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Insurance

Quarterly Legal and Regulatory Update

Period covered: 1 July 2020 – 30 September 2020

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1. SOLVENCY II

1.1 European Commission launches consultation on Solvency II 2020 review

On 1 July 2020, the European Commission launched a consultation on the key elements of the prudential framework of the Solvency II Directive (2009/138/EC) (**Solvency II Directive**). The European Commission is seeking stakeholders' views and evidence on the broad objectives and priorities of the review of the European framework, including such issues as:

- insurers' role in the long-term financing of the economy;
- the supply of products with long-term guarantees to clients;
- transparency towards consumers;
- policyholder protection; and
- emerging risks and opportunities (such as climate and environment related risks, digitalization and cyber risks).

The review will take into account any lessons learnt from the Covid-19 outbreak and its adverse consequences on European Union households, businesses and financial markets. Respondents are encouraged to support their answers by as much evidence as possible.

The deadline for the consultation is 21 October 2020 and the consultation questionnaire is accessible here.

1.2 EIOPA launches its Solvency II Single Rulebook

On 31 July 2020, the European Insurance and Occupational Pensions Authority (**EIOPA**) launched its Single Rulebook. The Single Rulebook is an online tool focused on Solvency II that further promotes the consistent implementation of the regulatory framework for insurance supervision.

The main benefit of the Single Rulebook is that it enables navigation across different legal acts such as the Directive, delegated and implementing regulations, as well as EIOPA guidelines, recommendations, opinions and supervisory standards. The aim of this tool is to improve the understanding of the applicable rules, and at the same time to promote the European internal market.

In the near future, EIOPA plans to expand the scope of the Single Rulebook by adding Questions and Answers submitted via EIOPA's dedicated Q&A process. EIOPA invites stakeholders to share their experience by sending comments and suggestions to rulebook@eiopa.europa.eu.

The Single Rulebook can be accessed here.

2. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

2.1 EIOPA's Question and Answer process on regulation

On 25 September 2020, EIOPA updated its Question and Answer process (**Q&A process**) on regulation. The Q&A process is to ensure consistent and effective application of European regulation and to contribute to supervisory convergence in the EEA.

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

Questions can be submitted and the Q&A archive can be accessed here.

2.2 EIOPA launches consultation on its supervisory statement on the use of risk mitigation techniques by insurance and reinsurance undertakings

On 29 September 2020, EIOPA launched a consultation on its supervisory statement on the use of risk mitigation techniques by insurance and reinsurance undertakings. The aim of the supervisory statement is to promote supervisory convergence on the assessment of the use of risk-mitigation techniques under Solvency II.

EIOPA will also assess potential group issues and internal reinsurance and is seeking the views of stakeholders on these topics.

The deadline for feedback on the consultation is 24 November 2020.

The consultation can be accessed here.

2.3 EIOPA sets out its key priorities in the light of the pandemic

On 30 September 2020, EIOPA set out its priorities for 2021-2023 taking into account the market due to the COVID-19 pandemic, along with the political priorities defined by the European Commission.

The main priorities for the period are COVID-19 crisis management, risk mitigation, consumer protection and active support to the recovery of the European economy. EIOPA will also work on digitalisation and cyber risk, sustainable finance, supervisory convergence, financial stability of the insurance and occupational pensions sectors, and the pan-European Personal Pension Product.

On 29 September 2020, the single programming document which sets out the activities that EIOPA plans to undertake in the period 2021-2023 was adopted and provides for four strategic objectives:

- driving forward conduct of business regulation and supervision to the benefit of consumers;
- leading supervisory convergence to ensure high-quality prudential supervision across Europe;
- strengthening financial stability of the insurance and occupational pension sectors; and
- continuing to deliver EIOPA's mandate effectively and efficiently while remaining adaptable to new priorities.

A copy of the single programming document can be accessed here.

3. INSURANCE IRELAND

3.1 Insurance Ireland calls on the European Commission to increase efforts to integrate the single market

On 4 August 2020, Insurance Ireland issued a response on the European Commission consultation on a roadmap in preparation of the re-boost of the Capital Markets Union (**CMU**) Action Plan.

In its response to the consultation, Insurance Ireland stated that it strongly supports the CMU and that the CMU can have a significant impact on the EU's economic recovery and the Green Deal. The CMU should aim at improving fair competition, enhancing the competitiveness of EU players at global level and increasing product availability and consumer choice. Insurance Ireland also stated that:

- the CMU Action Plan would optimise regulatory and supervisory convergence, enhancing fair competition, consumer protection and a regulatory level-playing field in the EU;
- freedom of capital and regulatory certainty are crucial aspects for the success of the CMU;
- capital requirements must be reviewed to ensure the full investment and risk-taking capacity of insurers;
- the CMU should aim to enhance digital service provision and capital market governance; and
- increasing the attractiveness of pension savings and the opportunities the new Pan-European Personal Pension Product (**PEPP**) can offer should be fully embraced.

Insurance Ireland also urged the European Commission to avoid misleading attempts to streamline information requirements and conduct provisions across different financial services sectors.

Insurance Ireland's response can be accessed here.

4. CENTRAL BANK OF IRELAND

4.1 Central Bank publishes report on thematic assessment of diversity and inclusion in insurance firms

On 29 July 2020, the Central Bank of Ireland (**Central Bank**) published a report on its thematic assessment of diversity and inclusion in insurance firms. The assessment examined the approach to Diversity and Inclusion (**D&I**) employed across a sample of insurance firms. The assessment considered:

- firms' policies, procedures, practices and monitoring of D&I;
- remuneration analysis by gender; and
- an analysis of pre-approved control functions (**PCF**) applications over the period 2012 – 2018.

The Central Bank found that:

- most firms did not have a D&I strategy;
- most firms are not sufficiently prioritising D&I;
- considerations of diversity and the overall effectiveness of boards and senior executive teams is not sufficiently evident in senior recruitment and succession planning; and
- there is clear evidence of significant gender pay gaps in most firms.

The Central Bank has issued a Risk Mitigation Programme to each of the firms subject to the review, requiring them to submit a detailed action plan to address the firm specific issues identified. The Central Bank expects all firms to assess and address, where appropriate, the key messages arising from this assessment.

The report can be accessed here.

For further information, please see the Dillon Eustace article entitled "The Drive for Diversity", addressing the growing regulatory focus on organisational diversity. The article was published in the September 2020 edition of Finance Dublin, and can be accessed here.

4.2 Central Bank publishes Covid-19 and Business Interruption Insurance Supervisory Framework

On 5 August 2020, the Central Bank published its COVID-19 and Business Interruption Insurance Supervisory Framework (**Framework**). The Framework sets out the Central Bank's approach to the identification and early resolution of potentially systemic issues of customer harm with respect to business interruption insurance in light of the outbreak of Covid-19, in turn providing clarity for affected businesses.

The Framework also sets out the Central Bank's expectations of insurance firms in handling business interruption claims arising out of the Covid-19 outbreak. For example, where a customer has an entitlement to a claim under a business interruption insurance policy, the Central Bank expects that the claim will be processed and paid promptly and fully. Furthermore, where cover and related issues are disputed, the Central Bank expects firms to pay the reasonable costs of customer plaintiffs in agreed test case litigation.

The Framework sets out the escalation strategy for intervention by the Central Bank where these expectations are not met.

The Framework can be accessed here.

4.3 Central Bank publishes statement on use of electronic signatures

On 24 August 2020, the Central Bank published a statement on the use of electronic signatures in regulatory documents and forms, arising out of increased instance of remote working arising from the Covid-19 pandemic.

In its statement, the Central Bank confirms that, in the absence of any specific legal provisions to the contrary, regulated firms may use electronic signatures in submitting regulatory documents and forms to the Central Bank.

The Central Bank emphasised that those signing regulatory documents and forms in electronic form will be accountable for the content of the document in the same way as if they had signed the document in 'wet ink'.

The statement is available here.

4.4 Central Bank (National Claims Information Database) Regulations 2020

On 3 September 2020, the Central Bank (National Claims Information Database) Regulations 2020 [S.I. No. 336 of 2020] (the **Regulations**) were signed and will come into effect on 30 September 2020.

The purpose of the National Claims Information Database is to increase transparency around the cost of claims. Data is collected from insurers, including premiums, policy and claims data. This allows the Central Bank to publish an annual report containing analysis of:

- the cost of claims;
- the cost of premiums;
- how claims are settled;
- how settlement costs vary depending on how claims are settled; and
- the various types of cost that make up settlements.

Private motor insurance was selected to be the initial class of insurance in scope of the National Claims Information Database and the purpose of the Regulations is to specify additional relevant classes of nonlife insurance and the circumstances in which risks falling within the relevant classes of non-life insurance are to be regarded as risks based in the State, for the purpose of the Central Bank (National Claims Information Database) Act 2018 [No. 42 of 2018]. The objective is to extend the scope of the National Claims Information Database to include employers' liability insurance and public liability insurance. Certain non-liability elements of commercial insurance will also be included.

The Regulation can be accessed here.

4.5 Regulatory Levies - Central Bank Act 1942 (Section 32D) Regulations 2020

On 4 September 2020, the Central Bank Act 1942 (Section 32D) Regulations 2020 (S.I. No. 345 of 2020) (the "**Regulations**") came into operation.

Each year, the Central Bank sets out the framework for that year's levying process and the basis on which the individual financial supervisory providers' levies will be calculated.

From 4 September 2020, all financial service providers are liable to pay an annual levy as specified in the Regulations. The Schedule to the Regulations prescribes the amount of the levy contribution and, where applicable, any supplementary levy contributions due in respect of each authorisation held during a relevant levy period.

A regulated entity is liable to pay the levy contribution prescribed whether or not a levy notice has been issued by the Central Bank

In particular, at Category B, the Schedule address the amount of the levy contribution for Insurance Undertakings.

The text of the Regulations can be accessed here.

4.6 Central Bank publishes requirements to firms following first phase of review of differential pricing in the insurance sector

On 9 September 2020, the Central Bank published the first phase of its Review of Differential Pricing in the Motor and Home Insurance Markets (the **Review**). The Review is being conducted in three phases:

1. market analysis with the objective of establishing the extent of differential pricing in the market and, where it exists, to determine how firms are utilising the practice;

2. quantitative analysis and consumer insight; and

3. findings and recommendations.

The market analysis conducted identified weaknesses in firms, raising concerns that some firms may not be adequately considering the effect of their pricing practices on their consumers. The Central Bank observed that:

- the majority of firms do utilise differential pricing through various techniques and firms have a responsibility to understand the impact of pricing practices on their customers - a failure to recognise and/or acknowledge the practice of price differentiation raises significant concerns about a firm's ability to assess this impact;

- the Board must take responsibility for the impact of differential pricing on customers, to ensure a firm's pricing practices are well governed, controls operate effectively and appropriate oversight is in place, with roles and responsibilities for pricing activities clearly defined;

- there is insufficient evidence of a customer focussed culture in respect of pricing decisions and practices - firms must ensure that customers are at the centre of pricing decisions and the pricing process.

The Central Bank expects that the best interests of customers are protected and that markets operate in a fair and transparent manner. The Board and senior management teams within all firms are required to consider the observations set out the Review. Where gaps/weaknesses are identified, firms should immediately develop and implement actions to address them and to mitigate any risks to customers.

Firms should also be able to demonstrate how their pricing practices adhere to the requirements in the Consumer Protection Code 2012, specifically to:

- act honestly, fairly and professionally in the best interests of their customers and the integrity of the market;

- act with due skill, care and diligence in the best interests of their customers; and

- make full disclosure of all relevant material information, including all charges, in a way that seeks to inform their customers.

Phase 2 of the Review (Quantitative Analysis and Consumer Insight) has begun and will assess the degree of differential pricing among private car and home insurance policy types. In parallel, a consumer insights exercise will be undertaken to further develop understanding of how consumers engage with insurance providers.

A copy of the Review, FAQs for consumers on differential pricing and the related press release can be accessed here.

4.7 Rescission of guidelines on reinsurance cover of primary insurers and the security of their reinsurers

The Central Bank issued a note stating that, after a detailed review of the guidelines on the reinsurance cover of primary insurers and the security of their reinsurers (the **Guidelines**), the Central Bank has concluded that the Guidelines are no longer relevant to reinsurance undertakings subject to Solvency II. The Guidelines have therefore been rescinded with effect from 14 September 2020 and have been removed from the Solvency II section of the Central Bank website.

The Guidelines will continue to apply for Non-Solvency II undertakings and have been retained on the Non-Solvency II section of the Central Bank website.

The Central Bank can be contacted at insurancepolicy@centralbank.ie, if there are any questions in relation to this announcement.

The announcement can be accessed here.

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

5.1 EBA publishes response to European Commission call for advice on the future of EU AML and CFT framework

On 10 September 2020, the European Banking Authority (**EBA**) published its response to the European Commission's call for advice, issued 3 March 2020, on the future of the EU's AML and CFT framework. The response comprises an opinion together with a report.

In its response, the EBA recommends that the Commission establish a single rulebook to:

- harmonise the EU's legal framework where evidence suggests divergence of national rules, in particular with respect to customer due diligence (**CDD**) measures and AML/CFT systems and controls requirements that determine what financial institutions do to tackle money laundering and terrorist financing;
- strengthen the EU's legal framework where current provisions are insufficiently robust, particularly in relation to the powers AML/CFT supervisors have at their disposal to monitor and take the measures necessary to ensure financial institutions' compliance with their AML/CFT obligations and in relation to financial institutions' reporting requirements;
- review of the scope of the EU's AML/CFT legislation to ensure the list of obliged entities is sufficiently comprehensive and in line with international AML/CFT standards; and
- clarify provisions in sectoral financial services legislation to ensure that they are compatible with the EU's AML/CFT objectives.

The opinion, which gives a high-level overview of the EBA's advice, may be accessed here.

The report, which sets out the EBA's detailed response, may be accessed here.

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

On 22 September 2020, the Criminal Justice (Money t and Terrorist Financing) (Amendment) Bill 2020 (**Bill**) commenced Dáil Éireann, Second Stage. The purpose of the Bill is to transpose the criminal justice elements of the Fifth EU Anti-Money Laundering Directive (**AMLD 5**) by amending the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 in line with AMLD 5. The Bill seeks to:

- improve the safeguards for financial transactions to and from high-risk third countries;
- bring a number of new 'designated persons' under the existing legislation (notably certain letting agents, virtual currency providers and custodian wallet providers);
- improve the transparency of beneficial ownership of legal entities. Where a designated person is entering a business relationship with another entity, the designated person must take steps to obtain the relevant information from the appropriate register of beneficial ownership prior to commencing the business relationship;

- provide for a new defence in relation to 'tipping off' where the designated person can prove that the entity to whom the information was disclosed was a specified financial institution, which is connected to the designated person or part of the same group structure;
- enhance existing CDD requirements;
- set new limits on the use of anonymous pre-paid cards. A person supplying such an instrument will now be required to conduct CDD when the value of the requested card is €150 or higher;
- broaden the definition of a politically exposed person (**PEP**) to include 'any individual performing a prescribed function';
- provide for Ministerial guidance which will clarify domestic 'prominent public functions' that will give rise to a person being designated as a PEP; and
- make a number of technical amendments to other provisions of Acts already in force.

The Bill's progress can be tracked here.

6. DATA PROTECTION

6.1 Implications of Schrems II Ruling

On 16 July 2020, the Court of Justice of the European Union (**CJEU**) published its much anticipated ruling in the Schrems II case1 in which it considered whether the transfer of personal data by Facebook Ireland to Facebook Inc which is located in the U.S. under the EU-U.S. Privacy Shield or through the use of standard common contractual clauses (**SCC**) was permissible.

The CJEU ruled that: (i) the Privacy Shield was no longer a valid mechanism by which to transfer personal data to the US on the basis that it did not ensure EEA data subjects the same protections they are afforded under Regulation (EU) 2016/679 (**General Data Protection Regulation** or **GDPR**); and (ii) although the SCC remained valid, upon assessment of the data controller, 'supplementary measures' may be required to ensure that the adequate level of protection is given to data subjects.

The ruling has significant implications for personal data transfers between EEA member states and third countries whose data protection regimes have not yet been assessed by the European Commission as offering an equivalent level of protection to data subjects. Notably, the UK will become a 'third country' for data protection purposes on 31 December 2020.

6.2 Data Protection Commission statement on Schrems II ruling

On 16 July 2020, the Data Protection Commissioner (**DPC**) published its response strongly welcoming the Schrems II ruling. The DPC's case was that data transfers between the EU and the USA were highly problematic in light of the CJEU's decision in the Safeharbour case of 2015 and the structure of the US legal system.

The DPC indicated that it had brought these proceedings, and resisted objections from both Facebook and Mr Schrems, *"specifically in order to secure a decisive statement of position from the CJEU in relation to the key issues of principle at stake when an EU citizen's personal data is transferred to the United States*".

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

The DPC indicates that the CJEU's decision in the Schrems II case endorses *"the substance of the concerns expressed by the DPC (and by the Irish High Court) to the effect that EU citizens do not enjoy the level of protection demanded by EU law when their data is transferred to the United States".* The DPC also indicates that whilst the SCCs transfer mechanism used to transfer data to countries worldwide is, in principle, valid, "*it is clear that, in practice, the application of the SCCs transfer mechanism to transfers of personal data to the United States is now questionable*".

The DPC also welcomes the clarity provided by this judgment in regards to the allocation of responsibility between data controllers and NSAs. It looks forward to cooperating with its fellow EU supervisory authorities in giving effect to this judgment.

The DPC statement can be accessed here.

6.3 Frequently Asked Questions on the Schrems II case

On 23 July 2020, following the ruling in the Schrems II case, the European Data Protection Board (**EDPB**) published its Frequently Asked Questions (**FAQ**) document. In this FAQ, the EDPB confirmed that the Privacy Shield was invalidated with immediate effect. Therefore data exporters which relied on the Privacy Shield as a legitimate means of transferring personal data from the EEA to the U.S. will need to consider an alternative mechanism for any future transfers.

The EDPB FAQ can be accessed here.

The decision of the CJEU is available here and the press release of the CJEU, here.

6.4 Guidance for Data Controllers who Lose Control of Data to a Third Party

On 27 August 2020, the DPC published guidance on its website highlighting the steps that should be taken by data controllers in the event of the loss of control to third parties (such as where personal data is disclosed to an unintended recipient).

The GDPR and the Data Protection Act 2018 are the primary pieces of legislation governing the control of data and list the responsibilities of data controllers. The Guidance indicates that the main responsibility for securing the deletion or return of wrongly held personal data lies with the lawful data controller.

If a third party refuses to return or delete wrongly held personal data, the DPC recommends that data controllers act promptly and use all reasonable measures to address and mitigate the risks posed to data subjects and their rights. The breach and all relevant information should be reported to the DPC. In addition, the following steps are recommended:

- Inform the third party that retention of this data is unlawful;
- If necessary, contact An Garda Síochána;
- Consult with legal advisers regarding possible remedies, including injunctions.

The guidance can be accessed here.

6.5 EDPB adopts guidelines on the concepts of controller and processor in the GDPR

On 2 September 2020, the EDPB adopted guidelines entitled "Guidelines 07/2020 on the concepts of controller and processor in the GDPR" (**Guidelines**).

The Guidelines seek to provide guidance on the concepts of controller and processor by clarifying the meaning of these concepts and clarifying the different roles and the distribution of responsibilities between these actors. The Guidelines specifically address the extent to which the GDPR brought changes to these concepts, including the implications of joint controllership under Article 26 GDPR and the relationship between controller and processor under Article 28 GDPR.

The Guidelines replace the previously issued Article 29 Working Party guidance on these concepts (Opinion 1/2010 (WP169)). The new Guidelines aim to give more developed and specific guidance in order to ensure consistent application of the rules throughout the EU and the EEA.

The EDPB is now seeking feedback on the Guidelines in the form of a public consultation. The closing date for receipt of comments is October 19 2020.

The Guidelines are available here, and the public consultation can be accessed here.

7. SUSTAINABLE FINANCE

7.1 EIOPA article on the EU's sustainable finance taxonomy from the perspective of the insurance and reinsurance sector

On 31 July 2020, EIOPA published an article investigating how much investment held by insurers may be covered by the European Union sustainable finance taxonomy. EIOPA suggests that only a small portion of insurers' investments are made in economic activities which might be eligible for the EU sustainable finance taxonomy as insurers' exposures are mainly concentrating toward financial activities.

This can be interpreted as an indicator of limited exposure to transition risk for the insurance sector and also indicates that insurers have the possibility to contribute more significantly to transitioning to a lower carbon society in the future. Insurers as long-term investors could play a key role in the transition towards more sustainable society. The taxonomy can help insurers by providing clarity in identifying sustainable economic activities and avoiding reputational risks.

A copy of the article can be accessed here.

8. COVID-19

8.1 EIOPA clarifies supervisory expectations on product oversight and governance requirements in the context of COVID-19

On 8 July 2020, EIOPA issued a statement calling on insurers to review their product oversight and governance measures in light of the potential impact of the COVID-19 pandemic on products and their utility for customers.

In the statement, EIOPA asks insurance manufacturers to identify products whose main features, risk coverage or guarantees have been materially affected by the COVID-19 pandemic. If those products no longer offer value to the target market, EIOPA states that insurers should assess whether there is a risk of unfair treatment. The assessment should take into account the product lifecycle and the evolution of the impact of the COVID-19 pandemic. If there is unfair treatment, EIOPA expects remedial measures to be taken and these measures should be proportionate to the potential unfair treatment and take account of legal requirements in national civil and insurance law. In taking remedial measures, insurance manufacturers should aim at both mitigating the situation and preventing further occurrences of detriment. Insurance manufacturers should consider a broad range of possible measures and their impact on products over the medium to long term.

EIOPA's statement builds on its statement of 1 April 2020 calling on insurers and intermediaries to take steps to mitigate the impact of COVID-19 on consumers. EIOPA and national supervisory authorities will continue to work collectively to ensure financial stability, market integrity and consumer protection, by monitoring market practices in light of the COVID-19 situation.

A copy of the statement can be accessed here.

8.2 EIOPA supervisory statement on Solvency II recognition of schemes based on reinsurance with regard to COVID-19

On 21 July 2020, EIOPA published a supervisory statement on the Solvency II recognition of schemes based on reinsurance with regard to COVID-19 and credit insurance.

The statement sets out EIOPA's treatment of schemes based on reinsurance implemented by Member States under the European Commission's temporary framework for state aid measures to support the economy during the COVID-19 pandemic which was adopted on 19 March 2020.

EIOPA identified significant differences in the way that national schemes in credit insurance are implemented through the temporary framework. EIOPA outlined in the statement a number of supervisory recommendations for national competent authorities (**NCAs**). These include the following:

- allowing insurers and reinsurers to consider schemes that transfer insurance risk to a Member State's government, based on the temporary framework, as having the same consequences as reinsurance as defined in Solvency II Directive which should lead the assets recognised by insurers and reinsurers under the scheme to be considered linked to reinsurance for Solvency II purposes;

- allowing insurers and reinsurers to consider that schemes based on reinsurance implemented through the government of a Member State comply with the relevant requirements regarding the counterparty;

- allowing insurers and reinsurers to assume that the schemes will be extended in 2021 only where such extension has already been approved; and

- insurers and reinsurers should clearly indicate the assumptions used in the calculation of the solvency capital requirement in their solvency and financial condition report.

EIOPA aims to support supervisory convergence through the statement and the statement should not serve as a basis for the application of the Solvency II rules beyond the scope and validity of the temporary framework.

A copy of the statement can be accessed here.

8.3 EIOPA issues statement on Solvency II supervisory reporting in the context of COVID-19

On 27 July 2020, EIOPA published a statement on Solvency II supervisory reporting during the COVID-19 pandemic. In the statement, EIOPA considers that insurance and reinsurance undertakings should now be in condition to comply with the deadlines provided in the Solvency II framework.

Insurance and reinsurance undertakings are expected to report the Solvency II solo quarterly Own Funds template (S.23.01) with a reference date between 30 June and 31 December 2020 and NCAs are requested to submit information received quarterly to EIOPA no later than two weeks after receipt.

A copy of the statement can be accessed here.

8.4 Companies (Miscellaneous Provisions) (COVID-19) Act 2020

The Companies (Miscellaneous Provisions) (COVID-19) Act 2020 (**Act**) was signed into law on 1 August 2020. The Act provides relief to companies which have faced difficulties in complying with certain statutory requirements as a result of the COVID-19 pandemic by way of temporary amendments to the Companies Act 2014. Please see Dillon Eustace's briefing concerning the temporary amendments made with effect on 21 August 2020 to the Companies Act 2014 by the Act.

A copy of the Dillon Eustace briefing can be accessed here.

9. MISCELLANEOUS

9.1 European Commission updates Brexit readiness notice for insurance

On 13 July 2020, the European Commission updated its webpage on getting ready for the end of the Brexit transition period. The updates include an updated notice to stakeholders on the withdrawal of the United Kingdom and European Union rules in the field of insurance/reinsurance.

The notice replace the version published in February 2018 and has been updated to address the legal situation and practical implications that the end of the transition period will have on the sector.

The readiness notices can be accessed here.

9.2 European Commission publish consultation on a Delegated Regulation on taxonomy related disclosures by undertakings reporting non-financial information

On 28 July 2020, the European Commission published a consultation on a delegated regulation on taxonomy related disclosures by undertakings reporting non-financial information supplementing the Taxonomy Regulation (2020/852/EU) (the **Taxonomy Regulation**).

The Taxonomy Regulation requires undertakings subject to an obligation to publish non-financial information under the Non-Financial Reporting Directive (2014/95/EU) (**NFRD**), including large banks, insurance companies and large listed companies, with more than 500 employees, to include in non-financial statements (or consolidated non-financial statements) information on how and to what extent their activities are associated with environmentally sustainable economic activities.

The deadline for responses to the consultation closed on 8 September 2020 and the European Commission intends to adopt the delegated regulation in the second quarter of 2021.

A copy of the consultation can be accessed here.

9.3 Proposal for a Directive amending the Motor Insurance Directive (2009/103/EC) relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to ensure against such liability

On 10 September 2020, an information note containing working papers on the Proposal for a Directive amending the Motor Insurance Directive (2009/103/EC) relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to ensure against such liability was issued by the General Secretariat of the Council.

The information note containing the working papers can be accessed here.

9.4 The Competition and Consumer Protection Commission issues preliminary findings to organisations under investigation in the private motor insurance sector

In 2016, the Competition and Consumer Protection Commission (**CCPC**) commenced an investigation into suspected anti-competitive practices in the provision of private motor insurance in Ireland, contrary to section 4(1) of the Competition Act 2002, as amended (**the Act**) and Article 101(1) of the Treaty on the Functioning of the European Union.

The anti-competitive cooperation activities under investigation included 'price-signalling'. Price signalling occurs when businesses make their competitors aware that they intend to increase prices, which in turn causing further price increases across the sector. These practices are particularly harmful to consumers when they occur in sectors like private motor insurance where motorists are required by law to take out cover and cannot avoid price increases.

On 17 September 2020, the CCPC issued preliminary findings to five insurers, an insurance industry trade association and an insurance broker.

The preliminary findings allege that the organisations engaged in anti-competitive cooperation over a 21-month period during 2015 and 2016. The alleged anti-competitive cooperation consisted of public announcements of future private motor insurance premium rises as well as other contacts between competitors, all of which reduced levels of competition between the parties.

The CCPC's findings are provisional and no conclusion should be drawn at this stage that there has been a breach of competition law. The parties have the opportunity to consider and respond to the preliminary findings and to engage with the CCPC to offer commitments regarding their future behaviour to address the CCPC's competition concerns. The CCPC will carefully consider any responses before deciding if it will bring civil court proceedings pursuant to the Act or take some other course of action.

The investigation is ongoing.

A copy of the preliminary findings can be accessed here.

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

Keith Waine
E-mail: keith.waine@dilloneustace.ie
Tel : + 353 1 673 1822
Fax: + 353 1 667 0042

Seán Mahon
E-mail: sean.mahon@dilloneustace.ie
Tel : + 353 1 673 1707
Fax: + 353 1 667 0042

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