

Insurance  
Quarterly Legal  
and Regulatory  
Update

Period covered:  
1 January 2017 – 31 March 2017

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<b>Table of Contents</b>	<b>Page</b>
INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE .....	2
Solvency II.....	2
European Insurance and Occupational Pension Authority (“EIOPA”) .....	10
European Commission.....	13
Insurance Distribution Directive .....	18
International Association of Insurance Supervisors (“IAIS”) .....	21
Insurance Europe.....	25
The Joint Committee (ESMA, EIOPA and EBA).....	27
Packaged Retail Insurance-Based Investment Products (“PRIIPS”).....	28
European Markets Infrastructure Regulation (“EMIR”) .....	30
Market Abuse Regulation.....	38
Prospectus Directive .....	39
Transparency Directive .....	40
Pensions Update.....	41
Central Bank of Ireland .....	42
Anti-Money Laundering/Counter-Terrorist Financing.....	48
Data Protection .....	54

## INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

### Solvency II

#### (i) **EIOPA publishes monthly symmetric adjustment of the equity capital charge**

On a monthly basis, EIOPA updates information on the symmetric adjustment of the equity capital charge. The symmetric adjustment to the equity capital charge shall be included in the calculation of the equity risk sub-module in accordance with the Solvency Capital Requirement (the “**SCR**”) standard formula to cover the risk arising from changes in the level of equity prices. This adjustment is regulated mainly in Article 106 of the Solvency II Directive (2009/138/EC); Article 172 of the Solvency II Delegated Act (2015/35/EU) as well as in the Implementing Technical Standards on the equity index for the symmetric adjustment of the equity capital charge (Commission Implementing Regulation 2015/2016/EU).

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

-  With reference to the end of December 2016 on 9 January 2017;
-  With reference to the end of January 2017 on 7 February 2017; and
-  With reference to the end of February 2017 on 7 March 2017.

The monthly symmetric adjustment of the equity capital charge can be accessed via the following link:

<https://eiopa.europa.eu/regulation-supervision/insurance/solvency-ii-technical-information/symmetric-adjustment-of-the-equity-capital-charge>

#### (ii) **EIOPA publishes updated technical methodology documentation for the risk-free interest rate term structures for Solvency II**

During Quarter 1, EIOPA published updates to the technical documentation of the methodology to derive EIOPA’s risk-free interest rate term structures (“**RFR**”) for Solvency II (the “**RFR Updates**”).

Under Solvency II, the RFR underpins the calculation of liabilities by insurance and reinsurance undertakings. EIOPA is required to publish the RFR.

The RFR technical methodology documentation aims to assist users in complying with their obligations under the Solvency II Directive by explaining in a transparent manner how the relevant RFRs are derived. It is published to achieve a consistent calculation of technical provisions. EIOPA notes that it does not constitute legal advice.

The RFR Updates during the Quarter include:

In January 2017, the update includes the following changes:

- ▣ The use of the input data for the derivation of the risk-free interest rates for the Mexican peso was aligned with the maturity of the underlying financial instruments.
- ▣ The peer country that is used to derive the fundamental spreads for Latvian government bonds was changed from Spain to Ireland to reflect market developments with regard to the government bond yields of these countries. The fundamental spread is used to calculate the matching adjustment and the volatility adjustment to the risk-free interest rates.

The changes will be taken into account in the production of the technical information for end of January 2017.

In February 2017, the update includes the following changes:

- ▣ The government bond tickers for Bulgaria, China, India, South Africa, Taiwan and Thailand are discontinued by the data provider and are replaced accordingly. The new tickers are applied for reference dates as of 1 February 2017.
- ▣ The annual update of the transition matrices for the calculation of the fundamental spreads in January 2017 was reflected in the technical documentation.

The changes will be taken into account in the production of the technical information for end of February 2017.

The RFR Updates 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 Solvency II relevant risk-free interest rate term structures**

EIOPA intends to publish the RFR on a monthly basis to ensure consistent calculation of technical provisions across the EU.

In Quarter 1, EIOPA published the RFR as follows:

- ▣ With reference to the end of December 2016 on 9 January 2017;
- ▣ With reference to the end of January 2017 on 7 February 2017; and
- ▣ With reference to the end of February 2017 on 7 March 2017.

Undertakings should note that EIOPA has 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>

**(iv) EIOPA publishes updated Solvency II Questions and Answers**

During Quarter 1, EIOPA published updated Solvency II Q&As on the following:

- ▣ (EU) No 2016-1800 with regard to the allocation of credit assessments of external credit assessment institutions (Published 16 January 2017);
- ▣ (EU) No 2015/2450 with regard to the templates for the submission of information to the supervisory authorities (Published 31 March 2017);
- ▣ (EU) No 2015/2452 with regard to the procedures, formats and templates of the solvency and financial condition report (Published 31 March 2017);
- ▣ Answers to questions on Guidelines on reporting for financial stability purposes (Published 16 January 2017);
- ▣ Answers to questions on Symmetric Adjustment of the Equity Capital Charge (Published 30 January 2017);
- ▣ Answers to questions on Guidelines on the loss-absorbing capacity of technical provisions and deferred taxes (Published 21 February 2017);
- ▣ Answers to questions on Guidelines on classification of own funds (Published 31 March 2017);

- ▣ Answers to questions on Guidelines on reporting and public disclosures (Published 31 March 2017); and
- ▣ Risk – Free Interest Rate – Financial Market Data (Published 16 March 2017).

The EIOPA Solvency II Q&As can be accessed via the following link:

<https://eiopa.europa.eu/regulation-supervision/q-a-on-regulation>

**(v) EIOPA publishes official translations of Guidelines on effective dialogue between competent supervisory authorities**

On 2 February 2017, EIOPA published the translations of the Guidelines on Facilitating an Effective Dialogue between Insurance Supervisors and Statutory Auditors (the “**Guidelines**”) into all official languages of the European Union following publication of the final version in December 2016.

In line with the objectives of the European reform on statutory audits and according to Article 16 of the EIOPA Regulation and of Article 12(2) of Regulation 537/2014 (the “**Audit Regulation**”), EIOPA was required to issue Guidelines addressed to competent authorities supervising insurance undertakings for the purpose of facilitating the establishment and the maintenance of an effective dialogue between the competent authorities supervising insurance undertakings, the statutory auditor(s) and the audit firm(s) carrying out the statutory audit of those undertakings. The Solvency II Directive (2009/138/EC) sets out legal requirements 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 a (re)insurance undertaking.

The Guidelines cover the approach to the dialogue, the nature of information to be exchanged, the form of the dialogue, the representatives in the dialogue, the frequency and timing of the dialogue, the dialogue with auditors or audit firms collectively and compliance and reporting rules

According to EIOPA, the publication of the translations of the Guidelines indicated the start of a “comply or explain” reporting process which involves each competent authority confirming whether they comply or intend to comply with the Guidelines during a 2-month period.

The Guidelines are addressed to competent authorities supervising (re)insurance undertakings and will apply from 31 May 2017.

The Guidelines are available at:

[https://eiopa.europa.eu/Publications/Guidelines/Audit\\_GLs\\_EN.pdf](https://eiopa.europa.eu/Publications/Guidelines/Audit_GLs_EN.pdf)

(vi) **European Commission issues second call for technical advice from EIOPA on review of Solvency II Delegated Regulation as regards unjustified constraints to financing**

On 28 February 2017, the European Commission issued its second formal request to EIOPA for technical advice on the review of specific items in the Solvency II Delegated Regulation ((EU) 2015/35) (the “**Call for Advice**”).

The Call for Advice, which follows on from the first call for advice issued in July 2016 relates to the removal of unjustified constraints to financing.

It was highlighted in the European Commission's public consultation on the EU regulatory framework for financial services that the Solvency II framework may create unintended barriers to long-term investment.

The Call for Advice highlights that, within the context of Capital Markets Union, it is of utmost importance that any investment supporting jobs and growth is appropriately treated in insurers' prudential requirements. Therefore, this Call for Advice is sent to EIOPA, with the view of removing barriers to investments in unrated bonds and loans and in unlisted equity, in order to improve insurers' ability to invest in private placement offerings and in private equity.

A review of specific items of the Solvency II standard formula is expected before December 2018 and in preparation of this review, the European Commission requests EIOPA to provide its final technical advice as regards unjustified constraints to financing by 28 February 2018.

The Call for Advice available to view at the following link:

[https://ec.europa.eu/info/sites/info/files/eiopa-call-for-advice-22022017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/eiopa-call-for-advice-22022017_en.pdf)

(vii) **Solvency II Commission Implementing Regulation (EU) 2017/309 published in the Official Journal of the EU**

On 28 February 2017, Commission Implementing Regulation (EU) 2017/309 of 23 February 2017 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 December 2016 until 30 March 2017 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. The 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) of the Commission Implementing Regulation when calculating technical provisions and basic own funds for reporting with reference dates from 31 December 2016 until 30 March 2017.

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.

The Commission Implementing Regulation entered into force on 20 March 2017, applies from 31 December 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/PDF/?uri=CELEX:32017R0309&from=EN>

**(viii) Central Bank publishes updated Notes on Compilation for Statistics National Specific Template 13 (NST.13)**

In February 2017, the Central Bank published the updated Notes on Compilation for Statistics National Specific Template 13 (NST.13) (the “**NST.13 Notes**”). In order to meet the requirements of the ECB Securities Holdings Statistics Regulation (ECB/2012/24), the Central Bank is collecting the NST.13 data to reconcile differences in the reporting of Statistical and Supervisory data by giving a head office/non-resident branch split.

The NST.13 Notes include the following:

-  An Introduction to the NST.13 template which provides details on valuation, reporting currency, the basis of reporting, the reporting frequency, the basis of collection, Solvency II QRT Data and NST.13 and Reporting Population;
-  Some clarification on queries raised since the NST.13 Notes were first published;
-  Definitions of entry fields; and

- ▣ A worked example for (re)insurance undertakings which shows how the data in the SE.06.02 and NST.13 templates are related and goes on to show how to compile and split the data to meet the requirements of NST.13 template.

**(ix) EIOPA publishes Technical Specification of the Information Request for the EIOPA LTG Report 2017**

On 1 March 2017, EIOPA released its technical specification of the information request for the EIOPA Long Term Guarantees (“**LTG**”) Report for 2017.

The Solvency II Directive requires a review of LTG measures and the measures on equity risk until 1 January 2021. As part of this review, EIOPA must provide annual reports on the impact of the application of the LTG measures and the measures on equity risk to the European Parliament, the Council and the European Commission.

This information request is addressed to all solo European insurance and reinsurance undertakings subject to Solvency II for the financial years ending on or after 30 June 2016 but before 1 January 2017. The information request for undertakings shall provide quantitative data for the EIOPA LTG Report for 2017.

The information request consists of four parts as follows:

- ▣ General information on the participant and on the reported data;
- ▣ Information on the impact of the symmetric adjustment mechanism for equity risk on the financial position of undertakings;
- ▣ Information on the impact of the extrapolation on the financial position of undertakings; and
- ▣ Information on losses due to bond defaults and replacement of bonds for matching adjustment portfolios.

Undertakings are required to submit their data to their national competent authority (“**NCA**”) and upon examination the NCA will report this information to EIOPA.

The information request launched on 6 March 2017. It is expected that undertakings will have their data submitted to their NCA by the deadline of 15 June 2017. The NCAs will have to report the information to EIOPA by 16 July 2017.

The technical specification of the information request is available at:

<https://eiopa.europa.eu/Publications/Administrative/LTG%20Report%202017%20Information%20request%20-%20Technical%20Specification.pdf>

(x) **EIOPA publishes report on functioning of colleges of supervisors in 2016 and priorities for 2017**

On 1 March 2017, EIOPA published its 2016 Year-End report on the Functioning of Colleges of Supervisors and priorities for 2017 (the “**Report**”).

The Report sets out the general developments, observations and accomplishments of themes for colleges in 2016.

EIOPA also sets out its conclusions in the Report which tie into its priorities going forward which include the following:

- ▣ The implementation of the Solvency II Directive has improved the standard of discussion and activities in colleges but there is still a way to go to put the paradigm change of the new risk-based approach regulation into full life for cross border groups;
- ▣ EIOPA has confirmed its strong commitment to support the cooperation in colleges in further developing processes and by providing technical and analytical tools, peer comparisons, practical solutions and examples, expert knowledge and advice; and
- ▣ EIOPA considers trust, enhanced information exchange and further development of risk assessment techniques as important factors for enhancing supervision of cross-border groups.

The Report also sets out the themes for colleges 2017 which include the following:

- ▣ Theme I for 2017: Further develop effectiveness, efficiency and impact of information exchange and joint risk assessment in colleges; and
- ▣ Theme II for 2017: Ensure robustness and reliability of the SII balance sheet.

The Report may be viewed at the following link:

<https://eiopa.europa.eu/Publications/Administrative/Year-end%20report%202016%20on%20functioning%20of%20colleges%20of%20supervisors%20and%20priorities%20for%202017.pdf>

(xi) **EIOPA issues response to ECON comments on methodology to derive UFR**

On 24 March 2017, the European Parliament’s Committee on Economic and Monetary Affairs (“**ECON**”) published a letter (dated 14 March 2017) from EIOPA relating to EIOPA’s

review of the methodology to calculate the ultimate forward rate (“UFR”) under Solvency II (the “**Letter**”).

The Letter follows on from ECON’s suggestions in a letter to EIOPA in November 2016 that an additional assessment on the impact of the proposed UFR methodology should be carried out.

The Letter states that EIOPA has carried out the additional impact assessment as requested and that it calculated the impact of changing the UFR by 20 basis points and by 50 basis points. The results of these calculations show that the impact of the changes to the UFR is very small and manageable by insurance and reinsurance undertakings.

EIOPA is currently assessing how to address ECON’s concerns on the annual changes of the UFR of 20 basis points. In this regard, the Letter states that EIOPA is discussing the size of the annual limit of the UFR changes and measures to reduce the frequency of UFR changes and to increase the stability of the calculated UFR.

EIOPA also noted in the Letter that they are considering a delay in the first application of the UFR methodology which was originally due to be at the end of June 2017. However, it did note that delaying implementation later than the end of 2017 or the beginning of 2018 does not appear necessary.

The Letter concludes by noting that EIOPA’s Board of Supervisors plan on deciding on the UFR methodology and its first application at a meeting at the end of March 2017.

The Letter can be found at the following link:

<https://polcms.secure.europarl.europa.eu/cmsdata/115900/14%20Mar%202017%20EIOPA%20answer.PDF>

## European Insurance and Occupational Pension Authority (“EIOPA”)

### (i) **EIOPA speech on ‘The Future of the European Insurance Industry in a Digital Era’**

On 25 January 2017, the Chairman of EIOPA, Gabriel Bernardino delivered a keynote speech at the Sueddeutsche Zeitung Insurance Day 2017 on ‘The Future of the European Insurance Industry in a Digital Era: Turning Challenges into Opportunities’ (the “**Speech**”).

In the Speech, Bernardino sets out the implications of the digital revolution on the insurance sector, both challenges and benefits and the steps EIOPA has taken and will take to address this such as the public consultation on Big Data, the planned roundtables on InsurTech and also EIOPA’s contribution to the Insurance Distribution Directive

including delegated acts on issues like Product Oversight and Governance and Conflicts of Interest.

It was also highlighted in the Speech that one of the key priorities of EIOPA in the next three years is to further enhance the supervisory convergence with the aim of moving towards a common European supervisory culture. This is a risk based culture that: aims to ensure strong but fair supervision; is based on a forward-looking approach to risks; takes into account that it is always better to prevent than repair; it prioritises the dialogue with market participants; and promotes early awareness and supervisory action.

The Speech concludes by elaborating on EIOPA's expectations from the supervisory side which involves insurance companies promoting a strong risk culture, recognising the benefits of Solvency II public disclosure and developing a consumer-centric culture.

The Speech can be found at the following link:

<https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/2017-01-25%20Sueddeutsche%20Zeitung%20Insurance%20Day%202017FinalClean.pdf>

**(ii) EIOPA publishes updated version of its single programming document 2017-2019**

On 2 February 2017, EIOPA published its updated edition of its single programming document ("**Updated SPD**") 2017-2019. The Updated SPD amended the original SPD (2017-2019), which was published in October 2016, to take account of the shortfall of resources as a result of the agreement of the EU budget. It also inserted its annual work programme for 2018.

The Updated SPD provides information on EIOPA's aims and objectives in addition to its business goals and is split into two different sections. The first section relates to EIOPA's various business objectives and actions for 2017 to 2019. The second section relates to the actions and activities that EIOPA is mandated to carry out during 2017 – 2019.

EIOPA's Updated SPD may be viewed at the following link:

<https://eiopa.europa.eu/Publications/Administrative/SPD%202017-2019%20with%20AWP%202017.pdf>

**(iii) EIOPA publishes Risk Dashboard for February 2017**

On 9 February 2017, EIOPA published its risk dashboard for Quarter 3, 2016 (the "**Risk Dashboard**"). EIOPA publishes the Risk Dashboard on a quarterly basis, in accordance with its obligations under the EIOPA Regulation and following a framework determined in cooperation with the other ESAs, the ESRB and the ECB.

The Risk Dashboard sets out some key observations which include the following:

- ▣ It was noted that since the last publication of the Risk Dashboard, a number of political events have occurred which have contributed to a lot of political uncertainty;
- ▣ Despite the introduction of Solvency II implying a major change for insurance companies, the initial transition has been smooth which has resulted in a medium risk score for the profitability and solvency risk category; and
- ▣ The low-yield environment continues to be challenging for the insurance sector and when coupled with the expansionary monetary policy of a number of central banks, it has resulted in a high macro risk evaluation.

The Risk Dashboard sets out information on risk categories including macro risk, credit risk, market risk, funding and liquidity risk, profitability and solvency risk and risks resulting from interlinkages and imbalances and Insurance (Underwriting) risks.

The Risk Dashboard indicates that the market perception of the insurance industry was stable and there has been no major reaction to the transition to the new regulatory regime and no adverse reaction to the 2016 EIOPA Insurance Stress Test Results.

The Risk Dashboard is available at the following link:

<https://eiopa.europa.eu/Publications/Standards/EIOPA-BoS-17-022%20EIOPA%20RISK%20DASHBOARD%20February%202017.pdf>

**(iv) EIOPA publishes decision on the collaboration of the insurance supervisory authorities**

On 16 February 2017, EIOPA published its decision (dated 30 January 2017) on the collaboration of the insurance supervisory authorities (the “**Decision**”). The Decision is applicable to competent authorities of EEA Member States who engage in the supervision of insurance and reinsurance undertakings. EIOPA notes that the Decision should be read in conjunction with the Solvency II Directive.

EIOPA further notes that continued development of the internal market and increased internationalisation of business activities requires further collaboration between supervisors.

The Decision further strengthens and enhances the cooperation between the National Competent Authorities (“**NCA**s”) and deals with the following matters:

- ▣ Authorisation;
- ▣ Cross-border activities;
- ▣ Supervision on a continuous basis;
- ▣ Regular exchange of quantitative data; and
- ▣ Handling of policyholder complaints.

The Decision will enter into force on 1 May 2017. EIOPA will continue to monitor the implementation of the Decision, and will use its tools to ensure a consistent application across the European Union.

The Decision is available at:

<https://eiopa.europa.eu/Publications/Protocols/EIOPA-BoS-17-014%20Decision%20on%20the%20collaboration%20of%20the%20insurance%20supervisory%20authorities.pdf>

## European Commission

### (i) **EU and US conclude negotiations on a bilateral agreement on insurance and reinsurance prudential measures**

On 13 January 2017, the European Commission published a statement made jointly with the US announcing the conclusion of negotiations between the EU and US on a bilateral agreement on insurance and reinsurance agreement measures (the “**Agreement**”).

The Agreement covers three areas of prudential oversight:

- ▣ **Reinsurance:** The Agreement aims to enhance consumer protection and eliminate collateral and local presence requirements for EU and US reinsurers operating in these markets;
- ▣ **Group supervision:** The Agreement allows US and EU insurance companies operating in the other market to be subject only to worldwide prudential insurance group oversight by the supervisors in their home jurisdiction. However, supervisors will be able to request and obtain information about worldwide activities that could harm policyholders' interests or financial stability in their territories; and

- ▣ **Exchange of information between supervisors:** The Agreement encourages US and EU supervisory authorities to continue to exchange supervisory information on insurance and reinsurance companies that operate in US and EU markets. The Agreement includes model memorandum of understanding provisions.

The Agreement is being notified to US Congress. In the EU, it will be submitted to the EU Member States in Council in view of its formal signature. The European Parliament's consent will also be needed for conclusion of this Agreement.

The Agreement will enter into force seven days after the date the parties exchange written notifications certifying that they have completed their respective internal requirements and procedures, or on such other date as they may agree.

The Agreement may be viewed at the following link:

[https://ec.europa.eu/info/business-economy-euro/banking-and-finance/insurance-and-pensions\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/insurance-and-pensions_en)

**(ii) European Commission receives responses to fitness check consultation on EU consumer and marketing directives**

On 17 January 2017, the European Commission announced that it has received responses following a consultation period in relation to its "Fitness Check" on EU consumer and marketing directives. Responses were received in the areas of consumer contract simplification, banning particular unfair contract terms and fines for business for non-compliance with consumer legislation, which would be based on a percentage of the turnover of each business, among others.

While differing in their response to the proposals for reform and to what are the major obstacles to the effective application of the EU consumer protection regime, respondents in all categories considered the issue of consumers being unfamiliar with their rights as being an area of concern in relation to the application of consumer protection rules.

The European Commission envisages publication of its final report on EU consumer and marketing law to take place in the second quarter of 2017 having taken into consideration the responses received following the consultation period.

Further information on this topic may be found at the following link:

[http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=31689](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31689)

**(iii) European Commission assessment of EU equivalence decisions in financial services policy**

On 27 February 2017, the European Commission published a draft staff working document that includes an assessment of EU equivalence decisions in financial services policy.

The staff working document includes the following:

- ▣ Provision of a factual analysis of third-country provisions in EU financial services legislation;
- ▣ A consideration of the current legislative framework and interactions with supervisory work in the EU and in conjunction with international counterparts;
- ▣ An explanation of the mechanism which culminates in a determination by the European Commission of the equivalence of third-country rules and supervisory systems; and
- ▣ Reference to the European Commission's experience with the equivalence framework.

The European Commission considers as “broadly satisfactory” its experience in relation to the use of equivalence as a tool to deal with cross-border regulatory issues. However, the European Commission notes that there are a number of areas which may require increased focus in relation to its continued use by the EU.

The European Commission notes that the existing equivalence criteria, which have been created for each act individually, are not as clear as is required in order to assess both the regulatory and supervisory framework to an equal degree. In addition to this, the criteria do not provide a clear answer as to what the role of the ESAs should be in such equivalence assessments.

The European Commission notes that monitoring should relate to relevant market developments together with legal requirements and supervision. For example, a substantial increase in the exposure of EU markets to an equivalent third country in a relevant sector would generally represent a need for a renewed assessment by the European Commission. The European Commission regards that the ESAs are well placed, in line with their mandate, to engage in specific monitoring tasks in relation to their area of activity.

In concluding, the European Commission notes that equivalence determinations are an important element of the regulatory framework in respect of financial services within the EU. They underpin the international activities of EU financial intermediaries and allow non-EU intermediaries to operate in the EU. In addition, they facilitate cross-border regulation

and supervision. The careful risk calibration behind the approach also stimulates competition and efficiency in EU markets through proportionate equivalence assessments focussing on risks and proper enforcement arrangements.

The draft staff working paper is available at the following link:

[https://ec.europa.eu/info/sites/info/files/eu-equivalence-decisions-assessment-27022017\\_en.pdf](https://ec.europa.eu/info/sites/info/files/eu-equivalence-decisions-assessment-27022017_en.pdf)

**(iv) European Commission action plan for consumer financial services**

On 23 March 2017, the European Commission published its action plan for consumer financial services.

In creating the action plan, the European Commission utilised its green paper on retail financial services and outlines the steps which can be taken to develop a genuine technology-enabled single market for retail financial services, where consumers are exposed to the best value products while also being suitably protected.

Measures detailed in the action plan include:

-  Make product switching easier;
-  Improve the quality of financial services comparison websites;
-  Develop a deeper single market for consumer credit;
-  Examine consumer protection rules to assess whether they create unjustified barriers to cross-border business; and
-  Assess which actions are required to support the development of FinTech and a technology driven single market for financial services.

The action plan forms part of the European Commission's work on building a capital markets union (“**CMU**”).

Further information on the action plan is available at the following link:

[http://europa.eu/rapid/press-release\\_IP-17-609\\_en.htm](http://europa.eu/rapid/press-release_IP-17-609_en.htm)

(v) **European Commission conducts consultation on developing its policy approach to FinTech**

On 23 March 2017, the European Commission published a consultation paper called “FinTech: a more competitive and innovative European financial sector”. In order to further develop the European Commission's policy approach towards technological innovation in financial services (“**FinTech**”), the consultation seeks stakeholders' views on:

- ▣ The impact of new technologies on the European financial services sector, both from the perspective of providers of financial services and consumers; and
- ▣ Whether the regulatory and supervisory framework fosters technological innovation in line with the European Commission's three core principles which are: technological neutrality; proportionality; and market integrity.

The consultation is structured along four broad policy objectives that reflect the main opportunities (as well as the relevant challenges) related to FinTech.

Section 1 of the consultation paper explores the benefits that FinTech can offer to consumers, investors and firms in terms of access to financial services and strengthening financial inclusion. The section also seeks feedback on the potential challenges and risks posed by financial innovations to consumer protection and stability of the financial sector.

Section 2 reviews how FinTech can improve services, reduce operational costs, increase efficiency and speed up innovation in the EU financial services industry by streamlining processes in the provision of services. It also looks at the challenges that these developments bring for financial stability and financial sector employment.

Section 3 describes the opportunities of FinTech in increasing the competitiveness of the single market, through lowering barriers to entry for newcomers, while preserving fair competition, a level playing field and incentives to innovate. This section also explores how regulators, supervisors and industry can best support innovation in the financial sector.

Section 4 assesses the impact of FinTech on the capacity to estimate and monitor risk in the financial sector via access to larger amounts of data than traditional channels have offered, while protecting individuals' need for privacy and control over their personal data.

It is hoped that the feedback will help the European Commission to gauge how FinTech can make the single market for financial services more competitive, inclusive and efficient. The goal is to create an enabling environment, where innovative FinTech products and solutions take off at a brisk pace all over the EU, while ensuring financial stability, financial integrity and safety for consumers, firms and investors.

Responses to the consultation are invited by 15 June 2017.

The European Commission's consultation paper can be accessed at:

[http://ec.europa.eu/info/sites/info/files/2017-fintech-consultation-document\\_en\\_0.pdf](http://ec.europa.eu/info/sites/info/files/2017-fintech-consultation-document_en_0.pdf)

## Insurance Distribution Directive

### (i) EIOPA publishes final technical advice to European Commission on possible delegated acts under IDD

On 1 February 2017, EIOPA published its final version of its technical advice to the European Commission on possible delegated acts under the Insurance Distribution Directive (“IDD”) (the “**Advice**”), together with its final report on consultation number 16/006, which also relates to delegated acts concerning the IDD.

In the Advice, EIOPA notes that it is of utmost importance that the interests of the customer are taken into consideration throughout the life cycle of the product, that third party payments, such as commission do not have a detrimental impact on the quality of service the customer receives and that products sold are suitable and appropriate for the individual customer.

EIOPA recommends policy proposals regarding the following areas:

- ▣ **Product Oversight and Governance (“POG”) (Article 25(2), IDD):** In line with the proportionality principle, EIOPA's advice considers that manufacturers of all types of insurance products should establish processes to ensure that all phases of the production cycle are undertaken having the consumer's needs in mind. Based on its Preparatory Guidelines on POG, EIOPA further clarifies the criteria for insurance intermediaries acting as manufacturers and the level of granularity expected from manufacturers in defining the target market.
- ▣ **Conflicts of Interest (Article 29(2), IDD):** In the advice EIOPA defines potential situations in which conflicts of interests may arise between distributors and their customers in the course of the distribution of insurance-based investment products (“IBIPs”) requiring distributors to take appropriate measures to prevent, manage and, as a measure of last resort, to disclose conflicts of interest to avoid any harm to customers.
- ▣ **Inducements (Article 29(2), IDD):** EIOPA specifies the criteria to assess whether inducements have a detrimental impact on the quality of services to customers. In order to provide guidance to market participants on when a detrimental impact might

occur, EIOPA notes that the proposed criteria do not amount, in any way, to a *de facto* prohibition on the receipt or payment of inducements. EIOPA also clarifies that the detrimental impact has to be assessed by taking into account all factors which may increase or decrease the risk of customer detriment.

- ▣ **Suitability or appropriateness of IBIPs (Article 30(5), IDD):** EIOPA recommends that insurance intermediaries or undertakings should gather the appropriate information from their customers for the conduct of appropriateness or suitability assessments of IBIPs. Only where it is non-complex is it possible for an IBIP to be sold without such assessments being carried out.

A full version of the Advice is available at the following link:

<https://eiopa.europa.eu/Publications/Consultations/EIOPA%20Technical%20Advice%20on%20the%20IDD.pdf>

(ii) **EIOPA publishes consultation on guidelines on complex insurance-based investment products under IDD**

On 2 February 2017, EIOPA published its consultation paper on proposed guidelines under the IDD on insurance-based investment products (“**IBIPs**”) which incorporate a structure that may make it difficult for a customer to understand the risks associated with the products (the “**Consultation Paper**”).

Articles 30(1) and 30(2) of the IDD require insurance undertakings or intermediaries to carry out an assessment of the suitability or appropriateness of the IBIP for the customer. This assessment is required unless a Member State derogates from this requirement subject to certain conditions as provided by Article 30(3). If such conditions are met, neither a suitability or appropriateness test will be required. This type of sale is often referred to as execution-only, however, it is still necessary for the insurance distributor to specify the demands and needs of the customer.

These guidelines are developed in line with Articles 30(7) and (8) of the IDD and will cover the assessment of all types of IBIPs. They include criteria to identify product features, which may be difficult for the customer to understand. They address, for example, the nature of the charges paid by the customer and ability for the customer to surrender the product before maturity. IBIPs which include such features will be deemed complex and therefore not eligible for sale via execution-only.

EIOPA is accepting comments on the proposed guidelines until 28 April 2017. EIOPA will evaluate the feedback received, and following this will publish a final report on the consultation and submit a final version of the guidelines for adoption by EIOPA’s Board of

Supervisors. It is important to note that according to Article 30(7) of the IDD, EIOPA is required to develop guidelines by 23 August 2017.

The Consultation Paper is available to view at the following link:

[https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-17-001\\_IDD\\_Guidelines\\_Complex\\_IBIPs.pdf](https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-17-001_IDD_Guidelines_Complex_IBIPs.pdf)

**(iii) EIOPA draft ITS standardising presentation format of IPID under IDD**

On 7 February 2017, EIOPA published its draft implementing technical standards (“ITS”) on the Insurance Product Information Document (“IPID”), together with a draft IPID.

Under Article 20(9) of the IDD, EIOPA is required to develop draft ITS regarding a standardised presentation format of the IPID, specifying the details of the information in Article 20(8) of the IDD.

The purpose of the IPID is to ensure that the customer of the product has relevant information about a non-life insurance product to allow them to compare it to other products on the market and in turn, make an educated decision as to whether they will purchase the product. The key features of the non-life insurance products will be presented in a Q&A format and the design takes into account how information will be presented via digital media.

It is important to note that the IPID is a pre-contractual document and will not replace the contractual documentation that is provided with an insurance policy.

EIOPA was due to submit draft ITS and the impact assessment to the Commission by the end of February 2017, in line with their obligations as per Article 20(9) of the IDD. Member States are obligated to transpose the IDD by 23 February 2018.

The draft ITS may be viewed at the following link:

<https://eiopa.europa.eu/Publications/Technical%20Standards/Draft%20Implementing%20Technical%20Standards%20on%20the%20Insurance%20Product%20Information%20Document.pdf>

## International Association of Insurance Supervisors (“IAIS”)

### (i) IAIS release 2016 Insurance Market Report

On 31 January 2017, the IAIS released their Global Insurance Market Report for 2016 (the “**Report**”). The Report discusses the worldwide (re)insurance sector from a supervisory perspective, with particular focus on the performance of the sector in recent times and the key risks faced by the sector.

In the Report, IAIS notes that the sector has continued to be functioning and stable, which is supported by high capital levels, positive profitability and a persistent inflow of additional capital.

The Report highlights a number of issues including the following:

- ▣ The (re)insurance sector continues to operate in a difficult macroeconomic and financial environment which is challenging long-established business models of various insurance companies, mainly life insurers, as evidenced through recent official stress test results and scenario analysis;
- ▣ Non-life (re)insurance continues to be subject to soft market conditions; and
- ▣ The prolonged low interest rate environment is a source of vulnerability for life insurers, especially in Europe.

In light of the importance of insurance companies to the financial systems and economies in which they operate, it is crucial that they have in place a solid financial base and strengthen business management frameworks in order to manage the accumulation of risks, as well as being prepared to respond in an efficient manner during challenging times.

The issues highlighted above are developed and further discussed in the four chapters of the Report:

- ▣ Chapter 1 analyses the overall macroeconomic and financial environment;
- ▣ Chapter 2 focuses specifically on global insurance market developments;
- ▣ Chapter 3 contains a variety of special topics that focus on regulatory; financial and economic developments and risks; and
- ▣ Chapter 4 provides a summary of the IAIS survey of the global reinsurance market.

The Report is available at the following link:

<https://www.iaisweb.org/file/64547/2016-global-insurance-market-report>

**(ii) IAIS announces Systemic Risk Assessment and Policy Workplan**

On 28 February 2017, the IAIS published a press release announcing that it has adopted a systemic risk assessment and policy workplan.

The IAIS is currently completing a review of its approach to systemic risk assessment, which is due to conclude in 2019. As part of the review, the IAIS is developing an activities-based approach to systemic risk assessment in the insurance sector and has adopted a systemic risk and policy workplan to put this into effect.

The following elements are included in the workplan:

- ▣ Developing and putting in place an activities-based approach (assessing potential systemically risky activities) at the insurance sector level;
- ▣ Finalising any policy measures in order to address such potential systemically risky activities as part of the Common Framework for the Supervision of Internationally Active Insurance Groups (“**ComFrame**”) which is to be adopted in 2019;
- ▣ As part of the three-year cycle, releasing the revised 2019 systemic assessment methodology which is expected to go to public consultation by the end of 2018, and be adopted by 2019. The 2019 systemic risk assessment methodology is intended to be applicable from 2020; and
- ▣ Basing the planned revisions to high loss absorbency (“**HLA**”) requirements on Insurance Capital Standard (“**ICS**”) version 2.0 scheduled for adoption in late 2019, as opposed to basing it on the predecessor basic capital requirement (“**BCR**”).

The full press release may be viewed at the following link:

<https://www.iaisweb.org/page/news/press-releases/file/65229/iais-press-release-systemic-risk-assessment-workplan>

**(iii) IAIS launches consultation on its draft group corporate governance application paper**

On 3 March 2017, IAIS published for consultation a draft application paper on group corporate governance (the “**Application Paper**”).

The aim of the Application Paper is to provide good supervisory practices and examples to address challenges specific to the governance of insurance groups and to also create a common understanding among supervisors on how to assess or evaluate the governance frameworks of insurance groups.

The Application Paper relies on the main conclusions of an October 2014 IAIS issues paper on Group Corporate Governance; Impact on Central Functions. It provides supervisory responses and best supervisory practices for the five main areas identified in that issues paper where insurance groups face challenges which include:

- ▣ Setting objectives and strategies;
- ▣ Allocation of oversight and management responsibilities;
- ▣ Policies and processes;
- ▣ Risk management and compliance; and
- ▣ Control Functions.

The Application Paper does not set requirements but provides material related to Insurance Core Principles (“ICPs”) which may help practical application of IAIS supervisory material.

The deadline for comments on the Application Paper is 1 May 2017.

Further information on the Application Paper can be found at the following link:

<https://www.iaisweb.org/index.cfm?event=showPage&nodeId=65000>

#### (iv) **IAIS publishes report on FinTech Developments in the Insurance Industry**

On 14 March 2017, the IAIS published a report (dated 21 February 2017) on FinTech Developments in the Insurance Industry (the “**Report**”). The Report highlights the potential impact of innovative financial technologies (“**FinTech**”) on the competitiveness, consumer choice, interconnectedness, business model viability, prudential capital requirements and regulatory oversight of the insurance sector.

The IAIS considered it necessary to take stock of these innovations, in particular those relevant to the insurance industry and its supervision, known in the Report as InsurTech. The Report contains a description of innovations relevant to the insurance sector (which include digital platforms, Big Data and Data Analytics, distributed ledger technology and blockchain), their drivers and possible impacts based on a scenario analysis.

The Report's findings are intended to provide information to the IAIS, the entire insurance supervisory community and other stakeholders allowing further strategic consideration and discussion of possible future work.

In its conclusions, the Report states that InsurTech innovations have the potential to deliver a wide range of benefits, in particular efficiency improvements, cost reductions, improved risk assessment, superior customer experience and greater financial inclusion. However, some of the innovations could also pose negative implications to the consumer and the financial stability of insurance markets. InsurTech will have a significant impact on insurers' business models. Regulation, together with firm-level supervision, will need to evolve to ensure the right balance between maintaining policyholder protection without inadvertently stifling innovation.

The Report is available in full at the following link:

<https://www.iaisweb.org/page/supervisory-material/other-supervisory-papers-and-reports/file/65440/report-on-fintech-developments-in-the-insurance-industry>

**(v) IAIS releases stakeholder engagement plan**

On 20 March 2017, IAIS published its stakeholder engagement plan (the “**Plan**”) which is comprehensive in scope and reflects both member and stakeholders feedback. It also recommends a number of new engagement commitments.

The Plan consists of the following parts:

- ▣ Part I covers background, including the parameters and evolution of the Plan;
- ▣ Part II sets out the various elements of the Plan;
- ▣ Part III briefly describes the current engagement commitments, policies and strategies of the IAIS. These are described in more detail in the Annex to the Plan;
- ▣ Part IV sets out new engagement commitments and opportunities; and
- ▣ Part V provides for Plan implementation and calls on the IAIS to periodically survey stakeholders to monitor how the plan has been implemented.

To view the full Plan follow this link:

<https://www.iaisweb.org/page/about-the-iais/policies-and-procedures/file/65579/iais-stakeholder-engagement-plan-2017>

## Insurance Europe

### (i) Insurance Europe publishes press release on Solvency II

On 1 February 2017, Insurance Europe published a press release on the Solvency II regime. Insurance Europe notes the benefits of the regulatory framework, however highlights that issues must be addressed.

Insurance Europe notes that the Solvency II framework has been successfully implemented, however excessive conservativeness is risking harm to customers, long-term investments and the economy. In light of this, Insurance Europe is of the view that policy makers need to take action in order to make the framework more reflective of reality.

Insurance Europe has outlined a number of examples of how the framework is being implemented in a conservative manner, such as the requirement of insurers to ignore the actual yields they expect to earn on the assets backing liabilities, and assume that they invest all of their assets into almost risk-free investments, earning virtually no return.

The deputy director general of Insurance Europe, Olav Jones, notes that the insurers of Europe have implemented Solvency II successfully, in the face of the challenges faced.

Issues requiring attention include the following:

- ▣ The need for capital requirements to reflect the true risks that insurers face;
- ▣ Simplifications and practical application of the proportionality provisions allowed by Solvency II; and
- ▣ More appropriate calibrations and methods to better reflect the true risks and liability in several specific areas including longevity risk, catastrophe and currency risk.

Mr Jones notes that “the industry has strongly supported Solvency II and its shift towards a strong risk-based approach. However, for this to work, it is vital that the risks are measured in the right way and it is not excessively conservative. The ongoing work regarding the Capital Markets Union, the current Solvency II SCR review and the wider Solvency II review to be completed by 2020, provide the perfect opportunities to make these important changes and ensure that Solvency II works, and avoids causing harm to consumers, the economy or our industry.”

Insurance Europe’s press release is available at the following link:

<https://www.insuranceeurope.eu/solvency-ii-one-year-successfully-implemented-excessive-conservativeness-risks-harming-consumers>

**(ii) Insurance Europe publishes response to EIOPA's consultation on the potential harmonisation of recovery and resolution frameworks for insurers**

On 6 March 2017, Insurance Europe published its response to EIOPA's consultation on the potential harmonisation of recovery and resolution frameworks for insurers (dated 28 February 2017).

In its response, Insurance Europe welcomed EIOPA's recognition that insurance differs fundamentally from banking and that this impacts upon on the need for and design of recovery and resolution tools. However, at this stage it had not been demonstrated that normal insolvency procedures were unsuitable to deal with insurance failures. Also, given the absence of evidence that would support changing existing frameworks, a harmonised framework should only be developed to the extent that European Regulation in place such as Solvency II, is insufficient.

Some of the general comments include:

- ▣ If a recovery and resolution framework was to be introduced, Insurance Europe noted that all insurers regulated under Solvency II should be in scope subject to the proportionality principle;
- ▣ The framework itself must be clear;
- ▣ There would have to be a clear distinction between recovery plans and resolution plans;
- ▣ Resolution should be a measure of last resort once all recovery options had been exhausted; and
- ▣ Resolution powers should be well-defined and targeted.

Insurance Europe also provided responses to the questions set out in the consultation paper.

Insurance Europe's full response can be accessed below:

<https://www.insuranceeurope.eu/sites/default/files/attachments/Response%20to%20EIOPA%20consultation%20on%20potential%20harmonisation%20of%20recovery%20and%20resolution%20frameworks%20for%20insurers.pdf>

## The Joint Committee (ESMA, EIOPA and EBA)

### (i) European Commission consults on operations of ESAs

On 21 March 2017, the European Commission published a consultation paper on the operations of the European Supervisory Authorities (“ESAs”) (that is, ESMA, EIOPA and the EBA).

The consultation focuses on issues relating to the tasks and powers of the ESAs, grouped under the following headings:

- ▣ Optimising existing tasks and powers;
- ▣ Promotion of supervisory convergence;
- ▣ Consumer and investor protections;
- ▣ Working with third country supervisory authorities;
- ▣ Access and management of data between national competent authorities and ESAs;
- ▣ Powers in relation to reporting and improving reporting standards, in order to remove any overlaps or inconsistencies; and
- ▣ Financial reporting and enforcement of accounting standards.

In addition to the above, the European Commission is pursuing comments on the following topics:

**Governance of the ESAs:** The European Commission seeks views on the effectiveness of ESA's governance and, in particular, the current tasks and powers of their management boards.

**Adapting the supervisory architecture to challenges in the market place:** The European Commission is seeking views on the efficiency of the current sectoral model of the ESAs. In particular, it asks for comments on the merits of a "twin peaks" model, which would involve maximising synergies between the EBA and EIOPA and consolidating consumer protection powers in ESMA.

**Funding of the ESAs:** The European Commission is seeking views on whether the ESAs should be funded fully or partly by the industry.

The deadline for responses is 16 May 2017. The European Commission has indicated that further legislation may be recommended pending the outcome of the consultation.

The full consultation paper is available at the following link:

[http://ec.europa.eu/info/sites/info/files/2017-esas-operations-consultation-document\\_en.pdf](http://ec.europa.eu/info/sites/info/files/2017-esas-operations-consultation-document_en.pdf)

## Packaged Retail Insurance-Based Investment Products (“PRIIPS”)

### (i) ESAs issue Consultation Paper on PRIIPs with environmental or social objectives

On 10 February 2017, the Joint Committee of the European Supervisory Authorities (“ESAs”) published a consultation paper in relation to packaged retail and insurance-based investment products (“PRIIPS”) with environmental or social objectives (“EOS PRIIPS”) (the “**Consultation Paper**”).

The Consultation Paper is in response to the European Commission’s call for advice and proposes minimum requirements, which the manufacturers of EOS PRIIPS will be obliged to comply with in order to ensure that credible products are offered to retail investors.

The manufacturers of EOS PRIIPS are required to put in place governance requirements to ensure that their obligations in relation to EOS PRIIPS are met on a consistent basis. The relevance of the objectives should be demonstrable to retail investors throughout the investment process.

The Consultation Paper provides an analysis of the current legal framework for product oversight and governance rules and examines whether there are potential gaps in relation to EOS PRIIPS. The existing rules for PRIIPS, including those in the MiFID II Directive and the IDD are in general found to be insufficient for PRIIPS in general. However in relation to EOS PRIIPS, the ESAs consider it as important for the European Commission to provide additional guidance when interpreting these rules.

The consultation period ended on 23 March 2017, and the ESAs expect to issue technical advice to the European Commission by the end of April 2017, and publish final feedback on the consultation process, at this time.

The Consultation Paper is available at the following link:

<https://esas-joint-committee.europa.eu/Pages/News/ESAs-consult-on-Packaged-Retail-and-Insurance-Based-Investment-Products-with-Environmental-or-Social-Objectives.aspx>

(ii) **Amended Delegated Regulation adopted by European Commission in respect of PRIIPS KID**

On 8 March 2017, the European Commission adopted a Commission Delegated Regulation, including Annexes (“**PRIIPs RTS**”), supplementing the Regulation on key information documents (“**KIDs**”) for packaged retail and insurance-based investment products (“**PRIIPs Regulation**”).

The recently adopted PRIIPs RTS are a revised version of the delegated regulation adopted by the European Commission in June 2016 and aim to address the concerns expressed by the European Parliament in September 2016. Key amendments to the PRIIPs RTS are as follows:

- ▣ Clarification in relation to the treatment of multi-option products (“**MOPs**”) which have UCITS or non-UCITS funds as underlying investment options, according to which a PRIIP manufacturer can use the key investor information document (“**KIID**”) prepared in accordance with the UCITS Directive to comply with the PRIIPs KID disclosure requirements until 31 December 2019;
- ▣ The alignment of the comprehension alert with complex products under MiFID II; and
- ▣ An amendment to the performance scenarios where the option to provide a fourth scenario has been replaced by a mandatory requirement to add a stress scenario.

The European Parliament and the European Council have a period of three months to review the PRIIPs RTS. If no objections are raised, the PRIIPs RTS will become applicable twenty days following publication in the Official Journal of the EU. The PRIIPs RTS will apply from 1 January 2018. The European Supervisory Authorities (“**ESAs**”) are expected to publish a Q&A to supplement the PRIIPs RTS later in 2017.

The amended PRIIPs RTS may be viewed at the following link:

<http://ec.europa.eu/transparency/regdoc/rep/3/2017/EN/C-2017-1473-F1-EN-MAIN-PART-1.PDF>

The Annexes to the amended PRIIPs RTS can be found at the following link:

[http://ec.europa.eu/finance/docs/level-2-measures/priips-delegated-regulation-2017-1473-annex\\_en.pdf](http://ec.europa.eu/finance/docs/level-2-measures/priips-delegated-regulation-2017-1473-annex_en.pdf)

## European Markets Infrastructure Regulation (“EMIR”)

### (i) **ECBC respond to proposal for simple, transparent and standardised securitisation Regulation as published by the European Commission**

The European Covered Bond Council (“**ECBC**”) has published their letter of response to the proposal for a Regulation of the European Commission and Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation as published by the European Commission.

The ECBC is concerned that article 27 of the draft regulations which amends Regulation 648/2012/EU (“**EMIR**”) impacts directly upon the provisions on covered bonds derivatives, which are part of the framework regarding the clearing obligation under EMIR and the risk mitigation techniques, amongst which the obligation to exchange collateral.

Together with the above, the ECBC is concerned that the proposal interferes with the current definition of covered bonds. The ECBC notes that it is important that legal inconsistencies between the proposed regulations and existing regulations are avoided. The ECBC are appealing for this concern to be addressed during the trilogue negotiations between the European Commission, the Council and the European Parliament.

The letter can be viewed at the following link:

<http://www.hypo.org/DocShareNoFrame/docs/1/IICOCOLAPMGNPANGMEFLIFJMPDW39DBDBNTE4Q/EMF/Docs/DLS/2017-00006.pdf>

### (ii) **EBA and ESMA publish report on interaction of CRR with EMIR**

On 18 January 2017, EBA and ESMA published a report (the “**Report**”) on the functioning of the Capital Requirements Regulation (Regulation 575/2013) (“**CRR**”) with EMIR (the Regulation on OTC derivative transactions, central counterparties (“**CCPs**”) and trade repositories (Regulation 648/2012).

In the Report, EBA and ESMA analyse requirements in CRR and EMIR that are potentially duplicative. In particular, the Report focuses on the duplicative requirement which applies to firms authorised as a credit institution and that operate as CCP’s. The Report notes that, at present, only three EU credit institutions are also licensed as CCPs.

The Report makes certain recommendations including:

-  The treatment of CRR capital requirements for exposures already covered by specific financial resources in compliance with EMIR should be clarified;

- ▣ CCPs holding a banking licence should be exempted from certain CRR requirements concerning credit risk, counterparty credit risk and market risk for exposures that are already covered by financial resources under EMIR. These entities should also be exempt from requirements in Articles 300 to 309 of the CRR concerning exposures to CCPs with which an interoperability arrangement has been established in compliance with EMIR; and
- ▣ Article 305 of the CRR, which regulates the treatment of clients' exposures to the clearing members, should be clarified to allow a consistent application of EMIR and CRR requirements related to clients' accounts and to improve the requirements around the production of legal opinions, as well as to avoid unnecessary capital requirements for clients' exposures to CCPs.

The Report can be viewed at the following link:

<http://www.eba.europa.eu/documents/10180/1720738/Report+on+the+interaction+with+EMIR+%28ESAS-2017-82+%29.pdf>

**(iii) Delegated and Implementing Regulations on technical standards on EMIR reporting requirement published in the Official Journal of the EU**

On 21 January 2017, the following regulations relating to technical standards on data reporting under Article 9 of EMIR were published in the Official Journal of the EU:

- ▣ Commission Delegated Regulation (the “**Delegated Regulation**”) (EU) 2017/104 amending Delegated Regulation (EU) No 148/2013 supplementing EMIR with regard to regulatory technical standard (“**RTS**”) on the minimum details of the data to be reported to trade repositories.

The European Commission adopted the Delegated Regulation, which relates to Article 9(5) of EMIR, on 19 October 2016.

- ▣ Commission Implementing Regulation (the “**Implementing Regulation**”) (EU) 2017/105 amending Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards (“**ITS**”) with regard to the format and frequency of trade reports to trade repositories according to EMIR.

The Delegated Regulation and the Implementing Regulation entered into force on 10 February 2017. They will apply from 1 November 2017, with the exception of Article 1(5) of the Implementing Regulation, which will apply from 10 February 2017.

The Delegated Regulation can be viewed at the following link:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0104&from=EN>

The Implementing Regulation can be viewed at the following link:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0105&from=EN>

**(iv) ESMA launches consultation on guidelines on transfer of data between trade repositories**

On 30 January 2017, ESMA published a consultation paper in relation to guidelines (the “**Guidelines**”) in respect of the transferring of data between trade repositories (“**TRs**”) under EMIR.

The Guidelines as referred to, will relate to counterparties to derivatives and CCPs who are required to report derivatives under EMIR, together with TRs registered and recognised by ESMA. The Guidelines provide further information on the following:

- ▣ The reporting without duplication of derivatives by counterparties and CCPs as per Article 9(1) of EMIR;
- ▣ The transfer of derivatives data between TRs at the request of the counterparties to a derivative, or the entity reporting on their behalf, or in the situation as covered by Article 79(3) of EMIR; and
- ▣ The recording of data of derivatives under Article 80(3) of EMIR.

The Guidelines establish high level principles that would need to be followed by TR participants, reporting entities, counterparties, CCP’s and TR’s.

The consultation closed on 31 March 2017 and ESMA is expected to publish final guidelines later in 2017.

ESMA’s consultation paper can be viewed at the following link:

[https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-17\\_cp\\_on\\_guidelines\\_on\\_tr\\_portability.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-17_cp_on_guidelines_on_tr_portability.pdf)

**(v) Commission receives advices from ESMA in relation to EMIR review and sanctioning powers under EMIR and CRA Regulation**

On 30 January 2017, ESMA published a letter dated 27 January 2017 sent to the European Commission to ask it to consider a number of issues relating to its supervisory and sanctioning powers under EMIR. This request is in the context of the ongoing review of EMIR launched in 2015 by the European Commission.

The letter may be viewed at the following link:

[https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-19\\_letter\\_to\\_com\\_-\\_emir\\_review\\_and\\_sanctioning\\_powers.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-19_letter_to_com_-_emir_review_and_sanctioning_powers.pdf)

**(vi) ESMA launches 2017 EU – wide CCPs stress test**

On 1 February 2017, ESMA published its framework in relation to the stress testing which is to be carried out on CCPs over the course of 2017.

The framework outlines how the new stress test exercises will work and the manner in which the stress testing will be carried out. ESMA has made a number of changes to the 2017 framework in light of the stress testing which was carried out in 2016 whereby changes were identified.

CCPs currently carry out their own daily stress testing which focus on their individual environments; however ESMA's stress tests will serve to broaden the risk profile that is included in the tests as it will take into account the entire EU CCPs system. The ability of the CCPs to perform will be tested in line with a combination of multiple participant defaults and simultaneous market price shocks.

ESMA has submitted the data request to all EU CCPs and has issued instructions on how the CCPs are expected to calculate the data required which will be used in the stress testing process. ESMA envisages finalising the data analysis by the third quarter of 2017 and publishing the results stemming from the analysis in the fourth quarter of 2017.

This stress testing plan is beneficial as it will identify where the CCPs require attention in terms of any potential short comings but will also provide information on where and how CCPs are prepared in an event of market shock. If, following the stress testing, particular areas prove concerning, ESMA will provide recommendations on how to correct such issues.

Further information is available at the following link:

[https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-51\\_public\\_framework\\_2017\\_ccp\\_stress\\_test\\_exercise.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-51_public_framework_2017_ccp_stress_test_exercise.pdf)

**(vii) ESMA issues updated Q&As on EMIR implementation**

On 2 February 2017, ESMA published an updated version of its Q&A on the implementation of EMIR.

The updated Q&A includes a new answer in relation to transition to the revised technical standards on reporting which will become applicable on 1 November 2017. The Q&A clarifies that the reporting entities are not obliged to update all the outstanding trades upon the application date of the revised technical standards and they are required to submit the reports related to the old outstanding trades when a reportable event takes place (e.g. when a trade is modified).

The purpose of the Q&A is to promote common supervisory approaches and practices in the application of EMIR.

The updated Q&A is available at the following link:

[https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52\\_ga\\_on\\_emir\\_implementation.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_ga_on_emir_implementation.pdf)

**(viii) ESAs issue press release on EMIR 1 March 2017 variation margin deadline**

On 23 February 2017, the European Supervisory Authorities (“**ESAs**”) issued a press release indicating its expectation that national EU regulators would show temporary forbearance in enforcing EMIR’s variation margin provisions, on a case by case basis.

While this statement by the ESAs does not have the effect of amending the EMIR legislation, it would be expected to result in a temporary reprieve from enforcement action at a national level due to non-compliance with the variation margin rules. That is, assuming the relevant EU regulator considers this to be appropriate in light of the size of the exposure to the counterparty and the counterparty’s default risk. The ESAs’ statement also sets out that “participants must document the steps taken toward full compliance and put in place alternative arrangements to ensure that the risk of non-compliance is contained, such as using existing Credit Support Annexes to exchange variation margins.” It would appear from this that counterparties who already have CSAs in place must take demonstrable steps to exchange variation margin under such CSAs from March 1 (even if not compliant with the EMIR requirements) whereas counterparties without such CSAs would not be expected to do so. It is not clear what “alternative arrangements” the ESAs expect counterparties without existing credit support documentation to put in place.

The statement goes on to say that “this approach does not entail a general forbearance, but a case-by-case assessment from the [national regulators] on the degree of compliance and progress” with the expectation that “the difficulties will be solved in the coming few months and that transactions concluded on or after 1 March 2017 remain subject to the obligation to exchange variation margin.”

While this temporary reprieve will be welcomed by many, counterparties should take note of its limited and qualified nature.

Further information in relation to this is available at the following link:

<https://www.eba.europa.eu/documents/10180/1762986/ESAs+Communication+on+Industry+Request+on+Forbearance+Variation+Margin+Implementation.pdf>

**(ix) Responses to ESMA consultation on draft RTS on data to be made publicly available by trade repositories under EMIR**

On 23 February 2017, ESMA published a webpage detailing the responses it has received to its consultation paper on draft regulatory technical standards (“RTS”) on data to be made publicly available by trade repositories (“TRs”) under Article 81 of EMIR. ESMA published the consultation paper in December 2016.

Further information is available at the following webpage:

<https://www.esma.europa.eu/press-news/consultations/consultation-draft-technical-standards-data-be-made-publicly-available-trs>

**(x) Central Bank updates Q&A on EMIR in relation to variation margin rule**

On 27 February 2017, the Central Bank updated its Q&A in relation to EMIR to include the following question and answer:

Question:

*I cannot comply with the 1st March 2017 deadline for exchange of variation margin for reasons outside of my control. What should I do?*

Answer:

It is a legal obligation to exchange variation margin from the 1st March 2017. However, it has been recognised by authorities across the EU and by IOSCO that there are operational challenges in meeting this deadline.

The Central Bank applies a risk-based approach to the supervision of the adequacy of processes adopted by entities. All counterparties are expected to make every effort to move into full compliance at the earliest possible date.

While the Central Bank does not expect market participants to unwind or avoid transactions that they would have otherwise entered into, it does expect to see evidence of robust planning to achieve compliance at the earliest possible time for all in-scope transactions entered into from 1 March 2017.

**(xi) European Commission adopts Delegated Regulation on list of exempted entities under EMIR**

On 2 March 2017, the European Commission adopted a Delegated Regulation (the “**Delegated Regulation**”) in relation to the list of exempted entities report.

The European Commission has concluded that central banks and public bodies charged with or intervening in the management of the public debt from Australia, Canada, Hong Kong, Mexico, Singapore and Switzerland should be exempted from the clearing and reporting requirements set out in EMIR. Article 1 of the Delegated Regulation therefore amends article 1(4)(c) of EMIR to add the central banks and public bodies of these jurisdictions to the list of exempted entities under EMIR.

The Delegated Regulation will enter into force twenty days after it has been published in the Official Journal of the EU.

The Delegated Regulation may be viewed at the following link:

<http://ec.europa.eu/transparency/regdoc/rep/3/2017/EN/C-2017-1324-F1-EN-MAIN-PART-1.PDF>

**(xii) ESMA signs MoUs with non-EU regulators under EMIR**

On 20 March 2017, ESMA published a press release announcing a number of memoranda of understanding (“**MoUs**”) that it had entered into under EMIR, which are as follows:

-  Brazil (with the Banco Central de Brasil and the Comissao de Valores Mobiliarios);
-  Japan (with the Ministry of Agriculture, Forestry and Fisheries and the Ministry of Economy, Trade and Industry);
-  India (with the Reserve Bank of India);

- ▣ Dubai (with the Dubai Financial Services Authority for the Dubai International Financial Center); and
- ▣ United Arab Emirates (with the Securities and Commodities Authority).

These MoUs establish co-operation agreements, including the exchange of information for CCPs established and authorised or recognised in Brazil, Japan, India, the Dubai International Financial Centre or the United Arab Emirates and which have applied for EU recognition under EMIR.

The full press release can be found at the following link:

<https://www.esma.europa.eu/press-news/esma-news/esma-cooperate-non-eu-regulators-ccps>

**(xiii) ESMA updates list of recognised third-country CCPs**

On 30 March 2017, ESMA updated its list of recognised CCPs based in third countries.

Under the EMIR regime, third country CCPs must be recognised by ESMA in order to operate in the European Union.

The CCPs which were recognised are as follows:

- ▣ Dubai Commodities Clearing Corporation;
- ▣ Clearing Corporation of India Ltd;
- ▣ Nasdaq Dubai Ltd;
- ▣ Japan Commodity Clearing House Co. Ltd;
- ▣ BM&FBovespa S.A., Brazil; and
- ▣ Nodal Clearing LLC, USA.

A full list of CCPs recognised to offer services and activities in the European Union may be found at the following link:

[https://www.esma.europa.eu/sites/default/files/library/third-country\\_ccps\\_recognised\\_under\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/third-country_ccps_recognised_under_emir.pdf)

(xiv) **Delegated Regulation further extending temporary clearing exception for PSAs under EMIR published in the Official Journal of the European Union**

On 31 March 2017, Commission Delegated Regulation (EU) 2017/610 amending as regards the extension of the transitional periods related to pension scheme arrangements (“PSAs”) (the “**Commission Delegated Regulation**”) was published in the Official Journal of the EU. The exemption for PSA’s will run until August 2018.

The European Commission adopted the Delegated Regulation on 20 December 2016. The Council of the EU announced its decision not to object to the Delegated Regulation on 23 February 2017.

The Commission Delegated Regulation entered into force on 1 April 2017 and is available at the following link:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0610&from=EN>

## Market Abuse Regulation

(i) **Official translations of ESMA final guidelines on inside information and commodity derivatives under MAR**

On 17 January 2017, ESMA published the official translations of its final guidelines on inside information and commodity derivatives under the Market Abuse Regulation (Regulation 596/2014) (“**MAR**”) into all of the official languages of the EU.

The final version of the guidelines was originally published in September 2016 and serve to clarify the definition of inside information as it relates to commodity derivatives under MAR, establishing a non-exhaustive indicative list of information that is expected or required to be available in line with legal or regulatory provisions in EU or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets. The translated guidelines will become effective two months following publication.

Further information in relation to the official translations may be found at the following link:

<https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives>

(ii) **Central Bank notification regarding ESMA Market Abuse Guidelines**

On 19 January 2017, the Central Bank in accordance with Article 16(3) of Regulation EU No 1095/2010 (the “**ESMA Regulation**”) confirmed to ESMA that it complies with two sets of ESMA Market Abuse Guidelines:

- ▣ MAR Guidelines on legitimate interests of issuers to delay the disclosure of inside information and situations in which the delay of disclosure is likely to mislead the public; and
- ▣ MAR Guidelines on persons receiving market soundings.

**(iii) ESMA updates Q&A on MAR**

On 27 January 2017, ESMA published an updated version of its Q&A on MAR. The following updates have been made to the Q&A:

- ▣ A new question 6 has been included which relates to calculating the options which can be granted for free in relation to manager and employee transactions; and
- ▣ New questions 9 to 11, relating to investment recommendation and information recommending or suggesting an investment strategy.

The updated Q&A is available at the following link:

[https://www.esma.europa.eu/sites/default/files/library/esma70-21038340-40\\_qa\\_on\\_market\\_abuse\\_regulation.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-21038340-40_qa_on_market_abuse_regulation.pdf)

## Prospectus Directive

**(i) Financial reporting: ESMA Q&A on alternative performance measures**

On 27 January 2017, ESMA published a new Q&A on ESMA Guidelines on alternative performance measures (“APM”), comprising six questions on the implementation of its Guidelines on APMs for listed issuers. In the Q&A ESMA confirms:

- ▣ How to apply the guidelines when constituent parts of a prospectus straddle the date on which the guidelines came into force (3 July 2016). In short, the applicability of the guidelines will be determined by reference to the publication date of the prospectus. The examples of how to apply the guidelines in such cases replicate those set out in new question 101 in the 26th version of ESMA's Q&A on prospectuses, which was added to the prospectuses Q&A in December 2016.
- ▣ Its APM guidelines apply to all financial measures which fall within the definition set out in paragraphs 17 to 19 of the APM guidelines and are disclosed outside financial statements but in documents within the scope of regulated information.
- ▣ Where APMs directly identifiable from financial statements are also disclosed outside financial statements, the issuer or the persons responsible for the prospectus: do not

need to provide a reconciliation between the APM used and the most directly reconcilable line item, total or subtotal presented in financial statements; and, where applicable, may use the compliance by reference principle (paragraphs 45 to 48 of the APM guidelines) and refer to the specific page or section in the financial statements, where this information is readily and easily accessible to users.

- ▣ The APM guidelines apply to interim financial reporting if it falls under the definition of regulated information set out in the Transparency Directive (as amended). Therefore, the APM guidelines apply to: additional periodic financial information, when this information is published in accordance with Article 3(1a) of the Transparency Directive; half yearly financial reports, as required by Article 5 of the Transparency Directive; or any financial information published in accordance with Article 17 of the Market Abuse Regulation (such as ad-hoc disclosures). Where interim financial reports or the additional periodic financial information are regulated information, the APM guidelines only apply to the information accompanying financial statements (such as the interim management report), as the APM guidelines exclude from their scope the financial statements.
- ▣ The APM guidelines apply to all labels of APM used by issuers or the persons responsible for a prospectus (and not only to the labels “non-recurring”, “infrequent” or “unusual”, which are specifically referred to in paragraph 25 of the guidelines).
- ▣ How the concept of “corresponding previous periods” in relation to financial reports, ad-hoc disclosures or prospectuses should be applied by issuers or the persons responsible for the prospectus. Essentially, issuers or the persons responsible for the prospectus should disclose figures for all periods presented, that is, where the financial reports or prospectuses have more than one comparative period, comparatives on the APMs should be provided for all prior periods presented.

ESMA confirmed that it would welcome feedback from market participants on these or other questions with a view to updating the Q&A where necessary.

The Q&A is available at the following link:

<https://www.esma.europa.eu/file/21236/download?token=I5WVQq27>

## Transparency Directive

### (i) **Transparency Directive: guidelines in relation to EEA national regulations on major holdings notifications published by ESMA**

On 3 February 2017, ESMA published a guide in relation to the Transparency Directive relating to national regulations across the EEA in respect of major holdings notifications. It

is envisaged that the guide will act as a document to be used by market players and will aid such persons in the navigation of the different criteria required across the EEA, such guidelines may prove particularly useful for shareholders with notification obligations as per national law in respect of the Transparency Directive.

The guide is split into two sections, the first section outlining the national regulations for each EEA country (with the exception of Liechtenstein) with respect to the making and publishing notifications of major holdings. The second section is presented in table layout and outlines information and rules and practices of each Member State, which aids comparison of rules.

It is ESMA's intention to keep the guidelines up to date to reflect any changes in national rules and policy.

More information in relation to the guidelines can be found at the following link:

<https://www.esma.europa.eu/press-news/esma-news/esma-publishes-practical-guide-national-rules-across-eea-major-holdings>

## Pensions Update

### (i) **Pensions Authority issues its summary of 2016 regulatory activity and plans for 2017**

On 24 March 2017, the Pensions Authority published its summary of 2016 regulatory activity and plans for 2017 (the "**Release**"). Commenting on the Release, the Pensions Authority noted that the focus of their regulatory compliance work in 2016 was an increase in direct engagement with regulated entities which included reviews of scheme governance and administration practices of trustees of both defined benefit ("**DB**") and defined contribution ("**DC**") schemes.

During 2016, the Pensions Authority:

- ▣ Concluded 23 prosecutions where the Pensions Authority secured convictions in 12 cases;
- ▣ Carried out a series of data compliance meetings with the Registered Administrators ("**RAs**") responsible for about 90% of schemes and noted that further improvement regarding the quality of data is needed; and
- ▣ Confirmed the Pensions Authority's ongoing objective to support trustees with guidance and information including the publication of a number of Codes of Governance.

The Pensions Authority's plans for 2017 include the following:

- ▣ A varied programme of proactive compliance activity including on-site inspections of administrators, scheme administration reviews, reviews of PRSA actuarial reporting and desk compliance audits;
- ▣ A continued programme of engagement directly with trustees of both DB and DC schemes comprising detailed discussions with them on how they undertake the management of their scheme and their governance responsibilities;
- ▣ Ongoing engagement with RAs to ensure they submit accurate and complete data on time;
- ▣ Securing a resolution for the eight defined benefit schemes that do not have a funding proposal in place to enable them meet the funding standard;
- ▣ Assisting the pensions sector prepare for any changes required on foot of the Pensions Authority's pension reforms proposals to Government; and
- ▣ Promoting the information and enquiry services that the Pensions Authority provides.

The Release can be found at the following link:

[http://www.pensionsauthority.ie/en/News\\_Press/News\\_Press\\_Archive/The\\_Pensions\\_Authority\\_issues\\_its\\_summary\\_of\\_2016\\_regulatory\\_activity\\_and\\_plans\\_for\\_2017.html](http://www.pensionsauthority.ie/en/News_Press/News_Press_Archive/The_Pensions_Authority_issues_its_summary_of_2016_regulatory_activity_and_plans_for_2017.html)

## Central Bank of Ireland

### (i) **Director of Insurance Supervision at the Central Bank, Sylvia Cronin, addresses Association of Compliance Officers in Ireland (“ACOI”)**

On 18 January 2017, the Central Bank published remarks made by Sylvia Cronin to the ACOI. The focus of her address was the role of culture in Insurance Supervision.

In her address, she emphasised that there is no answer for what a ‘good’ culture looks like rather it is for each organisation to decide on what they want their culture to be. Further, it is not the role of regulation or the Central Bank to specify the culture of an organisation and instead it is for the Board, senior and middle management to drive culture within the organisation.

She stated that since the start of 2016, cultural awareness has been an underlying theme as part of the Central Bank's normal supervisory activity in tandem with on-site

inspections. The Central Bank also has an in-house organisational psychologist working to enhance its supervisory approach.

She noted that where weakness is spotted, the intensity of the Central Bank's supervision may increase and that they will not hesitate to use their formal powers if change is not evident or co-operation is not forthcoming.

In her closing remarks, she acknowledged that many companies will struggle to identify the type of culture that they want, they will have difficulty identifying weaknesses in their current culture and if such weaknesses are detected, they will have difficulties in knowing how to effectively address them. However, Cronin remarked that a positive culture takes time to build but that diligence and persistence pays off.

It was stressed that addressing the area of culture is vital in order to prevent history from repeating itself.

The full speech can be found at:

<https://www.centralbank.ie/news/article/remarks-by-director-insurance-supervision-sylvia-cronin-at-the-association-of-compliance-officers-in-ireland>

**(ii) Central Bank publishes letters to industry in relation to board oversight and governance of key assumptions**

On 7 February 2017, the Central Bank wrote to Boards in respect of Board oversight of key life insurance pricing and reserving assumptions (the “**Board Letter**”). As a result of the review carried out in June 2016, the Board Letter highlights that Boards are generally not fulfilling their role in relation to oversight and governance of assumptions. As the Board is ultimately responsible for oversight of the assumptions and ensuring compliance with the Solvency II Regulations, the Central Bank expects Boards to request sufficient information to be provided in order to be in a position to adequately challenge the key assumptions, expert judgements and results relating to the experience analysis and assumption setting process. The Central Bank further noted that the Board should have visibility of the key judgements made in the assumption setting process in order that they can be understood and robustly challenged.

On the same day, the Central Bank also issued a letter to the Head of Actuarial Function (the “**HoAF**”) on Guidance from HoAF to the Board on key life insurance pricing and reserving assumptions (the “**HoAF Letter**”). In the HoAF Letter, the Central Bank highlighted that the HoAFs are generally not fulfilling their role in relation to informing the Board of the reliability and adequacy of the calculation of the technical provisions. As the Board is responsible for an undertaking's compliance with the Solvency II Regulations, and this responsibility cannot be delegated, the Central Bank expects the HoAFs to provide

sufficient information in order for the Board to be in a position to adequately challenge the key assumptions, expert judgements and results relating to the experience analysis and assumption setting process.

In both letters, the Central Bank highlighted particular areas of concern which include the following:

- ▣ Delegation of assumption setting to the HoAF with insufficient Board oversight;
- ▣ Insufficient information being provided to the Board on the key judgements underlying the HoAF's recommendations;
- ▣ Overviews presented to Boards or Committees with insufficient rationale for significant deviation in experience compared to assumptions or changes in key parameters or methodology;
- ▣ Very detailed information being provided without sufficient highlighting of the most material parameters or risks; and
- ▣ Insufficient highlighting of cross subsidies when looking at market-related pricing decisions.

In both letters, the Central Bank included an Appendix which outlines actions for HoAFs to undertake when carrying out experience analysis, communicating opinions and recommending assumptions to the Board.

The Board Letter is available at the following link:

<https://www.centralbank.ie/docs/default-source/Regulation/insurance-reinsurance/solvency-ii/requirements-and-guidance/20170207-letter-to-board.pdf?sfvrsn=4>

The HoAF Letter found at the following link:

<https://www.centralbank.ie/docs/default-source/Regulation/insurance-reinsurance/solvency-ii/requirements-and-guidance/20170207---letter-to-hoaf.pdf?sfvrsn=4>

**(iii) Central Bank publishes report on consumer experiences of the motor insurance claims process**

On 28 February 2017, the Central Bank released a report on consumers' experiences of the motor insurance claims process. Research was carried out by a third party firm who surveyed insurance consumers who had made an insurance claim between January and June 2016.

This research was carried out alongside a related thematic inspection of insurers. The Central Bank, in their 2016 Consumer Protection Outlook Report, noted the need for insurers to treat their customers fairly and in a reasonable manner when handling claims, together with ensuring that any claim settlement offer made to a claimant is fair.

It should be noted, that while the findings of the motor insurance claims process report specifically relate to motor insurance, they can also be considered relevant to other types of insurance.

The Central Bank notes that regulated firms need to have regard to the findings of the research in relation to its requirements under the Consumer Protection Code 2012 (the “Code”). The Code places general requirements on all firms in order to ensure that they act in the best interests of their customers, make full disclosure of all relevant material information and handle complaints speedily, efficiently and fairly.

The key findings of the report are as follows:

- ▣ Most motor insurance claimants surveyed agree that the motor insurance claims process is carried out fairly;
- ▣ The majority of claimants found the overall process of reporting the damage to their car relatively easy;
- ▣ Claimants who had one person handling their claim were more satisfied with the claims process;
- ▣ Most claimants whose claim was accepted were satisfied with the settlement offered, however many said they were not informed of aspects relating to no claims bonus, the terms of settlement and certification of the value of the claim;
- ▣ Almost all claimants were satisfied with the repair work provided by the garage, although 28% noted that they were informed they could appoint their own loss assessor;
- ▣ Over half of the claimants surveyed were dissatisfied with some aspect of the motor insurance claims process; and
- ▣ Amongst claimants who were dissatisfied overall, efficiency, speed and follow-up were cited as areas for improvement.

The full report as published by the Central Bank is available at the following link:

<https://www.centralbank.ie/docs/default-source/publications/motor-insurance-claims-process-research.pdf>

(iv) **Central Bank issue Letter on Thematic Inspection of Motor Damage Claims Processing**

On 28 February 2017, the Central Bank published a letter to industry in relation to the thematic inspection of motor damage claims processing (the “**Letter**”)

The Letter referred to the Consumer Protection Outlook Report (published in February 2016) which set out the Central Bank’s assessment of key existing and emerging risks to consumers, and listed priority themes for the industry and the Central Bank.

It was highlighted, with respect to general insurance providers, that there was a risk in relation to claims handling and settlement. In particular, insurers’ handling of motor damages claims was selected as a priority theme to be assessed. In this regard, the Central Bank carried out a thematic inspection to assess insurers’ compliance with the claims processing requirements set out in Chapter 7 of the Consumer Protection Code 2012 (“the **Code**”). This inspection was further supported by consumer research in order to avail of the consumers’ perspective and to gauge their overall experience and satisfaction.

The areas of particular concern were identified as follows:

- ▣ Policyholders were not informed of settlements paid to third party claimants;
- ▣ Lengthy process to decide on a declined claim;
- ▣ Claimants were not always provided with relevant contact details;
- ▣ Settlement payments were not paid within 10 business days;
- ▣ Numerous claims handlers dealing with a single claim;
- ▣ Complainants were not given the opportunity to use the insurer’s complaints procedure; and
- ▣ Claimants were not always provided with a scope of works.

It was stated that firms are required to consider the issues raised in the Letter and the findings from the Central Bank’s research in respect of their own processes and procedures and to take remedial action where necessary.

The Central Bank expects that the Letter will be discussed and minuted at the firm’s next board meeting. The Central Bank is engaging directly with those firms where issues have arisen.

The key findings from the research are summarised in Appendix 1 of the Letter and the Code provisions are contained in Appendix 2.

The Letter can be found at the following link:

<https://www.centralbank.ie/docs/default-source/Regulation/consumer-protection/compliance-monitoring/themed-inspections/insurance-companies/motor-damage-claims-industry-letter.pdf?sfvrsn=4>

**(v) Central Bank confirms departure of Cyril Roux, Deputy Governor (Financial Regulation)**

On 28 February 2017, the Central Bank announced that Deputy Governor, Cyril Roux, will be leaving the Central Bank in April 2017 to pursue opportunities in the private sector.

**(vi) Central Bank publishes Consultation Paper on Methodology to Calculate Funding Levies**

On 27 March 2017, the Central Bank published a consultation paper in relation to a proposed new methodology to calculating funding levies in respect of credit institutions, investment firms, fund service providers and EEA insurers (“CP 108”). The consultation paper proposes that the industry funding levy for banks be calculated according to the ECB methodology.

The Central Bank notes that the current regime for calculating fees can create inconsistencies in relation to the levy charged as the levy is based off impact categories which are assigned based on scores received following completion of the Central Bank’s online reporting system. However, the use of impact categories to levy credit institutions, investment firms and fund service providers results in threshold effects whereby a movement between impact categories gives rise to a substantial increase or decrease in the levy.

The changes proposed in CP 108 remove the threshold effect by introducing continuous levying. The Central Bank note that for investment firms and fund service providers this would be achieved by calculating levies as a linear function of individual firms’ impact scores; and for credit institutions, continuous levying would be achieved by using a modified ECB Methodology for levy calculations.

For EEA entities who passport into Ireland it is proposed that such entities will be subject to an industry funding levy which will be representative of the engagement of the Central Bank and the costs in respect of supervising such entities.

The Central Bank is seeking views on the proposed methodologies by 28 April 2017.

The full consultation paper is available to view at the following link:

<http://www.centralbank.ie/docs/default-source/publications/Consultation-Papers/cp108/cp-108-new-methodology-to-calculate-funding-levies.pdf?sfvrsn=4>

**(vii) Central Bank change of address**

Effective from 3 April 2017, the Central Bank's postal address will change to either of the following:

Central Bank of Ireland	or	Central Bank of Ireland
New Wapping Street		PO Box 559
North Wall Quay		Dublin 1
Dublin 1		

The Central Bank's existing telephone numbers and email addresses will remain in use.

### Anti-Money Laundering/Counter-Terrorist Financing

**(i) European Parliament votes to reject Delegated Regulation amending list of high-risk third countries under MLD4**

On 19 January 2017, the European Parliament voted to reject Delegated Regulation which would have served to amend the European Commission's list of high-risk third countries under the Fourth Money Laundering Directive ((EU) 2015/849) ("MLD4"). The authority of the European Commission to vote and decide upon high risk third countries is contained in Article 9(2) of MLD4.

It should be noted that it is the view of the European Parliament's Economic and Monetary Affairs Committee ("ECON") and the Committee on Civil Liberties, Justice and Home Affairs ("LIBE") that the proposed number of high-risk third countries is not sufficient and should be broadened to include countries which engage in tax crimes.

The press release detailing the decision is available at the following link:

[http://www.europarl.europa.eu/pdfs/news/expert/infopress/20170113IPR58027/20170113IPR58027\\_en.pdf](http://www.europarl.europa.eu/pdfs/news/expert/infopress/20170113IPR58027/20170113IPR58027_en.pdf)

(ii) **Department of Finance publishes Information note in relation to Beneficial Ownership Regulations**

On 31 January 2017, the Department of Finance published an Information Note in relation to the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (SI No. 560 of 2016) (the “**Beneficial Ownership Regulations**”) as they relate to corporate and other legal entities incorporated in Ireland (the “**Information Note**”). Such regulations took effect in Ireland on 15 November 2016 as a result of MLD4.

The Beneficial Ownership Regulations stipulate that most Irish companies are required to take reasonable steps in order to hold adequate, accurate and current information in relation to the beneficial ownership of the company on an internal register. The Department of Finance note that there is currently progress on establishing a centralised register in relation to the beneficial ownership of companies in Ireland, however it is expected such register will not be publically available until later in the year.

The rationale behind the Beneficial Ownership Regulations is to ensure that there is a natural person who can be identified as the owner of the company; usually this is clear however in some cases the structure of the company may make it difficult to identify the beneficial owner(s) of the company. In such instances and where all options to identify the beneficial owner(s) have been exhausted, it is permitted that a senior member of management be added to the register.

The register of each company must comply with the Beneficial Ownership Regulations and contain specific information in respect of each beneficial owner/member of senior management:

- ☐ Name, date of birth, nationality and residential address;
- ☐ A statement of the nature and extent of the interest held by each beneficial owner;
- ☐ The date on which each natural person was entered into the Register;
- ☐ The date on which each natural person ceased to be a beneficial owner (if applicable).

It is important to note that failure by a relevant entity or company to comply with their obligations under the Beneficial Ownership Regulations risk committing an offence and is liable, on summary conviction, to a fine not exceeding €5,000. In addition to this, an individual who fails to comply with the Beneficial Ownership Regulations risks committing an offence which similarly to a company or relevant entity, may be liable on summary conviction to a fine of €5,000.

The Information Note issued by the Department is available at the following link:

[http://www.finance.gov.ie/sites/default/files/Beneficial\\_Ownership\\_Information\\_Note\\_Jan\\_2017.pdf](http://www.finance.gov.ie/sites/default/files/Beneficial_Ownership_Information_Note_Jan_2017.pdf)

**(iii) European Data Protection Supervisor reacts to MLD5 proposals**

On 2 February 2017, the European Data Protection Supervisor (“**EDPS**”) published an opinion in relation to the proposed Fifth Money Laundering Directive (“**MLD5**”).

For the purposes of the opinion, the EDPS takes into account the original MLD5 proposal of the European Commission of July 2016, together with the adapted text of the Council of the EU of December 2016. The EDPS examines MLD5 with a view to one’s fundamental rights to privacy and data protection. In addition, the principles of necessity and proportionality in relation to the obtaining and usage of personal data are at the fore in the EDPS’s examination of MLD5.

It is the opinion of EDPS that MLD5 takes a stricter approach to efficiently countering money laundering and terrorism financing in comparison to MLD4. The EDPS notes that MLD5 introduces policy purposes other than countering money laundering and terrorist financing such as specifically targeting tax evasion, the fight against financial crime and enhanced corporate transparency. The EDPS is concerned that the expansion of the purposes of data processing under MLD5 beyond that of AML/CTF brings with it a degree of uncertainty for data controllers in terms of justifying the purpose behind gathering such personal data.

The EDPS is of the opinion that the proposed amendments depart from the risk based approach adopted under MLD4.

In addition to above, the EDPS is further concerned in relation to the proposed broadening of access to beneficial ownership information by national competent authorities and the general public. Such broadening of access is intended to ensure and improve enforcement of tax obligations. The EDPS is of the opinion that, dependent on the roll out of such provisions, that a lack of proportionality may exist which would result in unnecessary risks for the individual rights to privacy and data protection.

In the opinion, EDPS advises that it was not consulted by the European Commission prior to the publishing of the MLD5 proposal, although its opinion was sought by the Council.

The opinion is available at the following link:

[https://edps.europa.eu/sites/edp/files/publication/17-02-02\\_opinion\\_aml\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/17-02-02_opinion_aml_en.pdf)

(iv) **Central Bank publishes guidance note for completion of the Anti-Money Laundering, Countering the Financing of Terrorism and Financial Sanctions Risk Evaluation Questionnaire**

On 9 February 2017, the Central Bank published a guidance note to assist those credit and financial institutions which are required to submit a Risk Evaluation Questionnaire (“REQ”) to the Central Bank.

The Central Bank operates a risk-based system whereby institutions selected to complete the REQ must do so in the specified time period and to the format which is requested by the Central Bank.

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) requires institutions to have in place AML/CFT preventative measures, together with policies, procedures and processes to address such. The REQ acts as a mechanism to confirm such measures are in place and are of adequate nature.

The guidance note can be viewed at the following link:

<https://www.centralbank.ie/docs/default-source/Regulation/anti-money-laundering-and-countering-the-financing-of-terrorism/guidance/req-guidance-final-pdf.pdf?sfvrsn=4>

(v) **Joint Committee of ESAs opinion on money laundering and terrorist financing risks**

On 20 February 2017, the Joint Committee of the European Supervisory Authorities (“ESAs”) published an opinion, addressed to the European Commission, on the risks associated with money laundering and terrorist financing affecting the EU’s financial sector (the “Opinion”).

The objective of the Opinion is to provide information to the European Commission in relation to their risk assessment work, together with the ESA’s work in respect of ensuring supervisory convergence and a level playing field in relation to anti-money laundering (“AML”) and counter terrorism financing (“CTF”). The Opinion is also intended to assist Member State competent authorities in their application of the risk-based approach to AML and CTF supervision.

Key issues identified in the Opinion include firms’ understanding of the money laundering and terrorist financing risk to which they are exposed and the importance of effective implementation, by firms, of customer due diligence policies and procedures. The Opinion also refers to the lack of timely access to intelligence that may aid in the identification and prevention of terrorist financing activities which can cause difficulties for firms, in addition to the differences in the manner in which competent authorities discharge their functions.

The ESAs state that the risks highlighted in the Opinion mean that more has to be done to ensure that the EU's AML and CFT defences are effective. Among other things, the ESAs highlight that:

- ▣ Law enforcement agencies should identify ways to work more closely with firms to facilitate the identification of such money laundering/terrorist financing risks;
- ▣ Competent authorities should collect AML/CFT supervisory data in a more consistent way to facilitate comparisons and track progress;
- ▣ The European Commission, the EU legislators and the ESAs should give further thought to identifying ways in which the ESAs and competent authorities can ensure that the EU's AML/CFT law and the ESAs' AML/CFT guidelines are implemented effectively and consistently in all Member States; and
- ▣ The Opinion notes that several initiatives are already underway, which, in the short to medium term, will serve to address many of the risks identified. These include proposed amendments to the Fourth Money Laundering Directive (“**MLD5**”).

The Opinion has been prepared under Article 6(5) of MLD4, which mandates the ESAs to issue a joint opinion on the risks of money laundering and terrorist financing affecting the EU's financial sector every two years.

The Opinion may be viewed at the following link:

<https://www.eba.europa.eu/documents/10180/1749433/Consultation+Paper+on+RTS+on+CCP+to+strengthen+fight+against+financial+crime+%28JC-2017-08%29.pdf/85648168-2059-4b00-a6c8-5dbc321796f5>

#### (vi) **ECON and LIBE adopt report on MLD5**

On 10 March 2017, the European Parliament published its report in relation to the proposed Fifth Money Laundering Directive (“**MLD5**”), which amends the Fourth Money Laundering Directive ((EU) 2015/849) (“**MLD4**”) (the “**Report**”). The European Parliament issued a press release referring to the Report on 28 February 2017.

The press release noted that the Parliament's Economic and Monetary Affairs Committee (“**ECON**”) and its Civil Liberties, Justice and Home Affairs Committee (“**LIBE**”) have voted to adopt an amended version of their draft report on MLD5. The Report was passed by 89 votes to one with four abstentions. The Report contains a draft Parliament legislative resolution, together with opinions from the Committee on Development, the Committee on International Trade and the Committee on Legal Affairs.

According to the press release, ECON and LIBE also voted by 92 votes to one, with one abstention, in relation to entering into negotiations with the Council of the EU. The Parliament was originally scheduled to give approval in its March plenary session to start triologue discussions with the Council and the European Commission, however this has been postponed to a future date yet to be confirmed.

The Report is available at the following link:

<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2017-0056&format=PDF&language=EN>

**(vii) Central Bank AML/CTF briefing to Industry**

On 14 March 2017 the Central Bank delivered an AML/CTF briefing to industry in relation to the Central Banks’ Money Laundering and Terrorist Financing Risk Assessment and their AML/CTF Supervisory Engagement Model.

In relation to the Risk Assessment, the Central Bank notes that this is based on a sector by sector approach which takes into account categories of inherent risk, incorporating product/service, customer, geography and distribution channels. Together with this, categories of mitigants are taken into consideration, which incorporates quality of risk management and internal control functions and controls.

Such risk based approach assessment criteria result in Investment Firms (other than Asset Managers) and Fund Administrators/Funds being categorised as ‘Medium High’, with Life Assurance and Investment (Asset Managers) being categorised as ‘Medium Low’.

The risk rating assigned impacts upon the AML/CTF Minimum Supervisory Engagement Model, whereby differing procedures exist dependent on the risk rating as outlined below:

Category	Inspection Cycle (Years)	AML/CTF review meetings (Years)	Risk Evaluation Questionnaires (Years)
Medium High ML/TF Risk	5	5	2
Medium Low ML/TF Risk	Spot check and Responsive	Spot check and Responsive	3

## Data Protection

### (i) **EU Article 29 Working Party adopts 2017 GDPR Action Plan**

On 3 January 2017, the EU Article 29 Working Party 29 (“**WP29**”), an independent advisory board specialising in data protection and privacy (originating from Data Protection Directive 95/46/EC), adopted their 2017 action plan in relation to the General Data Protection Regulations (“**GDPR**”).

The GDPR comes into effect on 25 May 2018 and will replace the existing EU data protection framework, providing for additional and enhanced data protection rights for individuals, and greatly increased obligations on organisations who collect and process personal data.

The 2017 action plan aims to build and advance upon the objectives of the 2016 plan, inclusive of issues such as the right to data portability and the incoming requirement of the position of Data Protection Officer within companies. Focus will also be given to the setting up of the European Data Protection Board (“**EDPB**”) structure to preparing the mechanism for the establishment of the ‘one stop shop’ in relation to data protection and privacy issues within the European Union and the UK (post Brexit).

Going forward, new issues which WP29 intend to progress in 2017 include the creation of guidelines in relation to consent and filing, and transparency. In addition, the WP29 will be working on updating information in relation to data transfers to third countries and the procedures in relation to data breach notifications.

It is the intention of the WP29 to hold a Fablab in April 2017 whereby interested stakeholders may present their views and opinions to the Working Party. In conjunction with the Fablab, the Working Party intends to hold an interactive workshop whereby members of the international data protection community will be invited to converge, become involved and build relationships with their international counterparts.

The action plan is available at the following link:

<https://www.huntonprivacyblog.com/wp-content/uploads/sites/18/2017/01/Pressrelease-Adoptionof2017GDPRActionPlan.pdf>

### (ii) **Insurance Europe publishes Position Paper on Article 29 Working Party Guidelines on the right to data portability**

On 26 January 2017, Insurance Europe published its Position Paper on the Article 29 Working Party’s (“**WP**”) Guidelines on the interpretation and implementation of Article 20 of

the GDPR on the protection of individuals with regard to the processing of personal data and the free movement of this data (the “**Guidelines**”) (the “**Position Paper**”).

Insurance companies process customer data in the carrying out of their business and as such data protection is a fundamental part of providing insurance. In the Position Paper, Insurance Europe welcomes the launch of the WP consultation and notes that it is important to ensure that stakeholders are afforded sufficient time to provide input and that industry has sufficient time to prepare for implementation.

Amongst the points raised in the Position Paper, Insurance Europe notes that the WP guidelines suggest that when a policyholder wants to switch insurer, the portable data and new data processing should be limited to the data required for the new product. Insurance Europe believes that this would be mutually beneficial for the consumers and insurance company as follows:

- ▣ For the consumer who would have more control by being aware of the data necessary for the product they are interested in purchasing; and
- ▣ For the receiving insurance company, who would be able to mitigate the risk of breaching the data minimisation and purpose limitation principles of Article 5 of GDPR by processing only the portable data that is relevant to the specific insurance product requested.

The Position Paper is available to view at the following link:

[https://www.insuranceeurope.eu/sites/default/files/attachments/Contribution%20to%20the%20Article%2029%20Working%20Party%20guidelines%20on%20the%20right%20to%20ata%20portability\\_0.pdf](https://www.insuranceeurope.eu/sites/default/files/attachments/Contribution%20to%20the%20Article%2029%20Working%20Party%20guidelines%20on%20the%20right%20to%20ata%20portability_0.pdf)

### (iii) **The General Data Protection Regulation – Consultation on Key Concepts**

On 16 March 2017, the office of the Data Protection Commissioner (“**DPC**”) published an information note referring to the EU Article 29 Working Party’s work in preparing guidance on the interpretation and application of key provisions of the GDPR and the DPC’s assistance in the process.

To inform the process, the DPC initiated a consultation period seeking submissions from interested individuals and organisations on the following key concepts:

- ▣ Consent;
- ▣ Profiling;

- ▣ Personal data breach notifications; and
- ▣ Certification.

The DPC's consultation period ran up to 28 March 2017.

The submissions received will be supplied to the presidency team of the Article 29 Working Party for consideration in the preparation of guidance on the key concepts. However, The DPC will not be summarising or preparing a report of the submissions received.

The information note is available at the following link:

<https://www.dataprotection.ie/docs/16-03-2017-GDPR-Call-for-consultation-on-consent-profiling-personal-data-breach-notifications-and-certification/1629.htm>

**Dillon Eustace**  
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