-outsourcing chain), paragraph 16 of Guideline 1 of EIOPA's Guidelines on outsourcing to cloud service providers (**Guidelines**) does not imply an obligation for the undertaking to conclude a written agreement with the cloud service provider in the outsourcing chain, but to ensure that the content of the Guidelines are complied with also in case of this type of arrangement. This expectation is to be read in conjunction with "Article 274(4) (k) and (l) of Commission Delegated Regulation (EU) 2015/35 of 10 October 2014".

Therefore, the written agreement entered into with the service provider that relies significantly on cloud infrastructures to deliver its service shall comply with the EIOPA's Guidelines on outsourcing to cloud service providers.

The Q&A on Regulation can be accessed [here](#).

3. INSURANCE DISTRIBUTION DIRECTIVE (IDD)

3.1 EIOPA launches consultation on draft Guidelines on the integration of the customer's sustainability preferences in the suitability assessment under the IDD

On 13 April 2022, EIOPA opened a public consultation on draft Guidelines on the integration of customers' sustainability preferences in the suitability assessment under the IDD.

The draft Guidelines stem from [Commission Delegated Regulation \(EU\) 2021/1257](#), and aim to:

- Promote coherent application of the Commission Delegated Regulation by insurance undertakings and intermediaries across Member States and NCAs;
- Restrict potential mis-selling of insurance products, in relation to the sustainability preferences of consumers; and
- Promote a more convergent approach by the NCAs to the supervision of insurance undertakings and intermediaries.

EIOPA's draft Guidelines provide guidance on:

- Helping customers understand the concept of "sustainability preferences";
- Collecting information on these preferences from customers;
- Matching customer preferences with products, following SFDR product disclosures;

- When to assess sustainability preferences; and
- The sustainable finance-related competences expected of insurance undertakings and intermediaries when providing advice on IBIPs.

The consultation closed on 13 May 2022. The short period was intended to facilitate finalisation of the draft Guidelines in advance of the Commission Delegated Regulation's application date of 2 August 2022.

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

4. PRIIPS

4.1 ESAs recommend changes to make the PRIIPs key information document more consumer-friendly

On 2 May 2022, the ESAs published technical advice to the European Commission on the review of the PRIIPs Regulation in which they recommend that significant changes be made to the regulation and suggest that a "broad review" of the PRIIPs framework is undertaken before formulating any proposals for changes.

The overall aim of the changes is to improve the presentation of information provided to consumers and make it easier to compare different products. More specifically, the ESAs recommend:

- Re-considering the sequencing, title of the different sections and details of the content of the KID;
- Allowing information to be digitally "layered", and other opportunities presented by digital disclosure;
- Further specifying the existing scope of the framework;
- Allowing different approaches for different types of products, where doing so would promote retail investors' understanding;
- Allowing more flexibility on the type of information to be provided in the performance section of the KID, including, in the case of certain funds, a past performance indication;
- Changing the rules for multi-option insurance products to better facilitate comparison between different instruments; and
- Introducing additional disclosures on whether the relevant product promotes environmental or social characteristics or has sustainable investment as its objective.

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

4.2 Joint ESA supervisory statement on expectations regarding the 'What is this product?' section of the key information document for packaged retail and insurance-based investment products

On 9 May 2022, the ESAs published a joint supervisory statement on expectations regarding the 'What is this product?' section of the KID (**Statement**). The Statement is intended to achieve a high, effective and consistent level of regulation and national supervision, promoting a level playing field and the protection of retail investors.

While much of the Statement contains specific guidance for certain types of structured products or derivative products, more generally the ESAs emphasise the need to use clear and understandable language in the KID and to avoid using technical jargon and terminology which is not clear to retail investors. The Statement sets out examples of when the expected standards are not adhered to by PRIIPS manufacturers.

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

5. CENTRAL BANK OF IRELAND

5.1 Template Outsourcing Register for submission to the Central Bank

As set out in the Cross-Industry Guidance on Outsourcing issued on 17 December 2021, regulated firms whose PRISM Impact Rating is Medium Low or above (or its equivalent) are required to submit their Outsourcing Registers to the Central Bank of Ireland (**Central Bank**) on an annual basis via a new online return. The Central Bank is currently testing the template Outsourcing Register which will be made available through the Online Reporting System (**ONR**). It is understood that firms will have two months to complete the return from the date that templates are made available.

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

6.1 Joint ESAs Report on the withdrawal of authorisation for serious breaches of AML/CFT rules

On 1 June 2022, the ESAs published a joint report on the withdrawal of authorisation from financial entities for serious breaches of AML/CFT rules. The report identifies 26 instances on which such a withdrawal occurred in the past 10 years.

The report emphasises that withdrawal of authorisation for a breach of AML/CFT rules should be a last resort measure, with respect shown to proportionality requirements. Nonetheless the report makes some recommendations and supports some amendments to the current regime:

- Specifically empowering competent authorities in the sectoral acts to withdraw authorisation on this basis would promote legal certainty.
- Sets out uniform criteria for the notion of serious breach of AML/CFT requirements.
- Competent authorities expressly considering the applicant's exposure to ML/TF risk would enable sound and effective risk management and compliance with AML/CFT requirements.
- Consideration should be taken of the context of a breach, and assessments should be made on a case-by-case basis.
- The report emphasises the importance of cooperation and exchange of information between the competent prudential supervisor and the resolution authority.

The report concludes with an overview of how the assessment of ML/TF risks is embedded in prudential regulation and supervision within the CRD/CRR framework, which has been recently updated and revised to embed AML/CFT requirements.

A copy of the report is accessible [here](#).

6.2 EBA publishes final guidelines on role of AML/CFT compliance officers

On 14 June 2022, the European Banking Authority (**EBA**) published its final guidelines (**Guidelines**) on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT compliance officer under Article 8 and Chapter VI of Directive (EU) 2015/849 (the **Fourth Money Laundering Directive** or **MLD4**).

The key areas addressed in the Guidelines are:

- Role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT;
- Role and responsibilities of the AML/CFT compliance officer; and
- Organisation of the AML/CFT compliance function at group level.

The Guidelines will apply from 1 December 2022.

The Guidelines can be accessed [here](#). For more information, please see our Dillon Eustace article on this topic [here](#).

7. DATA PROTECTION

7.1 EDPB adopts statement on the new Trans-Atlantic Data Privacy Framework

On 6 April 2022, the European Data Protection Board (**EDPB**) adopted a statement on the political agreement in principle between the European Commission and the United States on a new Trans-Atlantic Data Privacy Framework.

The EDPB welcomed as a positive first step the U.S. highest authorities' commitment to establish measures protecting the privacy and personal data of individuals in the European Economic Area (**EEA**) when those data are transferred to the U.S.

There is not yet a legal framework on which data exporters can base their data transfers to the U.S. Data exporters must still ensure compliance with Regulation (EU) 2016/679 (**GDPR**) and the CJEU's case law, in particular the Schrems II decision of 2020.

Under the GDPR, the European Commission must request an opinion of the EDPB before adopting an adequacy decision recognising the U.S. data protection laws as equivalent and satisfactory. On receipt of all supporting documents from the European Commission, the EDPB will prepare its opinion. The EDPB stated that it will in particular analyse whether the collection of personal data for national security purposes is limited to what is strictly necessary and proportionate, in the context of the new framework.

A copy of the EDPB's statement can be accessed [here](#).

7.2 European Commission publishes Questions and Answers on the new Standard Contractual Clauses

On 25 May 2022, the European Commission published Questions and Answers on the new Standard Contractual Clauses (**SCCs**) (the **SCC Q&As**) following its adoption of the new SCCs in June 2021. The SCC Q&As aim to provide practical guidance on the use of the SCCs to assist stakeholders in their compliance with their obligations under the GDPR.

The new SCCs for data transfers to third countries replace the previous SCCs adopted by the Commission under Directive 95/46/EC (**Data Protection Directive**). The new SCCs have a modular structure covering data transfers between the following parties: Controller to Controller (Module 1), Controller to Processor (Module 2), Processor to Processor (Module 3), and Processor to Controller (Module 4). The new SCCs also include a docking clause which allows new parties to join the SCCs throughout the life cycle of the contract.

The SCC Q&As clarify that the new SCCs cover the Article 28 requirements for controller to processor contracts, so companies do not need to enter a separate contract to comply with Article 28 of the GDPR.

The SCC Q&As confirm the scope of the SCCs, that they apply to controllers or processors that are subject to the GDPR and the transfer of personal data to controllers or processors outside the EEA whose activities are not subject to the GDPR. The SCC Q&A further confirmed that the new SCCs cannot be used for data transfers to controllers or processors whose processing operations are directly subject to the GDPR by virtue of the extraterritorial application of Article 3 of the GDPR. The European Commission has confirmed that it is developing an additional set of SCCs for this scenario.

There are 44 Q&As in total which also include general Q&As on how the SCCs should be executed, whether the text of the SCCs can be changed, whether they can be incorporated into a broader contract and whether additional provisions can be added.

Companies using the old SCCs have until 27 December 2022 to incorporate the new SCCs into their relevant contractual agreements.

The SCC Q&As can be accessed [here](#).

8. SUSTAINABILITY

8.1 EIOPA launches data collection on the prudential treatment of climate-related adaptation measures in non-life insurance

On 6 April 2022, EIOPA launched a data collection to assess the potential for a dedicated Pillar 1 treatment of climate-related adaptation measures in Solvency II's standard formula for non-life underwriting risk. This follows EIOPA's recent pilot exercise on climate change adaptation in non-life underwriting.

The data collection focuses on the influence of climate-related adaptation measures on premium risk, supplemented by qualitative questions on reserve risk and natural catastrophe risk.

The deadline for submission of results by participating undertakings to their NCAs was 1 June 2022, following which the NCAs will report to EIOPA.

Further information on the data collection can be accessed [here](#).

8.2 European Commission publishes finalised regulatory technical standards under the SFDR

On 6 April 2022, the European Commission adopted regulatory technical standards (RTS) to be used by financial market participants and/or financial advisors when disclosing sustainability-related information under Regulation (EU) 2019/2088 (SFDR).

These rules will require financial market participants to provide detailed information on the sustainability-related practices of financial products which fall within the scope of Article 8 or Article 9 in pre-contractual, website and annual report disclosures. It also sets down additional disclosure obligations for those financial market participants and/or financial advisers who are required or choose to consider the principal adverse impacts of their investment decisions, their investment advice or insurance advice (as applicable) on sustainability factors.

The disclosure obligations imposed under the RTS will generally apply from 1 January 2023, with the annual report disclosure obligations set down in the RTS applying to any annual report published on or after 1 January 2023 regardless of the reference period covered.

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

8.3 European Commission requests ESAs to propose amendments to SFDR Delegated Regulation RTS on product exposures to gas and nuclear activities

On 6 May 2022, ESMA published a letter from the European Commission to the ESAs requesting that they propose amendments to the RTS published under the SFDR which were adopted by the European Commission on 6 April 2022.

In its letter, the European Commission outlined that amendments to the RTS are necessary to provide investors with information on the exposure of financial products to investments in fossil gas and nuclear energy activities in order to reflect the proposed Complementary Climate Delegated Regulation (namely Commission Delegated Regulation amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities). The proposed Complementary Climate Delegated Regulation will, if enacted, extend the EU Taxonomy framework to include certain economic activities relating to natural gas and related technologies.

The ESA's deadline for submitting amendments to the RTS to the Commission is 30 September 2022.

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

8.4 European Commission requests ESAs to propose amendments to SFDR Delegated Regulation RTS on principal adverse impacts indicators

On 6 May 2022, ESMA published a letter from the European Commission to the ESAs requesting them to propose amendments to the RTS published under the SFDR which were adopted by the European Commission on 6 April 2022.

The European Commission requested that the review should aim to broaden the disclosure framework and address the main technical issues regarding sustainability indicators relating to adverse impacts referred to in Article 4(6) and (7) of the SFDR which have emerged since the SFDR was originally agreed. In particular, the ESAs have been asked to consider extending the lists of universal indicators for principal adverse impacts, as well as other indicators and refining the content of all the indicators for adverse impacts and their respective definitions, applicable methodologies, metrics and presentation. They have also been asked to consider proposed amendments to existing pre-contractual, website and periodic report disclosure obligations to provide information on decarbonisation targets and actions pursued as well as considering whether or not the existing Taxonomy-related disclosures contained in the RTS are sufficient.

The ESA's deadline for submitting amendments to the RTS to the Commission is April 2023.

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

8.5 EIOPA publishes discussion paper on European insurers' exposure to physical climate change risks

On 20 May 2022, EIOPA published a discussion paper on European insurers' exposure to physical climate change risks – potential impact for non-life business (**Discussion Paper**). The Discussion Paper focuses on assessing the materiality of the insurance sector exposure to physical climate change risk under a financial stability perspective in order to inform future work in this field. It presents the first results of the exercise on physical risks carried out in the second half of 2021 which included a large data collection from industry focused on property, content and business interruption insurance against windstorm, wildfire, river flood and coastal flood risks.

The first chapter describes the impacts that could arise from both extreme weather events, as well as from gradual global warming and discusses the potential negative consequences on the non-life insurance business. The second chapter presents the approach and methodology adopted, the different data sources used, the perils and the sample relevant for the analysis. Finally, the last chapter presents the main findings based on quantitative and qualitative data from a number of large European groups and solo undertakings active in non-life business and with relevant exposure to fire and other damages to property business.

The results indicate that while the sample European groups and solo undertakings have been historically well placed to handle claims stemming from three specific historic catastrophes, it is important to note that the sector's ability to continue to offer financial protection on this level is dependent on their ability to measure the likely impact of climate change and adapting business strategies accordingly.

The report finds that there is still work to do to prepare the insurance industry for climate-related changes.

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

8.6 European Commission, ESAs and ESMA provide clarifications on key areas of the SFDR and the RTS

On 25 May 2022, ESMA published answers received from the European Commission on questions posed to it by the ESAs on the application of the SFDR and Regulation (EU) 2020/852 (**Taxonomy Regulation**) in December 2021 (**European Commission Q&A**).

The European Commission Q&A provides guidance on a range of matters, including the following:

- consideration of principal adverse impacts of investment decisions on sustainability factors at product level;
- the scope of the obligation to consider good governance of investee companies under Article 8 and Article 9 of the SFDR;
- the scope and content of Taxonomy-related disclosures imposed under Article 5 and Article 6 of the Taxonomy Regulation; and

- the application of the disclosure obligations imposed under the SFDR and the Taxonomy Regulation to funds which are no longer available for investment.

On 2 June 2022, the ESAs published a statement providing clarifications on the draft RTS issued under the SFDR (**ESA Clarification Statement**).

The ESA Clarification Statement provides clarification on key areas of the SFDR disclosures, including:

- the “do not significantly harm” (DNSH) disclosures;
- use of sustainability indicators;
- principal adverse impact (PAI) disclosures;
- taxonomy-related financial product disclosures; and
- financial product disclosures.

The statement is part of the ESAs’ on-going efforts to promote a better understanding of the disclosures required under the technical standards of the SFDR ahead of the planned application of the rules on 1 January 2023.

A copy of the European Commission Q&A can be accessed [here](#)

A copy of the ESA Clarification Statement can be accessed [here](#).

8.7 CSRD: provisional political agreement between the Council and the European Parliament

On 21 June 2022, the Council and European Parliament reached a provisional political agreement on the proposed Corporate Sustainability Reporting Directive (**CSRD**). The proposal aims to address shortcomings in the existing rules on disclosure of non-financial information which hinder the sustainable economy transition.

The CSRD amends Directive 2014/95/EU (**Non-Financial Reporting Directive**). It introduces more detailed reporting requirements on sustainability related matters, aligning with reporting obligations set down under the SFDR and the Taxonomy Regulation. It also introduces a certification requirement for sustainability reporting as well as improved accessibility of information, by requiring its publication in a dedicated section of company management reports.

The CSRD significantly extends the scope of the Non-Financial Reporting Directive, requiring all large EU companies and all companies listed on regulated markets to report on sustainability matters. Certain SMEs are also captured by these rules, though an opt-out is available during a transition period until 2028. The CSRD will also impose certain disclosure obligations on non-EU companies which generate a net turnover of €150 million in the EU and which have at least one subsidiary or branch in the EU.

The application of the regulation will take place in three stages:

- 1 January 2024 for companies already subject to the Non-Financial Reporting Directive;
- 1 January 2025 for companies that are not presently subject to the Non-Financial Reporting Directive;
- 1 January 2026 for listed SMEs, small and non-complex credit institutions and captive insurance undertakings.

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

8.8 ESG Ratings

On 27 June 2022, ESMA published a letter to the Commission providing its findings from the Call for Evidence gathering information on the market structure for ESG rating providers in the EU (**Letter**).

On 4 April 2022, the European Commission opened a targeted consultation on the functioning of ESG ratings in the European Union and on the Consideration of ESG factors in credit ratings (**Targeted Consultation**). The Targeted Consultation is an integral part of the renewed sustainable finance strategy adopted in July 2021.

The Targeted Consultation aims to help the European Commission gain a better insight into the functioning of the market for ESG ratings, as well as better understand how credit rating agencies incorporate ESG risks in their creditworthiness assessment.

The Consultation Period closed on 6 June 2022 and responses will feed into an impact assessment that will assess the need for a policy initiative on ESG Ratings and on sustainability factors in credit ratings. Subject to the result of the impact assessment, this may lead to the Commission proposing an initiative by early 2023 to foster reliability, trust and comparability of ESG ratings.

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

The Targeted Consultation can be accessed [here](#).

9. MISCELLANEOUS

9.1 ESMA updates Q&As on data reporting under SFTR

On 1 April 2022, ESMA published updated Questions & Answers on reporting requirements under Regulation (EU) 2015/2365 (**Securities Financing Transactions Regulation** or **SFTR**).

ESMA has amended Q&A 12 on the currency of the overview and margin reports. It last updated the Q&As in January 2022.

A copy of the SFTR Data Reporting Q&As can be accessed [here](#).

9.2 EU Legislative Proposal for Distance Financial Services Contracts

On 11 May 2022, the European Commission published a new proposal to amend the rules concerning financial services contracts concluded at a distance. The aim of the proposal is to simplify and modernise the legislative framework.

The Commission proposes to repeal Directive 2002/65/EC (**Distance Marketing Directive**) and to amend Directive 2011/83/EU (**Consumer Credit Directive**). The Commission has noted that a series of legislative evaluations have concluded that the Distance Marketing Directive has seen its relevance and added value decrease. This follows the introduction into force of subsequent product-specific legislative acts and horizontal legislation relating to consumer's rights with regard to financial services. These subsequent legislative acts include Directive 2011/83/EU (**Consumer Rights Directive**), Directive 2014/17/EU (**Mortgage Credit Directive**) and the GDPR.

Certain aspects of the Distance Marketing Directive remain relevant, such as the right to pre-contractual information for financial products currently falling outside of scope of detailed legislation. It is therefore proposed to include such relevant provisions within scope of the Consumer Credit Directive.

A copy of the proposal is accessible [here](#).

9.3 EU Sanctions against Russia

In reaction to Russia's military aggression against Ukraine, the European Union has adopted additional suites of economic sanctions against Russia and Belarus which have been introduced through packages adopted by the Council of the EU on 8 April 2022 and 3 June 2022 respectively (**Sanctions**).

The latest measures introduced under the Sanctions include (i) an extension of the prohibitions on the export of banknotes and on the sale of transferable securities (or collective investment schemes providing exposure to such transferable securities) denominated in any official currency of the EU to Russian or Belarusian nationals or entities (ii) further freezing of assets of Russian and Belarusian individuals and entities, (iii) an extension on the prohibition of SWIFT services to certain Russian and Belarusian banks and subsidiaries, (iv) a full transaction bank and asset freeze on additional Russian banks and (v) measures which strengthen provisions on national penalties for any breach of the Sanctions.

The package of sanctions announced on 8 April 2022 can be accessed [here](#).

The package of sanctions announced on 3 June 2022 can be accessed [here](#).

9.4 Department of Finance publishes feedback statement on the Public Consultation on the Development of a National Resolution Framework for (re)Insurers

On 13 May 2022, the Department of Finance published its feedback statement on the Public Consultation on the Development of a National Resolution Framework for (re)Insurers. This follows the consultation held between 1 September and 30 November 2021 which sought views on the development and scope of a possible Irish resolution framework for (re)insurers. Seven submissions were received, primarily from industry representative bodies and insurance companies.

Some of the main findings were as follows:

- There was general support for a resolution framework in Ireland, with strengthened requirements around governance and risk management and that any new resolution framework should be aligned with the EU level proposal for an Insurance Recovery and Resolution Directive (**IRR**);
- The majority agreed that a flexible resolution toolkit could be of benefit to the resolution authority;
- Many were against additional capital buffer requirements and other imposed measures on insurers, on the basis that they could place Irish undertakings at a competitive disadvantage; and
- There was general support for exploring improvements to the insolvency regime.

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

9.5 Insurance (Miscellaneous Provisions) Act 2022 signed into law

On 27 June 2022, the Insurance (Miscellaneous Provisions) Act 2022 (**Act**) was signed into law. The aim of the Act, amongst other things, is to:

- amend the Central Bank (National Claims Information Database) Act 2018 to enable the collection by the Central Bank of certain information regarding deductions by insurance undertakings from amounts paid in satisfaction of claims;
- provide for the preparation of a report by the Central Bank on certain practices of insurance undertakings regarding pricing;
- amend the Consumer Insurance Contracts Act 2019 to provide for technical drafting amendments to the Act and also provide a new provision for the disclosure by insurance undertakings of information in relation to deductions from amounts paid in satisfaction of claims; and

- amend the European Union (Insurance and Reinsurance) Regulations 2015, as regards undertakings authorised in the United Kingdom or Gibraltar which are carrying on reinsurance business or subject to winding-up proceedings or reorganisation measures; and to provide for related matters.

On 7 July 2022, the Insurance (Miscellaneous Provisions) Act 2022 (Commencement) Order 2022 came into force appointing 8 July 2022 as the day on which most provisions of the Act come into force. Section 7 and part of Section 8 of the Act come into force on 1 October 2022, while the remaining provisions come into force on 1 January 2023.

A copy of the Act can be found [here](#).

A copy of the Commencement Order can be found [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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