Insurance Quarterly Legal and Regulatory Update

Period covered

1 January 2016 – 31 March 2016

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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

(i) Solvency II comes into force

On 1 January 2016, Solvency II came into force. The Solvency II regime comprises different levels of national and European legislation. The Solvency II Directive (2009/138/EC) and the relevant Solvency II provisions in the Omnibus II Directive (2014/51/EU) were transposed into Irish law by the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 545/2015). The Irish Solvency II regime is supplemented by Commission Delegated Regulation 2015/35/EU and various Commission Implementing Regulations. EIOPA has published Guidelines which provide further guidance on various areas of Solvency II. The Central Bank confirms that it intends to comply with the EIOPA Guidelines and incorporate them into its supervisory practices and in turn expects (re)insurance companies to comply with any relevant Guidelines. The Central Bank has also updated and/or issued guidance and requirements for (re)insurance companies subject to Solvency II.

Details of legislation, requirements and guidance applicable to Solvency II (re)insurance companies can be found on the Central Bank website:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Pages/default.aspx

On 4 January 2016, EIOPA published a press release on Solvency II going live and announced that it has a new 'Solvency II – Going Live!' webpage which explains the changes to the public.

This webpage can be accessed via the following link:

https://eiopa.europa.eu/Pages/Supervision/Insurance/Solvency-II-Going-Live.aspx

(ii) EIOPA publishes Solvency II relevant risk-free interest rate term structures

On 8 January 2016, EIOPA published the first Solvency II relevant risk-free interest rate term structures. This technical information is used for the calculation of the technical provisions for (re)insurance obligations. EIOPA intends to publish the risk-free interest rate term structure on a monthly basis to ensure consistent calculation of technical provisions across the EU resulting in increased supervisory convergence for the benefit of the European insurance policyholders.

On 5 February 2016, EIOPA published the technical information for January 2016 and on 7 March 2016, the technical information for February 2016 was published.

Undertakings should note that EIOPA have stated on their website that, in certain circumstances, it may be necessary to amend and/or republish the technical information after it has been published.

EIOPA's background material and the monthly technical information on the relevant risk-free interest rate term structures can be accessed via the following link:

https://eiopa.europa.eu/regulation-supervision/insurance/solvency-ii-technical-information/risk-free-interest-rate-term-structures

(iii) EIOPA publishes Opinion on the application of a combination of methods to the group solvency calculation

On 27 January 2016, EIOPA published an Opinion on the application of a combination of methods to the group solvency calculation (the **"Opinion"**). Under Solvency II, group solvency can be calculated by using the consolidation-based method (**"Method 1"**) or the deduction and aggregation method (**"Method 2"**) or a combination of Method 1 and Method 2. Supervisory approval is required where the (re)insurance group wishes to apply Method 2 or a combination of methods. This Opinion intends to provide clarity and recommendations on issues relating to the application of the combination of methods and covers such matters as how the methods should be applied if a combination of methods is to be used, considerations for the group supervisor when making the decision to allow a combination of methods and the need to allow specific solutions where a combination of methods is permitted so as to avoid unjustified disadvantages for those groups exclusively applying Method 1.

EIOPA states it will monitor the developments of the issues addressed in the Opinion and, if appropriate, will review it accordingly.

EIOPA's Opinion may be accessed via the following link:

https://eiopa.europa.eu/Publications/Opinions/20160127_EIOPA_opinion_combination_of_methods.pdf

(iv) Central Bank Guidance on In-Situ Pre-Approval Controlled Functions (PCFs): Notification of In-Situ and Confirmation of Due Diligence undertaken

On 27 January 2016, the Central Bank published guidance on the Head of Actuarial Function (PCF – 48) ("**HoAF**") In- Situ Notification and Confirmation of due diligence undertaken process (the "**Guidance**"). An individual in-situ in the role of HoAF as at 31 December 2015 may continue in that position and is not required to seek the approval of the Central Bank to continue to perform that PCF-48. However, regulated entities are required to notify the Central

Bank of any such individuals and must confirm that the required due diligence has been undertaken in respect of those individuals.

The Guidance sets out how regulated entities can comply with these requirements by providing guidance on how to complete and save the PCF-48 Information file and how to complete the submission on the Central Bank's Online Reporting System ("**ONR**").

The Guidance notes that the In-Situ Return will only be available from 1 February 2016 to 31 May 2016. Where the In-Situ Return is not submitted to the Central Bank within that timeframe, the individuals will be deemed to not hold the PCF-48 role and the regulated entity will have to formally apply to the Central Bank (through the online individual questionnaire process) for the individual to be approved to the role.

Information on this In-Situ Return, the Guidance and the PCF-48 Information file template can be found at the following link:

https://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Pages/InSituPCFs.aspx

(v) Solvency II Commission Implementing Regulation ((EU) 2016/165) published in the Official Journal of the EU

On 9 February 2016, Commission Implementing Regulation (EU) 2016/165 of 5 February 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 1 January until 30 March 2016 in accordance with the Solvency II Directive (2009/138/EC) (the "**Commission Implementing Regulation**") was published in the Official Journal of the EU.

For prudential reasons, it is necessary for (re)insurance companies to use the same technical information for the calculation of technical provisions and basic own funds for reporting irrespective of the date on which they report to their competent authorities and this Commission Implementing Regulation provides that (re)insurance companies must use the technical information on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments referred to in Article 1 (2) when calculating technical provisions and basic own funds for reporting with reference dates from 1 January until 30 March 2016.

In order to ensure uniform conditions for the calculation of technical provisions and basic own funds by (re)insurance undertakings, this Commission Implementing Regulation states in the recitals that this technical information should be laid down for every reference date.

This Commission Implementing Regulation entered into force on 10 February 2016, applies from 1 January 2016 and is binding in its entirety and directly applicable in all Member States.

This Commission Implementing Regulation can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0165

(vi) Central Bank requests completion of Balance Sheet Reconciliation between Solvency I and Solvency II positions

On 12 February 2016, the Central Bank issued correspondence to all (re)insurance undertakings requesting them to provide a quantitative analysis of the main differences between the figures reported in the opening valuation under Solvency II and those calculated according to the Solvency I regime (the "**Letter**") by completing a balance sheet reconciliation template (the "**Template**") in excel format. The Central Bank published an example of the Letter and Template sent to undertakings but noted that several versions of the Template were issued and the Template received by undertakings may differ slightly to the example published on the Central Bank's website.

Following receipt of feedback and queries, the Central Bank issued further clarification on the Template to (re)insurance undertakings by letter (the "**Clarification Letter**") on 16 March 2016. In this Clarification Letter, the Central Bank reiterated that the Template is advantageous to the insurance industry in making clear their expectations around the Day 1 narrative explanation required. The Clarification Letter notes that the Central Bank is accommodating two options in respect of the Day 1 narrative reporting. Where the Template is submitted within 20 weeks of the financial year end starting on or after 1 January 2016 (the "**20 week period**"), it will suffice as the undertaking's qualitative explanation required for Day 1 reporting and no further documentation is required. However, if the Template is not submitted within the 20 week period, then a qualitative narrative document that relates to the broad trends contained within the Template is required within the 20 week period and the Template must be submitted at any stage between 20 – 25 weeks of the financial year end starting on or after 1 January 2016.

The Clarification Letter also clarifies the following:

- Board of Directors sign off of the Template is required regardless of whether it is submitted within the 20 week period or between 20 – 25 weeks of the financial year end starting on or after 1 January 2016;

- In respect of non-life and reinsurance undertakings, the Central Bank intends to comply with Guideline 29 of the EIOPA Guidelines on the valuation of technical provisions and therefore the request for information on the split of expenses by line of business as per the original template has not been amended;

- In respect of life undertakings, the Central Bank requires that the order of the walk for life undertakings remains as outlined in the Template so as to ensure a meaningful analysis can be performed across different types of firms and risk categories and that the analysis

can be communicated back to the industry allowing benchmarking and peer review by firms themselves.

The Central Bank's Letter, Template and Clarification Letter can be found at the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance companies/Pages/ReportingReq.aspx

(vii) Central Bank publishes final editions of Solvency II Matters

On 19 February 2016, the Central Bank published its February edition of the Solvency II Matters newsletter (the "**February Edition**") which provides updates to the (re)insurance sector on industry engagement, reporting requirements, new legislation, EIOPA news and other matters relating to Solvency II.

Of particular note in the February Edition is that the Central Bank highlights the deadline of 31 May 2016 for the Head of Actuarial Function (PCF-48) (the "**HoAF**") in-situ notification process in respect of those individuals who were deemed to be performing the role of the HoAF on or before 31 December 2015. Any proposed appointments to the role from 1 January 2016 must follow the standard Fitness and Probity approval process and the Central Bank requests that these applications are completed as soon as possible.

This February Edition also notes the Central Bank's expectation that the ONR test environment to allow undertakings to test the submission of their Day 1, Quarterly Solvency II, Financial Stability and NST Returns will be available from Wednesday 30 March 2016 for a formal two week test period until 14 April 2016 so that defects can be logged and queries from undertakings can be answered. Although the test environment will remain open after 14 April 2016, full support may not be available and so the Central Bank urges all undertakings to sign-up for the test environment if they have not already done so.

The full February Edition can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Solvency%20II%20Matters%20-%20February%202016.pdf

On 29 March 2016, the Central Bank published its final edition of Solvency II Matters (the "**March Edition**"). The March Edition gives an update on the status of the auditing requirements for Solvency II regulatory returns. The Central Bank met with Chartered Accountants Ireland and accountancy firms to discuss the potential scope of the audit and also met with industry representatives. The Central Bank aims to publish a consultation paper in May 2016 with a view to finalising requirements in September 2016.

In this edition, the Central Bank also provided information on submitting queries going forward, recent publications and engagements and also clarified a number of issues that arose from the industry reporting workshop relating to Transitional reporting requirements, Day 1 Opening Balance Sheet Reconciliation Template, Undertakings with a non 31 December year-end, Correct Entry points for QRT's and NST's, EIOPA filing rules and list of validations and financial stability reporting requirements.

The full March Edition can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Solvency II Matters – March 2016.pdf

(viii) Central Bank publishes Solvency II reporting templates

On 26 February 2016, the Central Bank published the following Solvency II reporting templates on its website:

- Low/Medium Low ORSA Template – this must be completed by any Low and Medium Low undertaking that is required to submit an ORSA template via the ONR system; and
- Internal Model Structured Template – this must be completed by those undertakings using an internal model who are required to submit the template by 26 May 2016.

These templates have been published on the Reporting Requirements section of the Insurance/Reinsurance pages and can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance companies/Pages/ReportingReq.aspx

(ix) EIOPA XBRL Tool for Undertakings (T4U)

On 29 February 2016, EIOPA published the latest release of the Tool for Undertakings (T4U) (VER 2016.02.29) supporting the 2.0.1. taxonomy on its website. The XBRL Tool for Undertakings is designed to help undertakings without XBRL knowledge to implement Solvency II harmonised quantitative reporting in XBRL.

The source code for the latest release of this Tool for Undertakings (T4U) (VER 2016.02.29) was uploaded on 21 March 2016.

Undertakings should note that a final release supporting the 2.0.1. taxonomy is scheduled for publication at the end of April 2016. EIOPA will be decommissioning the Tool for Undertakings after the first Solvency II Reporting exercise in the second half of 2016 due to budget restrictions but it expects that market providers will be able to reuse and support the solutions

developed under the project and is therefore planning to make the tool available through an open source model.

The latest release of the Tool for Undertakings (T4U) (VER 2016.02.29) and information on the source code publication are available via the following link:

https://eiopa.europa.eu/regulation-supervision/insurance/tool-for-undertakings

(x) Commission Delegated Decisions on equivalence of third country supervisory regimes published in the Official Journal of the EU

On 4 March 2016, the following Commission Delegated Decisions on the equivalence of third country supervisory regimes under the Solvency II Directive (2009/138/EC) were published in the Official Journal of the EU.

- Commission Delegated Decision (EU) 2016/309 of 26 November 2015 on the equivalence of the supervisory regime for insurance and reinsurance undertakings in force in Bermuda to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council and amending Commission Delegated Decision (EU) 2015/2290; and

- Commission Delegated Decision (EU) 2016/310 of 26 November 2015 on the equivalence of the solvency regime for insurance and reinsurance undertakings in force in Japan to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council.

The Commission Delegated Decisions entered into force on 24 March 2016 and can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2016:058:TOC

(xi) Central Bank publishes final version Domestic Actuarial Regime and Related Governance Requirements under Solvency II

On 8 March 2016, the Central Bank published the final version of the Domestic Actuarial Regime and Related Governance Requirements under Solvency II (the "**Requirements**"). The Requirements apply to all Solvency II undertakings and are effective since 1 January 2016.

Under the Requirements, the Central Bank requires the following:

- The appointment of the Head of Actuarial Function ("**HoAF**");

- The responsibility for actuarial function held by one person and in the case of a High Impact undertaking, this person must be an employee of the undertaking;

- The provision of the actuarial opinion to the Central Bank on an annual basis;
- An actuarial opinion to Board in respect of each ORSA;
- An actuarial opinion on technical provisions ("**AOTP**");
- An actuarial report on technical provisions ("**ARTP**");
- The establishment of Reserving policy; and
- All High, Medium High and Medium Low impact undertakings to engage a reviewing actuary ("**RA**") to conduct peer review of the TPs of the undertaking and related AOTPs and ARTPs.

The Requirements set out some sector specific requirements and also provide for some exemptions from the requirements for non-life insurance undertakings only.

The Requirements also provide the Format of Actuarial Opinion on Technical Provisions.

The Requirements are available at the following link:

https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Domestic%20Actuarial Regime and Related Governance Requirements under Solvency II.pdf

(xii) Update on Central Bank's National Specific Templates

The Central Bank has introduced a number of reporting templates ("**National Specific Templates**") which are deemed necessary to address requirements specific to the local market and/or the nature of insurance undertakings supervised in Ireland and which are not catered for in the set of Solvency II harmonised reporting templates produced by EIOPA.

The Central Bank has stated that it will shortly publish regulations to be issued under the powers of the Central Bank (Supervision and Enforcement) Act, 2013 which will impose a statutory obligation on relevant undertakings to provide the reporting.

On 10 February 2016, the Central Bank published business templates for the National Specific Templates NST.03 – NST.07 which relate to Non-Life Technical Provisions & Claims Templates, while on 4 March 2016 the Central Bank published updated business templates for the National Specific Templates NST.08 – NST.11 relating to the reporting of variable annuity ('VA') P&L attribution data and variable annuity stress tests along with general

guidance documents on the completion and submission requirements under these National Specific Templates.

On 11 March 2016, the Central Bank published an updated version 1.0.1 of the National Specific Template (NST) taxonomy which fixes a number of issues which were identified with the previous version 1.0.0 of the taxonomy. The Central Bank notes on its website that this is now the only live version of the taxonomy and all instances should be validated against this version 1.0.1. Version 1.0.0 is no longer valid and should not to be used.

The templates and the undertakings to which they apply are listed in Table 1 and Table 2 which are available at the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Pages/NationalSpecificTemplates.aspx

(xiii) Central Bank publishes paper on the outsourcing notification process under Solvency II for (re)insurance undertakings

On 14 March 2016 the Central published a paper entitled "Notification Process for (Re)Insurance Undertakings when Outsourcing Critical or Important Functions or Activities under Solvency II" (the "**Paper**"). The Paper provides assistance to (re)insurance undertakings in complying with their obligations under Regulation 51(3) of the Solvency II Regulations, which requires prior notification to the Central Bank before outsourcing critical or important functions or activities. The prior approval of the Central Bank is not required before the outsourcing, however the purpose of the notification is to allow for the Central Bank to consider whether the outsourcing complies with Solvency II and, if not, then discuss any concerns with the (re)insurance undertaking.

- **Timing, Form and Content of the Notification**

  Notification to the Central Bank should take the form of written notification (letter/email), signed by the CEO or Captive Manager of the (re)insurance undertaking and be provided at least six weeks before the outsourcing is due to come into effect. Should no concerns be raised by the Central Bank in advance of the date the outsourcing is due to come into effect then the (re)insurance undertaking can take the outsourcing to be accepted by the Central Bank.

  The information required to be disclosed in the notification to the Central Bank includes a description of the scope and rationale for the outsourcing, the service provider's name and a declaration that the (re)insurance undertaking has taken into account the factors mentioned below. Where the proposed outsourcing relates to a key function, further information is required, including the name of the person in the (re)insurance undertaking designated with overall responsibility of the outsourcing arrangement and the name of

the person at the service provider responsible for the performance of the outsourced key function or activity.

Where subsequent material developments occur, requiring the Central Bank to reassess the outsourcing notification provided, additional notification should be made to the Central Bank promptly, in written form, as per the requirements for the initial notification.

- **Factors to Consider Prior to Outsourcing**

Section 5 of the Paper sets out a detailed list of requirements for (re)insurance undertakings to adhere to prior to the outsourcing coming into effect including factors to consider in respect of the outsourcing arrangement, due diligence guidance and documentation evidence in respect of the factors taken into account.

For the full list of requirements, please see the following link to the Paper:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Outsourcing%20Notification%20Process%20under%20SII.pdf

(xiv) EIOPA updates list of validations to be complied with under Solvency II Reporting and known issues with final version Taxonomy 2.0.1

On 18 March 2016, EIOPA updated the list of the validations which data submitted in the quantitative reporting templates should comply with and also updated the list of known issues with EIOPA's final version Taxonomy 2.0.1.

These updates can be accessed via the following link:

https://eiopa.europa.eu/Pages/Supervision/Insurance/Reporting-formats.aspx

(xv) Central Bank publishes Supervisory Disclosures documents

On 31 March 2016, the Central Bank published documents on the Supervisory Disclosures section of the Insurance/Reinsurance pages of its website in accordance with the transparency and accountability requirements under the Solvency II regime. The documents published include:

- Supervisory Review Process: this document sets out the Central Bank's method of supervising undertakings subject to Solvency II and the criteria for assessment;
- Template for the disclosure of information regarding the exercise of national options: this document sets out the references for and descriptions of the national options under the Solvency II Directive and indicates whether or not Ireland has exercised the option; and
- Overview of Insurance Directorate and its Supervisory Objectives for 2016: this document sets out the Central Bank's supervisory focus for 2016.

The above documents can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance companies/Pages/SupervisoryDisclosures.aspx

European Insurance and Occupational Pension Authority ("EIOPA")

(i) EIOPA's strategy towards a comprehensive risk-based and preventative framework for conduct of business supervision

On 11 January 2016, EIOPA published a paper setting out its strategic approach to developing a comprehensive risk-based and preventive framework for conduct of business supervision on a European level which aims to support EIOPA's goal of ensuring a high, effective and consistent level of regulation and supervision. EIOPA also outlines the tools it proposes to use to implement this framework and the data it needs to complement the tools.

A key element of the proposed framework is "smart regulation". EIOPA notes that the framework should be based on a two-pronged approach that is both risk-based as well as preventive in nature with the development of strong relationships between supervisors and insurance firms central to these aspects.

In order to implement the framework, EIOPA envisages using new and existing data collection tools including:

- *Consumer Trends Reports/Ad hoc surveys* – these provide a snapshot of existing cases of consumer detriment in the insurance and pensions market through quantitative and qualitative exchanges of consumer protection information between EIOPA and NCAs.

- *Retail risk indicators* – these are used to pre-emptively assess the effects of product characteristics and distribution processes on consumer protection and to determine the scale of the consumer detriment in question. Examples of retail risk indicators include claims ratios, combined ratios, commission levels and lapses/surrender ratios.

- *Thematic reviews* – these can be used to target a specific financial activity or product or help to explore issues that go beyond purely one national market. EIOPA's aim is to carry out thematic reviews at national level but not seek to repeat similar reviews which may have already been carried out at national level.

- *Deep and effective market monitoring both for general and product intervention purposes* – this involves EIOPA identifying market areas requiring monitoring as well as having the appropriate tools to carry out such monitoring. This would work through a sharing of data/analysis and the close co-operation between the European supervisory authorities.

EIOPA will submit a review of the implementation of the framework to the Board of Supervisors in spring 2017.

The full EIOPA paper can be accessed at the following link:

https://eiopa.europa.eu/Publications/Reports/EIOPA-16-015_EIOPA_Strategy_on_Conduct_Supervision_Framework.pdf

(ii) EIOPA Annual Work Programme 2016

On 11 January 2016, EIOPA published its Annual Work Programme for 2016 (the "**Programme**"), which sets out its priority objectives for the year and how EIOPA expects to mitigate the risks it perceives as potentially affecting how it functions.

The five strategic objectives of the Programme are the following:

- To ensure transparency, simplicity, accessibility, accessibility and fairness across the internal market for consumers;
- To lead the development of sound and prudent regulations supporting the EU internal market;
- To improve the quality, efficiency and consistency of the supervision of EU insurers and occupational pensions;
- To identify, assess, mitigate and manage risks and threats to the financial stability of the insurance and occupational pension sectors ; and
- EIOPA to act as a modern, competent and professional organisation with effective governance arrangements, efficient processes and a positive reputation.

The full Programme can be found at the following link:

https://eiopa.europa.eu/Publications/Administrative/AWP_2016.pdf

(iii) Consultation Paper on the proposal for Guidelines on facilitating an effective dialogue between competent authorities supervising insurance undertakings and statutory auditor(s) and the audit firm(s) carrying out the statutory audit of those undertakings

On 3 February 2016, EIOPA published a Consultation Paper on the proposal for Guidelines on facilitating an effective dialogue between competent authorities supervising (re)insurance undertakings and statutory auditors and audit firms that carry out statutory audits of (re)insurance undertakings (the "**Proposed Guidelines**").

The Proposed Guidelines relate to the provisions on fostering an effective dialogue between insurance supervisors and the statutory auditors and audit firms under the Audit Regulation (EU) 537/2014 and also the Solvency II requirement on statutory auditors to report promptly any facts which are likely to have a serious effect on the financial situation or the administrative organisation of (re)insurance undertakings.

The Proposed Guidelines are addressed to competent authorities supervising insurance and reinsurance undertakings and aim to formalise the interaction between the parties by creating a set of rules to govern the communication.

The Proposed Guidelines, for which EIOPA seeks comments, are as follows:

- *Guideline 1 – Objectives of the dialogue* – competent authorities should ensure that dialogue with statutory auditors and audit firms is open, constructive and sufficiently flexible in order to accommodate unexpected future developments. It should also remain confidential and promote the mutual understanding of the role and responsibilities of the parties. A risk-based approach should be applied by the competent authorities to determine the frequency and depth of the communication.

- *Guideline 2 – Nature of the information to be exchanged* – competent authorities should ensure that the information exchanged is relevant and the issues addressed are undertaking-specific as well as industry-specific. Information requested from statutory auditors and audit firms may include information relating to the external environment of the company, corporate governance and internal controls, going concern assumption, audit approach and valuation and appropriateness of own funds, investments, financial statements and other audit documentation.

- *Guideline 3 – Form of the dialogue* – the most effective means and channels of dialogue should be considered in light of the individual circumstances of the dialogue, taking the form of written and oral communication including phone calls and physical meetings. A record of the communication should be kept by the competent authorities.

- *Guideline 4 – Representatives in the dialogue* – competent authorities should consider inviting an appropriate number of knowledgeable individuals empowered to exchange the information relevant to the dialogue and should ensure that the primary participants are a representative from the supervisory authority acting as team leader and the key audit partner.

- *Guideline 5 – Frequency and timing of the dialogue* – this Guideline provides that the dialogue should be held as regularly and frequently as necessary, taking into account the planning cycle of supervisory inspections and statutory audits. Competent authorities should also regularly assess whether the frequency of the dialogue is appropriate and

proportionate. In the case of dialogues relating to undertakings considered high risk, competent authorities should consider holding meetings on at least an annual basis.

- *Guideline 6 – Dialogue with auditors or audit firms collectively* – whilst maintaining a level of confidentiality such that undertaking-specific information is not exchanged, the competent authorities should schedule regular dialogues (at least annually) with statutory auditors collectively to exchange views on current and emerging developments.

EIOPA welcomes comments on the Proposed Guidelines to be sent by email to CP16-002@eiopa.europa.eu by 28 April 2016.

The Proposed Guidelines together with a template to provide comments to EIOPA can be found at the following link:

https://eiopa.europa.eu/Pages/Consultations/EIOPA-CP-16-002-Consultation-Paper-on-the-proposal-for-Guidelines-on-facilitating-an-effective-dialogue-between-competent-a.aspx

(iv) EIOPA – Insurance Stress Test 2016

The purpose of the 2016 insurance stress tests are to assess the vulnerability of the sector with regard to potential adverse market developments in order to extract conclusions which can then be used to improve the stability of the financial system. The 2016 exercise will be based on a sample of solo insurance undertakings most vulnerable in a persistent low interest rate environment and a double hit scenario where, in addition to the low interest rates, assets prices are also stressed.

National Supervisory Authorities will be involved in the stress testing, including identifying and contacting the prospective participants in the test. The timeline for the 2016 stress testing is set out in the table below.

Date	**Activity**
April 2016 (First half)	Workshop with industry participants
May 2016 (Second half)	Launch of a Europe-wide stress test specifications and templates for the insurance sector
July 2016 (First half)	Submission deadline for industry participants to the national supervisory authorities
August 2016	Collection and validation of the undertakings' data by the national supervisory authorities

September 2016	Centralised validation by EIOPA of all the submitted results
December 2016	Disclosure of the results of the stress test analysis

(v) EIOPA Risk Dashboard March 2016 – Q4 2015 data

On 11 March 2016, EIOPA published its risk dashboard for Quarter 4, 2015 (the "**Dashboard**"), the last dashboard which will be based on Solvency I figures. The Dashboard indicates that the risk environment facing the insurance sector remains challenging and that market risk remains the most eminent risk due to a decrease in medium to long term yields resulting in some trends now being negative and at their lowest level ever.

The macroeconomic environment remained weak in 2015 and is anticipated to stay challenging in the medium term due to the increase in geopolitical risks such as the refugee crisis in Europe. The probability of re-pricing of risk premia in global financial markets increased. The Dashboard also noted a re-emergence in deflation pressure in the euro area mainly due to a renewed fall in crude oil prices, declining by 42% in 2015.

The Dashboard highlighted that there has been increased pressure on profitability due to the increased pressure on investment yield as a result of the low interest rate environment. The data shows a drop in both return on equity and investment returns in Quarter 4, 2015 which can hurt long term investors such as (re)insurers who may find it difficult to reinvest assets at a reasonable level.

The Dashboard is available at the following link:

https://eiopa.europa.eu/Publications/Standards/EIOPA-RiskDashboard-March%202016.pdf

European Commission

(i) Joint statement on US-EU negotiations for a bilateral agreement on insurance and reinsurance measures

On 23 February 2016, a joint statement by EU and US representatives was published on the European Commission's website following a meeting in Brussels where they discussed a future bilateral agreement relating to prudential insurance and reinsurance measures with the hope of improving regulatory and supervisory treatment for (re)insurance undertakings in the EU and US.

Both sides affirmed their good faith pursuit of an agreement on matters relating to group supervision, exchange of confidential information between supervisory authorities on both sides, and reinsurance supervision, including collateral.

The full Joint Statement can be viewed at the following link:

http://ec.europa.eu/finance/insurance/docs/solvency/international/160223-us-eu-joint-statement_en.pdf

(ii) Guideline (EU) 2016/256 of the European Central Bank ("ECB")

On 24 February 2016, Guideline 2016/256 of the ECB concerning the extension of common rules and minimum standards to protect the confidentiality of the statistical information collected by the ECB assisted by the national central banks to NCAs of participating Member States and to the ECB in its supervisory functions (ECB/2016/1) (the "**Guideline**") was published in the Official Journal of the EU.

The Guideline came into effect on 15 March 2016 and is addressed to NCAs and the ECB insofar as they receive confidential statistical information from the European System of Central Banks. The Guideline requires NCAs and the ECB to implement measures to prevent unauthorised access to confidential statistical information to include, at minimum, a unique user identifier and personal password to access the information as well as implementing physical authorisation and protection measures. These measures are also to be complied with by third parties who have access to the confidential data.

NCAs are required to report annually to the ECB any problems experienced, actions taken to address those problems and plans to improve on the protection of statistical information. The ECB will also draw up a report annually covering the same issues. The Guideline also requires that staff are made aware and kept up to date on the procedures surrounding the protection of confidential information and that all rules and procedures relating to this protection are documented.

For the full Guideline, please see the following link:

https://www.ecb.europa.eu/ecb/legal/pdf/celex_32016o0001_en_txt.pdf

(iii) Antitrust: Commission publishes report on functioning of Insurance block exemption

On 17 March 2016, the Commission published its report on the functioning and future of the Insurance Block Exemption Regulation ((EU) No 267/2010) (the "**IBER**") (the "**Report**").

The IBER grants an exemption to the application of competition rules to certain types of agreements in the insurance sector, namely agreements on:

- Joint compilations, tables and studies; and

- Co-(re)insurance pools (common coverage of certain types of risks).

The current IBER came into force on 1 April 2010 and will expire on 31 March 2017. The Commission is carrying out a full impact assessment of possible policy options before the current IBER lapses: non-renewal, partial renewal and renewal.

The Commission is required to submit to the Parliament and the Council a report on the IBER not later than six years after its entry into force. The Report presents the preliminary findings and conclusions of the Commission's review which are as follows:

- In respect of joint compilations, tables and studies, the Commission finds at this stage that the functioning of the insurance industry no longer appears to require an exceptional instrument such as the IBER; and

- In respect of the co-(re)insurance pools, the Commission's preliminary view at this stage is that the renewal of the IBER is not justified because of its limited use and relevance, the potential risk of misapplication and the fact that it is no longer possible to presume with sufficient certainty that the type of cooperation covered by the exemption satisfies all the conditions necessary for a finding of compatibility with the internal market.

The Commission notes that all findings and recommendations in the Report are preliminary and subject to the Commission's ongoing assessment and discussions with stakeholders with the aim of presenting an impact assessment report in early 2017.

The Commission will hold a meeting with stakeholders to present and discuss the report's findings on 26 April 2016. Stakeholders interested in participating in the event should register their interest by 15 April 2016.

The press release, full Report, executive summary of the Report and details on registering interest in participating in stakeholder meeting can be found at the following links:

http://ec.europa.eu/competition/sectors/financial_services/insurance.html

http://europa.eu/rapid/press-release_IP-16-861_en.htm

http://ec.europa.eu/competition/sectors/financial_services/insurance.html

The Joint Committee (ESMA, EIOPA and EBA)

(i) The Joint Committee issue request to the European Commission to address legislative inconsistencies between the banking, insurance and investment sectors

On 26 January 2016, the Joint Committee informed the Commission that following its work on the guidelines on cross-selling practices, it has identified some legal issues in the existing regulatory framework between the three financial sectors. The Joint Committee advised that the inconsistencies are impeding the establishment of the desired levels of consumer protection, expose consumers to the risk of detriment and are preventing the Joint Committee from ensuring a level playing field across the three sectors.

The Joint Committee requested that the Commission assess the differences in existing legislation and consider any necessary steps to ensure that the Joint Committee can regulate cross-selling practices in a consistent way across the three sectors.

A copy of the letter is available at the following link:

http://www.eba.europa.eu/documents/10180/15736/ESAs+letter+to+European+Commission+on+cross-selling+of+financial+product....pdf

International Association of Insurance Supervisors ("IAIS")

(i) 2015 Global Insurance Market Report

On 6 January 2016, the IAIS published its Global Insurance Market Report for 2015 (the "**Report**"), discussing the global (re)insurance sector from a supervisory perspective and focusing on the recent performance of the sector and the risks which it faced.

The Report found the (re)insurance sector to be well functioning and stable in an often challenging economic environment which was evidenced by the high levels of capital held by (re)insurance undertakings and the overall stable profitability of the sector. Some of the findings highlighted in the Report include:

- A slight decline in investment yields for (re)insurance undertakings but they held up well considering the low interest rates. Going forward, investment income will be impacted by a continuation of the low interest rate environment which will continue to put investment yields under pressure.

- It is forecasted that the lagged impact of low interest rates will keep portfolio yields on a weakening trend for the next couple of years and there is also a risk that stock market

performance will be less favourable once interest rates recover which will impact upon an important pillar of investment returns.

- There has been a surge in mergers and acquisitions in the (re)insurance sector, with an estimate that more than ten percent of the global reinsurance industry is currently involved in major mergers activity.

The Report analyses the overall macroeconomic and financial environment and discusses global insurance market developments. The Report also includes a section entitled "*Special Topics*", which focuses on a number of areas that the IAIS has highlighted as being particularly relevant for the (re)insurance sector, including the liquidity of corporate bond markets, the drive to alternative asset classes due to low yields on corporate bonds and the implications for supervisors, global reinsurance capacity, changes in the insurance-linked securities market, the impact of Solvency II on non-EEA jurisdictions, the use of derivatives by US insurance undertakings and the outsourcing of investment management by US insurance undertakings.

For the full Report please see the following link:

http://iaisweb.org/page/news/global-insurance-market-report-gimar/file/58465/2015-global-insurance-market-report-gimar

Insurance Europe

(i) Insurance Europe publishes response to the Joint Committee discussion paper on automation in financial advice

On 3 March 2016, Insurance Europe published its response to the Joint Committee discussion paper on automation in financial advice issued by the European Supervisory Authorities (the "**ESAs**") comprising the European Banking Authority ("**EBA**"), the European Insurance and Occupational Pensions Authority ("**EIOPA**") and the European Securities and Markets Authority ("**ESMA**").

The ESAs noted the continued increase in the digitalisation of financial services across the banking, insurance and securities sectors and this discussion paper was published with the aim of assessing what, if any, regulatory action is required to harness the potential benefits of this innovation and mitigate its risks.

Some of the points raised by Insurance Europe in its response include the following:

In respect of the characteristics of automated financial advice tools, Insurance Europe noted that the first characteristic that the automated tool is used without (or with very limited) human intervention needs to be qualified and it is good practice to give consumers the option to have

access to human advice if they want it any stage in the process. Insurance Europe noted their concern with the broad application of the concept of advice to include anything that is perceived by consumers to be advice and they believe that the discussion of advice should be aligned with the definitions of advice provided under financial services legislation.

Insurance Europe noted that the information conditions set out in Article 23 of the Insurance Distribution Directive present obstacles to the offering/development of automated advice tools as they require all advisory information to be provided on paper by default and durable mediums other than paper or websites are only permitted under certain conditions. This may increase costs and result in information given being less understandable and less accessible for customers.

Insurance Europe noted that they generally agree with the potential benefits to consumers outlined in the discussion paper and they also highlighted that there may be additional benefits in the future that cannot be perceived yet. However, Insurance Europe noted that the use of automated tools may not be suitable for all consumers.

Insurance Europe also generally agrees with the potential benefits to financial institutions and added that the automated advice models make it possible to introduce instant premium payment systems.

In respect of risks to consumers and financial institutions, Insurance Europe stated that a number of risks to consumers that are outlined in the discussion paper are applicable to advice in general and are not specific to the area of automated advice and they also noted that some risks outlined are already regulated under other pieces of financial services legislation. In respect of risks to financial institutions, Insurance Europe highlighted that the description of the risks relating to liability allocation does not take into account the strict regulatory framework for outsourcing under the Solvency II regime.

Insurance Europe believes that the potential benefits of automated financial advice outweigh the risks for both consumers and industry and that a flexible approach should be taken.

Insurance Europe's response can be viewed in full at the following link:

http://www.insuranceeurope.eu/response-joint-committee-esas-discussion-paper-automation-financial-advice

European Markets Infrastructure Regulation ("EMIR")

(i) MoU related to ESMA's monitoring of the ongoing compliance with recognition by CCPs established in South Africa and the United Mexican States ("Mexico")

On 26 January 2016, ESMA published the Memorandum of Understanding (the "**MoU**") it had entered into with each of the Financial Services Board of South Africa and the Comisión Nacional Bancaria y de Valores of Mexico. Article 25(2)(c) of EMIR requires the establishment of cooperation arrangements as a precondition for ESMA to recognise CCPs established in non-EEA jurisdictions to provide clearing services to clearing members or trading venues established in the EU. The MoU provides ESMA with the tools to monitor the ongoing compliance of non-EU CCPs with the recognition conditions under EMIR.

The MoU with South Africa has been effective since 30 November 2015 and the MoU with Mexico has been effective since it was signed on 25 January 2016.

The MoU for South Africa and Mexico can be found at the following locations:

https://www.esma.europa.eu/sites/default/files/library/signed_mou_for_south_africa_fsb.pdf
https://www.esma.europa.eu/sites/default/files/library/signed_mou_for_mexico_cnbv.pdf

(ii) FCA publishes list of Pension Scheme Arrangements Exempted from the Clearing Obligation

On 2 February 2016, ESMA published a set of opinions (the "**Opinions**") to exempt 16 UK-based pension schemes from clearing obligations contained in EMIR. The Opinions were requested by the UK's FCA and relate to 16 different kinds of pension schemes.

To obtain an exemption, requests must be made by the pension scheme to the relevant national regulator. Under EMIR, the national regulator must seek an Opinion from ESMA before making a final exemption decision. ESMA, in turn, must consult with EIOPA before issuing its Opinion. The FCA has now granted exemptions and ESMA will publish the list of the types of entities that have been given exemptions in the near future. To date we are not aware of any Irish pension scheme requesting such an exemption.

The Opinions can be found at this link:

https://www.esma.europa.eu/press-news/esma-news/esma-issues-opinions-uk-pension-schemes-be-exempt-central-clearing-under-emir

(iii) ESMA publishes updated Q&A Document on the practical implementation of EMIR

On 4 February 2016 and 16 February 2016, ESMA issued updates of its Questions & Answers Document ("**Q&A**") on practical questions regarding the implementation of EMIR. The updated Q&A concern information relating to default management at CCPs, competent authorities' access to trade repository data, the reporting of notional in position reports for options and futures, the frontloading requirement for the clearing obligation and the application of the clearing obligation to "swaptions".

The purpose of the Q&A is to promote common supervisory approaches and practices in the application of EMIR. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR. The content of the Q&A is aimed at competent authorities under EMIR to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the requirements under EMIR

The updated Q&A can be found at this link:

http://iaisweb.org/page/news/global-insurance-market-report-gimar/file/58465/2015-global insurance-market-report-gimar

(iv) Responses to ESMA Consultation on review of EMIR standards relating to CCP client accounts

On 4 February 2016, ESMA published the responses it had received following the launch of its Consultation Paper on 14 December 2015 on a Review of Article 26 of Regulatory Technical Standards ("**RTS**") No 153/2013 with respect to Margin Period of Risk ("**MPOR**") for client accounts. The closing date for responses was 1 February 2016.

The MPOR determines the amount of initial margins collected by a CCP and the ESMA proposal was to reduce from 2-day to 1-day the MPOR for gross omnibus accounts and individual segregated accounts for exchange traded derivatives and securities. Respondents to the consultation paper include the European Association of CCP Clearing Houses, Deutsche Bank, the US Committee on Capital Markets Regulation and Financial Markets Law Committee, the Alternative Investment Management Association, Managed Funds Association and the Alternative Investment Management Association.

The full set of responses can be viewed at the following link:

https://www.esma.europa.eu/press-news/consultations/consultation-paper-review-article-26-rts-no-1532013-respect-mpor-client

(v) ESMA resumes US CCP recognition process following EU-US agreement

On 10 February 2016, ESMA released a statement welcoming the common approach on the equivalence of central counterparty ("**CCP**") regimes between the Commission and the US Commodity Futures Trading Commission (the "**CFTC**"). The common approach is to be welcomed as it allows market participants to be able to use clearing infrastructures in both the US and in the EU.

The proposed determination of equivalence is based on the condition that CFTC-registered US CCPs seeking recognition in the EU confirm that their internal rules and procedures conform to EU equivalent standards. Once adopted, the equivalence decision will require ESMA to resume the recognition process of specific CFTC-supervised US CCPs to be recognised in the EU. EMIR gives ESMA one hundred and eighty working days to conclude the recognition process, however ESMA intends to shorten this period as far as possible and proceed with the recognition as soon as the US applicant CCPs meet the conditions contained in the equivalent decisions. ESMA has said that it will not commit to specific recognition dates as its recognition depends upon the level of compliance by the applicants.

The next step for ESMA is to continue, as a matter of priority, with its consultation on the amendment to its regulatory technical standards regarding the minimum period of risk for different types of clearing accounts in EU CCPs.

For further information please see the following link:

https://www.esma.europa.eu/press-news/esma-news/esma-resumes-us-ccp-recognition-process-following-eu-us-agreement

(vi) EMIR Clearing for Credit Default Swaps

On 1 March 2016, the Commission adopted a delegated regulation (the "**Delegated Regulation**") that makes it mandatory for certain OTC credit default derivative contracts to be cleared through CCPs. The Delegated Regulation applies the clearing obligation to untranched iTraxx Index credit default swaps and untranched iTraxx Index credit default swaps. The Delegated Regulation sets out four different categories of counterparties to which the clearing obligation applies and specifies the phase-in period for each.

The Delegated Regulation is subject to scrutiny by the EU Parliament and Council of the EU. Once finalised, the rules will be published in the Official Journal of the EU and will enter into force on the twentieth day following publication.

The text of the Delegated Regulation can be found at the following link:

http://ec.europa.eu/finance/financial-markets/docs/derivatives/160301-delegated-act_en.pdf

(vii) ESAs submit final draft regulatory technical standards on margin for non-cleared derivatives to the European Commission

On 8 March 2016, the European supervisory authorities (EBA, ESMA and EIOPA) ("**ESAs**") submitted to the Commission their final draft regulatory technical standards ("**RTS**") on risk-mitigation techniques for OTC derivative contracts not cleared by a CCP under Article 11 of EMIR. The RTS detail the requirements for firms to exchange margins on non-centrally cleared OTC derivatives as well as specify the criteria regarding intragroup exemptions.

The Commission has three months to decide whether to endorse the RTS. If it does endorse the RTS, this will be followed by a period of non-objection by the European Parliament and Council of the EU.

In order to ensure a proportionate implementation, the RTS confirm that the requirements will enter into force on 1 September 2016 subject to certain phase-ins, giving firms who are subject to these requirements time to prepare for the implementation.

The phase-in is as follows:

Variation margin (VM)

- September 2016 for entities with group's notional amount of derivatives above €3 trillion.
- March 2017 for all other entities.

Initial margin (IM)

- September 2016 for entities with group's notional amount of derivatives above €3 trillion.
- September 2017 for those above €2.25 trillion.
- September 2018 for those above €1.5 trillion.
- September 2019 for those above €0.75 trillion.
- September 2020 for those above €8 billion.

The RTS can be found at the following link:

https://www.eba.europa.eu/documents/10180/1398349/RTS+on+Risk+Mitigation+Techniques+for+OTC+contracts+ JC-2016-+ 29.pdf/fb0b3387-3366-4c56-9e25-74b2a4997e1d

(viii) ESMA fines DTCC Derivatives Repository Limited €64,000 for data access failures

On 31 March 2016, ESMA published a decision of its board of supervisors announcing that it has fined the trade repository DTCC Derivatives Repository Ltd ("**DDRL**") €64,000.

In an accompanying press release, ESMA explained that it had found that DDRL had failed to provide direct and immediate access to derivatives data from 21 March 2014 to 15 December 2014, during which period access delays increased from two days to sixty two days after reporting and affected 2.6 billion reports. This was due to its negligence in:

- Failing to put in place data processing systems that were capable of providing regulators with direct and immediate access to reported data;
- Failing, once they became aware, to inform ESMA in a timely manner of the delays that were occurring; and
- Taking three months to establish an effective remedial action plan even while delays were worsening.

DDRL's failures caused delays to regulators accessing data, revealed systemic weaknesses in its organisation (particularly its procedures, management systems and internal controls) and negatively impacted the quality of the data it maintained.

The press release is available at the link below:

https://www.esma.europa.eu/sites/default/files/library/2016-468_esma_fines_dtcc_derivatives_repository_limited_eu64000_for_data_access_failures.pdf

Packaged Retail Insurance-based Investment Products

(i) Insurance Europe express concern over content and presentation of KID for PRIIPS

On 1 February 2016, Insurance Europe issued a press release expressing concern over the content and presentation of the PRIIPs KID as the KID does not take into account the specific features of insurance-based investment products in comparison to other PRIIPs.

The press release follows Insurance Europe's response to the consultation paper issued by the ESAs on the draft regulatory technical standards on the content and presentation of the KID.

Insurance Europe also expressed concern over the time available to prepare KIDs as the majority of the time, in the run up to the implementation date, is being spent by insurance companies working on Level 2 measures, leaving only an estimated three to four months to implement the KID.

For the full press release please see the following link:

http://www.insuranceeurope.eu/sites/default/files/attachments/PRIIPS ESA consultation release_.pdf

Insurance Distribution Directive ("IDD") (formerly Insurance Mediation Directive 2 ("IMD2"))

(i) Insurance Distribution Directive 2016/97

On 2 February 2016, the text of Directive (EU) 2016/97 of the European Parliament and of the Council on insurance distribution (recast) (the "**Directive**"), was published in the Official Journal of the EU and entered into force on 22 February 2016. The Directive replaces the Insurance Mediation Directive 2002/92/EC and applies to the entire insurance distribution chain which includes both undertakings and intermediaries (intermediaries being distributors who are not (re)insurance undertakings selling directly). Member States must transpose the Directive into national law by 23 February 2018. There is a transitional provision for intermediaries registered under the Insurance Mediation Directive until 23 February 2019.

The main aim of the Directive is to facilitate market integration by the enhancement of retail insurance regulation and increasing the level of policyholder protection. Some of the key measures introduced by the Directive to achieve this include:

- *Scope* – the Directive applies to (re)insurance undertakings that sell direct to their customers as well as intermediaries.

- *Activity of Introducing customers excluded from definition of insurance distribution* – Intermediaries are required to register with the competent authority in their home Member Sate, however the Directive no longer includes introducing within the definition of insurance distribution which means that there is no longer a need for those who introduce customers to insurers to be registered.

- *Cross-selling and bundling products* – the Directive introduces new rules on the provision of information to customers where products are offered as part of a package or with another service. It requires the distributor to inform the customer of the possibility of purchasing components of the package separately (if possible) and provide information on the breakdown of the components including price and description.

- *Disclosure, transparency and professional requirements* – Enhanced professional requirements have been introduced by the Directive applicable to those who undertake the business of (re)insurance distribution, including increased competency standards and

continual professional development. Greater disclosure and transparency requirements apply with respect to the description and remuneration of intermediaries when selling products.

The Directive complements the rules relating to the sale of investment products introduced under MiFID II as well as those introduced by PRIIPS relating to key information documents.

On 24 February 2016, the European Commission sent a mandate to EIOPA for technical advice on possible delegated acts concerning the Directive. See point (ii) below for more detail.

For the full Directive, please see the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0097&from=EN

(ii) Commission Request for EIOPA Technical Advice on possible delegated acts concerning the Insurance Distribution Directive

On 24 February 2016, the Commission published its request for EIOPA Technical Advice on possible delegated acts concerning the Insurance Distribution Directive which was published in the Official Journal of the EU on 2 February 2016.

The elements of the Insurance Distribution Directive which need to be further specified in delegated acts to be adopted by the Commission include the following:

- Product oversight and governance: the measures to ensure that insurance distributors comply with the principles set out in Article 25 of the Directive;
- Conflicts of interest: measures to define the steps required for the identification, prevention, management and disclosure of conflicts of interest and to establish criteria for determining the types of conflicts of interest that may damage the interests of customers or potential customers;
- Inducements: measures to ensure that insurance distributors and insurance undertakings comply with the principles set out in Article 29 of the Directive; and
- Assessment of suitability and appropriateness of insurance-based investment products: measures to ensure that insurance distributors comply with the principles set out in Article 30 of the Directive.

The Commission is inviting EIOPA to provide its Technical Advice, including a cost-benefit analysis to the Commission by 1 February 2017 in order to allow the Commission to consider the adoption of possible delegated acts.

The Commission's request can be accessed via the following link:

http://ec.europa.eu/finance/insurance/consumer/mediation/index_en.htm

Market Abuse Directive

(i) Changes in the Market Abuse Regime

Regulation 596/2014 on market abuse ("**MAR**"), and Directive 2014/57/EU on criminal sanctions for market abuse ("**CS MAD**") were published in the Official Journal of the EU on 12 June 2014 and will apply from 3 July 2016. MAR and CS MAD are collectively referred to as "**MAD II**".

The existing Market Abuse Directive is repealed as of the effective date of the new Regulation. MAR has direct effect in all Member States and does not require any further legislation for it to have effect in national laws.

MAR aims at enhancing market integrity and investor protection. To this end, MAR updates and strengthens the existing market abuse framework by (a) extending its scope to new markets and trading strategies and (b) introducing new requirements and standards. The definition of financial instruments in MAR refers to the definition under MIFID II, which is very broad.

In addition, MAR does not limit its scope to financial instruments traded on regulated markets ("**Regulated Markets**") in the EU, but extends its requirements to financial instruments listed or traded on Multilateral Trading Facilities (**"MTFs"**) and Organised Trading Facilities (**"OTFs"**) and emission allowances, and to issuers who have made application for securities to be listed or traded on such markets.

(ii) European Commission Implementing Regulation ((EU) 2016/347) published in the Official Journal of the EU

On 10 March 2016, the European Commission Implementing Regulation ((EU) 2016/347) (the **"Implementing Regulation"**) laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) 596/2014 of the European Parliament and Council was published in the Official Journal of the EU.

The establishment of a precise format, including the use of standard templates, should facilitate the uniform application of the requirement to draw up and update insider lists laid down in Regulation (EU) 596/2014. It should also ensure that competent authorities are

provided with the necessary information to fulfil the task of protecting the integrity of the financial markets and investigate possible market abuse. Issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor, or any person acting on their behalf or on their account shall ensure that their insider list, which shall be kept in electronic format, is divided into separate sections relating to different inside information. Each section of the insider list shall only include details of individuals having access to the inside information relevant to that section.

The electronic format of the insider list shall ensure at all times:

- The confidentiality of the information included by ensuring that access to the insider list is restricted to clearly identified persons;
- The accuracy of the information contained in the insider list; and
- The access to and the retrieval of previous versions of the insider list.

The insider lists shall be submitted using electronic means as specified by the competent authority.

The Implementing Regulation entered into force on 11 March 2016 and shall apply from 3 July 2016.

A copy of the Implementing Regulation is available at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2016%3A065%3ATOC&uri=uriserv%3AOJ.L_.2016.065.01.0049.01.ENG

Prospectus Directive

(i) Amendment of the definition of "Home Member State" in the Prospectus Directive

The Prospectus (Directive 2003/71/EC) (Amendment) (No. 2) Regulations 2015 (S.I. No. 567/2015) (the "**Amending Regulation**") came into operation on 16 December 2015. The purpose of the Amending Regulation is to transpose into Irish law Article 2 of the Transparency Directive which establishes that the home Member State is to be the Member State chosen by the issuer from amongst the Member States where its securities are admitted to trading on a regulated market.

A copy of the Amending Regulation is available at the following link:

http://www.irishstatutebook.ie/eli/2015/si/567/made/en/pdf

(ii) Regulatory Technical Standards for the approval and publication of the prospectus and dissemination of advertisements published in the Official Journal of the EU

On 4 March 2016, Commission Delegated Regulation (EU) 2016/301 of 30 November 2015 supplementing the Prospectus Directive with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements (the "**RTS**") was published in the Official Journal of the EU, and became effective on 24 March 2016.

A copy of the RTS is available at the following link:

https://www.centralbank.ie/regulation/marketsupdate/Documents/Regulatory%20Technical%20Standards.pdf

Statutory Audit Directive

(i) Rotation of Auditors under the Statutory Audit Directive

The Statutory Audit Directive 2014/56/EU ("**SAD**") and its associated Regulation (EU) 537/2014 (the "**Regulation**") require public-interest entities (which includes all insurance undertakings in the EU, irrespective of whether they are listed or not and irrespective of whether they are life, non-life, insurance or reinsurance undertakings) to rotate their auditors every 10 years, and include a limitation on auditors providing non-audit services to such public-interest entities.

In addition there are new requirements for audit committees (or their equivalent) relating to their oversight of the performance of the audit and new requirements regarding reporting by the statutory auditor.

The new laws will apply to the first financial year starting on or after 17 June 2016 with the exception of the mandatory audit firm rotation, which is subject to transitional arrangements.

Pensions Update

(i) Pension Fund (Prohibition of Levies) Bill 2016

On 13 January 2016, the Pension Fund (Prohibition of Levies) Bill 2016 (the "**Pension Fund Bill**") was published and provides for a prohibition on legislation which would unilaterally impose a levy, or similar charge, on pension funds.

A copy of the Pension Fund Bill and updates on its progress through the legislative process can be found at the following link:

http://www.oireachtas.ie/viewdoc.asp?DocID=30690.

(ii) Central Bank Industry Letter Regarding Annuity Sales Process Themed Inspection

On 19 January 2016, the Central Bank published an industry letter following its themed inspection of a number of insurance firms to assess their compliance arrangements in relation to the sale of pension annuities (the "**Inspection**"). The sale of long term products has been identified by the Central Bank as a priority theme for 2015 – 2018 and pension annuities formed part of the initial examination for 2015 which took the form of desk research (annuity sales documentation and reviewing customer notification processes) as well as on-site inspections of specific firms.

The findings of the Inspection included:

- *Assessing Suitability* – The Central Bank identified a number of cases where there was insufficient evidence that all of the individual consumer's post-retirement options were fully explored and the Central Bank is engaging with firms where shortcomings were identified.

- *Open Market Option* – The Central Bank noted that the literature of firms referred to an open market option, however it was not always clearly explained that this meant customers could seek quotes from a number of firms for comparison. The Consumer Protection Code (the "**Code**") requires firms to be satisfied that the information provided on the open market option allows consumers to make fully informed decisions.

- *Enhanced Annuities* – The Central Bank found that more could be done by firms in respect of promoting awareness of enhanced annuity options available to consumers. Financial advisers should ensure that customers with a history of ill health or qualifying lifestyle characteristics are made aware that enhanced annuity options are available in the market, which may result in a higher annuity rate being available and consequently a higher pension income may be achievable.

- *Customer Communication* – The Central Bank found a marked difference in the level and adequacy of detail provided by firms to facilitate customers in making an informed decision.

As part of the industry letter and following the Inspection, the Central Bank identified a number of effective practices which firms should consider when implementing and embedding their consumer protection framework, as follows:

- *Suitability* – financial advisers should complete a "vulnerable customer's checklist" for customers over 60 years of age to assess whether any additional information or advice is required; customers should be provided with a list of (dis)advantages of annuities versus ARFs; and a compliance checklist review to be undertaken as against the relevant provisions of the Code for each file.

- *Wake up Communications* – firms to give to a customer notice of their post-retirement options at least 3 months in advance of the customer's Normal Retirement Date ("**NRD**") and then follow-up with the customer closer to their NRD.

- *Quotation Comparisons/Open Market Option* – Highlighting to customers that they can use the quotations provided to compare retirement income when shopping around in the open market; additional leaflets to be distributed to customers adding value to consumer documentation; and using highlighted text and boxes to draw customers' attention to the shopping around message.

The industry letter highlighted the Consumer Protection Outlook Report from 2015 (see item (ii) Central Bank of Ireland section for more detail) when mentioning that it expects firms to go beyond tick-box compliance to ensure that products are fully understood by consumers and suitable for their needs. The key priority for the Central Bank is that robust governance arrangements are in place around product design and suitability, as it refers to the EIOPA Guidelines on product oversight and governance arrangements for firms to consider.

A copy of the industry letter can be found at the following location:

https://www.centralbank.ie/regulation/processes/consumer-protection-code/compliance-monitoring/Documents/Industry%20Letter.pdf

(iii) Update on the revised Institutions for Occupational Retirement Provision Directive ("IORP II")

The Institutions for Occupational Retirement Provision ("**IORP**") is a framework designed to facilitate the development of occupational retirement savings and was introduced in 2003. In March 2014, the Commission proposed revisions to the existing IORP Directive with the aim of improving the governance, risk management, transparency and information provision of IORP and to help increase cross-border activity, which will strengthen the single market.

On 25 January 2016, following a review of the original text proposed by the Commission, the Economic and Monetary Affairs Committee ("**ECON**") of the Parliament adopted its position on the revised IORP II Directive which proposes amendments to the Commission's original text. Some of the amendments proposed by ECON include the following:

- *Transfers* – ECON proposes that transfer rules should be set for transfers within Member States rather than just for cross-border transfers as the Commission proposed. ECON proposes that in the event of a transfer of part of a pension scheme, the Member State shall require both the transferring and the receiving institution to have sufficient and appropriate assets to cover the technical provisions for the transferred part and the remaining part of the scheme. In addition, ECON proposes that all transfers should be made subject to prior approval by a majority of members and a majority of the beneficiaries concerned or where applicable by a majority of their representatives.

- *Information* – ECON proposes replacing the prescriptive rules for the pension benefit statement proposed by the Commission with guiding principles to provide key relevant information for each member.

- *Fit and Proper requirements* – The Commission proposed that all persons who effectively run the institution should have professional qualifications, knowledge and experience to enable them to ensure sound and prudent management of the institution whereas ECON proposes that the professional qualifications, knowledge and experience of persons who effectively run the institution should be collectively adequate to ensure a sound and prudent management of the institution.

- *Funding requirements of Cross Border Schemes* – ECON proposes removing the requirement for cross border schemes' technical provisions to be fully funded at all times. Instead, it proposes that the cross border schemes with insufficient assets to cover the technical provisions may be permitted to adopt a concrete and realisable recovery plan similar to that of non-cross border schemes, provided the interests of the members and beneficiaries are fully protected.

On 29 February 2016, IORP II trilogue discussions between the Commission, the Parliament and the Council of the European Union on the proposed revision of the IORP II Directive commenced with a view to finalising the text of the proposed IORP II Directive.

Commenting on the trilogies negotiations in a press statement, Insurance Europe states that these discussions are an important opportunity to ensure appropriate safeguards for IORPs' members and beneficiaries.

The outcome of the trilogue negotiations is expected in Quarter 3, 2016.

Information on the proposed IORP II Directive, including the Commission and ECON's proposals, can be accessed via the following link:

http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2014%2f0091(COD)

Insurance Europe's press statement can be found at the following link:

http://www.insuranceeurope.eu/iorp-ii-trialogues-offer-opportunity-safeguard-members-and-beneficiaries

(iv) The Pensions Authority – objectives and pension reform plans 2016 - 2020

On 4 March 2016, the Pensions Authority published its Statement of Strategy 2016 – 2020 (the "**Statement**"). The Statement generally followed the theme of the objectives set out in the speech given in January 2016 by the Pensions Regulator, Brendan Kennedy.

The strategic objectives include:

- *Monitoring and Supervising occupational pension schemes and PRSAs* – the objective is to ensure that schemes and PRSAs continue to be well managed by competent service providers.
- *Reliable for scheme trustees, the pensions industry and employers* – the Pensions Authority aims to be clear in its guidance and support so that trustees and PRSA providers and other relevant stakeholders have a clear understanding of what their obligations are and what best practice is.
- *Accessible, relevant and a practical source of information* – The Pensions Authority wants to be well known among the public, members, contributors and beneficiaries for providing information that is relevant, reliable and understandable.
- *Valuable source of technical pensions advice, knowledge, information and support* – the advice it provides to the Department of Social Protection should be well researched and the data analysed so that the advice is acted upon.

An appendix to the Statement sets out a hierarchy of risk priorities on which the Pensions Authority bases its supervisory approach. The risk priorities, set out in order of priority, are the following:

- The misappropriation of pension assets or contributions (the highest priority);
- The lack of governance or maladministration impacting on benefits/failure to pay benefits due;
- Defined Benefit solvency;
- The failure to provide prescribed information to members; and

- The failure by regulated entities to submit accurate and timely data to the Pensions Authority.

The Pensions Authority intends to review the strategy mid-term to assess whether it remains appropriate.

The full Statement can be found at the following link:

http://www.pensionsauthority.ie/en/Dealing_with_us/Statement_of_strategy/The_Pensions_Authority_Statement_of_Strategy_2016_-_2020.PDF

(v) Pensions Authority publishes the first tranche of the Codes of Governance for Defined Contribution Schemes

On 27 January 2016, the Pensions Authority issued a press release where it announced that it had published the first tranche of the Codes of Governance for Defined Contribution Schemes (the "**DC Codes"**). These DC Codes apply to trustees of all DC occupational schemes and will supplement the Pension Authority's Trustee Handbook and therefore should be read conjunction with the Trustee Handbook.

Specifically, the three DC Codes making up the first tranche provide for the following:

- *Governance plan of action* – trustees are expected to develop and apply consistent policies, processes and controls in their management of pension schemes, ensuring that sufficient time and resources can be allocated to maintaining the ongoing governance of the pension schemes.

- *Trustee meetings* – trustees are expected to be organised, hold formal meetings with agendas that address all important issues and record decisions to demonstrate that they have been reasonable in their actions.

- *Managing conflicts of interest* – trustees are expected to realise that primarily they are required to act in the best interests of the scheme's beneficiaries so it is important that they avoid circumstances which can lead to conflicts with the interests of the beneficiaries. This code provides a three stage approach for trustees to follow when considering any conflicts of interest, which are identification, monitoring and managing conflicts of interest.

The press release and DC Codes can be accessed via the following link:-

http://www.pensionsauthority.ie/en/News_Press/News_Press_Archive/The_Pensions_Authority_publishes_the_first_tranche_of_the_Codes_of_Governance_for_Defined_Contribution_Schemes.html

(vi) First EU stress test for occupational pensions

On 26 January 2016, EIOPA published the results of the first EU-wide stress test exercise of Institutions for Occupational Retirement Provisions (**"IORPs"**).

EIOPA stated that the goals of the stress tests were:

- To produce a comprehensive picture of the heterogeneous European occupational pensions' landscape;
- To test the resilience of defined benefits and hybrid pension schemes against adverse market scenarios and increased life expectancy;
- To identify potential vulnerabilities of defined contribution schemes; and
- To reveal areas that require supervisory focus.

The results provide a greater understanding of how different future stress scenarios can impact the resilience of pension schemes. However, Gabriel Bernardino, Chairman of EIOPA, stated that *"Further work needs to be done to analyse how prolonged adverse market conditions will affect the sponsors' behaviour and the possible consequences for financial stability and the real economy."*

For further information, including the EIOPA report on the results, please see the following link:

https://eiopa.europa.eu/Pages/News/Results-of-the-first-EU-stress-test-for-occupational-pensions.aspx

(vii) Consultation Paper on EIOPA advice on development of EU Single Market for personal pension products

On 1 February 2016, EIOPA published its Consultation Paper on EIOPA's advice on the development of an EU Single Market for personal pension products ("**PPP**").

The Consultation Paper builds on EIOPA's 2014 preliminary report entitled "*Towards an EU-Single Market for Personal Pensions*" and EIOPA's 2015 consultation paper on the creation of

a standardised Pan European Personal Pension product ("**PEPP**"), by providing final advice on the development of a second regime product for personal pensions.

EIOPA's aim is to identify how to further develop PPP, and possible frameworks for these, to enable them to contribute to meeting the challenges presented by an aging economy, the sustainability of public finances, the provision of adequate retirement income and fostering increased long-term investment. EIOPA's draft advice on the development of an EU Single Market for PPP primarily assesses opportunities to improve the current personal pensions market through a PEPP. The characteristics of a standardised PEPP proposed by EIOPA include the following:

- Standardised information provisions based on the proposals of a KID within the PRIIPs framework;
- Standardised limited investment choices and defining one default "core" investment option, which takes into account the link between accumulation and decumulation;
- Regulated, flexible, biometric and financial guarantees;
- Regulated, flexible caps on cost and charges;
- Regulated, flexible switching and transfer of funds; and
- No specification of decumulation options.

The full Consultation Paper together with a template for providing comments (to be sent by 26 April 2016, by email, to CP-16-001@eiopa.europa.eu) can be found at the following location:-

https://eiopa.europa.eu/Pages/Consultations/EIOPA-CP-16-001-Consultation-Paper-on-EIOPA%E2%80%99s-advice-on-the-development-of-an-EU-Single-Market-for-personal-pension-product.aspx

(viii) Insurance Europe comments on EIOPA advice on the development of a pan-European pension product

On 2 February 2015, Insurance Europe issued a press statement on EIOPA's advice on the development of a pan-European pension product confirming its support for the overall project to create a pan-European pension product and welcoming EIOPA's acknowledgment that it should be a true pension product. However, Insurance Europe noted that a number of questions arise from the proposed treatment of the main characteristics of a pension product such as minimum investment periods and a decumulation phase. Insurance Europe maintains that the overarching priority should be to ensure that information provided to future pensioners

assists them in making appropriate decisions for their retirement. Insurance Europe confirmed that it will respond to the consultation launched by EIOPA on 1 February 2016.

Insurance Europe's full press statement can be found at the following link:

http://www.insuranceeurope.eu/comment-eiopa-advice-development-pan-european-pension-product

Central Bank of Ireland

(i) Central Bank refers Administrative Sanctions Procedure case to Inquiry in respect of an Insurance Intermediary

On 10 February 2016, the Central Bank issued a press release in which it announced that following an investigation conducted by the Central Bank under its Administrative Sanctions Procedure (pursuant to Part IIIC of the Central Bank Act 1942 (as amended) (the "**Act**")), the Central Bank determined that it has reasonable grounds to suspect that an insurance intermediary has committed a prescribed contravention pursuant to Regulation 17 of the European Communities (Insurance Mediation) Regulations 2005 by failing to hold satisfactory professional indemnity insurance for a period of time. In accordance with Part IIIC of the Act, the Central Bank will hold an Inquiry to establish whether this suspected prescribed contravention has been committed by the insurance intermediary.

The Central Bank's press release can be found at the following link:

https://www.centralbank.ie/press-area/press-releases%5CPages%5CCentralBankrefersAdministrativeSanctionsProcedurecasetoInquiryinrespectofanInsuranceIntermediary.aspx

(ii) Central Bank of Ireland (the "Central Bank") publishes Consumer Protection Outlook Report (the "CPOR")

On 2 February 2016, the Central Bank published the CPOR, which outlines the Central Bank's consumer protection objectives and its assessment of the current and emerging consumer environment and risks to those objectives. It sets out a number of priorities in relation to consumer protection, namely:

- A positive consumer-focused culture that is embedded and demonstrated within all firms;
- A consumer protection framework that is fit for purpose and ensures that consumers' best interests are protected; and

- Ensuring regulated firms are fully compliant with their obligations and are treating their customers, existing and new, in a fair and transparent way.

In the CPOR, the Central Bank highlighted the following key consumer protection risks:

- *Culture* – Good conduct is not just about tick-box compliance with the letter of the law but about having a culture that focuses on the best interests of consumers in the short and long term.

- *Product Oversight and Governance* – Firms must be able to demonstrate that their products are fit for purpose, meaning that firms must ensure that products are fully understood by customers and are suitable for their individual needs. The Central Bank expects firms to conduct consumer-testing on their products (including their product literature) and to simplify same where necessary, by using plain language so as to ensure consumers' general understanding of such products. Firms must also continue to satisfy themselves that products remain suitable for the target market.

- *Indebtedness and Arrears* – While many people are benefitting from the economic recovery, many continue to struggle to meet repayments on mortgages and other debts. The Central Bank expects lenders to continue to work with over-indebted consumers to try and resolve their arrears situation and to work with co-operating borrowers to achieve sustainable solutions.

- *I.T. Reliance and Data Security* – The Central Bank has highlighted cyber risk as one of the key emerging threats to regulated firms and advises that all firms need to improve their knowledge and understanding of the sources of this risk to be in a position to identify, monitor and mitigate any real or perceived threat this risk poses to consumers.

- *Low Interest Rate Environment* – The current low yield environment may influence consumers to take increased risks to secure the returns they need to provide for their future. Firms producing and selling higher-risk investments directly or through intermediaries have a clear responsibility to ensure that any advice provided is suitable for the consumer and that such consumers are fully informed of the increased risks of such products.

- *Service Delivery* – Where a new method of delivering a service involves changes to existing service delivery, firms must fully assess the impact of these changes on affected consumers prior to implementing them.

- *Claims Handling and Settlement* – The providers of general insurance in the market are facing a number of challenges in relation to underwriting, claims and profitability. In meeting these challenges it is essential that insurers treat their customers in a fair and reasonable way up to and including claims handling and settlement.

The Central Bank has set out priority themes for each of these headings. The following are relevant to the insurance sector:

- *Priority themes on developing a consumer-focused culture* – The Central Bank aims to continue to engage with firms' boards and senior management to ensure that there is a clear focus from the top on embedding and measuring the firms' own cultural change programmes. The Central Bank aims to assess insurers' internal conduct risk frameworks to identify any gaps and best practices.

- *Priority themes on consumer confidence* – The Central Bank will commence an examination of the risks and benefits of commission payments to intermediaries. The first step will be to publish a discussion paper on the topic in order to seek input from interested parties and ascertain the next steps in order to ensure consumers' best interests are being protected in this area. In addition, systems failures and errors will continue to be monitored to ensure that firms keep consumers fully informed of any issues and on how such issues are to be resolved.

- *Priority themes on how firms are meeting and demonstrating compliance* – Insurance companies are required to ensure that any claim settlement offer made to a claimant is fair and to ensure that claimants are given sufficient time to accept or reject an offer. The Central Bank intends on reviewing compliance in this area with a specific focus on motor insurance. The Central Bank will also focus its supervisory work on firms that are not meeting the minimum standards of reporting compliance and other obligations to the Central Bank. Increased frequency of proactive, firm-specific inspections in the retail intermediary sector is also planned by the Central Bank.

A copy of the CPOR is available at the following link:

https://www.centralbank.ie/publications/Documents/Consumer ProtectionOutlookReport%202016.pdf

(iii) PRISM Explained

On 8 February 2016, the Central Bank published an updated PRISM guide entitled "*PRISM Explained – How the Central Bank of Ireland is Implementing Risk-Based Regulation, February 2016*". The paper provides a guide as to what risk-based regulation is and explains how the Probability Risk and Impact SysteM ("**PRISM**") operates for financial institutions.

For the full guide, please see the following link:

http://www.centralbank.ie/regulation/processes/prism/Documents/PRISM Explained Feb2016.pdf

Retail Intermediaries

(i) Reclassification of Multi-Agency Intermediaries and Authorised Investment Advisers to Investment Intermediaries

Since 1 October 2014, the Handbook of Prudential Requirements for Investment Intermediaries (the "**2014 Handbook**") came into effect and was imposed on all investment intermediaries under Section 14 of the Investment Intermediaries Act, 1995 (as amended) ("**IIA**").

The Central Bank expects that all investment intermediaries are familiar with the provisions contained in the 2014 Handbook, including the definition of "Investment Intermediary" which effectively means that all multi-agency intermediaries and authorised advisors have been re-classified as "Investment Intermediaries".

The Central Bank undertook a project to update its records, website and registers of regulated firms to include the up-to-date authorisation status of each investment intermediary and issue amended statements of authorisations to these firms. Firms which have requested amendments since the imposition of the 2014 Handbook have already received up-to-date statements of authorised status and the Central Bank intends to continue these amendments as normal until the expected completion of the project by the end of June 2016.

The 2014 Handbook is available at the following location:

https://www.centralbank.ie/regulation/industry-sectors/retailintermediaries/Documents/Handbook%20of%20Prudential%20Requirements%20for%20Investment%20Intermediaries.pdf

(ii) ICCL issues Funding Consultation Document

On 2 November 2015, the Investor Compensation Company Limited (the "**ICCL**") notified all retail intermediaries that it had issued its Funding Consultation Document – "Funding the Investor Compensation Scheme" (the "**Consultation Document**"), with responses to have been received by 11 December 2015.

Industry representative bodies were also invited to comment on the proposals for the three-year period commencing 1 August 2016. The Consultation Document contained proposals on target fund capacity, the mix of each funding layer and type, the basis of assessment for annual levies and proposed levy rates. As well as this, the ICCL sought the views of industry

participants on the implementation of other operational changes with a view to further enhancing efficiencies within the administration of the current levy collection processes.

The ICCL hopes to review the submissions and publish revised funding arrangements on the publications section of its website (www.investorcompensation.ie) by 31 May 2016.

The Consultation Document can be found at the following location:

http://www.investorcompensation.ie/_fileupload/Documents/Publications/FundingConsultation-Cycle Seven/15110 – Funding Consultation Final.pdf

(iii) Central Bank's inspection targets 325 non-compliant retail intermediary firms

On 23 March 2016, the Central Bank announced that its targeted inspection of non-compliant retail intermediary firms resulted in the majority of firms becoming compliant or else having their authorisation revoked. The inspections target intermediaries who were not in compliance with minimum reporting requirements by failing to submit annual returns, including unannounced on-site visits to 127 firms, based in 23 countries, over a 14 week period.

Some of the points to note from the inspection:

- Of the 325 firms inspected, 134 firms have since sought voluntary revocation of their authorisation, while 171 firms are now meeting reporting obligations;
- Further supervisory powers will be utilised in relation to the remaining 20 firms; and
- A large number of the 171 firms that submitted annual returns revealed potential areas of non-compliance with key regulatory requirements, which are being pursued by the Central Bank.

The announcement went on to highlight the importance of firms submitting annual returns as non-compliance in one area potentially signifies non-compliance in a number of areas which is a threat to consumer protection. The Consumer Protection Outlook Reports in 2015 and 2016 were also mentioned for the purposes of indicating the Central Bank's supervisory focus.

(iv) Central Bank introduces new application process model for retail intermediaries and issues new Guidance note on completing application for authorisation as a retail intermediary

On 24 March 2016, the Central Bank introduced new Authorisation Process Models for retail intermediaries, with the aim of ensuring a more transparent process for applicant firms in terms of the information required the status of firms in the authorisation process and timelines for decisions.

Key features of the new Authorisation Process Model include:

- Applications acknowledged within 3 working days of submission;
- Within 10 working days of submission, applicants will be advised whether or not all the key information required has been received to progress to the assessment phase; and
- Within 90 working days applicants will be advised of the outcome of the assessment phase and the intended decision in respect of the application.

A Guidance Note on the new Authorisation Process Models for retail intermediaries has been prepared which sets out the criteria for assessing applicants, the process for making an application, guidance on completing the different sections of the application form and what the Central Bank expects from retail intermediaries post-authorisation.

The Guidance note can be found at the following location:

http://www.centralbank.ie/regulation/industrysectors/retailintermediaries/Documents/230316%20Guidance%20Note%20for%20Completing%20an%20Application%20form.pdf

Anti-Money Laundering ("AML")/Counter-Terrorist Financing ("CTF")

(i) Central Bank report on on Anti-Money Laundering/Countering the Financing of Terrorism ("AML/CTF") and Financial Sanctions Compliance in the Life Insurance Sector in Ireland

On 8 March 2016, the Central Bank published a report on Anti-Money Laundering/Countering the Financing of Terrorism ("**AML/CTF**") and Financial Sanctions Compliance in the Life Insurance Sector in Ireland (the "**Report**") which was compiled from the information obtained from on-site inspections and off-site desk top reviews carried out by the Central Bank over the course of 2014 and 2015.

The main conclusions of the Report involved an acknowledgement from the Central Bank that generally firms had satisfactory procedures and systems in place however the issues identified in the Report highlight that further enhancements could be made by firms to strengthen their existing AML/CTF and Financial Sanctions frameworks.

The following is a summary of issues identified in the Report which are representative of issues identified across all the firms included as part of the review. These include:

- Non-adherence to stated AML/CTF and Financial Sanctions policies;

- Weaknesses in the suspicious transaction reporting process. In particular a lack of documentary evidence of the assessment and adjudication performed by the MLRO on the rationale for reporting or not reporting to the relevant authorities;

- Deficiencies in the ongoing customer and transaction monitoring processes;

- Insufficient evidence of firms giving sufficient consideration to the requirements of Section 33(1)(d) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended by the Criminal Justice Act 2013) so as to determine the adequacy of documentation and/or information held for existing policy holders on boarded pre-July 2010. Where trigger events were in place to collect or update Customer Due Diligence ("**CDD**"), these were deemed insufficient;

- Deficiencies in the policies and processes in place relating to third party reliance and outsourcing arrangements;

- Deficiencies in the policies and procedures in place with respect to the definition and identification of PEPs and application of enhanced due diligence including the obtaining and timing of senior management approval and failure to sufficiently identify, verify and document source of funds and source of wealth;

- Failure by firms to fully consider, qualify or document the criteria and process for the identification, recording and application of enhanced due diligence to high risk policy holders.

The Central Bank expects that firms review their systems and controls in light of the findings contained in the Report and take appropriate steps to ensure compliance with the Central Bank's recommendations.

The Regulatory and Compliance team in Dillon Eustace are available to assist in reviewing and updating firm's AML Policy and Procedures as necessary.

A copy of the Report is available at the following link:

http://www.centralbank.ie/regulation/processes/anti-money-laundering/Documents/Report on AMLCFT and FS Compliance in the Irish Life Insurance Sector.pdf

(ii) Opinion of Advocate General in ECJ case relating to application of customer due diligence to payment institutions under MLD3

Safe Interenvios, SA v Liberbank, SA, Banco de Sabadell, SA, and Banco Bilbao Vizcaya Argentaria, SA Case C-235/14 – Opinion of the Advocate General (the "**AG**")

This case concerns a payment institution (Safe Interenvios, SA) ("**Safe**") and three banks (Liberbank, SA, Banco de Sabadell, SA and Banco Vizcaya Argentaria, SA) (collectively, the "**Banks**"). The Banks closed accounts which Safe held with them due to money laundering concerns (as per Directive 2005/60/EC (the "**MLD3**")).

Safe refused to provide certain information to the Banks which had been requested by them as a result of information which showed irregularities with the agents whom Safe had authorised to transfer its clients' money abroad. This refusal resulted in the closure of bank accounts it held with the Banks. The information had been requested pursuant to Law 10/2010, the Spanish national law transposing the MLD3.

Safe argued before the Commercial Court Number 5, Barcelona that the closure of its bank accounts amounted to an act of unfair competition as *inter alia* it prevented Safe from transferring funds abroad. The Banks, in response to the arguments of Safe, said that their actions were in accordance with Law 10/2010, justified because of the money-laundering risks associated with the transfer of funds abroad and did not amount to a breach of competition law. The Spanish court rejected Safe's application, holding that the Banks were entitled to ask Safe for data relating to its customers subject to the condition that they had detected in Safe's behaviour signs of conduct that infringed Law 10/2010. In terms of the justification in closing the accounts which Safe held with the Banks, the court held that none of the three Banks infringed anti-competitive law however, Liberbank, SA and Banco de Sabadell, SA, by failing to give reasons for the bank account closures, had acted unfairly. Safe, Liberbank, SA and Banco de Sabadell, SA appealed the decision to the provincial court, Barcelona which referred certain issues to the European Court of Justice.

Money Laundering Issues considered by the AG

From a money laundering perspective the main issue to be considered is whether Article 11(1) of the MLD3 (allowing for a derogation from the requirement to apply customer due diligence where the customer is itself subject to the directive i.e. is itself a financial (including a payment) institution or credit institution) is a genuine derogation from the need to apply customer due diligence or whether it is simply an authorisation that a derogation is possible. The context of a consideration of this issue is as to whether the Banks were correct in applying due diligence against Safe or were simply using the MLD3 to carry out unfair commercial practices.

Opinion

It was noted by the AG that the customer due diligence measures in Articles 8 and 9(1) of the MLD3 are not to be applied in certain circumstances where they would otherwise be required under Article 7(a), (b) and (d) as a result of certain conditions laid down in Article 11. One condition is the situation where a customer of a covered entity is a payment or credit institution itself. The AG reasoned that the rationale for the derogation in Article 11(1) is that

the credit or payment institution customer is itself covered by the MLD3 and so must comply with all the requirements of the Directive, including the application of due diligence to its own customers. This allows for more cost-effective risk management and a proportionate prevention of the risk of money laundering.

However, considering Article 7(c) (which provides that customer due diligence measures are always required regardless of any derogation, exemption or threshold), the AG reasoned that this could be extended to apply regardless of the customer being a credit or payment institution, where there exists a suspicion of money laundering or terrorist financing. Thus the Banks were justified in interpreting the MLD3 to apply the due diligence measures they did against Safe and the AG.

The full opinion of the AG, including a consideration of all of the questions referred for a preliminary ruling, can be found at the following link:

http://curia.europa.eu/juris/document/document.jsf?text=&docid=166842&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=709141

(iii) Department of Finance and the Department of Justice and Equality publish consultation paper on Member States discretions in transposing fourth AML Directive

On 29 January 2016, the Department of Finance and the Department of Justice and Equality (the "**Departments**") issued a consultation paper on the transposition of the Fourth AML Directive into Irish law and the discretions available to Ireland (the "**Consultation Paper**").

Some of the areas where the Consultation Paper requested feedback included:

- *Beneficial ownership registers (corporate)* – The Fourth AML Directive requires Member States to ensure that corporate entities obtain and hold accurate information on their beneficial ownership which can be made available when due diligence is being undertaken on them. The information on beneficial ownership is required to be held in a central register and Member States are obliged to ensure that the information on beneficial ownership is accurate, adequate and current. Member States must also ensure that the beneficial ownership information register is readily accessible to competent authorities without restrictions, obliged entities within the due diligence framework and any person or organisation who can demonstrate a legitimate interest. The Consultation Paper asked for feedback on the level of access to the register for corporate and other entities and further asked whether access should be extended to the public at large. It also asked for views as to whether beneficial owners should be required to apply, on a case-by-case basis, to restrict access to certain information and, if so, what circumstances and information could be restricted.

- *Beneficial ownership register trusts* – Under the Fourth AML Directive Member States are required to hold trust-related information in a central register where the trust generates tax consequences, with the Revenue Commissioners indicating its openness to being the body to maintain such a register. The Consultation Paper suggested that evidence of the generation of a tax consequence could be the receipt by the trustees of income or capital gains, disposal of income or capital assets by the trust and/or the movement of funds by the trust. The Consultation Paper asked for feedback on the registration requirements for trusts and on the list of tax consequences, as well as any other views on how this article may be transposed.

The Consultation Paper also asked for views on other areas of the Fourth AML Directive such as the ability to exempt certain gambling services from AML/CFT laws, the discretion to allow certain obliged entities not apply customer due diligence measures, the discretions available in relation to due diligence carried out in high risk jurisdictions by wholly owned subsidiaries of entities established in the EU and the appointment of a central contact point for e-money issuers.

The Consultation Paper can be accessed at the following link:

http://www.finance.gov.ie/sites/default/files/AMLD National Discretions Consultation Paper.pdf

The deadline for responses to the Consultation Paper was 4 March 2016. The responses are currently being considered by the Departments.

(iv) Commission establishes Action Plan for strengthening the fight against terrorist financing

On 2 February 2016 the Commission published its action plan aiming to strengthen the fight against terrorist financing (the "**Action Plan**"). The Action Plan seeks to prevent the movement of terrorism-derived funding and aims to target the sources of terrorist funding. It also comments on the international dimension to terrorism and the need for the EU to be an active player on the international scene in the fight against terrorist financing to include closer cooperation with third countries in identifying terrorist entities and being at the forefront of international forums on the issue of terrorist financing.

In order to better prevent the movement of funds and identify terrorist financing, the Action Plan proposes certain amendments to the Fourth AML Directive, as follows:

- *Concrete effect to the EU "list of high risk third countries*" – Under the Fourth AML Directive, where a country is listed as having strategic deficiencies in the area of AML or CTF, EU obliged entities will have to apply enhanced due diligence measures, however the exact nature of these measures is not currently specified. The Action Plan

recommends clarifying the obligation in respect of applying the enhanced due diligence measures.

- *Virtual currency exchange platforms* – Virtual currencies are not currently regulated at EU level and lack the reporting mechanism currently found in the mainstream banking system to report suspicious activity. On this basis, the Action Plan seeks to bring the anonymous currency exchanges under the control of competent authorities by extending the scope of the Fourth AML Directive to include virtual currency exchange platforms.

- *Prepaid instruments* –The Commission is currently considering how to address the concerns raised by the anonymity of such general purpose cards without eliminating the benefits that they offer in their normal day-to-day use. The Commission stated that it will present further changes to the Fourth AML Directive, which could focus in particular on reducing existing exemptions such as thresholds below which identification is not required, notably for cards used face-to-face, and requiring customer identification and verification at the time of online activation of the prepaid cards. The Commission is currently exploring the detailed design of such measures, taking into account their impact and the need for proportionality.

- *Centralised bank and payment account registers and central data retrieval systems* – The Commission proposes amending the Fourth AML Directive to ensure that each Member State must establish centralised bank and payment accounts registers or electronic data retrieval systems as, currently, Member States are not bound by EU legislation to maintain such registers or retrieval systems.

The Commission has also said in the Action Plan that it will adopt an EU blacklist to identify high risk third countries with strategic deficiencies in their AML/CTF by the second quarter of 2016 at the latest. It also said that it will publish a report on a supranational assessment of ML and TF risks and recommendations to Member States on measures suitable to address those risks by the second quarter of 2017.

The full Action Plan can be found by accessing the following link:

https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-50-EN-F1-1.PDF

Data Protection

(i) European Data Protection Supervisor: EU Institutions making steady progress

A report was published on 21 January 2016 by the European Data Protection Supervisor (the "**EDPS**"), entitled "*Measuring compliance with data protection rules in EU institutions*", (the "**Report**") on the levels of compliance by EU institutions with data protection obligations and

privacy principles across EU services. In general, the Report found evidence of high levels of compliance among the EU institutions.

The Report is based on a survey conducted by the EDPS, issued to 61 EU institutions, on the state of registers and inventories which contain information on each operation involving the processing of personal data. Other areas addressed by the survey included data transfers to non-EU countries and how data protection officers are involved in the development of new processing operations.

The full Report can be accessed at the following location:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Inquiries/2016/16-01-21_Report_Survey_2015_EN.pdf

(ii) Data Protection Commissioner (the "DPC") outlines priorities for 2016

At the National Data Protection Conference held on 28 January 2016, the DPC outlined the priorities for the upcoming year. These priorities build on the work completed in 2015 and address the challenges which the DPC expects to face in 2016.

The priorities for 2016 include:

- *Resource expansion* – A key issue for the DPC is the expansion of resources, involving the recruitment of more staff such as lawyers, audit staff, a new communications director and call centre staff. It also includes moving the office of the DPC to new premises within Dublin city centre. The aim with the expansion of resources is to improve the performance and quality of response by the DPC.

- *Guidance and DPC website* – A new DPC website and more streamlined guidance were listed as two areas which will be focused on by the office of the DPC in 2016.

- *Challenges faced by big data* – The DPC highlighted the need to ensure that the development of big data was matched with adequate monitoring to ensure that the collection and processing of data would not breach the rights of the subjects. Health data was also highlighted by the DPC as a new area requiring monitoring, due to the growth in wearable health technology and mobile applications.

- *Social media* – An area which has been the subject of focus over the past number of years, the DPC mentioned the consultation carried out with Facebook and the recommendations which followed, including cross-device opt-outs and data subject access requests.

- *WiFi tracking* – Noting that guidance from the Article 29 Working Party was imminent, the DPC discussed the area of WiFi tracking which involves data subjects connecting to WiFi networks and providing data which can then be combined with smart video analysis to allow for high level analytics to be carried out.

- *Special Investigations Unit* – Within the office of the DPC, a new special investigations unit has been established to investigate and prosecute for data legislation breaches. It also assists the Office of the Information Commissioner in the United Kingdom.

- *Security* – The DPC talked about security and the necessity of having effective security surrounding the processing of data. It was highlighted that encryption is not solely the answer to resolving security issues, but it must be used in the right manner, at the right time and during the entire course of the data retention.

While the above were the specific issues highlighted as areas on which it would focus during 2016, the DPC also spoke of the General Data Protection Regulation (5455/16) and the work being carried out by the office of the DPC in preparation for its implementation, once it has been adopted by the Council and approved by the European Parliament.

(iii) Notice 2016/C 33/01

On 28 January 2016, a notice from the European Data Protection Supervisor (the "**EDPS**") on establishing an external advisory group on the ethical dimensions of data protection (the "**Notice**") was published in the Official Journal of the EU.

The Notice establishes an external advisory group on the ethical dimensions of data protection (the "**Advisory Group**") whose tasks shall include:

- An analysis of the ethical dimensions of data protection;

- Submitting recommendations to the EDPS upon request;

- Producing at least two public reports;

- Submitting research suggestions;

- Including experts in its work where experts can bring additional knowledge and experience; and

- Presenting assumptions to a critical audience in order to receive feedback on the research it carries out.

The Advisory Group will sit for a two year period from 1 February 2016 to 31 January 2018 and will consist of six members with considerable background experience in the area of the ethical dimension of data protection, appointed by the EDPS, with a chair appointed from the six members. No remuneration will be received for carrying out the work of the Advisory Group except for certain expenses and members of the public have access to the documents produced by the Advisory Group in accordance with Regulation (EC) 1049/2001.

A copy of the Notice can be found at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:033:FULL&from=EN

(iv) The European Commission Releases EU-US Privacy Shield

Following the European Court of Justice ruling in October 2015, that the Safe Harbour framework was invalid, the Commission published the texts of the replacement EU-US Privacy Shield (the "**Privacy Shield**") on 29 February 2016. The Commission also made public a draft adequacy decision (allowing for the transfer of EU citizens' data outside of the EU) including the Privacy Shield Principles companies have to abide by, as well as written commitments by the US Government (to be published in the US Federal Register) on the enforcement of the arrangement.

The main aim of the new Privacy Shield is to safeguard the data on EU citizens by providing greater transparency in the transfer of their data to the US as well as placing stronger obligations on US companies to protect the data. The US Department of Commerce (the "**DoC**") and Federal Trade Commission (the "**FTC**") are required to carry out stronger monitoring on US entities and work more closely with European Data Protection Authorities to ensure that the Privacy Shield is being properly implemented.

The Privacy Shield involves US companies registering to be on the Privacy Shield list, following which they will self-certify annually that they comply with the relevant data protection requirements. They will also display their privacy policies prominently on their websites. The DoC monitors the compliance of US companies with the Privacy Shield on an ongoing basis and can remove companies from the Privacy Shield list should it find that companies are not complying in practice with the Privacy Shield, for example, where privacy policies displayed on US companies' websites are not in line with the Privacy Shield principles. The FTC has a civil law enforcement authority to promote consumer protection and competition across the US so will be in charge of enforcement of the Privacy Shield.

A key benefit to EU citizens under the Privacy Shield is in respect of redress which they can seek, both cost and ease benefits. Under the Privacy Shield, any EU citizen has the following redress options available to them:

- *Complain directly to the company* – Companies will then have 45 days within which they must respond to the complaint.

- *Alternative Dispute Resolution* – Available free of charge to complainants, companies which register to be on the Privacy Shield list must designate a body either in the US or the EU to handle and resolve any complaints made against them.

- *Ombudsman mechanism* – An ombudsman mechanism, independent but located within the US Department of State, will follow-up complaints and enquiries by individuals and inform them whether the relevant laws have been complied with. This follows the US government giving the EU written assurance from the Office of the Director of National Intelligence that any access of public authorities for national security purposes will be subject to clear limitations, safeguards and oversight mechanisms, preventing generalised access to personal data.

- *Arbitration* – As a last resort, where other means have failed to resolve the dispute, complainants can engage the arbitration mechanism. This consists of a Privacy Shield Panel who can take binding decisions against US companies self-certifying on the Privacy Shield list.

The Judicial Redress Act passed on 10 February 2016, together with the Privacy Shield, provides an additional redress option for EU citizens. It allows for non-US citizens to take private action in US courts for alleged misuse of their personal data.

An annual review of the functioning of the Privacy Shield will take place between the Commission and the DoC, including the commitments and assurance as regards access to data for law enforcement and national security purposes. A public report will then be presented by the Commission to the European Parliament and Council on foot of the joint review. It is also envisaged to hold a privacy summit on an annual basis with NGOs and relevant stakeholders on developments in US privacy law and the impact it has on EU citizens.

The next step in the implementation of the Privacy Shield involves an Article 29 Working Party, consisting of representatives of EU Member States' data protection agencies, reviewing the legal texts of the Privacy Shield and assessing whether they meet the requirements of EU data protection law. On the US side, the necessary preparations are currently being made for the framework to implement the Privacy Shield.

For more information on the EU-US Privacy Shield, please see the following link:

http://europa.eu/rapid/press-release_IP-16-433_en.htm

(v) European Commission publish EU-US Privacy Shield FAQ document (the "FAQ")

On 29 February 2016, in conjunction with the publication of the EU-US Privacy Shield, the Commission issued the FAQ to assist stakeholders understanding and to address any queries arising in respect of the Privacy Shield.

The FAQ addresses, inter alia, the following issues:

- The main differences between the old Safe Harbour arrangement and the Privacy Shield;
- How the Privacy Shield will operate in practice;
- How Europeans can get redress in the US in the event their data is misused by commercial companies
- The role of the Ombudsperson mechanism;
- The role of the Judicial Redress Act; and
- The EU-US data protection "Umbrella Agreement".

A copy of the FAQ is available at the following link:

http://europa.eu/rapid/press-release_MEMO-16-434_en.htm

Health Insurance

(i) Commission Decision on Irish Risk Equalisation Scheme 2016

On 29 January 2016, the Commission adopted its decision in respect of the Irish Risk Equalisation Scheme (the **"Decision"**) which was published in the Official Journal of the EU on 18 March 2016. Following an examination of information provided by the Irish Authorities, the Commission concluded that the compensation granted through the Risk Equalisation Scheme for the provision of private medical insurance in Ireland for the period 2016-2020 constitutes State Aid that is compatible with the internal market pursuant to Article 106(2) of the Treaty of the Functioning of the EU.

The public version of the letter regarding the Decision can be accessed via the following link:

http://ec.europa.eu/competition/state_aid/cases/262379/262379_1730677_40_2.pdf

The Decision can be viewed in the Official Journal of the EU at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.104.01.0001.01.ENG&toc=OJ:C:2016:104:TOC

(ii) Health Insurance Authority publishes Guide to 2016 – 2020 Risk Equalisation Scheme

In February 2016, the Health Insurance Authority ("**HIA**") published a guide to the 2016 – 2020 Risk Equalisation Scheme (the "**Guide**"). The Guide provides general guidance on the Risk Equalisation Scheme 2016 and sets out the method of calculation of the payments made under the Risk Equalisation Scheme 2016. It also outlines the regulatory structure of the market, the roles of the Minister for Health, the Health Insurance Authority and insurers.

The Health Insurance Acts, 1994 – 2015 introduced the Risk Equalisation Scheme in Ireland. Risk equalisation is a process that aims to address differences in insurers' claim costs that arise due to variations in the health status of their members and involves payments to or from insurers related to the risk profile of their membership.

The Guide can be accessed via the following link:

http://www.hia.ie/publication/risk-equalisation

(iii) Health Insurance Amendment Act 2015 (No 54 of 2015)

On 1 March 2016, amendments to the Health Insurance Act 1994 (the "**Principal Act**") introduced by the Health Insurance Amendment Act 2015 (the "**2015 Act**") came into effect. The main amendments introduced include revised amounts to be paid from the Risk Equalisation Fund in respect of certain classes of insured persons, a definition of "hospital utilisation credit" and the amounts of hospital utilisation credit applicable from 1 March 2016.

The amendments to the Stamp Duties Consolidation Act 1999, introduced by the 2015 Act, came into effect on 1 January 2016.

The 2015 Act can be found at the following location:

http://www.oireachtas.ie/documents/bills28/acts/2015/a5415.pdf

(iv) Health Insurance Act 1994 (Information Returns) (Amendment) Regulations 2015 (S.I. 608/2015)

On 1 March 2016, the Health Insurance Act 1994 (Information Returns) (Amendment) Regulations (the "**2015 Regulations**") came into effect which make amendments to the definitions of "day-patient day", "in-patient stay (publicly-funded hospital)" and "private hospital accommodation" in the Health Insurance Act 1994 (Information Returns) Regulations 2009 (S.I. No. 294 of 2009).

The 2015 Regulations can be found at the following link:

http://www.irishstatutebook.ie/eli/2015/si/608/made/en/print

(v) Health Insurance Act 1994 (Section 11E(2)) Regulations 2016

On 1 March 2016, the Health Insurance Act 1994 (Section 11E(2)) Regulations 2016 (the "**2016 Regulations**"), which were published on 26 February 2016, came into operation. The 2016 Regulations were made by the Health Insurance Authority and specify that the Health Insurance Authority is satisfied that certain relevant contracts do not provide for advanced cover.

The 2016 Regulations can be found at the following link:

http://www.irishstatutebook.ie/eli/2016/si/120/made/en/pdf

(vi) Central Bank requires health insurance providers to take action to further protect consumers

On 11 March 2016, the Central Bank issued a press release announcing that it is putting in place a number of additional protections for consumers when renewing their health insurance policies. This follows the findings from the Central Bank's thematic inspection of the four health service providers and its recent health insurance consumer research (see further details in section (vii) below).

The Central Bank's thematic inspection of the four health insurance service providers focused on how these providers are engaging with and/or advising consumers during the annual renewal process, in the context of the important protections provided by the Consumer Protection Code.

The Central Bank's main findings from the recent themed inspection include the following:

- Consumers find it difficult to compare policies and most consumers renew the same policy with the same provider;
- Renewal notices issued to consumers are not highlighting important information;
- Providers collect less information from consumers purchasing online prior to making recommendations, compared to the face-to-face or telephone-based sales process; and

- Three providers' websites, when recommending a policy, do not offer consumers policies from their full range of available policies.

- As a result of these findings, the Central Bank is requiring providers to enhance the content and presentation of the information contained in policy renewals to:

- Clearly explain to consumers that their policy will auto-renew on to the same policy if they do not contact their insurer prior to their renewal date; and

- Encourage customers to make contact during the renewal process to ensure the provider assesses if there are more suitable policies available.

The full press release is available at the following link:

http://www.centralbank.ie/press-area/press-releases/Pages/CentralBankrequireshealthinsuranceproviderstotakeactiontofurtherprotectconsumers.aspx

(vii) Central Bank's Consumer research on the renewal of private health insurance

On 11 March 2016, the Central Bank published consumer research on the renewal of private health insurance in Ireland. The Central Bank commissioned Ipsos MRBI to research how consumers make decisions about health insurance policies at renewal time in order to better understand consumer experience and decision-making at this time and to assess consumers' views of their understanding of their purchases. The research used a nationally representative sample of 1,003 respondents who were screened to ensure that they met certain criteria and the key findings are as follows:

- Most respondents had renewed the same policy with the same provider;

- Most respondents had not contacted their provider before renewal;

- Generally respondents were satisfied with the renewal process;

- Most respondents who switched or were considering switching policy or provider were looking for a cheaper policy;

- Most respondents rated their understanding of policy coverage as 'good';

- Respondents found it difficult to choose between products; and

- Respondents' trust in providers was high.

The Central Bank's consumer research can be viewed in full at the following link:

http://www.centralbank.ie/regulation/processes/consumer-protection-code/compliance-monitoring/Documents/Renewal of Private HealthInsurance –Consumer Research.pdf

(viii) Health Insurance Authority publishes Compliance Checklist

In March 2016, the Health Insurance Authority ("**HIA**") published a compliance checklist which may be viewed as a Plain English guide to an insurer's responsibilities in implementing the requirements under the Health Insurance Acts, 1994 to 2015 (the "**Acts**"). The HIA states that it is not a comprehensive description of the legislative requirements but lists issues that arise for an insurer in complying with the Acts. The Compliance Checklist covers the following issues:

- Prohibition on carrying on of Health Insurance Business unless registered with HIA;
- Community Rating;
- Open Enrolment;
- Waiting Periods;
- Minimum Benefits;
- Lifetime Cover;
- General product rules;
- Prohibition of Inducements;
- Information returns;
- Levy on insurers; and
- Support to community rating.

The full Compliance Checklist can be viewed at the following link:

http://www.hia.ie/sites/default/files/Compliance_checklist_for%20health%20insurers_March 2016.pdf

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