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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

1 SOLVENCY II

1.1 EIOPA consults on Solvency II 2020 review proposals for supervisory reporting and public disclosure

On 12 July 2019, EIOPA published a cover note (dated 25 June 2019) on a package of consultations on supervisory reporting and public disclosure under Solvency II (the "Cover Note"). The Cover Note was released in preparation for the Solvency II 2020 review and sets out the consultation process that will be used. EIOPA will be consulting on the review of supervisory reporting and public disclosure requirements in two waves.

The first wave includes consultation papers in relation to draft technical advice to the European Commission on:

- General issues on supervisory reporting and public disclosure which can be accessed <u>here</u>;
- Individual Quantitative Reporting Templates ("QRTs") which can be accessed here;
- Financial Stability Reporting which can be accessed <u>here</u>; and
- Solvency and Financial Condition Report (the "SFCR") and Narrative Supervisory Reporting which can be accessed here.

The deadline for feedback is 18 October 2019. EIOPA will include the final version of the advice in its opinion on the 2020 Solvency II review, which is due to be published for public consultation in the fourth quarter of 2019.

Later in the year, together with the other areas of the Solvency II 2020 Review, EIOPA will consult on the following areas of supervisory reporting and public disclosure:

- Group Quantitative Reporting Templates;
- Regular Supervisory Reporting ("RSR");
- Technical aspects of the reporting and disclosure processes;
- Data quality aspects; and
- Reporting and disclosure issues linked to other areas of the Solvency II 2020 Review, in particular (but not necessarily only) the Long-Term Guarantee templates.

The Cover Note can be accessed here.

1.2 EIOPA submits final draft ITS amending Solvency II reporting and disclosure requirements to European Commission

On 15 July 2019, EIOPA published the final draft implementing technical standards ("ITS") under the Solvency II Directive (2009/138/EC) (the "Solvency II Directive"). The following draft Commission Implementing Regulations setting out ITS were submitted to the European Commission for endorsement:

- Draft Commission Implementing Regulation amending and correcting Commission Implementing Regulation (EU) 2015/2450 laying down ITS with regard to the templates for submitting information to supervisory authorities. The provisions dealing with the submission of information concerning the calculation of the lossabsorbing capacity of deferred taxes are to apply from 1 January 2020. The remainder will apply twenty days after its publication in the Official Journal of the European Union; and
- Draft Commission Implementing Regulation amending Commission Implementing Regulation (EU) 2015/2452 laying down ITS on the procedures, formats and templates of the solvency and financial condition report. This draft Implementing Regulation is intended to apply from 1 January 2020.

EIOPA explains in a cover letter to the European Commission enclosing the draft ITS that the proposed amendments are intended to align the reporting and disclosure requirements with the recent amendments to the Solvency II Delegated Regulation (2015/35/EU) (the "Solvency II Delegated Regulation"), which were made by Commission Delegated Regulation (EU) 2018/1221.

On 16 July 2019, EIOPA also published an impact assessment (dated 15 July 2019) of the draft reporting amendments and corrections proposed. EIOPA noted that the proposed draft ITS have been kept to a minimum as a detailed review of the reporting requirements will occur during the Solvency II 2020 review.

The draft Commission Implementing Regulations can be accessed <u>here</u> and <u>here</u>. The cover letter can be accessed <u>here</u> and the impact assessment can be accessed <u>here</u>.

1.3 EIOPA publishes consultation paper on its draft opinion on supervision of remuneration principles under Solvency II

On 25 July 2019, EIOPA published a consultation paper on its draft opinion on the supervision of remuneration principles in the insurance and reinsurance sector (the "**Paper**"). The Paper is addressed to national competent authorities ("**NCAs**") and aims at enhancing supervisory convergence in the supervision of remuneration policies of insurance and reinsurance undertakings.

In the Paper, EIOPA noted that the remuneration principles set out in Article 275 of the Solvency II Delegated Regulation leave considerable discretion to insurance and reinsurance undertakings and NCAs which has led to divergent practices across the European Union. To combat this, the Paper offers guidance to NCAs, identifies benchmarks which could allow for supervisory dialogue and promotes a proportionate approach by focusing on a reduced scope of staff identified as potential higher profile risk takers.

In the Paper, EIOPA emphasises their intention to avoid creating an administrative burden. The Paper states that a risk-based approach and supervisory judgement should be the basis of the supervision of the remuneration principles with NCAs having a two-dimensional approach when assessing the risk. The first dimension involves an undertaking's overall risk profile, while the second dimension is the design of the concrete remuneration policy, which may be compared against others for its level of risk. The Paper also allows NCAs to adopt a more proportionate approach in the supervision of the remuneration principles when undertakings are categorised as "low risk", including the design of the remuneration policy.

The public consultation closed on 30 September 2019. EIOPA is due to consider the feedback and expects to publish a final report on the consultation together with the final opinion.

The Paper can be accessed here.

1.4 EIOPA updates the Change of Financial Market Data Provider for the calculation of Solvency II Risk-Free Interest Rate Term Structures

On 26 July 2019, EIOPA published the list of Reuters Instrument Codes ("**RICs**") of financial market data for the calculation of the technical information relating to the risk-free interest rates ("**RFR**") term structures, namely:

- Interest rate swap rates;
- Zero coupon government bond interest rates;
- Inter-bank offered rates;
- Overnight indexed swap rates; and
- Additional data necessary for the calculation of the volatility adjustment.

From 1 January 2020 onwards, EIOPA plans to use Refinitiv as the main source of the RFR production process. The first publication of the technical information using this data would be for the reference date 31 January 2020, with all historical data being retained.

Stakeholders were invited to comment on the specific RICs chosen by EIOPA or submit any comment on the process until 16 August 2019.

A revised RFR Technical Documentation containing the RICs as well as adjustments to the DLT points can be expected to be published by the end of the third quarter of 2019.

A copy of the press release and the list of RICs can be accessed <u>here</u>.

1.5 Commission Implementing Regulation on technical information for the calculation of technical provisions and basic own funds for third quarter 2019 reporting under Solvency II published in Official Journal

On 31 July 2019, the Commission Implementing Regulation (EU) 2019/1285 (the "Commission Implementing Directive") which lays down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June 2019 until 29 September 2019 under the Solvency II Directive was published in the Official Journal of the European Union.

The Commission Implementing Regulation requires (re)insurance companies to use the technical information on the relevant risk-free interest rate term structures, the fundamental spreads for the calculation of the matching adjustment and the volatility adjustments referred to in Article 1 (2) of the Commission Implementing Regulation when calculating technical provisions and basic own funds for reporting with reference dates from 30 June 2019 until 29 September 2019.

The Commission Implementing Regulation entered into force on 1 August 2019 and applies from 30 June 2019.

The Commission Implementing Regulation can be accessed here.

1.6 EIOPA publishes monthly symmetric adjustment of the equity capital charge

On a monthly basis, EIOPA updates information on the symmetric adjustment of the equity capital charge. The symmetric adjustment to the equity capital charge shall be included in the calculation of the equity risk sub-module in accordance with the Solvency Capital Requirement (the "SCR") standard formula to cover the risk arising from changes in the level of equity prices. This adjustment is regulated mainly in Article 106 of the Solvency II Directive; Article 172 of the Solvency II Delegated Regulation as well as in the Implementing Technical Standards on the equity index for the symmetric adjustment of the equity capital charge (Commission Implementing Regulation 2015/2016/EU).

EIOPA published the technical information on the symmetric adjustment of the equity capital charge for Solvency II as follows:

- With reference to the end of June 2019 on 4 July 2019;
- With reference to the end of July 2019 on 6 August 2019; and
- With reference to the end of August 2019 on 5 September 2019.

The monthly symmetric adjustment of the equity capital charge can be accessed <u>here</u>.

1.7 EIOPA publishes monthly technical information for Solvency II relevant risk free interest rate term structures

During the period of 1 July 2019 to 30 September 2019, EIOPA published technical information in relation to risk free interest rate term structures, as follows:

- With reference to the end of June 2019 on 4 July 2019;
- With reference to the end of July 2019 on 6 August 2019; and
- With reference to the end of August 2019 on 5 September 2019.

The risk free interest rate term structures are published to ensure the consistent calculation of technical provisions for (re)insurance obligations across the European Union. Undertakings should note that EIOPA has stated on their website that, in certain circumstances, it may be necessary for EIOPA to amend and/or republish the technical information after it has been published.

EIOPA's background material and the monthly technical information on the relevant risk-free interest rate term structures can be accessed here.

1.8 EIOPA issues opinion on sustainability within Solvency II

On 30 September 2019, EIOPA published an opinion on sustainability within Solvency II (the "**Opinion**"). The opinion addresses the integration of climate-related risks in Solvency II Pillar I requirements as requested by the European Commission in August 2018.

Solvency II is a risk-based, forward-looking and market-consistent framework which is well equipped to accommodate sustainability risks and factors. However, climate change brings significant challenges to the valuation of assets and liabilities, underwriting and investment decisions and risk measurement.

Climate change increases the uncertainty about the occurrence and the impact of physical or transition risks, which can happen at any time and suddenly, with far-reaching consequences. Therefore, undertakings should not be complacent about assessing the impact of these risks in Pillar 1 requirements. (Re)insurance undertakings are called to implement measures linked with climate change-related risks, especially where they will materially impact their business strategy. EIOPA stresses the importance of scenario analysis in the undertakings' risk management. The Opinion covers the following areas:

- the extent to which the valuation of assets and liabilities under Solvency II can capture sustainability factors;
- how (re)insurance undertakings, through their investment and underwriting practices, can account for sustainability considerations;
- how / if sustainability risks are reflected in capital charges for market and natural catastrophe risks under Solvency II;
- the extent to which internal models currently capture sustainability risks and factors;
 and
- how sustainability could today best be taken into account across the three pillars in Solvency II (Pillar I - capital requirement, Pillar II - governance and supervision and Pillar III - disclosure and reporting).

The European Commission will take the Opinion into account in the preparation of its report on the Solvency II Directive, which is due by 1 January 2021.

A copy of the Opinion can be accessed <u>here</u>.

1.9 Central Bank publishes Statistics National Specific Template 12 and 13 - Notes on Compilation

In September 2019, the Central Bank published updated versions of its:

Statistics National Specific Template 12 ("NST.12") Notes on Compilation which is
used to address a number of statistical requirements including the reconciliation
between supervisory reporting (on which Solvency II is based) and statistical

reporting as an outcome of ECB Regulation on statistical reporting requirements for insurance corporations (ECB/2014/50); and

Statistics National Specific Template 13 ("NST.13") Notes on Compilation which is
used to reconcile between differences in the reporting of statistical and supervisory
data by giving a head office/non-resident branch split.

The NST.12 and NST.13 templates should be completed on a quarterly basis.

The Central Bank's notes on compilation can be found here

2 EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY ("EIOPA")

2.1 EIOPA publishes consultation paper on cloud service provider outsourcing guidelines

On 1 July 2019, EIOPA published a consultation paper on the proposal for guidelines on outsourcing to cloud service providers (the "**Guidelines**"). The Guidelines provide guidance on how the outstanding provisions in the Solvency II Directive and Solvency II Delegated Regulation need to be applied in the case of outsourcing to cloud service providers.

The Guidelines aim to foster supervisory convergence regarding the expectations and processes applicable in relation to cloud outsourcing and to clarify and offer transparency to market participants to avoid potential regulatory arbitrages. The Guidelines cover the following areas:

- criteria to distinguish whether cloud services should fall within the scope of outsourcing;
- principles and elements of governance of cloud outsourcing including documentation requirements and information to be included in the notification to supervisory authorities;
- pre-outsourcing analysis, including materiality assessment, risk assessment and due diligence on the cloud service providers;
- contractual requirements;
- management of access and audit rights; security of data and systems; suboutsourcing, monitoring and oversight of cloud outsourcing and exit strategies; and
- principle-based instructions for the NCAs on the supervision of cloud outsourcing arrangements including, where applicable, at group level.

EIOPA proposes that the Guidelines will apply from 1 July 2020 to all cloud outsourcing arrangements entered into or amended on or after that date. Further proposals expect undertakings to review and amend accordingly existing cloud outsourcing arrangements with a view to ensuring that these are compliant with these Guidelines by 1 July 2022.

The public consultation closed on 30 September 2019. EIOPA will consider the feedback received and expects to publish a Final Report on the consultation and to submit the finalised Guidelines for adoption by its Board of Supervisors.

The consultation paper on the Guidelines can be accessed <u>here</u>.

2.2 EIOPA publishes June 2019 Financial Stability Report of the European insurance and pensions sector

On 1 July 2019, EIOPA published its June 2019 Financial Stability Report (the "**Report**") of the European insurance and pensions sector which outlines the key financial stability risks for these sectors.

The Report consists of two parts – the standard part and the thematic article section. In the standard part, the first chapter discusses the key risks identified for the insurance and occupational pension fund sectors. The second, third and fourth chapters elaborate on these risks for the insurance, reinsurance and pension sectors. The fifth chapter provides a more detailed qualitative and quantitative assessment of the risks identified. Finally, the thematic article discusses the impact of green bond investment policies on the share price performance of European insurers.

The press release can be accessed here and the Report can be accessed here.

2.3 EIOPA publishes updated Q&As

During the period 1 July 2019 to 30 September 2019, EIOPA published updated Questions and Answers ("Q&As") on the following:

- Answers to guidelines on basis risk (last updated 4 July 2019);
- Answers to guidelines on Health Catastrophe Risk Sub-Module (last updated 4 July 2019);
- Answers to (EU) No 2015-2450 templates for the submission of information to the supervisory authorities (last updated 23 July 2019);
- Answers to (EU) No 2009-138 Solvency II Directive (Insurance and Reinsurance) (last updated 4 July 2019);
- Answers to (EU) 2015-35 supplementing Directive 2009-138 (last updated 4 August 2019); and
- Answers to Other (last updated 4 July 2019).

The updated Q&As can be accessed here.

2.4 EIOPA publishes consultation paper on the harmonisation of national insurance guarantee schemes

On 12 July 2019, EIOPA published a consultation paper (dated 9 July 2019) (the "Consultation Paper") on the harmonisation of national insurance guarantee schemes ("IGSs"). The Consultation Paper has been published as part of the proposals for the Solvency II 2020 review.

The Paper seeks feedback on draft technical advice on the establishment of national IGSs in European Union Member States. EIOPA believes that it is necessary to establish a national IGS in every Member State in order to protect policyholders in the event of insurance failures.

The Paper sets out draft recommendations on the minimum set of harmonised features for national IGSs, including, amongst other things:

- The role and functioning The IGS should be set up with the primary aim of protecting policyholders;
- Geographical coverage The geographical coverage of national IGSs should be harmonised on the basis of the home-country principle;
- Funding IGSs should be primarily funded by ex-ante contributions from insurers, with the possibility of being complemented by ex-post funding arrangements in case of capital shortfalls;
- Eligible policies National IGSs should cover specific life and non-life policies, and at a minimum the following lines of business should be captured: (i) policies where the failure of an insurer could lead to considerable financial or social hardship for policyholders and beneficiaries; and (ii) lines of business with a high market share in cross-border business in Europe;
- Harmonised coverage level There should be a harmonised coverage level with Member States having the option to increase the level of coverage if they deem necessary in their jurisdiction;
- Eligible claimants National IGSs should cover natural persons and micro and small-sized legal entities (i.e. policyholders and beneficiaries); and
- **Disclosure** There should be requirements for the adequate, clear and comprehensive disclosure to consumers and policyholders about the existence of IGSs and the rules governing the entitlement to coverage under such schemes. These requirements should apply to both insurers and IGSs.

The deadline for feedback is 18 October 2019. EIOPA will include the final version of the advice in its opinion on the 2020 Solvency II review, which will be published for consultation in the fourth quarter of 2019.

The Paper can be accessed here.

2.5 EIOPA publishes a discussion paper on methodological principles of insurance stress testing

On 22 July 2019, EIOPA published a discussion paper on methodological principles of insurance stress testing (the "Paper"). The Paper aims to set out the main methodological principles and guidelines for conducting and assessing a European Union-wide stress test exercise. These principles and guidelines will be the toolbox to facilitate both the design and execution phase of future EIOPA stress test exercises.

EIOPA addressed the following key elements when setting out its methodological stance:

- Stress test process, objectives and scope of stress tests;
- Scenario design of a stress test;
- Shocks and their application in a stress test; and
- Data collection and validation.

The Paper is part of a broader process to enhance EIOPA's stress testing framework in the insurance sector and EIOPA highlighted its intention to work on other stress testing-related issues including the assessment of vulnerabilities towards climate-related risks, potential approaches to multi-period stress tests and assessment of liquidity positions under adverse scenarios.

Public consultation on the Paper is open until 18 October 2019. EIOPA will consider any feedback received before publishing a final discussion paper.

The Paper can be accessed here.

2.6 EIOPA publish report on cyber risk challenges and opportunities for insurers

On 17 September 2019, EIOPA published a report on 'Cyber Risk for Insurers – Challenges and Opportunities' (the "**Report**").

The Report provides an overview of cyber risk as part of insurers' operational risk profile as well as cyber risk as part of underwriting risk. It is based on the responses from 41 large (re)insurance groups across 12 European countries with the aim of further enhancing the level of understanding of cyber risk for the European Insurance market.

Overall, the Report confirms the need for a sound cyber resilience framework for insurers and also identified the key challenges faced by the cyber underwriters, such as non-affirmative cyber risks.

A copy of the Report can be found here.

3 INSURANCE DISTRIBUTION DIRECTIVE ("IDD")

3.1 EIOPA publishes report on national general good rules under Insurance Distribution Directive

On 22 July 2019, EIOPA published a report analysing national general good rules (the "Report") under Directive (EU) 2016/97 (the "Insurance Distribution Directive" or "IDD"). The Report examines the accessibility and impact of the general good rules that have been published by Member States in the context of the proper functioning of the IDD and of the internal market.

EIOPA makes note that they were unable to fully assess the impact of Member States' introduction of general good rules as most Member States only transposed IDD at the end of 2018. The Report focuses on general good provisions that directly regulate insurance distribution activity, such as conduct of business requirements and excludes other areas such as tax and competition law.

The Report sets out that 20 Member States (including Ireland) have provided an appropriate publication indicating the general good rules arising from IDD on their individual websites while 6 other Member States are in the process of doing this. However, the Report found that there is still scope for improving the visibility and accessibility of the webpages on general good rules on some NCAs' websites.

The Report also found that some Member States have published or are due to publish general good rules on registration and organisational requirements which allow NCAs of the host Member State to impose additional requirements on incoming insurance distributors, where these rules are under the competence of the home Member State in the IDD.

The Report recommends a number of follow-up actions which include issuing recommendations on an individual basis to NCAs on how the information on general good rules should be published, obtaining stakeholders feedback on disproportionate general good rules and examining the additional general good rules imposed by certain Member States.

The Report has been submitted to the European Commission.

The Report can be accessed here.

3.2 European Union (Insurance Distribution) (Amendment) Regulations 2019 published

On 21 September 2019, the European Union (Insurance Distribution) (Amendment) Regulations 2019 (S.I. 467/2019) (the "**Amendment Regulations**") were published.

The Amendment Regulations amend the European Union (Insurance Distribution) Regulations 2018 (S.I. 229/2018) (the "Insurance Distribution Regulations") to clarify the relationship between Part 7 of the Insurance Distribution Regulations, which deals with information requirements and conduct of business rules, and certain other pieces of financial services legislation and regulatory codes, to include the Central Bank's Consumer Protection Code 2012 (the "CPC").

The Central Bank also amended the CPC to address certain inconsistencies between it and the Insurance Distribution Regulations (See Section 3.3 below for more details).

The Amendment Regulations can be accessed <u>here</u>.

3.3 Central Bank publishes Addendum to the Consumer Protection Code on Intermediary Inducements and IDD related amendments

On 25 September 2019, the Central Bank published an Addendum to the Consumer Protection Code 2012 (2019) (the "Addendum"). The Addendum contains two Parts as follows:

- Part 1: Introduces enhanced protections relating to intermediary inducements (see section 8.2 for more details). Part 1 of the Addendum becomes effective on 31 March 2020; and
- Part 2: Introduces consequential amendments to the Consumer Protection Code 2012 arising from the Insurance Distribution Regulations, with a particular focus on clarifying the scope of the following chapters and requirements in respect of insurance distributors and insurance-based investment products:

- Chapter 3 General Requirements;
- Chapter 4 Provision of information;
- Chapter 5 Knowing the Consumer and Suitability; and
- Chapter 12 Definitions.

Part 2 of the Addendum became effective from 25 September 2019.

The Addendum can be accessed here.

4 INSURANCE EUROPE

4.1 Insurance Europe welcomes consultation on Distance Marketing Directive

On 3 July 2019, Insurance Europe issued a press release welcoming the consultation by the European Commission into the effectiveness of Directive 2002/65/EC (the "**Distance Marketing Directive**" or "**DMD**"). The consultation allowed concerned parties particularly consumers, retail financial service providers and supervisory authorities the opportunity to express their views on the effectiveness, pertinence and coherence of DMD.

Insurance Europe believes that many provisions in the DMD have been duplicated through separate product specific rules since it was adopted. For this reason, Insurance Europe believes product specific legislation, such as the Insurance Distribution Directive, should take precedence to achieve certainty.

The European Commission's consultation closed on 2 July 2019 with the conclusions expected to be published by the end of 2019.

The press release from Insurance Europe can be accessed here.

4.2 Insurance Europe and other trade associations call for delay in application of Regulation on sustainability disclosures

On 20 September 2019, Insurance Europe along with seven other trade associations (Association for Financial Markets in Europe ("AFME"), the Alternative Investment Management Association ("AIMA"), the Association of Mutual Insurers and Insurance Cooperatives in Europe ("AMICE"), the European Association of Cooperative Banks ("EACB"), the European Banking Federation ("EBF"), the European Fund and Asset Management Association ("EFAMA") and Pensions Europe) (together the "Associations") published a letter sent to the European Commission (dated 19 September 2019) (the "Letter") on their concerns on the current application timeline of the Regulation on disclosures relating to sustainable investments and sustainability risks and amending Directive (EU) 2016/234 (the "Regulation").

The Regulation requires the European Supervisory Authorities ("**ESAs**") to draft regulatory technical standards ("**RTS**") on a number of issues and the Associations are concerned that the Regulation is very likely to become applicable before the related RTS are even adopted. They warn that this will create significant compliance challenges and liability risks for market players as well as confusion for investors.

The Associations urge the European Commission to take immediate action to ensure that the industry is provided with realistic time for implementation and suggest that new requirements in the Regulation should apply at least one year after all the RTS are published in the Official Journal of the European Union.

A copy of the Letter can be accessed here.

4.3 Insurance Europe and AMICE publish joint proposals for making proportionality work in Solvency II

On 30 September 2019, Insurance Europe and AMICE published a joint paper with proposals to improve the principle of proportionality in Solvency II.

The joint paper welcomes the European Commission's request to EIOPA, in its call for advice on the Solvency II 2020 Review, to assess whether proportionality in the application of the Solvency II framework could be enhanced, noting that the principle of proportionality is a vital element of the Solvency II Directive. The joint paper presents proposals for changes and recommendations that would help ensure that the proportionality principle works in practice and is applied effectively and consistently across all Member States and across all pillars of Solvency II.

A copy of the joint paper can be accessed here.

5 INSURANCE IRELAND

5.1 Insurance Ireland and the Dutch Association of Insurers call for a proportionality toolbox for Solvency II

On 11 July 2019, Insurance Ireland and the Dutch Association of Insurers (together the "**Associations**") published a discussion paper on a proportionality toolbox for Solvency II as they consider the current Solvency II reporting framework disproportionate for non-complex small and medium-sized insurers.

The discussion paper covers the reasons for the proposals and the details of the proposed proportionality toolbox. Some of the proposals are as follows:

- to increase the threshold of the application of Solvency II from €5 million premium income to €10 million along with other comparable increases in other Solvency II thresholds as this is in line with the European Commission definition of "small" companies; and
- to introduce a European Union wide toolbox of proportionate measures under Solvency II, which is a pre-set proportional application of Solvency II for insurers from €10 million up to €50 million premium income (plus comparable increases in the other Solvency II thresholds) and other conditions as necessary.

The Associations have presented their proposals now as they believe that the 2020 Solvency II review is an opportunity to ensure that proportionality is consistently applied across the European Union.

The press release can be accessed <u>here</u> and the consultation paper can be accessed <u>here</u>.

6 PACKAGED RETAIL INSURANCE-BASED INVESTMENT PRODUCTS ("PRIIPS")

6.1 European Commission adopts Delegated Regulation to align transitional arrangements

On 3 July 2019, the European Commission adopted a Delegated Regulation (the "**Delegated Regulation**") which amends the Commission Delegated Regulation (EU) 2017/653 (the "**PRIIPs Delegated Regulation**"). The purpose of the Delegated Regulation is to align the transitional arrangements for PRIIP manufacturers offering units of UCITS and non-UCITS funds referred to in Regulation (EU) 1286/2014 (the "**PRIIPs Regulation**") as underlying investment options with the prolonged exemption period under the PRIIPs Regulation.

The Delegated Regulation will extend the transitional arrangements by two years until 31 December 2021. The Delegated Regulation will be considered by the Council of the European Union and the European Parliament. It will enter into force 20 days after its publication in the Official Journal of the European Union.

The Delegated Regulation can be accessed here.

6.2 ESAs respond to the European Commission on the exclusion of performance scenarios options from PRIIPs consumer testing exercise

On 30 July 2019, the ESAs wrote to the European Commission concerning the exclusion of certain performance scenarios options that were proposed by the ESAs to be tested during a consumer testing exercise conducted by the European Commission under the Level 2 review of the PRIIPs Regulation. On 19 July 2019, the European Commission had informed the ESAs that three of the proposed options would be excluded.

The ESAs noted in their response that consumer testing can bring the best insights if a wide range of different approaches and options are first put on the table. The response stated that an exclusion of different options on the basis of their conformity with the existing regulation could excessively limit the value of the feedback from the testing.

The European Commission letter can be accessed <u>here</u> and the ESA response can be accessed <u>here</u>.

7 EUROPEAN MARKETS INFRASTRUCTURE REGULATION ("EMIR")

7.1 ESMA publishes updated EMIR Q&As

On 15 July 2019, ESMA published an updated version of its questions and answers on the implementation of Regulation (EU) 648/2012 ("EMIR") (the "Q&As"). The update comes as a result of Regulation (EU) 2019/834 (the "EMIR Refit Regulation") entering into force on 17 June 2019. The following changes have been made to the Q&As:

- General Question 1: This Q&A is amended to clarify that fund managers will be legally responsible for reporting to Trade Repositories on behalf of the funds (applicable from 18 June 2020);
- Q&A 7 on Trade Repositories: This Q&A relates to reporting by CCPs and the duplication of reporting to Trade Repositories;

- Q&A 13 on Trade Repositories: This Q&A relates to the reporting of intragroup transactions;
- Q&A 39 on Trade Repositories: This Q&A relates to block trades and allocations;
- Q&A 44 on Trade Repositories: This Q&A relates to the transition to the revised technical standards on reporting; and
- Q&A 52 on Trade Repositories: This is a new Q&A which clarifies the notional amount field for credit index derivatives.

In addition, Q&As relating to frontloading or backloading (which are no longer relevant following the EMIR Refit Regulation) have been removed.

On 2 October 2019, ESMA published a further updated version of its Q&As on the implementation of EMIR. The following changes have been made to the Q&As:

- Q&A 2 on OTC: This Q&A is amended to clarify when counterparties that start taking
 positions in over the counter ("OTC") derivatives need to notify the relevant national
 competent authorities and ESMA that they have exceeded the clearing thresholds
 for the first time;
- **Q&A 4 on OTC**: This Q&A is amended to clarify whether counterparties not subject to the clearing obligation should obtain representation from their counterparties;
- **Q&A 12 on OTC**: This Q&A is amended to clarify the status of entities established in a third country;
- **Q&A 14 on Trade Repositories**: This Q&A is amended to clarify whether all transactions within the same legal entity should be reported;
- Q&A 17 on Trade Repositories: This Q&A is amended to clarify position level reporting; and
- Q&A 53 on Trade Repositories: This is a new Q&A which clarifies the reporting of reference rates not included in Regulation (EU) 2017/105.

The updated Q&As can be accessed here.

7.2 ESMA issues public statement addressing derivatives trading obligation

On 12 July 2019, EMSA issued a public statement addressing concerns in relation to the scope of counterparties subject to the EMIR clearing obligation and the MiFIR Regulation 600/2014/EU ("MiFIR") derivatives trading obligation.

The EMIR Refit Regulation, which came into force on 17 June 2019, provides for an exemption from the clearing obligation for small financial counterparties and certain non-financial counterparties, while still being subject to the trading obligation. ESMA addresses the challenges that this misalignment may create for counterparties which are exempt from the clearing obligation.

The statement provides that NCAs should not prioritise their supervisory actions in relation to the derivatives trading obligation towards counterparties exempted from the clearing obligation following the entry into force of the EMIR Refit Regulation.

The statement also clarifies the application date of the derivatives trading obligation for counterparties impacted by the modified application date of the clearing obligation under the EMIR Refit Regulation. The date of application of the derivatives trading obligation should correspond with the new date of application of the clearing obligation as amended by the EMIR Refit Regulation. This date of application should therefore be four months following the notification from financial counterparties to ESMA and national competent authorities as required under the EMIR Refit Regulation, rather than 21 June 2019.

ESMA's statement can be accessed here.

7.3 BCBS and IOSCO agree to one-year extension of the final implementation phase of the initial margin requirements for non-centrally cleared derivatives

On 23 July 2019, the Basel Committee on Banking Supervision ("BCBS") and the International Organisation of Securities Commissions ("IOSCO") agreed to extend the final implementation of the initial margin requirements by one year. The extension will result in the final implementation phase taking place on 1 September 2021.

Covered entities with an aggregate average notional amount ("AANA") of non-centrally cleared derivatives greater than €8 billion will be subject to the initial margin requirements on 1 September 2021. To facilitate the extension, the BCBS and IOSCO have introduced an additional implementation phase whereby as of 1 September 2020, covered entities with an AANA of non-centrally cleared derivatives greater than €50 billion will be subject to the initial margin requirements.

The BCBS and IOSCO have concluded that this extension will support the smooth implementation of the margin requirements and will avoid any market fragmentation. Covered entities are expected to comply with the requirements by the revised timeline and the BCBS and IOSCO strongly encourage market participants to make all relevant arrangements in a timely manner.

The updated version of the margin requirements reflects the extension to the implementation timeline. The BCBS and IOSCO will continue to monitor the progress in this area to ensure consistent implementation across products, jurisdictions and market participants.

8 CENTRAL BANK OF IRELAND

8.1 Central Bank publishes feedback statement on the consultation on new levy calculation methodology for insurers

On 10 July 2019, the Central Bank of Ireland (the "Central Bank") published a feedback statement on consultation paper 129 ("CP129"). CP129 deals with the proposed new levy calculation methodology for insurers and was issued to address possible shortcomings in the existing Probability Risk and Impact System ("PRISM"). The feedback statement sets out a summary of the responses received and the Central Bank's opinion on this feedback.

While the Central Bank acknowledged the comments of the respondents, the Central Bank concluded that it was most appropriate for insurance entities to remain on PRISM impact-derived pricing for the next levy cycle. The Central Bank intends to move to new methodologies as alternatives are developed during the continued review of the PRISM framework.

The feedback statement on CP129 can be accessed here.

8.2 Central Bank new rules on broker commission

On 25 September 2019, the Central Bank published an Addendum to the Consumer Protection Code 2012 (the "**CPC**") which introduces new requirements relating to the payment of commission to financial intermediaries.

The amendments are designed to enhance transparency in commission arrangements between financial intermediaries and product producers and to prohibit certain types of commission arrangements. The aim is to minimise the risk of conflicts of interest arising from commission arrangements when intermediaries are providing advice to consumers.

A copy of the Central Banks press release can be accessed <u>here</u> and a copy of the Addendum can be accessed here.

A Dillon Eustace article on the changes can be accessed here.

8.3 Central Bank issues Prohibition Notice for failure to disclose information as part of the IQ process

On 27 September 2019, the Central Bank issued a Prohibition Notice prohibiting a gentleman performing a pre-approval controlled function ("**PCF**") from performing any controlled function in all regulated financial service providers for a period of 2 years. This is due to a failure by the PCF in question to provide full disclosure to the Central Bank in an individual questionnaire ("**IQ**") about the circumstances in which his previous employment had ceased.

The press release issued by the Central Bank can be accessed here.

A Dillon Eustace article on this can be accessed here.

9 SUSTAINABLE FINANCE

9.1 European Commission technical expert group announces call for feedback on taxonomy for sustainable economic activities

On 4 July 2019, the European Commission announced that its technical expert group ("**TEG**") on sustainable finance has launched a call for feedback on taxonomy for environmentally-sustainable economic activities.

The TEG's technical report on taxonomy was published by the European Commission on 18 June 2019. The European Commission has asked stakeholders to comment on the proposed climate change mitigation activities, the climate change adaptation principles and criteria, the usability of the proposed taxonomy and its future development.

Submissions closed on 13 September 2019.

The call for feedback can be accessed here.

10 HEALTH INSURANCE (AMENDEMNENT) ACT 2018

10.1 Health Insurance (Amendment) Act 2018 comes into effect

On 5 July 2019, the commencement order for section 3 of the Health Insurance (Amendment) Act 2018 (S.I. No. 35 of 2018) (the "**Act**") was published. Section 3 of the Act deals with the Health Insurance Authority and is effective from 27 June 2019.

With this commencement order the Health Insurance Authority will now consist of 7 members instead of 5 and the quorum for a meeting of the Health Insurance Authority has increased from 3 to 4.

The Act can be accessed here and the commencement order can be accessed here.

11 CONSUMER INSURANCE CONTRACTS BILL 2017

11.1 Oireachtas publishes amended version of the Consumer Insurance Contracts Bill 2017

On 11 July 2019, an amended version of the Consumer Insurance Contracts Bill 2017 (the "Bill") was published on the Oireachtas website. This is the first time the Bill has been revised since it was initially published in early 2017. The purpose of the revised Bill is to update references for European and Irish legislation that have subsequently been introduced since the Bill was first published and to incorporate some of the feedback that was received after the public consultation on the Bill.

The most notable amendments include the following:

- Inclusion of and changes to definitions including those of "consumer" and "durable medium" to align them with financial services legislation;
- Proposal to delete the section 8 relating to the provision of pre-contractual information;
- In the event that the insurer cancels the contract of insurance, the requirement to disclose the reasons for such cancellation;
- Additional claims handling duties for insurers e.g. provide the consumer with the opportunity to provide evidence which could inform the insurer's determination as regards the claim;
- Inclusion of a new section on limitations of deferring payments until completion of work in property contracts; and
- Supplemental provisions relating to the right of third party to claim from insurer.

The Bill is due to be revised further before going to report stage in the Oireachtas.

The amended Bill can be accessed here.

12 COMPETITION AND CONSUMER PROTECTION COMMISSION ("CCPC")

12.1 CCPC commences market study into the Public Liability Insurance Sector

On 15 August 2019, the Competition and Consumer Protection Commission (the "CCPC") commenced a market study into the public liability insurance sector in Ireland. The commencement of this study follows a ministerial request from the Minister for Business, Enterprise and Innovation, Heather Humphreys TD. The aim of the market study is to contribute to the State's efforts to bring about widely-supported change in the sector.

The project is in the early stages and once the Terms of Reference has been finalised, the CCPC will undertake an extensive process of engagement with all relevant stakeholders.

A copy of the press release can be accessed here.

13 INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS ("IAIS")

13.1 IAIS launches consultation on the use of big data analytics in insurance

On 2 September 2019, the IAIS launched a consultation on the draft issues paper on the use of big data analytics in insurance (the "**Draft Issues Paper**").

The Draft Issues Paper builds on the IAIS Issues Paper on Increasing Digitalisation in Insurance and its Potential Impact on Consumer Outcomes (which was published in November 2018). The Draft Issues Paper relates to the use of personal and other data by insurers as a result of digitalisation. The scope of the Draft Issues Paper focuses on the use of algorithms and advanced analytics capabilities by insurers to make decisions based on patterns, trends and linkages and the availability to insurers of new alternative data sources, collectively referred to as big data analytics.

To help understand the potential benefits and risks to consumers associated with the use of big data analytics by insurers, the Draft Issues Paper considers the manner in which insurers are now able to collect, process and use data across various stages of the insurance product lifecycle, specifically product design, marketing, sales and distribution, pricing and underwriting and claims handling.

The Draft Issues Paper also makes certain observations about the potential implications for supervisors as a result of the use of big data analytics in insurance.

The public consultation closes on 16 October 2019 and the Draft Issues Paper can be accessed here.

14 ANTI-MONEY LAUNDERING ("AML") / COUNTER-TERRORIST FINANCING ("CTF")

14.1 FATF publish Terrorist Financing Risk Assessment Guidance

On 5 July 2019, the Financial Action Task Force ("FATF") published its Terrorist Financing Risk Assessment Guidance (the "Guidance"). The Guidance aims to provide relevant information sources, practical examples and good approaches for concerned parties to consider when assessing terrorist financing risk at the jurisdiction level.

The main areas covered by the Guidance include:

- Examples of information sources when identifying TF threats and vulnerabilities;
- Key considerations when determining the relevant governance and scope of a risk assessment;
- Considerations for different country contexts such as lower capacity jurisdictions;
- Relevant information sources for concerned parties when identifying terrorist financing risks within high-risk sectors such as investments; and
- Practical examples to overcome information sharing challenges.

The Guidance can be accessed here.

14.2 European Parliament and European Commission make statements on final text of Directive (EU) 2019/1153

On 11 July 2019, the European Parliament and the European Commission made statements that were published in the Official Journal of the European Union on the final text of Directive (EU) 2019/1153 (the "**Directive**") laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences. The Directive came into effect on 10 July 2019.

In their statement, the European Parliament highlighted their disappointment that Article 9 of the Directive does not include rules on precise deadlines and IT channels for the exchange of information between Financial Intelligence Units of separate Member States. Similarly the European Parliament regrets that the scope of this article was limited to crimes related to terrorism and not all serious criminal offences. The European Commission also stated their disappointment of these issues in their statement.

The statements can be accessed <u>here</u> and the Directive can be accessed <u>here</u>.

14.3 EBA publishes opinion inviting prudential supervisors to communicate with firms on AML and CTF risks

On 24 July 2019, the EBA published an opinion addressed to prudential supervisors to enhance communication with supervised firms about AML and CTF risks in prudential supervision.

The EBA invites prudential supervisors to exchange information with the management of supervised firms to ensure that prudential supervisors consider AML and CTF issues throughout the prudential supervisory process, while co-operating closely with AML and CTF supervisors.

The communication to firms should explain that money laundering and terrorist financing can have a significant adverse impact on a firm's safety and soundness. Prudential supervisors should be aware of, and act on, AML and CTF risks, which may pose prudential risks to the firms they supervise.

The EBA recommends that prudential supervisors alert supervised firms to the fact that the AML and CTF risks will be considered during the prudential supervisory process and in particular, but not solely as follows:

- At authorisation or when assessing the proposed acquisitions of qualifying holdings;
- As part of the ongoing supervision of a firm;
- In the context of the supervisory review and evaluation process; and
- When taking any administrative measures, imposing penalties or proceeding to a
 withdrawal of authorisation process, to address any potential weaknesses from a
 prudential perspective.

Prudential supervisors are invited to note in their communications the ongoing need for closer co-operation and increased information exchange between prudential supervisors and AML and CTF competent authorities, at home and abroad.

A copy of the opinion can be found <u>here</u>.

14.4 European Commission publishes package of materials assessing the European Union's AML and CMT framework

On 24 July 2019, the European Commission published a package of materials assessing the European Union's AML and CTF framework. The materials, addressed to the European Parliament and the Council of the European Union, aim to support the European Union and national authorities to better address money laundering and terrorist financing risks.

The European Commission notes that the materials will serve as a basis for future policy choices on how to further strengthen AML and CTF framework of the European Union. The European Commission will continue to support member states in this area, while seeking to address the remaining structural challenges.

The package of materials contains the following:

- <u>Communication</u> towards better implementation of the European Union's AML and CTF framework;
- <u>Supranational risk assessment</u> of money laundering and terrorist financing risks affecting the European Union and relating to cross-border activities;
- <u>Report</u> assessing recent alleged money laundering cases involving European Union credit institutions;
- <u>Report</u> assessing the framework for cooperation between Financial Intelligence Units;
- Report on the interconnection of national central bank account registries; and
- Related Q&As.

14.5 European Commission publishes staff working document supplementing the supranational risk assessment under MDL4

On 24 July 2019, the European Commission published a staff working document which supplements the recently published supranational risk assessment of money laundering and terrorist financing risks affecting the European Union and relating to cross-border activities under Directive (EU) 2015/849 ("MLD4").

The supranational risk assessment is designed to help Member States address money laundering and terrorist financing risks related to specific products and services. The staff working document provides an overview of the methodology followed by the European Commission to assess the money laundering and terrorist financing risks in the supranational risk assessment. It also provides additional information on the European Commission's risk analysis for each of the sectors and products identified as potentially vulnerable to money laundering and terrorist financing risk.

The staff working document can be accessed here.

14.6 Establishment of the Central Register of Beneficial Ownership

On 29 July 2019, the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (the "**RBO**") was established. Irish incorporated companies now have until 22 November 2019 to submit information on their beneficial owners to the RBO.

Every Irish company is required to maintain an internal register recording accurate and upto-date information on its ultimate beneficial owners. The European Union (Anti-Money Laundering Beneficial Ownership of Corporate Entities) Regulations 2019 (the "**Regulations**") provided for the establishment of the RBO and imposed a duty on companies to submit information on their beneficial ownership to the RBO.

The RBO is now open and all filings must be made online by companies (including investment funds established as public limited companies) by 22 November 2019. Newly incorporated companies are required to register their beneficial ownership details within five months of incorporation. Access to most of the data maintained on the central register will be made available to the general public.

The RBO can be accessed here.

14.7 Central Bank publishes AML Guidelines

On 6 September 2019, the Central Bank published the final version of its Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector (the "**Guidelines**"). The Guidelines are designed to assist credit and financial institutions in understanding their obligations in relation to AML and CTF, following the implementation in Ireland of MLD4.

The Guidelines are largely consistent with the draft guidelines issued in December 2018 as part of the Central Bank's Consultation Paper CP128, with the majority of changes being for the purposes of clarification. The more material changes relate to the timing of customer due diligence, the approval of politically exposed persons and the training required to be put in place by firms.

The Guidelines can be accessed here.

In addition, please see the Dillon Eustace briefing paper entitled "Central Bank publishes AML Guidelines" (9 September 2019) which can be accessed here for further information.

14.8 FATF publishes new consolidated assessment ratings

For the period 1 July 2019 to 30 September 2019, the FATF updated the consolidated assessment ratings which provide a summary of: (1) the technical compliance; and (2) the effectiveness of the compliance, of the assessed parties against the 2012 FATF Recommendations on combating money laundering and the financing of terrorism & proliferation. FATF also released new mutual evaluations for the same period.

The updated consolidated rating table can be accessed <u>here</u> and the full set of reports for each country can be accessed <u>here</u>.

15 DATA PROTECTION / GENERAL DATA PROTECTION REGULATION ("GDPR")

15.1 EDPB holds twelfth plenary session

On 9 and 10 July 2019, the European Data Protection Board ("**EDPB**") held its twelfth plenary session. Following this session the following were published:

- Recommendation 01/2019 on the draft list of the European Data Protection Supervisor ("EDPS") regarding the processing operations subject to the requirement of a data protection impact assessment, which can be accessed here;
- Opinion 8/2019 on the competence of a supervisory authority in case of a change in circumstances relating to the main or single establishment, which can be accessed here;
- Opinion 9/2019 on the Austrian data protection supervisory authority draft accreditation requirements for a code of conduct monitoring body pursuant to article 41 GDPR, which can be accessed here;
- Opinion 10/2019 on the draft list of the competent supervisory authority of Cyprus regarding the processing operations subject to the requirement of a data protection impact assessment, which can be accessed here;
- Opinion 11/2019 on the draft list of the competent supervisory authority of the Czech Republic regarding the processing operations exempt from the requirement of a data protection impact assessment which can be accessed here;
- Opinion 12/2019 on the draft list of the competent supervisory authority of Spain regarding the processing operations exempt from the requirement of a data protection impact assessment, which can be accessed here;
- Opinion 13/2019 on the draft list of the competent supervisory authority of France regarding the processing operations exempt from the requirement of a data protection impact assessment, which can be accessed here; and

 Opinion 14/2019 on the draft Standard Contractual Clauses submitted by the supervisory authority of Denmark, which can be accessed <u>here</u>.

15.2 EDPB publishes annual report for 2018

On 16 July 2019, the EDPB published its annual report for 2018. The report, which covers the period from 25 May to 31 December 2018, provides an outline of the activities of the EDPB during this period, along with setting out its main objectives for 2019.

The annual report provides key statistics reflecting matters and proceedings initiated during this period in EEA countries, such as cross-border cases, one-stop-shop procedures, joint operations and binding decisions.

The EDPB endorsed and adopted twenty Guidelines which are contained in the annual report. In addition, 13 sub-groups have been established to assist the EDPB's performance.

The annual report can be accessed here.

15.3 Data Protection Commission publishes guidance note on GDPR breach notification requirements

On 12 August 2019, the Data Protection Commission ("**DPC**") published a guidance note on GDPR breach notifications to assist controllers in understanding and complying with their obligations regarding notification and communication requirements.

The guidance note covers two primary obligations of controllers:

- the notification of a personal data breach to the DPC; and
- the communication of that data breach to data subjects, where applicable.

The guidance note also highlights the accountability principle set out in GDPR and states that controllers must document any and all personal data breaches so as to demonstrate compliance with the data breach notification regime to the DPC.

The guidance note can be accessed here.

15.4 Data Protection Commission publishes guidance note on Data Protection Impact Assessments

On 26 September 2019, the Data Protection Commission published a guidance note on Data Protection Impact Assessments ("**DPIAs**"). The guidance note is designed to assist data controllers and data processors whose business activities may require them to carry out a DPIA.

The guidance note discusses when a DPIA is required and the benefits of conducting a DPIA. It also provides an overview of the steps involved in carrying out a DPIA.

The guidance note can be accessed <u>here</u>.

16 BREXIT

16.1 The Government of Ireland publishes a Contingency Action Plan update to prepare for the withdrawal of the United Kingdom from the European Union

On 9 July 2019, the Government of Ireland published an update on its Brexit Contingency Action Plan. The update expands on the Government's Action Plan published in December 2019 and outlines key preparations for the withdrawal of the United Kingdom from the European Union in the context of the extension of the Brexit Article 50 process to 31 October 2019.

The Government address the significant risk of a no-deal Brexit and the substantial challenges across various industry sectors that flow from this. The update provides a review of the extensive Irish and EU level work already done in this regard, and addresses the contingency measures still to be taken before 31 October.

The updated Action Plan can be accessed here.

16.2 The Government of Ireland approves draft legislation to facilitate transition of the Irish securities market

On 17 July 2019, the Government of Ireland approved draft legislation to facilitate the transition of the Irish securities market from its current settlement system based in the UK to the industry selected settlement system operated in Belgium. The approval of the draft bill is part of the longer term Government response to Brexit.

Brexit means that the Irish market will no longer be able to access the current UK settlement system. The Irish market selected Euroclear Bank in Belgium as its preferred long term solution and the migration of securities from the UK system must be completed and fully operational by March 2021.

The Government's press release can be accessed here.

16.3 ISDA publishes updated Brexit FAQs

On 18 July 2019, ISDA published an updated version of its Brexit frequently asked questions ("FAQs"). The FAQs aim to address possible outcomes for the derivatives market post-Brexit. The FAQs have been updated to reflect developments as at 30 June 2019 and deal with topics including the publication of a withdrawal agreement that is not yet ratified and the publication of final and draft UK legislation to cater for Brexit.

The FAQs can be accessed here.

16.4 European Commission publishes Communication on preparations for "no-deal" Brexit

On 4 September 2019, the European Commission published its sixth Communication on finalising preparations for the withdrawal of the UK from the European Union on 1 November 2019.

The Communication is accompanied by five legislative proposals. In the area of financial services, the Commission strongly encourages insurance firms and other financial service

operators that have not yet done so to finalise their preparatory measures by 31 October 2019.

The Communication can be accessed <u>here</u>.

Dillon Eustace

30 September 2019

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