

**Insurance  
Quarterly Legal and  
Regulatory Update**

**Period covered:  
1 October – 31 December 2019**

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## INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

### 1 SOLVENCY II

#### 1.1 EIOPA publishes first parallel calculation for Solvency II Relevant Risk Free Interest Rate Term Structures – end of September 2019

On 8 October 2019, the European Insurance and Occupational Pensions Authority (“EIOPA”) published the first parallel calculation on the relevant risk free interest rate term structures (“RFR”) with reference to the end of September 2019 based on Refinitiv data and an updated version of the source code used for the monthly risk-free interest RFR calculation.

The parallel calculation publication will allow stakeholders to compare their own calculations with those conducted by EIOPA before the use of Refinitiv data is used as a main source of market data for the RFR calculation becomes official for end of January 2020.

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

#### 1.2 EIOPA launches field test on revised and new templates under Solvency II reporting and disclosure review 2020

On 9 October 2019, EIOPA launched a field test on the revised and newly proposed templates as part of the 2020 Solvency II reporting and disclosure review. The revision covers both content and structure of different reporting and disclosure templates. The aim of the field test is to provide undertakings with the possibility to implement the new and revised reporting requirements, to identify the main issues and to report on these issues.

The field test is open for all solo undertakings and service providers and feedback is sought until 31 January 2020. The feedback received will support EIOPA’s ongoing discussions with stakeholders on the issues raised.

Feedback received after this date is also welcome and will be considered during EIOPA’s future work developing the implementing technical standards (“ITS”) on reporting and disclosures under Directive 2009/138/EC (the “Solvency II Directive”).

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

#### 1.3 EIOPA launches consultation on the Opinion that sets out technical advice for the 2020 review of the Solvency II Directive

On 15 October 2019, EIOPA published a consultation paper on the opinion that sets out technical advice for the 2020 review of the Solvency II Directive (the “Opinion”).

By way of background, the Opinion is in response to the European Commission’s call for advice on the Solvency II 2020 review in February 2019, which covers 19 separate topics. In the Opinion, EIOPA’s overall view is that the Solvency II framework is working well and the main considerations and proposals of the consultation relate to the following:

- Considerations to choose a later starting point for the extrapolation of risk-free interest rates for the Euro or to change the extrapolation method to take into account market information beyond the starting point;
- Considerations to change the calculation of the volatility adjustment to risk-free interest rates, in particular to address overshooting effects and to reflect the illiquidity of insurance liabilities;
- The proposal to increase the calibration of the interest rate risk sub-module in line with empirical evidence;
- The proposal to include macro-prudential tools in Solvency II; and
- The proposal to establish a minimum harmonised and comprehensive recovery and resolution framework for insurance.

Feedback on the Opinion is welcome until 15 January 2020, with a view to EIOPA publishing its final advice in June 2020.

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

#### **1.4 Notice listing the compulsory insurance requirements by various Member States published in the Official Journal of the European Union**

On 18 October 2019, the European Union (“EU”) published a notice pursuant to Article 179 (4) of Solvency II Directive in the Official Journal of the European Union, which lists the type of compulsory insurance required by various Member States, the specific legal provisions relating to that insurance and the particulars which must be given in the certificate which a non-life insurance undertaking must issue to an insured person where the Member State requires proof that the obligation to take out insurance has been complied with.

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

#### **1.5 EIOPA publishes updated Risk Dashboard based on the second quarter 2019 Solvency II data**

On 25 October 2019, EIOPA published its updated risk dashboard based on the second quarter 2019 Solvency II data which summarises the main risks and vulnerabilities in the European insurance sector through a set of risk indicators of the second quarter of 2019. The results show that the risk exposures of the European insurance sector remained overall stable compared to July.

Further observations set out in the risk dashboard can be accessed [here](#).

## 1.6 Responses to EIOPA's first consultation on Supervisory Reporting and Public Disclosure requirements under Solvency II

In July 2019, EIOPA launched its first consultation on its proposals for the 2020 Solvency II Review regarding supervisory reporting and public disclosure (the “**Consultation**”).

The Consultation covered the following areas:

- General issues on supervisory reporting and public disclosure;
- Individual Quantitative Reporting Templates (“**QRTs**”);
- Solvency and Financial Condition Report and Narrative Supervisory Reporting; and
- Financial Stability Reporting;

The consultation closed on 18 October 2019.

In October 2019, various stakeholders such as EIOPA's Insurance and Reinsurance Stakeholder Group (“**IRSG**”), the Association of Mutual Insurers and Insurance Cooperatives in Europe (“**AMICE**”) and Insurance Europe together with the European Insurance CFO Forum and CRO Forum issued responses to the Consultation.

The IRSG response can be accessed [here](#), AMICE's response can be accessed [here](#) and the joint response can from Insurance Europe, European Insurance CFO Forum and CRO Forum can be accessed [here](#).

The result of this consultation will be included in an EIOPA Opinion to be submitted to the European Commission by June 2020.

## 1.7 Commission Implementing Regulation on technical information for the calculation of technical provisions and basic own funds for fourth quarter 2019 reporting under Solvency II published in Official Journal of the European Union

On 14 November 2019, the Commission Implementing Regulation (EU) 2019/1902 (the “**Commission Implementing Regulation**”) which lays down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September 2019 until 30 December 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 September 2019 until 30 December 2019.

The Commission Implementing Regulation entered into force on 15 November 2019 and applies from 30 September 2019.

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

## 1.8 Two Commission Implementing Regulations amending Solvency II reporting and disclosure requirements published in the Official Journal of the European Union

On 10 December 2019, the following Commission Implementing Regulations were published in the Official Journal of the European Union:

- Commission Implementing Regulation (EU) 2019/2103 amending and correcting Implementing Regulation (EU) 2015/2450 laying down ITS with regard to templates for submitting information to supervisory authorities in accordance with the Solvency II Directive, which can be accessed [here](#); and
- Commission Implementing Regulation (EU) 2019/2102 amending Implementing Regulation (EU) 2015/2452 with regard to the disclosure of information used in calculating the adjustment for the loss-absorbing capacity of deferred taxes in accordance with Article 56 of the Solvency II Directive, which can be accessed [here](#).

The Commission Implementing Regulations are based on draft ITS submitted to the European Commission by EIOPA in July 2019. Both entered into force on 30 December 2019 and deal with amendments to Delegated Regulation 2015/35/EU (the “**Solvency II Delegated Regulation**”) introduced by Commission Delegated Regulation 2018/1221 and Commission Delegated Regulation 2019/981.

## 1.9 EIOPA launches consultation on draft guidelines on information and communication technology security and governance

On 12 December 2019, EIOPA launched a consultation on guidelines on Information and Communication Technology (“**ICT**”) security and governance (the “**Draft Guidelines**”). The objectives of the Draft Guidelines are:

- To create a common baseline for information security throughout the EU Member States; and
- To enhance convergence of supervisory practices in this area.

More specifically, the Draft Guidelines will provide guidance to NCAs and market participants on how regulation regarding operational risks set out in the Solvency II Directive, the Solvency II Delegated Regulation and EIOPA Guidance set out in EIOPA's Guidelines on System of Governance is applied in the case of ICT security and governance.

EIOPA's Draft Guidelines cover governance and risk management, ICT operations security and ICT operations management.

The consultation on the Draft Guidelines closes on 13 March 2020 and can be accessed [here](#).

## 1.10 EIOPA publishes annual report on the use of capital add-ons during 2018

On 13 December 2019, EIOPA published its annual report on the use of capital add-ons by NCAs under Solvency II during 2018 (the “**Report**”). The objective of the capital add-on measure is ensure that the regulatory capital requirements reflect the risk profile of the undertaking or group. It is important that it is used by NCAs when needed and it is also important to ensure a high level of supervisory convergence within the European Economic Area (“**EEA**”) regarding the use of the capital add-on.

The analysis in the Report is based on 2018 year-end Solvency II data collected under the Solvency II Regime and some of the key findings are as follows:

- All 31 NCAs have reported no changes in the internal process of setting and reviewing capital add-ons for solo undertakings, including solo undertakings that are part of a cross-border group;
- The majority of NCAs have no formal policy in place for assessing the potential need for setting and reviewing capital add-ons;
- The overall use of capital add-ons remains extremely limited. During 2018, eight NCAs set capital add-ons to twenty-one solo insurance and reinsurance undertakings and one NCA used it for three groups; and
- The distribution of the capital add-ons as a percentage of the total SCR in 2018 for undertakings that imposed capital add-ons varied in 2018, the largest percentage being 80%, whereas the smallest percentage rounded close to 0%.

EIOPA concludes that the simplification of the process for setting capital add-ons would allow for better use of the tool.

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

## 1.11 Delegated Regulation amending Solvency II Delegated Regulation on look-through approach and risk weights for flood risk adopted by the European Commission

On 17 December 2019, the European Commission adopted the Commission Delegation Regulation (C(2019) 8951 final) (the “**Commission Delegation Regulation**”) which proposes to amend the Solvency II Delegated Regulation as follows:

- **Look-through approach:** The Commission Delegated Regulation proposes to amend an erroneous exemption from the look through approach for certain collective investment undertakings and investments packaged as funds set out in the Solvency II Delegated Regulation because collective investment undertakings and investments packaged as funds should, by default, be subject to the look through approach.
- **Risk weights for flood risk:** The Table section “Risk weights for flood risk” of Annex X of the Solvency II Delegated Regulation will be amended to include the correct

table which contains the correct number of rows which correspond to the 124 risk zones of the United Kingdom of Great Britain and Northern Ireland.

The Commission Delegated Regulation will be considered by the European Parliament and the Council of the EU. If adopted, the Commission Delegated Regulation will enter into force 20 days after publication in the Official Journal of the European Union and will apply retroactively from 8 July 2019.

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

### **1.12 European System of Financial Supervision (“ESFS”) legislative reforms published in the Official Journal of the European Union**

On 27 December 2019, Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending the Solvency II Directive on the taking-up and pursuit of the business of Insurance and Reinsurance and Directive 2014/65/EU on markets in financial instruments (the “**MiFID II Directive**”) was published in the Official Journal of the European Union.

The Directive amends the Solvency II Directive to give EIOPA a greater role to contribute to supervisory convergence in the areas of internal model application (through provisions on co-operation and information-sharing) and the power to adopt opinions in this area. These reforms are intended to address the European Commission's concerns that major inconsistencies remain in national competent authorities' (“**NCA**s”) requirements for the use of internal models for the calculation of the Solvency Capital Requirement (“**SCR**”).

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

### **1.13 EIOPA publishes updated Q&As**

During the period 30 September 2019 to 31 December 2019, EIOPA published updated Questions and Answers (“**Q&As**”) on the following:

- Answers to (EU) No 2015-2452 procedures formats and templates of the solvency and financial condition report (last updated 8 November 2019);
- Answers to (EU) No 2009-138 Solvency II Directive (Insurance and Reinsurance) (last updated 16 December 2019);
- Answers to guidelines on reporting and public disclosure (last updated 16 December 2019);
- Answers to (EU) No 2015-2450 templates for the submission of information to the supervisory authorities (last updated 16 December 2019);
- Answers to (EU) No 2015-2011 lists of regional governments local authorities exposures (last updated 21 December 2019)

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



## 1.14 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 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 ITS 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 September 2019 on 7 October 2019;
- With reference to the end of October 2019 on 7 November 2019; and
- With reference to the end of November 2019 on 5 December 2019.

The monthly symmetric adjustment of the equity capital charge can be accessed [here](#).

## 2 EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (“EIOPA”)

### 2.1 AMICE issues response to EIOPA consultation on remuneration principles

On 4 October 2019, AMICE issued a response (dated 30 September 2019) (the “**Response**”) to EIOPA’s consultation paper on the draft Opinion on the supervision of remuneration principles in the insurance and reinsurance sector (the “**Consultation Paper**”).

The Response stated that even though it recognises that it is not EIOPA’s intention to add new requirements or to create administrative burden, the quantitative criteria and targets might cause excessive burden for insurance undertakings, mainly because the NCAs could request the mechanical application of the mentioned thresholds, which would unduly restrict the undertakings’ flexibility to make their entrepreneurial choices related to the remuneration policies. It also states that it believes that the supervision should “focus on a reduced scope of staff identified as potential higher profile risk-takers to promote a proportionate approach”.

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

### 2.2 EIOPA publishes Thematic Review on Consumer Protection Issues in Travel Insurance

On 9 October 2019, EIOPA published its Thematic Review on Consumer Protection Issues in Travel Insurance (the “**Thematic Review**”). Recognising that the travel insurance sector is facing new important changes, both opportunities and challenges, the aim of the Thematic Review is to better understand travel insurance products and to identify sources of potential conduct risks and consumer detriment.

EIOPA collected input from industry and consumer associations, as well as its IRSG. The key findings are:

- The travel insurance market as a whole does not appear to face a general market failure and travel insurance products remain valuable for consumers. However, there are heightened conduct risks leading to consumer detriment due to problematic business models with remuneration structures based on extremely high commission levels;
- There is strong potential for poor value for money for consumers due to some insurers paying extremely high commissions to distributors, in some cases significantly more than 50% of the premium;
- There is strong potential for poor value for money for consumers due to very wide variations in the claims ratio. Some insurers have claims ratios below 20% of the gross written premium compared to the average claims ratio of 40% of the gross written premium regardless of the distribution channel;
- There are increased conduct risks due to new market players entering the market and selling travel insurance products online as an ancillary activity (such as airlines and ferry companies, price comparison websites, aggregators, banks and supermarkets);
- There are potential risks of low quality products and services for consumers due to newly established partnerships with distributors via international tenders;
- There is a high degree of consumer detriment due to the potential high degree of dismissed claims through no pre-contractual medical screening and around 70% of insurers excluding pre-existing medical conditions from the coverage of travel insurance products; and
- There is potential for increased costs for consumers as, in most cases, assessment of overlaps in cover are only conducted at the claim stage and not during the sales process.

As a result of the findings, EIOPA has issued a warning to the travel insurance industry as a supervisory response on the issues identified by the Thematic Review. The issues addressed are, in particular, those problematic business models with remuneration structures based on extremely high commission levels and the business models that combine high commission with extremely low claims ratios offering poor value for money. EIOPA is of the view that such business models are not consistent with the principles set out in Directive (EU) 2016/97 the Insurance Distribution Directive (the “IDD”), such as the obligation to act in the customer’s best interests and obligations on product oversight and governance. EIOPA expects all market participants to comply fully with the IDD.

EIOPA and the NCAs will intensify their risk-based supervision of insurance undertakings and insurance intermediaries, notably in the national markets where risks are identified, including monitoring the market for ancillary insurance products. NCAs will share with EIOPA supervisory measures taken to address the business models highlighted by the Thematic Review.

A copy of the Thematic Review can be accessed [here](#) and the warning can be accessed [here](#).

### **2.3 EIOPA publishes single programming document 2020-22 and annual work programme for 2020**

On 14 October 2019, EIOPA published a revised Single Programming Document 2020-22 including EIOPA's updated Annual Work Programme for 2020. The Single Programming Document sets out the activities EIOPA will undertake during 2020-22, with EIOPA focusing on the delivery of its strategic objectives which include:

- Driving forward conduct of business regulation and supervision;
- Leading convergence towards high-quality prudential supervision throughout the EU;
- Strengthening the financial stability of the insurance and occupational pensions sectors; and
- Delivering EIOPA's mandate effectively and efficiently whilst remaining adaptable to new priorities and demands.

Two key themes which EIOPA will focus on during this period are:

- Digitalisation and cyber, specifically the impact of new technology enabled business models and the use of new technologies for supervisory purposes; and
- Furthering the sustainable finance agenda.

A copy of EIOPA's Single Programming Document 2020-22 and Annual Work Programme for 2020 can be accessed [here](#).

### **2.4 EIOPA launches call for research proposals on various topics**

On 21 October 2019, EIOPA launched a call for research proposals aimed at addressing open questions with a special emphasis on the policy angles related to the following topics:

- Investment allocations of insurers and pension funds;
- Liquidity stress testing in the insurance sector;
- Early warning systems in insurance;
- Systemic relevance of insurance sector and its interlinkages with financial and real sectors; and
- Economic valuation of insurers' liabilities; best estimate and risk margin.

Theoretical and empirical research proposals were sought before 15 January 2020 and EIOPA expects the outcome to be announced to the authors of the submitted proposals by 28 February 2020.

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

## 2.5 EIOPA publishes its December 2019 Financial Stability Report of the (re)insurance and occupational pensions sectors

On 18 December 2019, EIOPA published its December 2019 Financial Stability Report of the (re)insurance and occupational pensions sectors in the EEA (the “**Report**”). The Report covers both the European insurance and reinsurance sectors and also the European pensions sector.

Some of the key financial stability risks outlined in the Report include:

- The risk of a prolonged low yield environment has intensified over the last 6 months and remains the key challenge for European insurers and pension funds, putting pressure on both solvency positions and long-term profitability;
- The combination of weakening economic outlook, concerns over debt sustainability and stretched valuations across financial markets could also give rise to a sudden reassessment of risk premia;
- Emerging cyber and climate change related risks continue to demand attention from insurers, pension funds and supervisors; and
- Interconnectedness with banks and home-bias in investments remain high for European insurers and could lead to potential spillovers of risks from other sectors.

The Report also includes two thematic articles which focus on i) a climate risk assessment of the sovereign bond portfolio of European insurers and ii) the impact of variation margining on EU insurers' liquidity (the “**Thematic Articles**”).

The Report and the Thematic Articles can be accessed [here](#).

## 2.6 EIOPA publishes Consumer Trends Report for 2019

On 19 December 2019, EIOPA published its consumer trends report 2019 (the “**Report**”). The Report outlines major developments in the insurance and pensions sectors affecting European consumers.

Some of the key observations relating to the insurance market in the Report include:

- Overall, transparency and disclosure of information to consumers has improved;
- The digitalisation of the insurance sector continues to show potential for improving the consumer experience and brings new opportunities for insurers;
- Areas that could cause potential consumer detriment continue being reported, with possible risks for consumers across the product lifecycle;
- Conduct issues related to unit-linked, credit life / credit protection insurance and add-on insurance products have become more prevalent; and

- Claims management in motor insurance, in particular in some markets, also remains an area of concern as motor insurance complaints due to claims management issues continue to be the most prevalent complaints and have increased by 6% at EEA level.

The Report also covers customer trends in the pensions sector.

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

### **3 INSURANCE DISTRIBUTION DIRECTIVE (“IDD”)**

#### **3.1 Commission Delegated Regulation adapting base euro amounts for professional indemnity insurance and financial capacity of intermediaries under IDD published in the Official Journal of the European Union**

On 22 November 2019, the Commission Delegated Regulation (EU) 2019/1935 amending the IDD with regard to regulatory technical standards (“RTS”) adapting the base euro amounts for professional indemnity insurance (“PII”) and for financial capacity of insurance and reinsurance intermediaries was published in the Official Journal of the European Union.

The Commission Delegated Regulation increases the amount of professional indemnity insurance an intermediary must hold and, where required by certain Member States (this does not apply under Irish law), increases the minimum required financial capacity of intermediaries to reflect the increase in the European index of consumer prices.

The Commission Delegated Regulation (EU) 2019/1935 entered into force on 12 December 2019 and will apply from 12 June 2020 and can be accessed [here](#).

### **4 PACKAGED RETAIL INSURANCE-BASED INVESTMENT PRODUCTS (“PRIIPS”)**

#### **4.1 Joint Committee of ESAs publishes consultation on amendments to PRIIPS Delegated Regulation**

On 16 October 2019, the Joint Committee of the European Supervisory Authorities (“ESAs”) published a consultation paper on proposed amendments to Regulation (EU) 2017/653 (“PRIIPS Delegated Regulation”) regarding the existing rules on key information documents (“KIDs”) for PRIIPS. The proposed amendments relate to:

- Performance scenarios;
- Information regarding the costs of the investment; and
- Specific issues for PRIIPs offering multi-option products for investments.

The Joint Committee is welcoming comments on the proposals until 13 January 2020. It intends to conclude the review during the first quarter of 2020 and to submit its final proposals to the European Commission shortly afterwards.

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

## 5 INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS (“IAIS”)

### 5.1 IAIS adopts package of reforms to enable effective cross-border supervision of Internationally Active Insurance Groups

On 14 November 2019, the International Association of Insurance Supervisors (“IAIS”) adopted a comprehensive set of reforms to enable effective cross-border supervision of insurance groups and contribute to global financial stability. The adopted reforms include:

- The Common Framework (“**ComFrame**”)

This establishes supervisory standards and guidance focusing on the effective group-wide supervision of Internationally Active Insurance Groups (“IAIGs”).

- Insurance Capital Standard (“**ICS**”) Version 2.0

This is being developed with the purpose of creating a common language for supervisory discussions of group solvency of IAIGs to enhance global convergence among group capital standards. The newly agreed ICS Version 2.0 commences in January 2020,

- Holistic Framework for Systemic Risk

IAIS adopted the holistic framework for assessment and mitigation of systemic risk in the insurance sector for implementation from the beginning of 2020. This framework recognises that systemic risk can arise from sector-wide trends with regard to specific activities and exposures as well as from a concentration of these activities and exposures in individual insurers.

The press release for the adopted set of reforms can be accessed [here](#).

### 5.2 IAIS launches consultation on draft application paper on Liquidity Risk Management

On 19 November 2019, the IAIS launched a consultation on a draft application paper on Liquidity Risk Management (the “**Draft Application Paper**”). The purpose of the Draft Application Paper is to provide guidance to supervisors about the application of Liquidity Risk Management standards in the Insurance Core Principles (“**ICPs**”) and ComFrame.

In particular, it is related to the material in:

- ICP standards 16.8 and 16.9 (ICP 16 enterprise risk management (“**ERM**”) for solvency purposes); and
- ComFrame 16.9.a to 16.9.d.

The Draft Application Paper is open to feedback until 20 January 2020 and can be accessed [here](#).

## 6 INSURANCE EUROPE

### 6.1 Insurance Europe issues response to EIOPA consultation on the proposal for guidelines on outsourcing to cloud service providers

On 7 October 2019, Insurance Europe issued its response to EIOPA's consultation on the proposal for Guidelines on outsourcing to cloud service providers (the "**Response**"). Some of the key comments outlined in the Response include the following:

- In relation to the proposed timeline to apply the guidelines, Insurance Europe note that, based on practical industry experience, further flexibility will likely be necessary to facilitate a smooth transition from current operational practices;
- The guidelines should be limited to instances of material outsourcing, such as outsourcing that encompasses critical and important operational functions or activities only to ensure legal certainty and consistency with Solvency II requirements. Non-material outsourcing to the cloud should fall outside of their scope;
- There is a need to distinguish between outsourcing and the purchasing of a service. A key consideration is whether or not the service is an activity that is typically carried out by an insurer as part of its regular insurance business; and
- In the context of access and audit rights, Insurance Europe encourages EIOPA to allow greater reliance on the use of third-party certification.

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

### 6.2 Insurance Associations issue position papers on EU initiative on insurance guarantee schemes

On 22 October 2019, Insurance Europe issued a position paper opposing the EU initiative on insurance guarantee schemes (the "**Position Paper**").

In the Position Paper, Insurance Europe supports the status quo and opposes the EU initiative on insurance guarantee schemes ("**IGSs**"). They are of the view that IGSs vary significantly across Member States but generally work well within their local context and laws.

The Position Paper also notes that even a minimum level of harmonisation would create significant costs and involve complex challenges with no acceptable solutions, highlighting that the focus and priority instead should be on ensuring that Solvency II is actually applied appropriately in all Member States and also that there is coordinated supervision of Freedom of Services ("**FoS**") and Freedom of Establishment ("**FoE**"). NCAs should be allowed significant flexibility to choose the features that best suit their market, to reflect the important differences between Member States regarding social welfare systems, winding-up process for insurers and insurance product lines.

The Position Paper also provides a number of suggestions to the European Commission if it still considers that minimum harmonisation is necessary.

On 18 October 2019, AMICE issued a response to EIOPA’s Consultation on harmonisation of national IGSs (the “**Response**”). In its Response, AMICE believes that there is no rationale for a minimum harmonisation in the field of IGS as the Solvency II regime adequately protects policyholders through a system of two capital requirements which ensures the early detection of financial difficulties and through other requirements.

The Insurance Europe Position Paper can be accessed [here](#) and a copy of the Response can be accessed [here](#).

### 6.3 Insurance Europe publishes paper on making EU insurance regulation that works and benefits consumers

On 4 December 2019, Insurance Europe published a paper on how EU policymakers can ensure rules for insurers work properly and benefit consumers (the “**Paper**”). The insurance industry firmly supports effective regulation that protects consumers and helps them to buy the right products. However, EU financial services legislation does not always achieve the ultimate aim of benefiting consumers and the current regulatory processes do not always lead to good outcomes for consumers.

In order to ensure that regulation proposed with the best intentions is not detrimental to consumers, Insurance Europe calls on policymakers to:

- **Avoid continual regulatory changes:** Policymakers should perform in-depth analysis to ensure that any new legislation (Levels 1, 2 and 3) is fit for purpose from the start and at the same time, keep the regulatory framework stable and change rules only if it will demonstrably benefit consumers;
- **Avoid legal uncertainty:** Policymakers should allocate the necessary time and resources to meaningful consultations with all stakeholders;
- **Avoid inconsistencies, overlaps and duplication:** Coherence and consistency across EU legislation must be ensured. Policymakers should ensure coherence and consistency across EU legislation by assessing the cumulative impact that the proposed rules and existing rules would have on consumers.
- **Avoid unfit rules and disclosures that mislead consumers:** Policymakers must ensure that disclosures are clear, meaningful and help consumers to understand insurance products. The profound differences between financial service products and markets should not be underestimated.
- **Avoid outdated rules and obstacles to pro-consumer innovation:** Policymakers must design digital-friendly rules to allow consumers to access information or services digitally if they wish to benefit from the opportunities that digitalisation offers;
- **Avoid implementation timelines that are too short:** Insurance Europe recommends that there are separate timeframes for developing Level 2 and 3 measures and for industry implementation. Industry should also be provided with at least one year for implementation after Level 2 texts are published in the Official Journal of the European Union.



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

## **7 NON-LIFE INSURANCE (PROVISION OF INFORMATION) (RENEWAL OF POLICY OF INSURANCE) (AMENDMENT) REGULATIONS 2018**

### **7.1 The Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) (Amendment) Regulations 2018 came into effect**

On 1 November 2019, the Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) (Amendment) Regulations 2018 (the “**Amendment Regulations**”) came into effect.

The Amendment Regulations amend the Non- Life Insurance (Provision of Information) Regulations 2007 (S.I. 74 of 2007) (“**Principal Regulations**”) by:

- Extending the renewal notification period from 15 working days to 20 working days for all non-life insurance policies covered by the Principal Regulations;
- Requiring insurers, upon quotation and / or renewal (whichever is applicable) of motor insurance policies, to also provide the total premium for each policy option (i.e. third party, comprehensive, third party, fire and theft, or a combination thereof) available from that insurer. However, it must be noted that these information requirements do not apply to a policy of motor insurance that is a mid-term adjustment of an existing policy; and
- Introducing additional information requirements for renewals of private motor insurance policies which include providing, on the same page as the renewal premium, the premium paid in the previous year or where any mid-term adjustments were made to the policy during the year, an annualised premium figure for the previous year and a statement indicating that the annualised premium figure shown may not reflect the actual premium paid in the previous year.

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

## **8 CENTRAL BANK OF IRELAND**

### **8.1 Central Bank’s Derville Rowland delivers speech on the Senior Executive Accountability Regime**

On 22 October 2019, Derville Rowland, Director General of the Central Bank of Ireland (the “**Central Bank**”), delivered a speech in relation to the proposed Senior Executive Accountability Regime (“**SEAR**”). In her speech, Ms. Rowland indicates that the Central Bank the proposed SEAR regime will be complimented by enhancements to the current Fitness & Probity (“**F&P**”) regime.

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

## 8.2 Central Bank launches Discussion Paper 9 - Use of Services Companies in the Insurance Sector

On 11 November 2019, the Central Bank launched discussion paper 9 on the use of services companies in the insurance sector (the “**Discussion Paper**”) in order to seek stakeholders’ views on how undertakings who enter such arrangements adequately identify, assess and mitigate against all material risks that they introduce. The Discussion Paper focuses on issues such as:

- The appropriateness and adequacy of the initial and ongoing risk identification and management in relation to the arrangement;
- The adequacy of the protections provided for policyholders and other beneficiaries on an ongoing basis and in stress scenarios; and
- The substance in the Irish undertaking.

The Discussion Paper closes on 31 January 2020 and can be accessed [here](#).

## 8.3 Central Bank publishes revised Solvency II National Specific Template DPM and Taxonomy – Version 1.4.0

On 11 November 2019, the Central Bank published a revised version of the National Specific Template (the “**NST**”) Data Point Model (“**DPM**”) and Taxonomy - Version 1.4.0 (the “**Release**”).

The Release updates the set of NSTs previously published on the Central Bank website. The templates contained in the Release are based on the EIOPA Solvency 2.4.0 package (as published on 15 July 2019) in particular the DPM Dictionary, the DPM Annotated Templates and the XBRL taxonomy.

The Central Bank clarifies that it plans for the Release to be used for collection of NST quarterly submissions from Quarter 4, 2019 onwards. Revised documentation relating to the Release was also published on the Central Bank’s website.

The Central Bank’s website page containing details of the Release can be accessed [here](#).

## 8.4 Central Bank launches ASP sanctions guidance

On 14 November 2019, the Central Bank launched ASP sanctions guidance, providing detail on the sanctioning factors which it takes into account when imposing sanctions in enforcement cases under its Administrative Sanctions Procedure (“**ASP**”).

The ASP sanctions guidance can be accessed [here](#).

In addition, please see the Dillon Eustace article entitled ‘Central Bank launches ASP Sanctions Guidance’ (15 November 2019) which can be accessed [here](#).

## 8.5 Central Bank issues Dear CEO letter in respect of differential pricing in the motor and home insurance industries

On 21 November 2019, the Director General of Financial Conduct at the Central Bank, Derville Rowland, issued a Dear CEO letter (the “**Letter**”) in respect of its review of differential pricing in the motor and home insurance industries.

The Central Bank has identified the practice of differential pricing (whereby customers with the same risk and cost to service are charged different premiums) as a potential risk to consumers and intends to commence a review in January 2020 to examine for consistency with the Consumer Protection Code 2012.

The Letter focuses on the requirement for boards to ensure that treating customers fairly forms an integral part of their firms' corporate culture and attaches the initial terms of reference for that review as a schedule to the Letter.

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

## 8.6 Central Bank publishes updated Minimum Competency Code 2017 and Minimum Competency Regulations 2017 Q&As

On 6 December 2019, the Central Bank published an updated version of its Minimum Competency Code 2017 and Minimum Competency Regulations 2017 Questions and Answers (“**MCC Q&As**”). The updates reflect the entry into force of Directive 2014/17/EU (the “**Mortgage Credit Directive**”), the MiFID II Directive and the IDD.

The updates are as follows:

- Q7.4: This has been amended and concerns the application of the Minimum Competency Code (“**MCC**”) and the Minimum Competency Regulations 2017 to (re)insurance undertakings and intermediaries authorised, licenced or registered by the Central Bank when providing services, either on a freedom of establishment or freedom of services basis, in other EU/EEA member states. While the Central Bank considers that the appropriate competency standards to apply are the corresponding requirements of the Member State in which the services are provided, it should be noted that pursuant to the IDD, it is necessary for such firms to be able to demonstrate to the Central Bank their compliance with the relevant professional knowledge and competence requirements, and that, where applicable, employees of (re)insurance undertakings and intermediaries undertake fifteen hours of professional training or development per year.
- Q9.5: This is a new question and addresses whether it is possible to complete more than one hour of CPD per year relating to ethics. The Central Bank confirms that, in relation to persons exercising certain controlled functions within a firm, there is a minimum of one hour in ethics to be completed per year. While this is not a limit, the overall CPD completed by an individual must cover a range of the competencies required for the activities undertaken by that individual.
- Question 9.6: This is a new question and clarifies whether modules relating to culture, inclusion and diversity can be included to meet CPD requirements. The Central Bank

confirms that these topics would not meet the requirements of the MCC, and that while they are important for all regulated firms, they relate to the general operation of the firm rather than the technical knowledge of the individual undertaking a controlled function within the scope of the MCC.

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

## 8.7 Central Bank issues the first Private Motor Insurance Report

On 16 December 2019, the Central Bank published the first annual Private Motor Insurance Report on the National Claims Information Database (the “**Report**”). The aim of the Report is to improve transparency and understanding of the issues affecting the functioning of the motor insurance industry in Ireland by providing key statistics on the market.

The statistics are based on data gathered from insurance undertakings providing private motor insurance products in Ireland, including foreign companies selling into the Irish market.

Some of the key statistics from the Report are as follows:

- **Cost of claims per policy:** Between 2009 and 2018, the average cost of claims per policy decreased by 2.5% from €437 in 2009 to €426 in 2018. Between 2009 and 2013 claims costs reduced by 14% to €375, followed by an increase of 14% to €426 in 2018;
- **Premium per policy:** Between 2009 and 2018, the average premium per policy increased by 42% from €498 in 2009 to €706 in 2018. Between 2009 and 2013, average premiums decreased by 13% to €435, followed by an increase of 62% to €706 in 2018.
- **Litigated Settlements (total):** Injury claims settled through litigation had an average compensation cost of €45,390 in the period 2015-2018, in addition average legal costs were €23,031, and claims took on average 4.4 years to settle. Litigated settlements costing more than €100k account for 15% of claimants settling through litigation but account for 53% of total litigated costs and involve a number of very large settlements. These very large settlements can have a significant impact on the average compensation and legal cost figures.
- **2018 private motor revenue results:** Insurers’ gross combined operating ratio on private motor business was 81% and net combined operating ratio was 88%. As firms do not account for private motor insurance business separately, an income and expenditure statement was prepared on a proportioned basis.

Under the Central Bank (National Claims Information Database) Act 2018, the Central Bank is required to publish a report on an annual basis.

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

## 9 HEALTH INSURANCE (AMENDEMENT) ACT 2019

### 9.1 Health Insurance (Amendment) Act 2019

On 26 December 2019, the Health Insurance (Amendment) Act 2019 (the “**2019 Act**”) was signed into law.

The Act amends the Health Insurance Act 1994 (the “**1994 Act**”) to specify the amount of premium to be paid from the Risk Equalisation Fund in respect of certain classes of insured persons from 1 April 2020. The 2019 Act also amends the 1994 Act to specify the amount of the hospital utilisation credit applicable from 1 April 2020 and makes amendments to the Stamp Duties Consolidation Act 1999, and provides for other related matters.

The 2019 Act can be accessed [here](#).

## 10 THE CONSUMER INSURANCE CONTRACTS ACT 2019

### 10.1 The Consumer Insurance Contracts Act 2019

On 26 December 2019, the Consumer Insurance Contracts Act 2019 (No.53 of 2019) (the “**Act**”) was signed into Irish law. The Act, which was initiated in January 2017, is based on recommendations made by the Law Reform Commission in its Report on Consumer Insurance Contracts 2015. The Act reforms the law around consumer insurance contracts and enhances consumer protection by placing more onerous obligations on insurers. Various amendments were made to the Act at Committee stages prior to its enactment.

The Act applies to consumer insurance contracts only and covers life insurance and non-life insurance contracts. Under the Act, a consumer includes natural persons and small businesses with an annual turnover of less than €3 million.

Some of the most notable provisions of the Act include the following:

- The Act reforms the consumer’s duty of disclosure, for example, by replacing the principle of utmost good faith (*uberrima fides*) at the pre-contractual stage with a limited pre-contractual duty of disclosure where the consumer is confined to providing responses to specific questions asked by the insurer;
- “Basis of contract” clauses and clauses described as warranties, future warranties, promissory warranties or continuing warranties will no longer be valid;
- Clauses which impose continuing restrictive conditions on consumers will now be treated as suspensive conditions;
- The requirement for an insurable interest is abolished under the Act. However, it must be noted that the Act does not prevent an insurer from requiring that there is an insurable interest in the risk to be insured, such as in the case of a contract of indemnity;

- The law relating to misrepresentations is reformed by introducing different consequences for three types of misrepresentation, namely innocent, negligent and fraudulent misrepresentations;
- The Act extends the scope of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. 27 of 1995) to consumers covered by the Act;
- The Act introduces third party rights to claim directly against the insurer in specified cases;
- Insurers and consumers are subject to additional pre and post-contractual duties;
- Additional claims handling duties for insurers and consumers are introduced; and
- The rules of subrogation have been modified for certain circumstances such as in family and personal relationships and in employment relationships.

The provisions of the Act will come into operation on such day or days as the Minister for Finance may order. As at the date of writing no commencement order relating to the Act has been published.

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

## **11 INSURANCE (LIFE ASSURANCE AND LIFE INSURANCE) (AMENDMENT) BILL**

### **11.1 Insurance (Life Assurance and Life Insurance) (Amendment) Bill 2019**

On 10 December 2019, the Insurance (Life Assurance and Life Insurance) (Amendment) Bill 2019 (the “**Bill**”) was initiated in Dáil Éireann and completed the First Stage.

The aim of the Bill is to prohibit insurance companies, insurance providers, brokers or other such undertakings from failing or refusing to make payments under life insurance or assurance policies, including death benefit, where the person insured dies by suicide more than 12 months after the commencement of the policy.

The progress of the Bill can be tracked [here](#) and a copy of the initiated Bill can be accessed [here](#).

## **12 ANTI-MONEY LAUNDERING (“AML”) / COUNTER-TERRORIST FINANCING (“CTF”)**

### **12.1 Joint Committee of ESAs publishes opinion on money laundering and terrorist financing risks**

On 4 October 2019, the Joint Committee of ESAs published an opinion on current and emerging money laundering and terrorist financing risks affecting the EU’s financial sector.

The opinion identifies the primary cross-sectoral risks which arise from Brexit, new technologies, virtual currencies, legislative divergence, divergent supervisory practices weaknesses in internal controls, terrorist financing and de-risking. The Joint Committee has also proposed a number of potential mitigating actions for NCAs.

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

## **12.2 Council of the EU publishes note on the identification of high-risk third countries under MLD4**

On 10 October 2019, the Council of the EU published a note to COREPER relating to the identification of high-risk third countries under Article 9 of Directive (EU) 2015/849 (“**MLD4**”).

The note attaches an outline by the European Commission of the key elements of a refined methodology for identifying high-risk third countries. These include the following:

- Interaction between the EU and the Financial Action Task Force (“**FATF**”) listing processes;
- Enhanced engagement with the third countries, through a staged approach; and
- Consultation with experts of member states at every stage of the process, including consultation with law enforcement agencies, intelligence services and financial intelligence units.

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

## **12.3 FATF publishes list of jurisdictions with AML/CFT deficiencies**

On 18 October 2019, the FATF published a list identifying several jurisdictions that have strategic AML/CFT deficiencies. Each jurisdiction has provided a written high-level political agreement to address the identified deficiencies. The jurisdictions are:

- The Bahamas;
- Botswana;
- Cambodia;
- Ghana;
- Iceland;
- Mongolia;
- Pakistan;
- Panama;
- Syria;
- Trinidad and Tobago;
- Yemen; and

- Zimbabwe.

Additionally, the FATF confirmed that three jurisdictions, Ethiopia, Sri Lanka and Tunisia are no longer subject to monitoring. The FATF continues to identify additional jurisdictions, on an ongoing basis, that pose a risk to the international financial system.

The FATF publication can be accessed [here](#).

#### **12.4 FATF issues public statement on DPRK and Iran**

On 18 October 2019, the FATF issued a public statement calling on its members and other jurisdictions to apply counter-measures to protect the international financial system from the ongoing and substantial money laundering and financing of terrorism risks. The specific risks apply to the Democratic Peoples' Republic of Korea ("DPRK") and Iran.

The FATF urges all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with the DPRK, including DPRK companies, financial institutions, and those acting on their behalf, and to adopt all measures to facilitate targeted financial sanctions.

In June 2016, the FATF welcomed Iran's high-level political commitment to address its strategic AML/CFT deficiencies. However in October 2019, the FATF noted that there are still items not completed. The FATF urges all jurisdictions to continue to advise their financial institutions to apply enhanced due diligence with respect to business relationships and transactions with natural and legal persons from Iran, consistent with FATF Recommendations.

The FATF publication can be accessed [here](#).

#### **12.5 FATF publishes report on best practices on beneficial ownership for legal persons**

On 25 October 2019, the FATF published a report on best practices on beneficial ownership for legal persons. The report has been published in advance of Directive (EU) 2018/843 ("MLD5") which is required to be transposed by 10 January 2020.

The results of the FATF mutual evaluations indicate that jurisdictions find it challenging to achieve a satisfactory level of transparency regarding the beneficial ownership of legal persons. The paper aims to provide suggested solutions, supported by cases and examples of best practices from delegations.

The paper also identifies suggested key features of an effective system, which include adequate risk assessment; adequacy, accuracy and timeliness of information on beneficial ownership; access by competent authorities; forbidding or immobilising bearer shares and nominee arrangements; and effective, proportionate and dissuasive sanctions.

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



## **12.6 FATF publishes consultation on draft guidance on digital identity**

On 31 October 2019, the FATF published a consultation on draft guidance on digital identity. The guidance is intended to clarify how digital ID systems can be used to conduct certain elements of customer due diligence in order to help governments, financial institutions and other relevant entities to apply a risk-based approach to the use of digital identification for customer due diligence.

The FATF sought feedback on particular areas and specific proposals regarding the text of the draft guidance. In particular, the FATF sought to hear from financial institutions, virtual asset service providers and other regulated entities.

The consultation closed on 29 November 2019 and can be accessed [here](#).

## **12.7 BCBS publishes consultation on guidelines on cooperation between prudential and AML/CFT supervision**

On 8 November 2019, the BCBS published a consultation on guidelines on the interaction and cooperation between prudential and AML/CFT supervision.

The proposed guidelines are intended to enhance the effectiveness of the supervision of banks' money laundering and financing of terrorism risk management, consistent with the goals and objectives of the standards issued by the FATF.

The BCBS is welcoming feedback until 6 February 2020. The consultation can be accessed [here](#).

## **12.8 FATF publishes follow up report on Ireland's AML and CFT measures**

On 12 November 2019, the FATF published a follow-up report and technical compliance re-rating in relation to Ireland's anti-money laundering and counter-terrorist financing measures.

The report provides that Ireland is currently compliant with 17 recommendations of the 40 FATF recommendations and largely compliant with 16 of them. It remains partially compliant with 7 of the 40 recommendations.

Ireland will move from enhanced to regular follow-up and will continue to report back to the FATF on progress to strengthen its implementation of AML/CFT measures.

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

## **12.9 Publication of European Union (Money Laundering and Terrorist Financing) Regulations 2019**

On 25 November 2019, the European Union (Money Laundering and Terrorist Financing) Regulations 2019 [S.I. No. 578] (the "**Regulations**") were published. The Regulations amend the primary AML and CFT legislation in Ireland and have been introduced to give further effect to MLD4.

The Regulations came into effect on 18 November 2019 and can be accessed [here](#).

Please see the Dillon Eustace article entitled 'New AML/CFT requirements' (3 December 2019) for further details which can be accessed [here](#).

## **12.10 Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) (Cross Border Crime Agency) Bill 2019**

On 19 December 2019, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) (Cross Border Crime Agency) Bill 2019 (the “**Bill**”) completed Dáil Éireann, First Stage (whereby the Bill is initiated or presented to the House). The purpose of the Bill is to establish, on a statutory basis, a cross-border crime agency.

The Bill, when enacted, will amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 in order to establish a statutory agency to investigate and report on criminal activity between Northern Ireland and this jurisdiction.

The Bill’s progress can be tracked [here](#).

## **12.11 FATF publishes new consolidated assessment ratings**

For the period 1 October 2019 to 31 December 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. The FATF also released new mutual evaluations for the same period.

The updated consolidated rating table can be accessed [here](#) and the full set of reports for each country can be accessed [here](#).

## **13 DATA PROTECTION / GENERAL DATA PROTECTION REGULATION (“GDPR”)**

### **13.1 Pan-industry associations issue letter on the ePrivacy Regulation**

On 8 October 2019, a group of industry associations representing the interests in various sectors such as ICT, automotive, medical technology, construction equipment, consumer electronics, home appliances, retail, banking and insurance issued a letter ‘Time to rethink ePrivacy’ calling on the Council of the EU to ask the European Commission to fundamentally reassess its proposal for the ePrivacy Regulation (the “**Letter**”).

The Letter states that while the Council of the EU has considered ways to improve the text of ePrivacy Regulation, too many important questions remain unaddressed and amendments continue to create more confusion than clarity. The current ePrivacy proposal has generated uncertainty across all of these industries, whose efforts to comply with the General Data Protection Regulation (“**GDPR**”) risk being jeopardised by an incoherent ePrivacy Regulation text.

The Letter also states that without a major overhaul of the text, Europe’s digital transformation will be severely hampered as a result of the legal uncertainty and rigidity brought about by the ePrivacy Regulation.

The signatories of the Letter urge Member States to ask the European Commission to reconsider its proposal. The group of industry associations fully supports the objectives of the proposal, however only a fresh new attempt will serve the ePrivacy Regulation's purpose in line with the principles of better regulation.

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

### **13.2 Data Protection Commission publishes FAQs on Brexit**

On 11 October 2019, the Data Protection Commission published Frequently Asked Questions (“**FAQs**”) on Brexit. The FAQs address the potential impact of Brexit, in the context of a “no-deal” scenario, on the data protection obligations of Irish controllers which transfer personal data to the UK.

The Frequently Asked Questions can be accessed [here](#).

### **13.3 Data Protection Commission publishes updated guidance note on personal data breach notifications under GDPR**

On 21 October 2019, the Data Protection Commission published an updated guidance note on personal data breach notifications under GDPR. The guidance note aims to give practical advice to data controllers on how to handle data breaches and navigate the mandatory data breach notification regime, which was introduced by GDPR in May 2018.

The guidance note is designed to help controllers understand two primary obligations:

- The notification of any personal data breach to the Data Protection Commission (unless the controller can demonstrate that the breach is unlikely to result in a risk to data subjects); and
- The communication of that breach to data subjects, where the breach is likely to result in a high risk to data subjects.

The guidance note can be accessed [here](#).

### **13.4 Reports published by the European Commission and by the European Data Protection Board on third annual joint review of the EU-U.S. Privacy Shield**

On 23 October 2019, the European Commission published its report on the third annual joint review of the functioning of the EU-U.S. Privacy Shield. The review addresses the practical implementation and day-to-day functionality of the Privacy Shield.

The report confirms that the U.S. continues to ensure an adequate level of protection for personal data transferred under the Privacy Shield from the EU to participating companies in the U.S. Since the second annual review, there have been a number of improvements in the functioning of the framework.

However, the Commission notes that certain steps should be taken to ensure the effective functioning of the Privacy Shield in practice. This includes further strengthening the (re)certification process for companies who want to participate by shortening the time of the

(re)certification process; expanding compliance checks, including concerning false claims of participation in the framework; and developing additional guidance for companies related to human resources data.

On 12 November 2019, the European Data Protection Board (“**EDPB**”) published its report on the third annual joint review. The EDPB welcomes the efforts made by the U.S. authorities to implement the Privacy Shield, but notes that substantial compliance checks with the substance of the Privacy Shield’s principles remain concerning.

The Commission report can be accessed [here](#) and the EDPB report can be accessed [here](#).

### **13.5 Data Protection Commission publishes updated guidance note on Data Protection Impact Assessments**

On 29 October 2019, the Data Protection Commission published an updated 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 [here](#).

### **13.6 Publication of Data Protection Act 2018 (section 60(6)) (Central Bank of Ireland) Regulations 2019**

On 30 October 2019, the Data Protection Act 2018 (section 60(6)) (Central Bank of Ireland) Regulations 2019 [S.I. 537/2019] (the “**Regulations**”) were published.

The Regulations relate to certain restrictions on the obligations of controllers and the rights of data subjects for important objectives of general public interest as set out in section 60 of the Irish Data Protection Act 2018. The Regulations apply specifically to personal data (including special category data and data relating to criminal convictions and offences) processed by the Central Bank as a controller when exercising a “relevant function”.

The Regulations contain examples of when certain rights and obligations may be restricted, along with the matters which must be considered by the Central Bank to determine if a restriction is necessary.

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

### **13.7 Data Protection Commission publishes FAQs on data subject access requests**

On 30 October 2019, the Data Protection commission published Frequently Asked Questions (“**FAQs**”) on data subject access requests.

The FAQs address when an individual is entitled to make an access request; what information an individual is entitled to make when they make an access request; and the specific formalities required for a valid access request.

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

### **13.8 Data Protection Commission publishes note on the restrictions on the right to data protection**

On 8 November 2019, the Data Protection Commission published a note on the restrictions on the right to data protection. The note explains that although data protection is a fundamental right set out in Article 8 of the EU Charter of Fundamental Rights, the right to data protection must always be balanced against other fundamental rights. The following are examples of limitations within the data protection rights as set out in the GDPR:

- The right to obtain a copy of your personal information under the rights of access or portability should not adversely affect the rights and freedoms of others.
- Certain data protection rights only apply in certain circumstances. For example, the right to “be forgotten” only applies under certain conditions, such as where the personal data is no longer required for the purpose it was originally collected.
- In certain very limited cases, the GDPR allows organisations to charge a reasonable fee for responding to a request, or even to refuse to act on a request, if the request is “manifestly unfounded or excessive”.

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

### **13.9 EDPB adopts updated guidelines on the territorial scope of the GDPR**

On 12 November 2019, the EDPB adopted updated guidelines on the territorial scope of the GDPR. The guidelines were initially adopted by the EDPB on 16 November 2018 and have been updated to reflect contributions and feedback received in response to a public consultation.

The guidelines can be access [here](#).

### **13.10 Data Protection Commission publishes guidance for organisations engaging cloud service providers**

On 12 November 2019, the Data Protection Commission published guidance for organisations engaging cloud service providers.

The guidance addresses the obligations on data controllers under the GDPR to process personal data using “appropriate technical or organisational measures” and sets out the security considerations around cloud computing. It also provides information on the key points a cloud service contract should contain.

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

### **13.11 EDPB publishes contribution to the consultation on an additional protocol to the Council of Europe Convention on Cybercrime**

On 13 November 2019, the EDPB published a contribution to the consultation on a draft second additional protocol to the Council of Europe Convention on Cybercrime.

The EDPB contribution focuses on a preliminary assessment of the provisional texts published on 1 October 2019 and in particular the new provisions on direct disclosure of subscriber information and on the giving effect to the orders from another party for expedited production of data.

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

### **13.12 EDPB adopts guidelines on data protection by design and by default**

On 13 November 2019, the EDPB adopted guidelines on the obligation of data protection by design and by default as set out in Article 25 of the GDPR.

The guidelines cover elements that controllers must take into account when designing the means of processing data, along with how to ensure that only personal data which is necessary for each specific purpose of the processing is processed.

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

### **13.13 Data Protection Commission publishes guidance on the lawful bases for processing personal data**

On 17 December 2019, the Data Protection Commission published guidance on the lawful bases for processing personal data. The guidance aims to assist organisations involved in processing personal data to identify the correct legal basis for such processing, and to

Please see the Dillon Eustace article entitled ‘Data Protection Commission issues guidance on the lawful bases for processing personal data’ (19 December 2019) for further information which can be accessed [here](#).

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

### **13.14 Advocate General delivers opinion on validity of SCCs in Schrems II case**

On 19 December 2019, the Advocate General of the Court of Justice of the EU (“CJEU”) delivered his opinion on a case brought against Facebook Ireland by Max Schrems concerning the transfer of personal data to the United States (case C-311/18) (the “**Schrems II case**”). He recommended that the CJEU uphold the validity of the standard contractual clauses (“**SCCs**”) as a mechanism for transferring personal data outside the EU.

The Advocate General’s opinion, if followed by the CJEU, will be particularly important in the context of Brexit, with many organisations utilising the SCC’s as part of their Brexit preparations. The CJEU is expected to make its decision within a few months of the Advocate General’s opinion.

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

## 14 CYBER SECURITY

### 14.1 Insurance Europe issues publication on Insurers' role in EU cyber resilience

On 9 October 2019, Insurance Europe issued a new publication entitled 'Insurers' role in EU cyber resilience' (the "**Publication**") which examines the key role insurers play in assisting the EU in its efforts to increase cyber resilience and competitiveness.

The Publication also includes examples of cyber-resilience initiatives by national insurance associations and outlines ways to encourage the growth of the European cyber insurance market, while also providing other policy recommendations.

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

## 15 BREXIT

### 15.1 Guidance note on transfers of Personal Data from Ireland to the UK in the event of a 'No-Deal' Brexit

In October 2019, the Data Protection Commission issued a guidance note on transfers of Personal Data from Ireland to the UK in the event of a 'No-Deal' Brexit (the "**Guidance Note**") to assist those who might transfer personal data to the UK to understand the impact of a 'No Deal' Brexit on their data protection obligations. The Guidance Note, includes:

- Steps to determine whether you are a controller that transfers personal data to the UK (including Northern Ireland); and
- The measures required to legally transfer personal data from Ireland to the UK in the event of a 'No Deal' Brexit.

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

### 15.2 Central Bank publishes updated Brexit FAQs for financial services firms

On 3 October 2019, the Central Bank published updated Brexit FAQs for financial services firms. The FAQs provide general information to financial services firms considering relocating their operations from the UK to Ireland. The FAQs are regularly updated as the Brexit negotiations progress.

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

## 16 SUSTAINABLE FINANCE

### 16.1 European Commission publishes frequently asked questions on the IPSF

On 18 October 2019, the European Commission published frequently asked questions on the International Platform on Sustainable Finance (“**IPSF**”). The frequently asked questions set out the scope and objectives of the IPSF, along with addressing the reasons behind its establishment.

The frequently asked questions can be accessed [here](#).

### 16.2 Insurance Europe publish position paper on EU proposals for a sustainability taxonomy

On 6 November 2019, Insurance Europe published a position paper outlining its views on the EU’s proposals for a sustainability taxonomy in view of the current trilogue discussions between the European institutions (the “**Position Paper**”). Some of the key messages set out in the Position Paper include:

- The insurers support the focus of the European Commission and the Council of the EU on financial products marketed as environmentally sustainable;
- Insurers support the EU taxonomy to encourage the transition to a sustainable economy;
- Performing a sustainability assessment in the current taxonomy is complex and may lead to inconsistent results across different investors and so a reliable assessment should be made directly by investee companies;
- The establishment of a platform on sustainable finance is supported and essential to inform the taxonomy and monitor related key developments; and
- The implementation timeline might lead to compliance challenges and liability risks for market participants and add confusion for investors.

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

### 16.3 Regulations on sustainability-related disclosures and low carbon benchmarks published in Official Journal of the European Union

On 8 November 2019, the Council of the EU adopted the following Regulations:

- Regulation on disclosures relating to sustainable investments and sustainability risks in the financial services sector (the “**Disclosure Regulation**”); and
- Regulation amending the Benchmarks Regulation as regards low carbon benchmarks and positive carbon impact benchmarks (the “**Low Carbon Benchmarks Regulation**”).



The Regulations were published in the Official Journal of the European Union on 9 December 2019 and entered into force the following day.

The Disclosure Regulation can be accessed [here](#) and the Low Carbon Benchmarks Regulation can be accessed [here](#).

#### **16.4 The European Parliament and Council of the EU reach political agreement on Taxonomy Regulation**

On 17 December 2019, the European Parliament and the Council of the EU reached political agreement on the proposed Regulation on the establishment of a framework to facilitate sustainable investment (the “**Taxonomy Regulation**”).

On 18 December 2019, the Council of the EU published an “I” item note attaching the final compromise text of the proposed Taxonomy Regulation. In addition, on that date, the European Commission published Q&As on the Taxonomy Regulation.

The European Parliament’s announcement of the political agreement can be accessed [here](#), the final compromise text of the Taxonomy Regulation can be accessed [here](#) and the Q&As can be accessed [here](#).

**Dillon Eustace**

**31 December 2019**

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