Insurance Quarterly Legal and Regulatory Update

Period covered:
1 October 2016 – 31 December 2016

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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

(i) Central Bank publishes Solvency II National Specific Template DPM and Taxonomy – Version 1.1.0

On 5 October 2016, the Central Bank of Ireland (the "**Central Bank**") published the National Specific Template (the "**NST**") Data Point Model ("**DPM**") and Taxonomy - Version 1.1.0 (the "**Release**") followed by the publication of Hotfix on 10 November 2016.

The Release relates to the set of NSTs previously published on the Central Bank website and the NST Release notes introduce the DPM and XBRL taxonomy deliverables covering information requirements defined by the Central Bank in the NSTs.

The following documentation relating to the Release was published on the Central Bank's website:

- NST Release Notes & NST Release Notes Hotfix;
- NST DPM Documentation;
- NST DPM Dictionary (Updated 10 November 2016);
- NST DPM Annotated Templates;
- NST XBRL Taxonomy Documentation;
- NST XBRL Taxonomy Package (Updated 19 December 2016);
- NST XBRL Test Instance Documents (Updated 9 December 2016);
- List of Known Issues (Updated 9 December 2016); and
- NST Validations (Updated 9 December 2016).

The Release can be accessed via the following link:

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

(ii) Solvency II Commission Implementing Regulation (EU) 2016/1800 published in the Official Journal of the EU

On 12 October 2016, Commission Implementing Regulation (EU) 2016/1800 of 11 October 2016 laying down implementing technical standards with regard to the allocation of credit assessments of external credit assessment institutions to an objective scale of credit quality steps in accordance with the Solvency II Directive (the "**Commission Implementing Regulation**") was published in the Official Journal of the EU

Article 111(1)(n) of the Solvency II Directive (2009/138/EC) provides that the allocation of credit assessments of external credit assessment institutions ("**ECAIs**") to an objective scale of credit quality steps for the purposes of the calculation of the solvency capital requirement (the "**SCR"**) (the "**Allocation**") must be consistent with the use of external credit assessments of ECAIs in the calculation of the capital requirements for credit institutions and financial institutions, as set out in Regulation (EU) No 575/2013.

Article 3 of the Solvency II Delegated Regulation (EU) 2015/35 provides that the Allocation is subject to a system of seven credit quality steps in contrast to the six credit quality steps laid down in Regulation (EU) No 575/2013 and used in the mapping methodology for credit institutions and financial institutions.

In order to achieve the consistency required by Article 111(1)(n) of the Solvency II Directive, the Allocation is based on the mapping methodology for credit institutions and financial institutions subject to alterations, where appropriate, taking into account the extra step laid down in the credit quality system of relevance for the calculation of the SCR.

The allocation arrangements apply to credit assessments of ECAIs, which are credit rating agencies that are registered or certified in accordance with Regulation (EC) 1060/2009 or central banks issuing credit ratings which are exempt from the application of Regulation (EC) 1060/2009. The allocation arrangements also apply to credit assessments endorsed by an ECAI in accordance with Regulation (EC) 1060/2009.

The Commission Implementing Regulation entered into force on 1 November 2016 and can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1800&from=EN

(iii) Solvency II Commission Implementing Regulation (EU) 2016/1868 published in the Official Journal of the EU

On 21 October 2016, Commission Implementing Regulation (EU) 2016/1868 of 20 October 2016 amending and correcting Implementing Regulation (EU) 2015/2450 laying down implementing technical standards ("**ITS**") with regard to the templates for the submission of information to the supervisory authorities according to Solvency II ("the "**Commission Implementing Regulation**") was published in the Official Journal of the EU.

In April 2016, Commission Delegated Regulation (EU) 2016/467 introduced the new asset class of qualifying infrastructure investments, extended to European Long-Term Investment Funds ("**ELTIFs**") the specific treatment in the Solvency II Delegated Regulation (EU) 2015/35 for European Venture Capital Funds and European Social Entrepreneurship Funds and amended Article 168 of the Solvency II Delegated Regulation to provide for equivalent treatment to equities traded on multilateral trading facilities ("**MTFs**") as those listed on regulated markets.

In order to ensure that supervisory authorities receive appropriate information on qualifying infrastructure investments made by (re)insurance undertakings as well as investments in ELTIFs and equities traded on MTFs, the Commission Implementing Regulation amends the templates for reporting by these undertakings to supervisory authorities accordingly.

The Commission Implementing Regulation entered into force on 10 November 2016 and can be found at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1868&from=EN

(iv) Central Bank publishes Frequently Asked Questions document on the Guideline for Solvency II (Re) Insurance Undertakings on Directors' Certifications

On 25 October 2016, the Central Bank published a Frequently Asked Questions document (the "**FAQs**") on the Guideline for Solvency II (Re)Insurance Undertakings on Directors' Certifications (the "**Guideline**"). The FAQs are meant to be read in conjunction with the Guideline and reflect questions which have been raised and are anticipated in relation to the Guideline. The Central Bank noted that the FAQs may be updated from time to time and was recently updated in November 2016.

The FAQs deal with, amongst other things, the number of Directors Certifications undertakings must prepare and submit to the Central Bank, submission dates for the different Directors' Certifications, and how undertakings should submit their Directors' Certifications.

The FAQs can be found at the following link:
https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Guideline%20for%20Solvency%20II%20Undertakings%20on%20Directors%20Certifications%20FAQs.pdf

(v) Guidance for (Re) Insurance Undertakings on the Head of Actuarial Function Role

On 28 October 2016, the Central Bank published the Guidance for (Re)Insurance Undertakings on the Head of Actuarial Function Role (the "**Guidance**"). The aim of the Guidance is to assist undertakings by providing an overview of the issues the Central Bank expects to be considered regarding the tasks of the actuarial function set out in Regulation 50 of the Solvency II Regulations (S.I. 485 of 2015), the Solvency II Delegated Act (2015/35/EU) and the Domestic Actuarial Regime and General Governance Requirements (the "**Central Bank Requirements**").

The Guidance sets out General Expectations for the role of the Head of Actuarial Function (the "**HoAF**") which include the following:

- The skills and experience of the HoAF can provide a different perspective than that of other experts within the undertaking and this perspective can be communicated in order to ensure the Board remains fully informed;

- The HoAF is expected to make appropriate enquiries in order to provide informed opinions to the Board; and

- The HoAF is expected to identify any significant deficiencies or areas for improvement in the information made available to him or her by the undertaking for the purposes of assisting him or her in the task of expressing opinions on the underwriting policy and the reinsurance arrangements and the contribution to the effective implementation of the risk management system.

The Guidance covers certain tasks of the Head of Actuarial Function Role which include:

- Expressing opinions on the underwriting policy and reinsurance arrangements,

- The contribution to the effective implementation of the risk management system,

- Calculation of capital requirements; and

- Opinions on ORSA process.

The Guidance is to be used by (re)insurance undertakings when complying with their obligations under Regulation 50 of the Solvency II Regulations and will be updated on a regular basis by the Central Bank as issues arise concerning the above tasks. The Guidance does not purport to address all aspects of these tasks.

The Guidance explains that certain aspects of the Guidance may not be relevant or material to every (re)insurance undertaking, due to the nature, scale and complexity of the undertaking. In addition, a (re)insurance undertaking may decide to adopt different practices to those covered in this Guidance to ensure compliance with the Solvency II Regulations and Central Bank requirements. In this case, the (re)insurance undertaking is expected to be in a position to explain to the Central Bank, upon request, the reason for any divergence from the Guidance.

The Guidance can be found on the Central Bank's website at the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Guidance%20for%20(Re)Insurance%20Undertakings%20on%20Head%20of%20Actuarial%20Function%20Role.pdf

(vi) EIOPA issues response to European Commission's call for advice on the review of Solvency II Delegated Regulation

On 7 November 2016, EIOPA published a letter (dated 13 October) to the European Commission (the "**Letter**") responding to the European Commission's formal request of 18 July 2016 for technical advice on the review of specific items in the Solvency II Delegated Regulation ((EU) 2015/35) (the "**Call for Advice**").

In the Call for Advice, the European Commission requested technical advice from EIOPA on topics relating to proportionate and simplified application of the requirements and the removal of unintended technical inconsistencies in the Solvency II Delegated Regulation. The European Commission asked EIOPA to provide its final technical advice, including a cost-benefit analysis, by 31 October 2017

In the Letter, EIOPA explained that most of the items required for the evidence-based assessment will only become available to EIOPA through the annual reporting data in July 2017. EIOPA also explained that it will be launching a specific call for evidence and information to gather necessary data not collected via the reporting templates. Therefore, EIOPA will only be in a position to deliver its final advice by end February 2018. However, EIOPA noted that for those items of the Call for Advice where annual reporting data is not needed, EIOPA will provide elements of the technical advice by end of October 2017, and where the data analyses will provide further insight, EIOPA will adapt its final response where necessary.

The Letter can be found at the following link:

https://eiopa.europa.eu/Publications/Letters/EIOPA-16-623%20Reply%20letter%20to%20Mr%20Guersent%20on%20SII%20implementation%20%28GBE%29.pdf

(vii) ECON publishes letter on EIOPA's review of methodology to derive ultimate forward rate under Solvency II

On 16 November 2016, the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") published a letter (dated 15 November 2016) (the "**Letter**") that it sent to EIOPA relating to EIOPA's review of the methodology to calculate the ultimate forward rate ("**UFR**") under the Solvency II Directive (2009/138/EC).

Following on from an ECON meeting discussing the EIOPA initiative concerning the review of the methodology to calculate the UFR held at the end of August 2016, ECON comments are as follows:

- **Timing of the review**. The UFR is an important cornerstone of the package on the interest rate term structure agreed under the Omnibus II Directive (2014/51/EU). A review of this package is due to take place by 1 January 2021 (under Article 77f of the Solvency II Directive). This date was deliberately chosen to ensure a review based on market experience, to provide stability to market operators, and to ensure a coherent and consistent approach. ECON also points out in the Letter that the review in 2018 referred to in Recital 150 to the Solvency II Delegated Regulation (EU) 2015/35 concerns only the standard formula to calculate the solvency capital requirement ("**SCR**") and in particular a number of standard parameters.

- **Impact assessment.** ECON notes that it has become good practice in EU law to carry out a proper impact assessment before taking policy decisions. EIOPA's proposed review effectively changes an important pillar of the Omnibus II trialogue agreement concerning long-term guarantees. Furthermore, the proposed change has an effect on the level of technical provisions and on the level of the SCR. ECON believes wider testing by market participants through an impact assessment is warranted.

- **Phasing-in and annual changes**. The Letter notes that the phasing-in within three years, with adaptions of 20bp per year, is rather arbitrary. Such a short period does not seem coherent when taking into account that the element under discussion is of a considerable long-term nature. The Letter also notes that it is difficult to understand why a parameter that according to the Solvency II Delegated Regulation, should be "stable over time and shall only change as a result of changes in long-term expectations" should possibly change every year in particular when that change may only be the result of a longer series of data.

  ECON advises that, at this stage, comments from its Committee Members do not necessarily criticise the underlying calculation that EIOPA is proposing, but merely focus on the timing of the review, the necessity to carry out a proper impact assessment, and the incoherence of speedy implementation and annual changes.

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

https://polcms.secure.europarl.europa.eu/cmsdata/upload/3086e321-f5b9-4d24-a0f9-7d3aa3ff5d78/D50272%20-%20Bernardino%20-%20Letter%20regarding%20the%20Ultimate%20Forward%20Rate.pdf

(viii) Solvency II Commission Implementing Regulation (EU) 2016/1976 published in the Official Journal of the EU

On 16 November 2016, Commission Implementing Regulation (EU) 2016/1976 of 10 November 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September until 30 December 2016 in accordance with the Solvency II Directive (2009/138/EC) (the "**Commission Implementing Regulation**") was published in the Official Journal of the EU.

For prudential reasons, it is necessary for (re)insurance companies to use the same technical information for the calculation of technical provisions and basic own funds for reporting, irrespective of the date on which they report to their competent authorities. 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 30 September 2016 until 30 December 2016.

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

The Commission Implementing Regulation entered into force on 17 November 2016, applies from 30 September 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/?qid=1482161815952&uri=CELEX:32016R1976

(ix) EIOPA issues Discussion Paper on the Review of Specific Items in the Solvency II Delegated Regulation

On 8 December 2016, EIOPA issued its Discussion Paper on the Review of Specific Items in the Solvency II Delegated Regulation (EIOPA-CP-16-008) (the "**Discussion Paper**"). This follows the Call for Advice issued to EIOPA by the European Commission (see section (vi) above).

To answer this Call for Advice, EIOPA has launched a project dedicated to the review of the Solvency II Delegated Regulation and in particular of the SCR standard formula.

The main goals of this project are:

- To ensure a proportionate and technically consistent supervisory regime for (re)insurance undertakings; and
- To look for possible simplifications in the SCR standard formula and to ensure the proportionate application of the requirements.

EIOPA will suggest changes in methods, assumptions and standard parameters, where appropriate, as well as additional policy options. During this process, EIOPA will be engaging in a constructive dialogue with stakeholders on an on-going basis.

The Discussion Paper intends to engage in a dialogue with stakeholders on all items in the scope of the review. The Discussion Paper follows the modular structure of the SCR standard formula and seeks feedback on, amongst other things, simplified calculations, reducing reliance to external credit ratings in the standard formula, risk mitigation techniques and on key sub-modules of the SCR.

The responses provided to the Discussion Paper will help EIOPA to narrow down its policy approach. EIOPA will develop consultation papers on its advice to the European Commission during 2017.

EIOPA welcomes comments on the Discussion Paper by 3 March 2017.

The Discussion Paper can be accessed via the following link:

https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-16-008_Discussion_Paper_on_SII_DR_SCR_Review.pdf

(x) Central Bank issues letter to industry on the review of the standard formula Solvency Capital Requirement

On 9 December 2016, the Central Bank issued a letter to industry on its recent review of the standard formula for the SCR (the "**Letter**"). The aim of the Letter is to highlight to undertakings some key control issues relating to these calculations which were identified by the Central Bank during the review.

The Central Bank's findings include the following:

Inadequate controls: The Central Bank's review found the following:

- Inadequate controls and testing around manual spreadsheets used in the SCR calculations;
- A large number of instances where the model parameters have been updated incorrectly; and
- Examples of wrong currencies being assumed for funds which understated the SCR results

Not meeting Solvency II Regulations: The Central Bank found that there were a number of instances where the Solvency II Regulations were incorrectly applied and highlighted that undertakings should have a robust process in place within their governance structures to review and challenge the application of Solvency II Regulations guided by the principle of proportionality. The Letter provided some examples of where Solvency II Regulations were not applied correctly.

Management actions not approved: The Central Bank found that future management actions assumed in the technical provision and SCR calculations, which reduced an undertaking's expenses, were not supported by a Board approved management action plan as required by Article 23 of the Solvency II Delegated Regulation.

Employee defined benefit scheme not treated as ring-fenced fund: The Central Bank found that when performing the SCR calculations, some standard formula calculations have allowed for diversification of the pension scheme with the undertaking's other business when calculating the market risk SCR. The Central Bank expects undertakings using the standard formula to treat employee defined benefit pension schemes as ring-fenced funds with no diversification benefits across other ring-fenced funds and/or other funds of the company.

The above issues are correlated with wider issues that the Central Bank has seen in the broader Solvency II reporting. The Central Bank states that undertakings must ensure that their own governance frameworks have the capability and capacity to review, challenge and remediate inaccuracies relating to broader data reporting standards so that the returns clearly represent their business as a whole and not take false comfort from checks purely relating to the internal consistency of the forms.

The Letter can be accessed via the following link:

https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/20161209-Letter%20re%20Review%20of%20SCR.pdf

(xi) EIOPA publishes Report on long-term guarantees measures and measures on equity risk

On 16 December 2016, EIOPA published its first annual report on long-term guarantees measures ("**LGT**") and measures on equity risk (the "**Report**") which deals with their use and impact on the financial position of insurers (the "**Report**").

The LTG measures are the extrapolation of risk-free interest rates, the matching adjustment, the volatility adjustment, the extension recovery period in case of non-compliance with the SCR, the transitional measure on the risk-free interest rates and the transitional measure on technical provisions. The equity risk measures are the application of a symmetric adjustment mechanism to the equity risk charge and the duration-based equity risk sub-module.

In the Report, EIOPA found that:

- 901 insurance and reinsurance undertakings in 24 countries with a European market share of 69 % used at least one of the measures;
- 852 undertakings with a European market share of 61% used the volatility adjustment;
- 154 undertakings with a European market share of 24% applied the transitional on technical provisions;
- 38 undertakings with a European market share of 16% used the matching adjustment; and
- The transitional on risk free interest rate was used by six undertakings and the duration-based equity risk sub-module by one undertaking.

The Report concludes that the LGT have a significant impact on the own funds and capital requirements of insurers.

The Report has been submitted to the European Parliament, the Council of the European Union and the European Commission. As part of the overall review of Solvency II, EIOPA will publish similar reports on an annual basis until 2021. EIOPA plans to submit the opinion on the assessment of the application of the LTG measures and the measures on equity risk to the European Commission in 2020, based on the annual reports submitted by then.

The Report can be accessed via the following link:

https://eiopa.europa.eu/Publications/Responses/EIOPA-BoS-16-279_LTG_REPORT_2016.pdf

(xii) Central Bank publishes the Insurance Quarterly Newsletter

On 19 December 2016, the Central Bank published issue three of the Insurance Quarterly Newsletter (the “**Newsletter**”) which is intended to provide the insurance industry and other interested stakeholders with updates on supervision, reporting, policy and EU and International affairs.

Some of the updates in this edition of the Newsletter include the following:

IT & Cybersecurity: The Central Bank requested auditors of High Impact undertakings to complete work in accordance with the Auditor Assurance framework. Auditor Assurance notification letters were issued in October to relevant undertakings and their auditors as regards to the reports that must be examined, prepared and submitted to the Central Bank by 30 June 2017.

The Central Bank also issued a questionnaire to Medium High & Medium Low undertakings, which was based on the Cross Industry Guidance in respect of Information Technology and Cybersecurity. Responses were received from these undertakings in December.

Look Through on Collective Investment Undertakings (“CIUs”): Following on from the Information Note on the look through of CIUs, further clarification was sought. The Central Bank expects that undertakings will note the following in relation to CIUs:

- Undertakings should be fully compliant with the relevant Solvency II Regulations regarding the completion of the CIU reporting template;

- Commission Implementing Regulation (EU) 2015/2450 states that "the look-through shall be performed until the asset categories, countries and currencies are identified" … "For the identification of countries, the look-through should be implemented in order to identify all countries that represent more than 5 % of each fund being looked-through and until 90 % of the value of each fund is identified by country."; and

- The EIOPA Guidelines on look-through approach advise that undertakings should perform a sufficient number of iterations of the look-through approach to capture all material risks.

Data Quality issues with SII Reporting: Following the Day 1 and Q1 2016 reporting exercises, the Central Bank engaged with a number of undertakings to query the quality of the data they received. Although the Central Bank saw improvements in Q2 2016 reporting, fundamental questions remain about the underlying reporting processes within undertakings. Therefore, the Central Bank has asked undertakings to consider three important questions in relation to their data governance:

- What controls are in place in your undertaking to mitigate risks to the quality of reporting?

- To what extent has the review and governance process within your undertaking been either validated or shown to be ineffective?

- To what extent is there certainty of the integrity of the data from its origin to final reporting?

Requirement for External Audit of Solvency II Regulatory Returns/Public Disclosures: The Central Bank's Requirement for External Audit of Solvency II Regulatory Returns/Public Disclosures was published on 28 September 2016. The requirement will apply to all undertakings subject to Solvency II and for periods ending on or after 31 December 2016. On 11 November 2016, the Central Bank provided notice to Solvency II undertakings and their auditors by email.

The Newsletter can be accessed via the following link:

https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/The%20Insurance%20Quarterly%20-%20Dec%202016.pdf

(xiii) EIOPA issues opinion on disclosure of information related to the use of transitional measures in the calculation of technical provisions

On 21 December 2016, EIOPA issued its opinion on the disclosure of information related to the use of transitional measures in the calculation of technical provisions under the Solvency II Directive (2009/138/EC (the "**Opinion**").

Articles 308c and 308d of the Solvency II Directive address the application of the transitional adjustment to the relevant risk-free interest rate term structure and the transitional deduction to technical provisions, also known as transitional measures. Articles 308c(2) and 308d(2) indicate that the effect of the transitional measures shall decrease linearly at the end of each year, from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.

In the Opinion, EIOPA explains that the application of these Articles implies that the calculation of the technical provisions at the end of the year should not reflect the reduction of the adjustment related to that year. The reduction should only be made on the first day of the following financial year. However, undertakings might follow a different approach and might calculate the new adjustment on 31 December of each year, or even quarterly, following accounting methodologies.

Under Solvency II, undertakings are required to produce a report on their solvency and financial condition (the "**SFCR**"). The SFCR should present a transparent and relevant picture of the undertaking's solvency and financial position and should be up-dated in the event of any major development affecting significantly the relevance of the information disclosed. Further, according to general accepted principles of public disclosure there is an obligation to disclose the nature and the effect of material events arising after the balance-sheet date which are not reflected in the balance-sheet.

Given the importance of public disclosure under Solvency II, EIOPA advises the following in the Opinion:

- A re-calculation of technical provisions with a different portion of the transitional leading to a material impact in the solvency and financial position should be considered as an event materially affecting the information to be disclosed;

- The SFCR should contain the information necessary to reflect the estimated impact of the decrease of the portion of the adjustment performed on the first day of the next financial year in the technical provisions, Minimum Capital Requirement, Solvency Capital Requirement and Eligible own funds to cover the capital requirements; and

- This information is considered relevant only where the recalculation of technical provisions would lead to a material impact in the solvency position of the undertaking in accordance with Article 291 of the Solvency II Delegated Regulation (EU) 2015/35.

EIOPA intends to monitor the developments of the issues addressed in the opinion, and will, if appropriate, review the opinion accordingly.

The Opinion can be found at the following link:

https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-16-243_Opinion_on_Disclosure_of_Transitional_measures_on_TP.pdf

(xiv) Central Bank issues Policy Notice on discretions and options on submission of information to the Central Bank under Solvency II

On 22 December 2016, the Central Bank issued a Policy Notice on discretions and options on submission of information to the Central Bank under Solvency II (the "**Policy Notice**"). The Policy Notice is applicable to all insurance and reinsurance undertakings within the scope of the Solvency II Regulations.

The Policy Notice specifies the Central Bank's requirements and guidance in relation to the implementation of specific discretions and options arising under:

- Regulation 34 of the Solvency II Regulations 2015 (S.I. No. 485 of 2015);
- Commission Implementing Regulation (EU) 2015/2450 laying down implementing technical standards with regard to the templates for the submission of information to the supervisory authorities; and
- Commission Implementing Regulation (EU) 2015/2452 laying down implementing technical standards with regard to the procedures, formats and templates of the Solvency and Financial Condition Report.

More specifically, the Policy Notice outlines the Central Bank's policy on:

- Exemptions from Solvency II annual regulatory item-by-item reporting;
- The Lines of Business undertakings are required to report in template S.21.03.01;
- The definition of number of claims reported in template S.20.01.01;
- The reporting by currency in templates S.16.01.01 and S.19.01.01;

- Underwriting or accident year reporting in templates S.16.01.01, S.19.01.01, S,19.01.21, S.20.01.01, S.21.01.01 and S.29.03.01;

- The brackets that must be used when reporting loss distribution information by claims incurred in template S.21.01.01; and

- The brackets that must be used when reporting information on underwriting risks by sum insured in template S.21.03.01.

The Central Bank notes that the Policy Notice does not offer an exhaustive account of all discretions or options under Solvency II and that further notices may be issued by the Central Bank in due course.

The Policy Notice can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/SII%20Implementation%20Note%20-%2022%20December%202016.pdf

(xv) EIOPA publishes first report on the limitations from the regular supervisory reporting

On 23 December 2016, EIOPA published its first report on information on the use of limitations and exemptions regarding the submission by insurance and reinsurance undertakings of regular supervisory reporting (the "**Report**").

(Re)insurance undertakings are subject to annual and quarterly reporting. According to the Solvency II Directive, national competent authorities ("NCAs") can exempt or limit the submission of the quantitative reporting templates ("QRTs"), based on certain criteria such the size of an undertaking. These limitations and exemptions of quantitative regular reporting information are defined in Articles 35(6-7) and 254(2) of the Solvency II Directive. EIOPA is responsible for analysing the application of these supervisory powers across Member States in order to inform citizens on the use of it, and to detect potential inconsistent applications.

The results of the Report show the following:

- In 2016, more than 900 insurers, being almost 30% of all undertakings, benefit from limitations from quarterly reporting;

- Eleven NCAs have used the power to grant limitations from reporting. In all of these Member States, the market share of undertakings benefiting from limitations rests below the maximum of 20%, with some minor differences between the Life and Non-Life markets. The results for the whole EU market rest far below this threshold;

- Undertakings benefitting from limitations are expected to be amongst the smaller ones in each Member State. They individually represent up to 3% of their country market size. The total assets of the largest undertaking using limitations from reporting are just below 15 billion Euros; and

- Finally, when limitations are used they are applied to most templates, although not necessarily to all.

EIOPA advises that the Report is of preliminary nature, as annual submissions of the 2016 quantitative reporting will only be available from 2017 onwards. Therefore, the Report does not include information on exemptions from annual reporting. The Report is factual and based on the first Solvency II reporting submissions and no trend can be identified at this point. However, EIOPA envisages potential follow-up analyses on the application of limitations and exemptions from reporting by engaging on a bilateral basis with NCAs.

The Report can be accessed via the following link:

https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS16-293_Report%20on%20limitations%20from%20reporting.pdf

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

On 23 December 2016, EIOPA published its updated technical documentation of the methodology to derive EIOPA's risk-free interest rate term structures ("**RFR**") for Solvency II (the "**RFR document**").

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

The RFR document 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 document incorporates EIOPA's changes to the methodology to calculate the RFR, more specifically, changes of the financial instruments used to derive the RFR to reflect market developments.

The RFR document can be accessed via the following link:

https://eiopa.europa.eu/Publications/Standards/Technical%20Documentation%20(22%20December%202016).pdf

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

EIOPA intends to publish the risk-free interest rate term structures on a monthly basis to ensure consistent calculation of technical provisions across the EU.

In Quarter 4, EIOPA published the RFR as follows:

- With reference to the end of September 2016 on 10 October 2016;
- With reference to the end of October 2016 on 9 November 2016; and
- With reference to the end of November 2016 on 7 December 2016.

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

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

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

(xviii) EIOPA publishes monthly symmetric adjustment of the equity capital charge

On a monthly basis, EIOPA updates information on the symmetric adjustment of the equity capital charge. The symmetric adjustment to the equity capital charge shall be included in the calculation of the equity risk sub-module in accordance with the SCR standard formula to cover the risk arising from changes in the level of equity prices. This adjustment is regulated mainly in Article 106 of the Solvency II Directive (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 September 2016 on 10 October 2016;

- With reference to the end of October 2016 on 9 November 2016; and

- With reference to the end of November 2016 on 7 December 2016.

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

(xix) EIOPA publishes updated Solvency II Questions and Answers

During Quarter 4, EIOPA published updated Solvency II Q&As on the following:

- Answers to questions on Guidelines on application of outwards reinsurance (updated 26 October 2016);

- Answers to questions on Guidelines on group solvency (updated 4 November 2016);

- Answers to questions on Guidelines on the loss-absorbing capacity of technical provisions and deferred taxes (updated 26 October 2016);

- Answers to questions on Guidelines on reporting for financial stability purposes (updated 19 December 2016);

- Answers to questions on Guidelines on recognition and valuation of assets and liabilities other than technical provisions (updated 1 September 2016);

- Answers to questions on the Final report on the ITS on the templates for the submission of information to the supervisory authorities (CP-14-052) (updated 26 October 2016);

- Answers to questions on the Final report on the ITS on procedures, formats and templates of the solvency and financial condition report (CP-14-055) (updated 19 December 2016); and

- Other (updated 6 October 2016).

- Answers to questions on Guidelines on own risk and solvency assessment (updated 19 December 2016)

- Answers to questions on Guidelines on reporting and public disclosure (updated 19 December 2016).

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

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

European Insurance and Occupational Pension Authority ("EIOPA")

(i) EIOPA publishes Discussion Paper on potential harmonisation of recovery and resolution frameworks for insurers

On 2 December 2016, EIOPA published a discussion paper on potential harmonisation of recovery and resolution frameworks for insurers (the "**Discussion Paper**").

The Discussion Paper, which does not constitute a formal proposal by EIOPA, aims at gathering the views of stakeholders. It comprises the following four chapters:

- Chapter 1 provides the Introduction which sets out the legal basis, context and EIOPA's potential next steps;
- Chapter 2 provides an overview of the existing recovery and resolution frameworks for insurers, based on the results of the survey conducted by EIOPA in the first half of 2016 and responded to by 30 National Supervisory Authorities of the EU and EEA;
- Chapter 3 assesses the need for harmonisation by focusing on the advantages and disadvantages of harmonisation; and
- Chapter 4 presents EIOPA's preliminary views of what the main building blocks of a harmonised recovery and resolution framework for insurers could be. Questions for stakeholders are included throughout this chapter.

EIOPA indicated that it would like stakeholders to focus, in particular, on Chapter 4, "Building blocks of recovery and resolution" and the specific questions included in that chapter and in chapter 3 "Rationale for harmonisation".

Following the consultation process, EIOPA will further develop its view on harmonising recovery and resolution frameworks for insurers and may decide to publish an Opinion addressed to the EU institutions on this topic. In addition, EIOPA may consider future work on potential harmonisation of Insurance Guarantee Schemes ("**IGSs**") as the existence and working of IGSs are highly connected to resolution tool kits. The Discussion Paper notes that IGSs are outside the scope of the current work.

EIOPA welcomes comments on the Discussion Paper by 28 February 2017.

The Discussion Paper can be found at the following link:

https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-16-009%20Discussion%20paper%20recovery%20and%20resolution%20for%20insurers.pdf

(ii) EIOPA publishes fifth Consumer Trends Report

On 16 December 2016, EIOPA published its fifth consumer trends report (the "**Report**"). The Report covers trends in both the insurance sector and pensions sector and describes some of the most significant developments that are taking place and how they impact the behaviour of consumers and their relationships with undertakings. The Report includes a brief description of the market growth during 2015 and the recent financial innovations for each category. The Report also includes, as relevant, an analysis of consumer complaints during the latest reporting period as well as some of the National Competent Authorities consumer protection activities developed to address shortcomings are included.

One of the key objectives of the report is to try to identify risks for consumers arising from trends in the market, which may require specific policy proposals or supervisory action from EIOPA and/or its Members.

Trends in the Insurance market

Some of the main developments observed in the European Insurance Market include the following:

- New life insurance products with reduced or no guarantees, sometimes with a high degree of complexity, continue to be introduced into the market;
- Motor insurance complaints relating most often to claims handling, have decreased in several Member States, however, complaints related to the terms and conditions have increased in some Member States;
- Big data and consumer analytics allow the accuracy of risk assessments to be improved and the development of more tailored products, yet the availability and affordability of insurance for some consumers could also be affected;
- Travel insurance sales are increasing, but the number of related consumer complaints are also growing in several Member States; and
- Fintech/Insurtech firms are increasingly present in insurance, very frequently via cooperation agreements with established insurers.

Trends in the personal and occupational pension sectors

Some of the main developments observed in the European personal and occupational pension markets include the following:

- The number of active members has remained steady or moderately increased in most Member States, with the exception of the UK were it has doubled in two years;

- A shift from Defined Benefit to Defined Contribution schemes is taking place in several Member States, where individuals are commonly offered a greater choice of investment strategies in exchange for bearing investment risks;

- The liberalisation of the pay-out phase introduced in several Member States offers new decumulation options to members and policyholders, although risks of poor outcomes may also arise (e.g. pension scams); and

- There is a growing interest amongst NCAs on the impact of costs and charges on the accrued benefits or calculated contributions, as well on the need to inform pension participants fairly, based on realistic assumptions, about their expected retirement income.

The Report also outlines steps and activities that will be undertaken by EIOPA to address these developments such as:

- EIOPA is developing extensive work to strengthen the consumer protection framework in the life insurance sector;

- EIOPA will also develop and publish guidelines on Insurance-Based Investment Products ("**IBIPs**") not fit for execution-only business. EIOPA may also develop guidelines for the assessment of insurance-based investment products being classified as non-complex;

- EIOPA's activities are focusing on the development of Implementing Technical Standards regarding the product information document;

- EIOPA is currently assessing the issue of automation on financial advice;

- EIOPA is also analysing in cooperation with the other two ESAs the use of Big Data by financial institutions; and

- Following the agreement of the IORP II Directive earlier this year, EIOPA is also committed to promoting the supervisory convergence activities amongst NCAs, with the aim of strengthening the quality, efficiency and consistency of the supervision of occupational pension schemes.

The Report can be accessed via the following link:

https://eiopa.europa.eu/Publications/Reports/06.0._EIOPA-BoS-16-239%20-%20EIOPA%20Fifth%20Consumer%20Trends%20report%20-%20Clean%20after%20BoS.pdf

(iii) EIOPA publishes Final Report on proposal for guidelines on dialogue between insurance supervisors and the statutory auditor(s) and audit firm(s)

On 12 December 2016, EIOPA published its final report on the proposal for guidelines on facilitating an effective dialogue between competent authorities supervising insurance undertakings and statutory auditors and the audit firms carrying out the statutory audit of those undertakings (the "**Final Report**").

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 must, taking current practices into account, 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 and 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 Final Report sets out the final text of the guidelines which 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.

The Guidelines are addressed to competent authorities supervising (re)insurance undertakings. The Guidelines will apply from 31 May 2017 but earlier application is encouraged. Competent authorities must confirm to EIOPA whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions. Competent authorities that comply or intend to comply with them should incorporate them into their regulatory or supervisory framework in an appropriate manner.

The Final Report also sets out an overview and summary of the main conclusions of the public consultation held in February 2016, including the full final impact assessment and the comments and resolutions template.

The Final Report can be accessed via the following link:

https://eiopa.europa.eu/Publications/Consultations/Final%20report_Guidelines_effective%20dialogue_supervisor-statutory%20auditor_for%20publication.pdf

(iv) EIOPA publishes report and recommendations relating to the 2016 insurance sector stress test

On 15 December 2016, EIOPA published its report on the 2016 insurance stress test (the "**Report**"). The stress test (with a reference date of 1 January 2016) was launched in May 2016 with the aim of assessing the resilience of the life insurance industry to the most prominent and prevalent risks.

Two scenarios were tested in this exercise i.e. a low-for-long yield scenario and a so-called 'double-hit' scenario. The low-for-long yield scenario aims at emulating a situation of entrenched secular stagnation where a lack of long-term investment opportunities and permanently low productivity growth is combined with an extended scarcity of risk free assets which drives down yields at all maturities. The 'double-hit' scenario was set-up by EIOPA in cooperation with the ESRB and reflects the prevailing systemic risks to the European financial system i.e. a sudden increase in risk premia combined with a prolonged low yield environment.

The stress test exercise involved 236 insurance companies at solo level, including medium and small-sized undertakings, from 30 EU/EEA countries with average market coverage of 77% of relevant business.

Participants calculated the impact of the severe stress scenarios on their balance sheets. The impact of the two scenarios is discussed in the Report in terms of impact on the assets over liabilities including subordinated debt, and excludes any consideration regarding capital requirements.

The Report indicates that the double-hit results in a 9.7% decline (almost 610 billion euro) of the total assets in the baseline. As liabilities only decline by 7.8% (450 billion euro) of the total liabilities in the baseline, this scenario has a negative impact on the balance sheet of stress test participants of 28.9% (close to 160 billion) of the total excess of assets over liabilities in the baseline. In the event of the low-for-long scenario, the impact for the insurance sector would represent an 18% fall (about 100 billion euro) in the total excess of assets over liabilities in the baseline.

The stress test exercise confirmed the vulnerability of the insurance sector to the low interest rate environment, and to a pronounced reassessment of risk premia. The Report noted that these vulnerabilities deserve a supervisory response.

On 15 December 2016, EIOPA issued a set of general recommendations which address the need for the follow-up actions set out in the Report (the "**Recommendations**"). The Recommendations are addressed to all National Supervisory Authorities in the EU and EEA and aim to continue and further enhance the cooperation and coordination of actions at EU level.

The Recommendations include actions such as the following:

- To ensure that undertakings align their internal risk management processes to the external risks faced;

- To review and assess undertakings' models regarding the behaviour of management and policyholders; and

- To ensure that the vulnerabilities identified at solo level are appropriately recognised and dealt with at the group level.

More information on the 2016 insurance stress tests, including the Report and Recommendations, can be found at the following link:

https://eiopa.europa.eu/Pages/Financial-stability-and-crisis-prevention/Stress-test-2016.aspx

(v) ESAs launch public consultation on Big Data

On 19 December 2016, the ESAs – the EBA, EIOPA and ESMA – launched a public consultation on the potential benefits and risks of Big Data for consumers and financial firms with the aim of assisting the ESAs in determining whether any further regulatory or supervisory actions may be needed.

The ESAs describe Big Data as a phenomenon linked to the ever increasing availability of data and advances in Information Technology tools, applications, platforms and systems to collect, process and analyse it.

In monitoring consumer protection developments and financial innovations, the ESAs have noted the continued increase in the use of Big Data across the banking, insurance and securities sectors.

Existing EU legislation on data protection, competition and consumer protection, which share the common goals of promoting economic growth, innovation and the welfare of individual consumers, are relevant for financial firms while not explicitly addressing Big Data. The Discussion Paper seeks views on whether the existing regulatory framework is sufficiently flexible to cover Big Data, has gaps which need to be filled and how it impacts the use of Big Data technologies.

The purpose of the Consultation is for the ESAs to understand better what the Big Data phenomenon means for consumers, the financial industry and regulators, and they invite all stakeholders to share their views.

The Consultation paper defines the scope of the Consultation and describes the Big Data phenomenon as observed by the ESAs, presents a preliminary assessment of the potential benefits and risks for consumers and financial institutions and then concludes by presenting an overview of the possible evolution of the market.

The ESAs welcome comments on the Consultation by 17 March 2017.

The Consultation can be accessed via the following link:

https://www.esma.europa.eu/press-news/consultations/joint-committee-discussion-paper-use-big-data-financial-institutions

European Commission

(i) Joint Statement on US-EU negotiations on bilateral agreement on insurance and reinsurance measures

During Quarter 4, US and European representatives published three joint statements on the proposed bilateral agreement on insurance and reinsurance measures.

The latest joint statement notes that US and EU representatives met in Brussels on 19 – 20 December, to discuss the bilateral agreement relating to prudential insurance and reinsurance measures. The joint statement notes that the representatives discussed matters relating to group supervision, exchange of confidential information between supervisory authorities on both sides, and reinsurance supervision, including collateral. The representatives made significant progress on steps identified toward a possible agreement.

The latest joint statement can be found at the following link:

http://ec.europa.eu/finance/insurance/docs/solvency/international/161223-us-eu-joint-statement_en.pdf

(ii) European Commission confirms Insurance Block Exemption Regulation will expire on 31 March 2017

On 13 December 2016, the European Commission issued a press release (Commission MEX/16/4369) confirming that that the Insurance Block Exemption Regulation 267/2010 (the **"IBER"**) will expire on 31 March 2017.

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

- Joint compilations, tables and studies; and

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

The current IBER came into force on 1 April 2010 and is due to expire on 31 March 2017. The European Commission was required to submit to the European Parliament and the Council a report on the IBER not later than six years after its entry into force.

The European Commission published a report in March 2016 which presented the preliminary findings of the review of the IBER and concluded that the two remaining exemptions were no longer warranted because:

- The Commission's Guidelines on horizontal cooperation published in 2011 already offer guidance on how to assess the conformity of joint compilations, tables and studies with the antitrust rules; and

- Both the public consultation and a study showed that the exemption for pools in the IBER was less and less used in practice.

The European Commission highlighted that the expiry of the IBER does not mean that these forms of co-operation become unlawful under Article 101 of the Treaty on the Functioning of the European Union. Rather, insurance undertakings, as all other companies doing business in the EU, will need to assess their co-operation in the market context to see whether it is in line with EU competition rules.

Following the expiry of the IBER, the European Commission will continue to monitor developments in the market to evaluate how insurance undertakings adapt to the change.

The European Commission's press release can be found via the following link:

http://europa.eu/rapid/midday-express-13-12-2016.htm

Further information on the IBER can be found at the following link:

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

International Association of Insurance Supervisors ("IAIS")

(i) Reponses to IAIS Consultation on risk-based global insurance capital standard published

On 4 November 2016, the IAIS released the responses it received to its July 2016 Consultation on the Risk-based Global Insurance Capital Standard ("**ICS**") (the "**2016 Consultation**"). The IAIS committed to developing a risk-based global ICS after its announcement in 2013 that a sound capital and supervisory framework for the insurance sector is essential for supporting financial stability and protecting policyholders.

The aim of the 2016 Consultation was to seek stakeholder feedback on three key components of the ICS Version 1.0 for confidential reporting purposes which include:

- Valuation methodologies (Market-adjusted valuation ("**MAV**") and GAAP (Generally Accepted Accounting Principles with Adjustments ("**GAAP Plus**");
- Qualifying capital resources; and
- A standard method for determining the ICS capital requirement.

The IAIS received 76 submissions in response to the 2016 Consultation from respondents such as BaFin, EIOPA and Insurance Europe. Of these 76 responses, 18 were kept confidential upon request by respondents. As a result, the comments published by the IAIS are a subset of those that the IAIS will be taking into account as it moves forward with the ICS.

ICS Version 1.0 for confidential reporting is scheduled for adoption in mid-2017. ICS Version 2.0 is planned for adoption in late 2019.

All publicly available responses can be found on the IAIS' website at the following link:

http://www.iaisweb.org/page/supervisory-material/insurance-capital-standard//file/61565/2016-risk-based-global-insurance-capital-standard-ics-consultation-document

(ii) IAIS publishes application paper on approaches to supervising intermediaries' conduct

On 15 November 2016, the **IAIS** published an application paper on approaches to supervising the conduct of intermediaries (the "**Application Paper**").

Given their key role in the insurance sector, IAIS recognises the importance of intermediaries conducting their business with due skill, care and diligence, applying adequate and appropriate governance, acting in the best interests of their customers, and being subject to enforceable supervisory standards.

The Application Paper sets out possible approaches that may promote good conduct of business for IAIS members to take into consideration when developing or revising a regime for supervising intermediaries including when implementing Insurance Core Principle ("**ICP**") 18 on intermediaries and relevant aspects of ICP 19 on conduct of business. The Application Paper also supplements the IAIS' Application Paper on Approaches to Conduct of Business Supervision.

The IAIS consulted on a draft of the Application Paper in July 2016 and also conducted a survey of over 60 members to obtain more information on approaches to supervising intermediaries' conduct for the Application Paper.

The Application Paper is structured into four different sections and:

- Sets out the background and purpose of the Application Paper;
- Describes the different types of intermediaries and the diversity of intermediation;
- Discusses approaches to intermediary supervision within the context of the overall supervisory framework; and
- Outlines supervisory requirements and approaches that promote good conduct of business by intermediaries, with reference to the requirements of ICPs 18 and 19.

The Application Paper can be found on the IAIS' website at the following link:

http://www.iaisweb.org/page/supervisory-material/application-papers//file/63297/application-paper-on-intermediaries-supervision-final

Insurance Europe

(i) Insurance Europe issues response to EIOPA consultation on draft ITS on a standardised format of the IPID

On 27 October 2016, Insurance Europe published its response to a public EIOPA consultation on draft Implementing Technical Standards (“**ITS**”) on a standardised version of the Insurance Product Information Document (“**IPID**”) (the “**Response**”). The objective of the IPID is to increase understanding and comparability of product information and the IPID will be provided to the customer prior to the conclusion of a non-life insurance contract in accordance with the provisions of the Insurance Distribution Directive (“**IDD**”).

In the Response, Insurance Europe:

- Supports EIOPA’s approach to have a single standardised presentation format for all non-life products and its aim to help consumers to choose insurance contracts both online and offline;

- Has included the consumer and digital-friendly mock-up it has developed;

- Advises that EIOPA should ensure that the level of standardisation introduced in the final IPID leaves manufacturers the necessary flexibility to make the IPID as meaningful as possible for consumers;

- Notes that EIOPA’s format for the IPID is designed to first and foremost be used as a paper document and is not adapted to enable consumers to take full advantage of using the IPID online and advises that EIOPA must ensure that consumers have equal access to both digital and paper IPIDs that work now and in the future;

- Agrees with EIOPA’s approach that the focus of the IPID is on consumers. However, Insurance Europe advises that further explicit clarification of the aim of the IPID would help to ensure that it is provided to consumers and not professional customers;

- Advises that sufficient time must be left for the insurance industry to properly prepare IPIDs for the wide scope of non-life insurance products covered and ensure that they are available to consumers by 23 February 2018 (the deadline for the IDD transposition). This is because the introduction of a standardised format requires significant modifications, particularly to IT systems. Insurance Europe notes that the industry will need 12 months following the adoption of the final implementing technical standards (ITS) by the European Commission. However, given that EIOPA is expected to submit the final draft ITS to the Commission on 23 February 2017 and that it could then take several months for the ITS to be adopted by the European Commission, insurers could have less than 12 months to implement the IPID.

Insurance Europe also provides answers to the specific questions set out in the EIOPA consultation in its Response.

The Response can be found at the following link:
http://www.insuranceeurope.eu/sites/default/files/attachments/Response%20to%20EIOPA%20consultation%20on%20draft%20ITS%20on%20a%20standardised%20format%20of%20the%20IPID.pdf

(ii) Insurance Europe publishes response to European Commission consultation on personal pensions

On 28 October 2016, Insurance Europe published its response to the European Commission's July 2016 Consultation on personal pensions (the "**2016 Consultation**") (the "**Response**").

The purpose of the 2016 Consultation was to identify potential obstacles to the uptake of personal pension products and to seek views on how to best address them with the aim of helping the European Commission analyse the case for an EU personal pension framework. The closing date for comments on the 2016 Consultation was 31 October 2016.

In the Response, Insurance Europe, amongst other things:

- Strongly acknowledges the importance of examining ways of encouraging and supporting citizens in saving for their retirement;
- Has strong reservations about the European Commission's analysis and policy options to develop personal pensions in the EU, particularly the Commission's lack of proper consideration of key product features that have proven instrumental in providing European citizens with tailored retirement solutions;
- Believes the European Commission does not address the complex relations between the EU policy options and areas falling under national competence and noting that the European insurance industry fears that a poorly designed regulatory initiative could bring benefits to neither consumers nor the EU economy; and
- Does not see how extending the provision of personal pensions to other types of providers would ensure a similar level of protection for customers of insurers (who are

the main providers of personal pensions) to that currently under Solvency II. Insurance Europe notes that from a regulatory point of view there is a very high risk of an uneven playing field to the detriment of consumers.

The Response can be found at the following link:

http://www.insuranceeurope.eu/sites/default/files/attachments/Response%20to%20European%20Commission%20consultation%20on%20personal%20pensions.pdf

(iii) Insurance Europe publishes response to EIOPA's consultation on its technical advice regarding the delegated acts of the Insurance Distribution Directive

On 4 October 2016, Insurance Europe published its response to EIOPA's consultation on its technical advice regarding the delegated acts of the Insurance Distribution Directive ("**IDD"**) (the "**Response**").

The consultation, which was launched in July 2016, sought feedback on policy proposals with regard to the following areas:

- Product oversight and governance ("**POG**") (Art 25(2) of IDD);
- Conflicts of interest (Article 27 and 28(4) of IDD);
- Inducements (Art 29(2) of IDD); and
- Assessment of suitability and appropriateness and reporting to customers (Art 30(5) of IDD):

In the Response, Insurance Europe provides some general comments on the consultation and also provides answers to the specific questions set out in the consultation.

Some of Insurance Europe's general comments set out in the Response include:

- EIOPA should ensure that the POG requirements can be implemented at national level as efficiently as possible and that for this to happen, EIOPA should recognise that existing national rules that pursue the same objectives and reflect the same principles as the ones EIOPA is putting forward in the technical advice, meet the POG requirements;
- The rules on conflicts of interest need to take the insurance-specific characteristics of Insurance-Based Investment Products ("**IBIPs**") more carefully into account.

- There is no overarching ban on commissions under the IDD. The co-legislators instead opted to ensure that the possibility for such a ban remains as an option for Member States. EIOPA must therefore avoid introducing rules that will give rise to a de facto ban on commissions. By specifying a broad list of inducements that are considered to pose a high risk of a detrimental impact on the quality of the service to the customer, EIOPA is in effect undermining the content of the IDD Level 1 text.

- The cumulative list of high-level criteria to assess non-complex insurance-based investment products will result in a de facto ban on execution-only products. All products are deemed complex under the list besides products with a unit-linked investment element. This approach would seriously undermine the explicit member state option in the IDD that permits the execution-only sale of non-complex IBIPs.

The Response can be found in full at the following link:
http://insuranceeurope.eu/sites/default/files/attachments/Response%20to%20EIOPA%20consultation%20on%20IDD%20delegated%20acts.pdf

Organisation for Economic Co-Operation and Development ("OECD")

(i) OECD finalises revised core principles of private pension regulation

On 7 November 2016, the OECD published their revised core principles of private pension regulation (the "**Principles**"). The Principles, first published in July 2015, seek to provide guidance on the design and operation of private pension systems, as well as provide a common criterion for the insurance industry in this area.

The changes between the current and 2015 versions of the Principles are said to be minimal, with any revisions aiming to reflect updates and changes in the insurance industry in the time elapsed since the first draft.

The document contains ten core principles, six general principles carried from the first draft such as governance and risk management and four new principles which centre on areas of occupational and personal pension plans.

The Principles can be found at the following link:

http://www.oecd.org/daf/fin/private-pensions/Core-Principles-Private-Pension-Regulation.pdf

Packaged Retail Insurance-Based Investment Products ("PRIIPS")

(i) PRIIPs Commission Delegated Regulation (EU) 2016/1904 on product intervention published in the Official Journal of the EU

On 29 October 2016, Commission Delegated Regulation (EU) 2016/1904 of 14 July 2016 supplementing Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (the **"PRIIPs KID Regulation"**) with regard to product intervention (the **"Commission Delegated Regulation"**) was published in the Official Journal of the EU.

The Commission Delegated Regulation is based on the empowerments set out in Articles 16 and 17 of the PRIIPs KID Regulation, which give National Competent Authorities (**"NCAs"**) and EIOPA the power to monitor financial products under their supervision and, subject to certain conditions, to prohibit or restrict temporarily the marketing, distribution or sale of insurance-based investment products, financial activities or practices.

The powers of the NCAs and EIOPA to prohibit or restrict the marketing, distribution and sale of insurance-based investment products laid down in PRIIPs KID Regulation are subject to a number of specific conditions including the requirement to determine the relevant significant investor protection concern or threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of at least one Member State of the EU. Another condition for the exercise of these powers is that existing regulatory requirements under EU law applicable to the insurance-based investment products, or activity or practice are not sufficient to address those concerns and risks.

The Commission Delegated Regulation sets out the criteria and factors to be taken into account by both the NCAs (Article 2 of the Commission Delegated Regulation) and EIOPA (Article 1 of the Commission Delegated Regulation) when determining the existence of a significant investor protection concern or threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of at least one Member State of the EU.

The Commission Delegated Regulation entered into force on 18 November 2016 and applies from 31 December 2016. It can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R1904

(ii) Update on status of PRIIPs KID Regulatory Technical Standards

The draft PRIIPs KID Regulatory Technical Standards (the **"RTS"**), adopted by the European Commission on 30 June 2016, were rejected by the European Parliament on 14 September 2016. The European Parliament called for modifications to the RTS which relate to multi-option PRIIPs, the inclusion of a fourth performance scenario (the 'stress scenario') and the use of the comprehension alert.

On 10 November 2016, the European Commission wrote to the European Supervisory Authorities (**"ESAs"**) informing them of its intention to amend the draft RTS to address the concerns expressed by the European Parliament. In the letter, the European Commission set out its proposed amendments relating to multi-option PRIIPs, the fourth performance scenario and the comprehension alert and invited the ESAs to amend the draft RTS within six weeks on the basis of the proposed amendments. The European Commission also invited the ESAs to develop guidance in line with the relevant provisions of the RTS and without altering their substance on the practical application of credit risk mitigation factors under the RTS for insurers.

The European Commission's letter to the ESAs can be found at the following link:

https://esas-joint-committee.europa.eu/Publications/Letters/Ares%206353871_Letter%20to%20EBA%20ESMA%20and%20EIOPA%20-%20PRIIPs%20draft%20RTS.pdf

On 22 December 2016, the ESAs issued their response to the intention of the European Commission to amend the draft RTS. Following a discussion of the proposed amendments, the ESAs presented an Opinion to the three Boards of Supervisors covering all areas addressed by the European Commission's letter and the amendments in the RTS. The EBA and ESMA Boards adopted the Opinion on the basis of a qualified majority. However, the Opinion did not receive the support of a qualified majority of the EIOPA Board as there were different views in particular concerning the treatment of multi-option products, the criteria to determine whether a comprehension alert should be included in a KID and the provision in the RTS on the credit risk mitigation factors for insurers. Consequently, the three ESAs were not in a position to provide an agreed opinion on the amended draft RTS. The ESAs did, however, convey in the letter the main concerns raised during the discussions that the amendments to the performance scenarios proposed by the Commission raised comprehension issues and may be misleading.

The ESAs response to the European Commission can be found at the following link:

https://esas-joint-committee.europa.eu/Publications/Letters/ESAs-2016-81%20Joint%20letter%20on%20RTS%20on%20PRIIPs.pdf

(iii) Regulation amending application date of PRIIPs KID Regulation published in the Official Journal of the EU

On 23 December 2016, Regulation (EU) 2016/2340 of the European Parliament and of the Council of 14 December 2016 amending Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products as regards the date of its application (the **"Amending Regulation"**) was published in the Official Journal of the EU.

The publication of the Amending Regulation follows the European Parliament's rejection of the European Commission's Regulatory Technical Standards (adopted 30 June 2016) in September 2016 along with its call, together with a large majority of Member States, for a deferral of the date of application of the PRIIPs KID Regulation.

The Amending Regulation provides that the PRIIPs KID Regulation will now apply from 1 January 2018. This deferral of twelve months will give additional time for those concerned to adhere to the new requirements.

The Amending Regulation entered into force on 24 December 2016 and can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2340&from=EN

European Markets Infrastructure Regulation ("EMIR")

(i) Central Bank publishes letter on EMIR reporting requirements

On 30 September 2016, the Central Bank published a letter to industry to provide feedback on the EMIR Regulatory Return ("**ERR**"), by outlining on the main issues identified from this review to facilitate appropriate amendments to ensure complete, accurate and timely reporting of derivate trades.

The letter contains recommendations for how firms' compliance with EMIR reporting requirements could be improved.

The letter can be found at the following link:

https://www.centralbank.ie/regulation/EMIR/Documents/EMIR%20Industry%20Feedback%20Letter.pdf

(ii) European Commission adopts and publishes text of Implementing Regulation on ITS on format and frequency of trade reports to trade repositories

On 26 October 2016, the European Commission adopted an Implementing Regulation (the "**Implementing Regulation**") amending Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards ("**ITS**") with regards to the format and frequency of trade reports to trade repositories under EMIR.

On 27 October 2016, the European Commission published the text (plus Annex) of the Implementing Regulation. The Implementing Regulation will enter into force 20 days following its publication in the Official Journal of the EU and will apply from the first day of the ninth month from the date of entry into force.

The Implementing Regulation can be found in full at the following link:

http://ec.europa.eu/finance/financial-markets/docs/derivatives/161026-implementing-regulation_en.pdf

(iii) European Commission reports on outcome of EMIR review

On 23 November 2016, the European Commission published a report on the review of EMIR. Article 85(1) of EMIR, required the European Commission to review and prepare a general report on EMIR to be submitted to the European Parliament and the Council, together with any appropriate proposals.

The European Commission considered that no fundamental change should be made to the nature of the core requirements of EMIR, which are integral to ensuring transparency and mitigating systemic risks in the derivatives markets. Nonetheless, a number of areas were highlighted where the EMIR requirements could be adjusted without compromising on its overall objectives in order to:

(i) Simplify and increase the efficiency of the requirements; and

(ii) Reduce disproportionate costs and burdens.

Some of the identified issues and considered actions are:

- Review of the categorisation of non-financial counterparties;
- Adjustment of trade reporting requirements to reduce operational burden;
- A possible mandate for supervisory approval of initial margin models;

- Review of extent of frontloading requirements;

- Potential clearing solutions for small financial counterparties; and

- A possible longer-term exemption from clearing for pension schemes.

In the report the European Commission also stated that it will propose a legislative review of EMIR in 2017. This review will also assess the technical standards made under EMIR.

The European Commission's full review can be found at the following link:

http://ec.europa.eu/finance/financial-markets/docs/derivatives/161123-report_en.pdf

(iv) ESMA publishes final report on delaying EMIR clearing obligations for financial counterparties with a limited activity volume

On 14 November 2016, ESMA published its final report (ESMA/2016/1565) on the amended application of the clearing obligations for financial counterparties with a limited volume of activity under EMIR.

The aim of the report is to present amended regulatory technical standards (**"RTS"**) as a result of the difficulties facing some financial counterparties with a limited volume of activity in preparing for the clearing obligation.

The following changes to the timeframe for application of the clearing oblgiation proposed by ESMA, along with the reasoning for the changes, are outlined in the final report:

- An extension of the phase in period of the clearing obligations by two years, for financial counterparties with a limited volume of activity; and

- Modification of the compliance dates in the Delegated Regulation on interest rate swaps and credit default swaps. This compliance date is now 21 June 2019.

The European Commission must now make a decision whether to endorse the RTS within three months from the date of submission of the final report.

The final report, along with the draft RTS, can be found at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1565_final_report_on_clearing_obligation.pdf

(v) ESMA opinion defines supervisory approach for CCPs' product and service extensions and significant changes to risk models under EMIR

On 15 November 2016, ESMA published an opinion (ESMA/2016/1574) on common indicators for new products and services under Article 15 and for significant changes under Article 49 of EMIR.

ESMA provides this opinion to NCAs for the purpose of building a common supervisory culture and consistent supervisory practices, as well as ensuring uniform procedures and consistent approaches throughout the EU.

The opinion states that national competent authorities (**"NCAs"**) supervising authorised CCPs should follow some commonly agreed indicators to identify when a change is significant (as required by Article 15) and seek the NCAs and ESMA's opinion on the project of extension of the services and activities and on the significant change of the risk models and parameters (as required by Article 49).

The opinion is available via the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1574_-_opinion_on_significant_changes_for_ccps.pdf

(vi) Delegated Regulation on RTS on risk mitigation techniques for uncleared OTC derivative contracts under EMIR published in OJ

On 15 December 2016, Commission Delegated Regulation ((EU) 2016/2251) supplementing EMIR with RTS on risk mitigation techniques for uncleared OTC derivative contracts under Article 11(15) of EMIR was published in the Official Journal of the EU.

The European Commission adopted the Delegated Regulation on 4 October 2016, and it came into force 20 days following its publication in the Official Journal of the EU on 4 January 2017.

The Delegated Regulation can be found in full at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2251&from=EN

(vii) ESMA consults on draft RTS on data to be made publicly available by trade repositories under EMIR

On 15 December 2016, ESMA published a consultation paper on draft RTS on data to be made publicly available by trade repositories ("**TRs**") under article 81 of EMIR (ESMA/2016/1661).

Article 81(5) of EMIR requires ESMA to develop RTS specifying the frequency and the details of the information to be made available to the relevant authorities and the information to be published by TRs. Annex III to the consultation sets out the proposed RTS in the form of a draft Commission Delegated Regulation, including discussions and analysis on exchange-traded derivatives ("**ETDs**"), data aggregation and aggregation on commodity derivatives.

The consultation closes on 15 February 2017 at which point ESMA will analyse the responses received and submit the draft RTS for inclusion in a final report to the European Commission.

The consultation paper can be found at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1661_consultation_paper_on_tr_public_data_under_emir.pdf

(viii) ESMA publishes peer review report on CCP compliance with margin and collateral requirements under EMIR

On 22 December 2016, ESMA published a report (ESMA/2016/1683), for information purposes only; outlining the results of a peer review it conducted on how NCAs assess compliance by CCPs with the margin and collateral requirements under EMIR.

The report identifies a number of areas where there is a lack of consistency in the supervisory approaches of NCAs, including differences in the frequency and depth of the supervision of CCPs that are similar in terms of size, systemic importance, nature and complexity. The report makes a series of recommendations to improve consistency in supervisory practices.

ESMA also identified differing supervisory approaches regarding the frequency and proactivity of NCAs' assessments and reviews of margin requirements. This includes areas of CCPs' back testing and sensitivity analysis reports, the adequacy of CCPs' confidence levels and the liquidation period and the efficiency of countercyclical tools used by CCPs.

The report is available via the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1683_ccp_peer_review_report.pdf

(ix) European Commission adopts Delegated Regulation further extending temporary clearing exception for Pension Scheme Arrangements under EMIR

On 20 December 2016, the European Commission adopted a Delegated Regulation amending EMIR as regards the extension of the transitional periods related to pension scheme arrangements ("**PSAs**") (C (2016) 8542 final).

The reasoning for this extension was outlined in European Commission press release, where it was noted, that in the absence of such as extension, PSAs would have to source cash for central clearing. Since PSAs hold neither significant amounts of cash nor highly liquid assets, imposing central clearing requirements on them would require very far-reaching and costly changes to their business model which could ultimately affect pensioners' income. Therefore the European Commission concluded that CCPs need this additional time to find solutions for pension funds

The next step will be for the Council of the EU and the European Parliament to consider the Delegated Regulation. If neither of them objects, it will enter into force the day after it is published in the Official Journal of the EU.

The text of the Delegated regulation is available via the following link:

http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/C-2016-8542-F1-EN-MAIN-PART-1.PDF

Market Abuse Regulation

(i) ESMA final guidelines on market soundings and delayed disclosure of inside information under MAR

On 20 October 2016, ESMA published a press release announcing that the following guidelines relating to the Market Abuse Regulation ("**MAR"**) (**"MAR Guidelines"**) had been published in the official languages of the EU:

- Delay in the disclosure of inside information (ESMA/2016/1478); and
- Persons receiving market soundings (ESMA/2016/1477).

ESMA had previously published the English version of these guidelines in July 2016.

The guidelines relating to the "Delay in the disclosure of inside information" came into effect on 20 December 2016.

On 10 November 2016, ESMA published a revised version of its guidelines on "Persons receiving market soundings" under MAR and these revised guidelines come into effect on 10 January 2017.

The MAR Guidelines can be found in full at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1478_mar_guidelines_-_legitimate_interests.pdf

https://www.esma.europa.eu/sites/default/files/library/2016-1477_mar_guidelines_-_market_soundings.pdf

(ii) ESMA updates Q&A on MAR

On 20 December 2016, ESMA published an updated version of its Q&A on MAR. The updated Q&A includes:

- Three new Q&A (questions 3 to 5) in section 2: managers' transactions; and
- Four new Q&A (questions 5 to 8) in section 3: investment recommendations 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/2016-1664_mar_qa_december_2016.pdf

Prospectus Directive

(i) Updated version of ESMA Q&A on Prospectuses

On 20 December 2016, ESMA published version 26 of its Q&A on prospectuses. Changes since the last version include a new question and answer on the application of ESMA's guidelines on alternative performance measures (**"APMs"**). The answer to the new question 101 clarifies how to apply the guidelines when constituent parts of a prospectus straddle the date on which the guidelines came into force, which was on 3 July 2016. The following should be noted:

- Where a registration document containing APMs was published before 3 July 2016 and that registration document is combined with a securities note published on or after 3 July 2016, the guidelines do not apply to the registration document but only to the securities note and the summary, where applicable;

- Where the information contained in such a registration document is incorporated by reference into a prospectus or a base prospectus published on or after 3 July 2016, the guidelines do not apply to the registration document but only to the remainder of the prospectus or base prospectus;

- Where a registration document containing APMs was approved but not published before 3 July 2016 and that registration document is combined with a securities note published on or after 3 July 2016, or the information contained in that registration document is incorporated by reference into a prospectus or a base prospectus published on or after 3 July 2016, the guidelines apply to the registration document as well as to the securities note and the summary, where applicable, or to the prospectus or base prospectus. In these instances, the registration document should be updated through the mechanism set out in Article 12(2) of the Prospectus Directive; and

- Where a prospectus or registration document published before 3 July 2016 is supplemented on or after 3 July 2016 and the supplement contains APMs, the guidelines apply to the supplement.

A copy of the updated Q&A is available at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1674_qa_on_prospectus_related_topics.pdf

(ii) ESMA feedback statement on European Single Electronic Format Consultation Paper

On 21 December 2016, ESMA published a feedback statement providing an overview of feedback received on its consultation on draft regulatory technical standards on the European Single Electronic Format (**"ESEF"**) together with ESMA's response.

ESMA sets out the digital format which issuers in the EU must use to report company information from 1 January 2020. It concludes that Inline XBRL is the most suitable technology for ESEF, because it enables both machine and human readability in one document. The digital format will allow users to carry out software-supported analysis and comparison of large amounts of financial information.

ESMA's main conclusions are that:

- Issuers must prepare their annual financial reports in the human readable XHTML (Extensible Hyper Text Markup Language) format, which can be read by standard browsers without the need for specialised tools;

- Only where annual financial reports contain IFRS consolidated financial statements must issuers label this information using XBRL (Extensible Business Reporting Language), which is machine-readable. The XBRL data is embedded directly into the XHTML document through the Inline XBRL format. ESMA may extend mandatory labelling of information using XBRL to other parts of the annual financial report or to financial statements prepared under third country GAAP at a later stage; and

- The IFRS Foundation's Taxonomy should be used to transfer financial information into structured data for the electronic reporting of IFRS financial statements.

ESMA will now focus on developing the detailed technical rules, field test its proposed solution and expects to be in a position to submit the technical standard to the European Commission for endorsement towards the end of 2017.

Transparency Directive

(i) Central Bank publishes Transparency Rules and Transparency Regulatory Framework Q&A

On 4 November 2016, the Central Bank issued Transparency Rules under Section 1383 of the Companies Act 2014. The Transparency Rules set out procedural and administrative requirements and guidance in respect of the Transparency (Directive 2004/109/EC) Regulations 2007, as amended (the **"Regulations"**).

In addition on 25 November 2016, the Central Bank published the First Edition of the Transparency Regulatory Framework Q&A. The Transparency Regulatory Framework Q&A sets out answers to queries which may arise in relation to the Regulations and the Central Bank's Transparency Rules.

A copy of the Central Bank's Transparency Rules and Transparency Regulatory Framework Q&A are available at the links below:

http://www.centralbank.ie/regulation/securities-markets/transparency/Documents/161104%20Transparency%20Rules%20-%20FINAL%20clean.pdf

http://www.centralbank.ie/regulation/securities-markets/transparency/Documents/Transparency%20Q%20and%20A%2025%20November%202016.pdf

Pensions Update

(i) General Scheme of the Financial Services and Pensions Ombudsman Bill 2016

On 5 October 2016, the Minister for Finance and the Minister of State for Financial Services published the General Scheme of the Financial Services and Pensions Ombudsman Bill 2016 (the "**Bill**") (the "**General Scheme**"), with accompanying Explanatory Notes.

The General Scheme proposes to amalgamate the offices of the Financial Services Ombudsman and the Pensions Ombudsman into the combined Financial Services and Pensions Ombudsman and update the legislation generally on their roles and responsibilities.

More specifically, the General Scheme; amongst other things;

- Provides for the establishment of the Office of the Financial Services and Pensions Ombudsman and sets out the objects, functions and powers of the Ombudsman and provides for a Deputy Financial Services and Pensions Ombudsman;
- Provides for and the dissolution of the Financial Services Ombudsman Bureau and Pensions Ombudsman;
- Establishes the Financial Services and Pensions Ombudsman Council;
- Provides that the Minister for Finance will be the only authority with the power to make regulations impacting the role of the Financial Services and Pensions Ombudsman;
- Sets out the Complaints Procedures for complaints made to the Financial Services and Pensions Ombudsman including the jurisdiction of the Ombudsman and the appeals process. One of the main changes in the draft legislation is the amendment of the time limit in which complaints can be made to the Financial Services and Pensions Ombudsman. The legislation proposes to extend the time limits for complaints about certain long term financial services to the same time limit which currently applies to the pension products, namely six years from the date of the conduct complained of or three years from the date the complainant knew, or ought to have known, about the conduct. For short term financial services, the time limit for complaints to the Ombudsman will remain unchanged at six years from the conduct complained of.

The General Scheme can be found in full at the following link:

http://www.finance.gov.ie/sites/default/files/16-10-04%20Heads%20FSO%20PO%20Amalgamation%20for%20publication.pdf

The accompanying Explanatory Notes can be found at the following:

http://www.finance.gov.ie/sites/default/files/16-10-04%20Explanatory%20Notes%20Heads%20FSO%20PO%20for%20publication.pdf

(ii) Pensions Authority publishes final two codes of the Codes of Governance for Defined Contribution Schemes

On 12 October 2016, the Pensions Authority published the final two codes in the series of Codes of Governance for Defined Contribution ("**DC**") Schemes (the "**DC Codes**"). The DC Codes set out the standards that trustees will be expected to adopt to demonstrate their commitment to serving the best interests of members and beneficiaries.

The latest DC Codes relate to:

- Code 10: Member communications; and
- Code 11: Value for money.

The DC Codes apply to trustees of all DC occupational schemes. The DC Codes supplement the Pension Authority's Trustee Handbook and therefore should be read conjunction with the Trustee Handbook.

Previously published DC Codes include: governance plan of action, trustee meetings, managing conflicts of interest, collection and remittance of contributions, investing scheme assets, paying benefits, keeping records, data protection and risk management.

All DC Codes are available at the following link:

http://www.pensionsauthority.ie/en/Trustees_Registered_Administrators/Codes_of_governance_for_DC_schemes/

(iii) Pensions Authority publishes Prescribed Guidance in Relation to Section 34 of the Pensions Act 1990

On 24 October 2016, the Pensions Authority issued revised statutory guidance, approved by the Minister on 21 September 2016, in relation to section 34 of the Pensions Act 1990 (the "**Act**") (the "**Statutory Guidance**").

Section 34 of the Act provides that a member of a funded occupational pension scheme who is entitled to a preserved benefit will in certain circumstances be entitled to a transfer payment. The Statutory Guidance sets out the assumptions which must be used when calculating a transfer payment on a standard basis.

The effective date of the Statutory Guidance is 1 January 2017.

The Statutory Guidance is available at the following link:

http://www.pensionsauthority.ie/en/News_Press/News_Press_Archive/Prescribed_Guidance_in_Relation_to_Section_34_of_the_Pensions_Act_1990_Oct_2016.html

(iv) ESMA issues response to the European Commission Consultation on a potential EU personal pension framework

On 16 November 2016, ESMA published its response (dated 10 November 2016) to the European Commission's Consultation on a potential EU personal pension framework (the "**Response**").

The European Commission consulted on a personal pension framework in July - October 2016 as part of its work relating to capital markets union ("**CMU**") action plan.

ESMA welcomed the opportunity to respond to the consultation and noted that the Response should be considered in the broader context of ESMA's responses to the CMU Green Paper and to the EC Green Paper on Retail Financial Services.

In the Response, ESMA commented on a number of topics mentioned in the consultation which appear relevant to ESMA and explained that these comments were developed assuming that the potential EU framework for personal pensions could be established as a voluntary 29th/2nd regime.

Some of ESMA's comments include the following:

- ESMA fully supports the objective of creating a true CMU built on a high level of confidence among customers that their interests will be protected irrespective of where the firm providing the service or product is located in the EU, and on creating certainty for companies when doing business across borders;

- EMSA notes that certain regulatory differences may impact the objective of a well functioning market for personal pensions if consumers' interests are not protected in a similar manner, and suggests that the European Commission considers aligning certain future minimum requirements;

- ESMA agrees that if the decision to set up a voluntary EU personal pension product ("**PEPP**") is taken, the sectoral asset management legislation could be a useful source of inspiration and elements to be taken into account to design both the governance requirements relating to managing PEPPs and the product rules;

- ESMA supports the idea of introducing a product passport for PEPPs to tackle some portability issues;
- In relation to information to policyholders, ESMA agrees that the nature, frequency and content of disclosures should be one of the key elements of the pension products, and that both pre-contractual and product information is necessary; and

- ESMA's view is that the distribution of personal pension products should be limited to authorised intermediaries and should comply with the Insurance Distribution Directive ((EU) 2016/97) ("IDD") or the Markets in Financial Instruments Directive (2004/39/EC) ("**MiFID**").

The Response can be accessed via the following link:

https://www.esma.europa.eu/press-news/esma-news/esma-responds-commission%E2%80%99s-consultation-potential-eu-personal-pension-framework

More information on the European Commission's consultation can be found at the following link:

http://ec.europa.eu/finance/consultations/2016/personal-pension-framework/index_en.htm

(v) European Commission publishes responses to consultation on EU personal pension framework

On 1 December 2016, the European Commission published the responses it received to its Consultation on the EU personal pension framework (the "**2016 Consultation**").

The purpose of the 2016 Consultation was to identify potential obstacles to the uptake of personal pension products and to seek views on how to best address them to help the European Commission analyse the case for an EU personal pension framework. The 2016 Consultation closed on 31 October 2016.

The European Commission received 586 responses to the 2016 Consultation. Respondents included Insurance Europe, ESMA, the European Federation of Financial Advisers and Financial Intermediaries ("**FECIF**") and the Occupational Pensions Stakeholder Group ("**OPSG**") at EIOPA.

The questionnaire contained three parts (B1, B2 and B3) addressing three distinct target groups; private individuals (B1), consumer organisations representing existing or future consumers (B2), and stakeholders who provide, would provide, or represent organisations that are or would be involved in providing personal pensions, public authorities regulating personal pensions, academics or other professionals involved with personal pensions in a professional capacity (B3). To reflect the three different target groups, the responses for each target group have been published separately.

The European Commission intends to publish a summary of the responses at a later date.

The responses to the 2016 Consultation can be accessed via the following link:

http://ec.europa.eu/finance/consultations/2016/personal-pension-framework/index_en.htm

(vi) Pensions Authority publishes guidance on investment issues for trustees of Defined Benefit Schemes

On 9 December 2016, the Pensions Authority published two guidance documents in relation to investment issues for trustees of Defined Benefit ("**DB"**) schemes.

The first guidance document sets out the Pensions Authority's view of good practice in setting the investment strategy of a DB scheme. These guidelines deal only with the process of setting a strategy and do not consider the specific investment alternatives available to a scheme.

The second guidance document sets out the Pensions Authority's view of good practice for trustees of DB schemes in preparing and maintaining a Statement of Investment Policy Principles (the "**SIPP**"). The Pensions Authority has prepared a sample SIPP which illustrates the Authority's view of good practice in relation to the contents of a SIPP. The Pensions Authority asks trustees to note that in publishing this illustrative sample, the Pensions Authority is not endorsing one particular approach to the preparation of a SIPP. The Authority recognises that other approaches to preparing a SIPP may be equally valid.

The guidance documents can be found at the following link:

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

Central Bank of Ireland

(i) Central Bank publishes 2016 Industry Funding Levies

On 10 October 2016, the Central Bank published its 2016 Guide to the Industry Funding Levies (the **"Guide"**) along with an accompanying statement.

Under the current funding arrangements, which are approved annually by the Minister for Finance, regulated entities are levied 50 per cent of the costs incurred on financial regulation, with some exceptions. The balance is funded by the Exchequer by means of subvention from the Central Bank. In general, costs are levied on industry sectors on a proportionate basis, depending on the level of regulatory input and oversight required.

The budget for financial regulation for 2016 reflects:

- The growth of the financial sector and number of firms and funds regulated in Ireland;

- The additional mandates, number and complexity of the financial regulations that the Central Bank is tasked with supervising and enforcing, most notably Alternative Investment Fund Managers Regulations and the Solvency II, which introduced a harmonised EU-wide insurance regulatory regime and came into force on 1 January 2016; and

- The phased roll-out of the measures detailed in the Central Bank's 2016-2018 Strategic Plan, including addressing the IMF recommendations such as bringing low-impact supervision up to an acceptable standard of intensity, improving the Central Bank's IT infrastructure and the increased cost of contested enforcement actions, such as inquiries, refusals, appeals and litigation.

The Guide is intended to be a user-friendly means of understanding the levy calculation process and is divided into five sections:

1. A background to the 2016 Industry Funding Regulations;

2. Significant changes to the levy in 2016;

3. How the levy is calculated for each industry sector;

4. Calculation of the levy rates for individual financial service providers and how the net Annual Funding Requirement is determined; and

5. Appendices including a comparison of 2016 and 2015 net Annual Funding Requirements, the population of each Industry Sector, an introduction and background to Impact Scores and a glossary.

The Central Bank's Statement on the Industry Funding Levies 2016 can be found at the following link:

http://www.centralbank.ie/press-area/press-releases/Pages/StatementIndustryFundingLevies2016.aspx

The Guide to the 2016 Industry Funding Regulations can be found at the following:

http://www.centralbank.ie/regulation/processes/industry-funding-levy/Documents/A%20Guide%20To%20Industry%20Funding%20Regulations%202016%20FINAL.pdf

(ii) Insurance Directorate host Industry Briefing event

On 26 October 2016, the Insurance Directorate of the Central Bank hosted an event for insurance undertakings. This included presentations on the following:

- Insurance Regulatory Landscape from Sylvia Cronin, Director of Insurance Supervision;
- Insurance Supervision Priorities for 2017 from Nuala Crimmons, Head of Insurance Supervision noting the priorities for 2017 are capital, governance and risk management, thematic regulatory reporting review; and
- Solvency II Analytics and Reporting from Dr Allan Kearns, Head of Function – Analytics covering the relevance of Solvency II data for PRISM risk assessments, the phases of receipt of Solvency II quantitative data; and the Solvency II data compliance and validation.

A link to the Industry Briefing presentation in full can be found at the following:
http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Insurance%20Briefing%20-%2026%20Oct%202016.pdf

Anti-Money Laundering/Counter-Terrorist Financing

(i) Department of Finance publishes National Risk Assessment for Ireland

On 7 October 2016, the Department of Finance published the first National Risk

Assessment for Ireland (Money Laundering and Terrorist Financing) (the "**Risk Assessment**"), which was carried out in conjunction with the Department of Justice and Equality.

The aim of this process was to identify, understand and assess the money laundering and terrorist financing risks faced by Ireland and to develop strategies to address those risks and allocate sufficient resources to implement those strategies.

While this is Ireland's first Risk Assessment, Ireland as a FATF member and under its future legal obligations once the Fourth Money Laundering Directive (**"MLD4"**) comes into force will be required to update the Risk Assessment on an ongoing basis to reflect changes to existing and future threats and vulnerabilities as they emerge.

The Risk Assessment found Ireland's money laundering and terrorist financing risk profile to be broadly in line with the risk profile of other Member States of a similar size. At a macro-economic level a number of risk enhancing and risk reducing factors were identified.

Risk enhancing factors included:

- Ireland's open, free market principled economy with a service-exporting financial services that is generally regarded as highly interconnected;

- Ireland's membership of the EU which means the already open economy was further opened from 1973 to move goods, workers, services and capital across the internal borders of the EU; and

- Ireland's close economic ties with the United Kingdom, with a shared border increasing risk of certain cross-border activities.

Risk reducing factors found by the Risk Assessment included, amongst other factors:

- Ireland's single, centralised police force, An Garda Síochána, which allows it to effectively manage all types of crime;

- Ireland's comprehensive legislative framework criminalising both money laundering and terrorist financing; and

- Ireland's single, centralised and well-resourced financial services regulator, the Central Bank of Ireland that reflects adequately the scale and complexity of the financial sector.

The Risk Assessment also sets out the understanding of the nature and scale of criminal conduct in Ireland which generates illicit proceeds, particularly as informed by law enforcement authorities. This includes risks such as:

- **Drug offences –** According to the Risk Assessment, drug offences pose the most significant threat of money laundering to Ireland. While there has been a decrease in the numbers of drug offences recorded in recent years, drug offences still accounted for over 7% of all recorded offences in 2015.

- **Financial crime –** Such as social welfare fraud, inheritance scams and payment card scams.

- **Tax evasion** – Ireland is rated the easiest country in the EU to pay business taxes, and also the Member State with the second lowest burden of customs procedures in the EU. Academic research describes Ireland as a small, open economy which displays none of the characteristics of a tax haven. Ireland is also a strong supporter of the European Commission's work in the area of tax transparency and administrative cooperation.

- **Cybercrime** – Such as malware; denial of service attacks, hacking and intellectual property theft impact up to 44% of Irish businesses, which is almost double the rate in 2012. 36% of Irish businesses now also view cybercrime as the greatest future risk.

- **Other illicit trade** – Such as counterfeiting and intellectual property theft are emerging threats of money laundering in Ireland. Due to intelligence gaps, it is difficult to estimate the scale of the proceeds generated by these criminal activities, but intelligence suggests that the emergence and growth of online advertising and purchasing has increased the availability of illicit products in Ireland.

The Risk Assessment includes a table which sets out a brief overview of each sector and its final risk rating for potential money laundering and terrorist financing risk. It is important to note that these are residual risk ratings after taking mitigants and other relevant factors into account, however a higher rating does not necessarily indicate that there is low compliance in the sector. Some sectors will by their nature or scale remain higher risk even with robust AML/CTF compliance. The following ratings are of note:

- Funds/ Fund Administrators Medium High
- Life Assurance Medium Low
- Asset Managers Medium Low
- Investment Firms Medium High

A copy of the full Risk Assessment can be found on the Department of Justice and Equality's website at the following link:

http://www.justice.ie/en/JELR/National_Risk_Assessment_Money_Laundering_and_Terrorist_Financing_Oct16.pdf/Files/National_Risk_Assessment_Money_Laundering_and_Terrorist_Financing_Oct16.pdf

(ii) Register of Beneficial Ownership Requirements

On 15 November 2016, the Department of Finance published the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (the **"AML Regulations"**), which came into effect on the same day. These AML Regulations transpose Article 30(1) of MLD4 into Irish law in advance of the 26 June 2017 transposition deadline. In accordance with Article 30(1), Member States, such as Ireland, are required to oblige corporates and other legal entities to obtain and hold adequate, accurate and current information on their beneficial ownership, including details of the beneficial interests held.

Further to the publication of the AML Regulations, most Irish companies are now obliged to hold adequate, accurate and current information on their beneficial ownership on an internal register (the **"Register"**). The AML Regulations affect companies incorporated under the Companies Act 2014 (the **"Act"**) as well as existing companies within the meaning of that Act and other legal entities incorporated in Ireland (**"Relevant Entities"**). Therefore this will include unregulated companies as well as regulated companies such as UCITS investment companies, AIF investment companies, ICAVs and fund administrators.

- **Meaning of Beneficial Owner**

The term "beneficial owner" is defined in the AML Regulations as meaning the natural person(s) who ultimately owns or controls a Relevant Entity through either a direct or indirect ownership of a sufficient percentage of shares or voting rights or ownership interest in that entity. Where a natural person holds more than 25% of the shares of the Relevant Entity or has an ownership interest of more than 25%, then that shall be an indication of direct ownership by that person. Where a corporate or multiple corporates hold more than 25% of the shares or other ownership interest exceeding 25% in the Relevant Entity and those holdings are controlled by a natural person, that shall be an indication of indirect ownership.

If the Relevant Entity is not able to identify (or if there is any doubt that the person(s) identified are the beneficial owner(s)), the natural person(s) who holds the position of "senior managing official(s)" shall be listed in the Register. The Relevant Entity must also document and keep records of all actions taken in order to identify the beneficial owners of the Relevant Entity as such term is defined in the AML Regulations.

Exemptions

As outlined above, the AML Regulations apply to Relevant Entities which essentially refers to every company or other legal entity incorporated in Ireland. However, there is an exemption for those companies that are:

(i) Listed on a regulated market that is subject to disclosure requirements consistent with EU Law; or

(ii) Subject to equivalent international standards which ensure adequate transparency of ownership information.

The AML Regulations do not affect trust structures governed by Irish law. A separate provision of MLD4 deals with the beneficial ownership of trusts, however this provision has not as yet been transposed into Irish law.

Register

The AML Regulations require every Relevant Entity to take all “reasonable steps” to obtain adequate, accurate and current information in respect of its beneficial owners. In this regard the AML Regulations require the Relevant Entity to take certain steps to identify any beneficial owners. Further to this obligation if the Relevant Entity has reasonable cause to believe that an individual is a beneficial owner it must give a notice to that individual asking that person to confirm whether he/she is a beneficial owner. If the relevant individual is a beneficial owner he/she must confirm and correct any particulars of the notice within one month of the receipt of such notice.

Separately, if the Relevant Entity believes that someone else has information about any beneficial owner it must serve a notice on that person looking for the relevant information.

A duty is also imposed upon a natural person who is a beneficial owner, or who ought to know that they are one, to notify the Relevant Entity that they are a beneficial owner if they have not received a notice from the Relevant Entity requesting this information. There is also a duty on natural persons in certain circumstances to notify relevant changes in beneficial ownership.

The information in the Register must contain the following particulars in respect of each beneficial owner:

- Name, date of birth, nationality and residential address;
- A statement of the nature and extent of the interest held by each such beneficial owner;

- The date on which each natural person was entered into the Register; and

- The date on which each natural person who ceased to be a beneficial owner ceased to be such an owner.

Relevant Entities are required to keep and maintain this information since 15 November 2016 and they must also seek to ensure that this information is up to date and take measures where there are any changes to the beneficial owners.

- **Sanctions**

Failure by the Relevant Entity to comply with the obligations contained in the AML Regulations is an offence and the Relevant Entity can be liable on summary conviction to a fine not exceeding €5,000. It is also an offence for an individual to fail to comply with his/her obligations under the AML Regulations, including failing to comply with the terms of the notice received from the Relevant Entity. Such an individual can be liable on summary conviction to a fine not exceeding €5,000.

- **Next Steps**

Companies should consider the impact of the AML Regulations and the steps they will need to comply with the obligations set out in the AML Regulations. In particular, they will need to consider how they will maintain the Register and prepare the various notices to be served on shareholders as required by the AML Regulations.

A copy of the AML Regulations is available at the following link:

http://www.finance.gov.ie/sites/default/files/Beneficial%20Ownership%202016%20Si%20560%20Final.pdf

(iii) Joint Committee of ESAs final version of guidelines on risk-based supervision under MLD4

On 16 November 2016, the Joint Committee of the ESAs published the final version of its guidelines on risk-based supervision under MLD4 (the "**Guidelines**").

The Guidelines, addressed to National Competent Authorities (**"NCAs"**) responsible for supervising the compliance of credit and financial institutions with AML obligations, are based on a mandate set out in Article 48(10) of MLD4. They firstly set out the characteristics of a risk-based approach to AML and CTF supervision, and identify the role of NCAs in identifying and assessing the money laundering risk to which their sector is exposed, and consequently adjusting the focus, intensity and frequency of supervisory actions in line with the risk-based approach.

The Guidelines emphasise the need for, amongst other things:

- Suitably qualified staff to carry out risk-based AML and CTF supervision in an informed and consistent manner; and

- A policy that ensures that the size or systemic importance of a credit or financial institution is not the sole indicator of the extent to which it is exposed to money laundering and terrorist financing risk, particularly in the cases of smaller firms;

The Guidelines state that they apply a year from the date they are issued. Under MLD4, the final version of the Guidelines is to be issued by 26 June 2017. The Joint Committee intends to keep the Guidelines under review, once they have been adopted, and to update them as appropriate.

A link to the Guidelines in full can be found here:

https://www.eba.europa.eu/documents/10180/1663861/Joint+Guidelines+on+Risk-Based+Supervision+(ESAS+2016+72).pdf

(iv) European Commission adopts Delegated Regulation amending list of high-risk third countries under MLD4

On 25 November 2016, a Commission Delegated Regulation was published which amended Commission Delegated Regulation (EU) 2016/1675 supplementing MLD4 by identifying high-risk third countries with strategic deficiencies.

The explanatory memorandum to the new Delegated Regulation explains that, as stressed in recital 28 to MLD4, the European Commission will adapt its assessment to changes made to information sources from international organisations and standard setters, such as those issued by the FATF. As a consequence, the European Commission aims to update the list to reflect the progress, or the lack of progress, made by high-risk third countries in removing the strategic deficiencies.

The European Commission has adopted the new Delegated Regulation in the light of FATF's recent on-site visit to Guyana where it was found that Guyana has made significant progress on AML and CTF matters. Consequently, the European Commission has concluded that Guyana should no longer be considered to be a third-country with strategic AML and CTF deficiencies and Guyana has been removed from the list of high-risk third countries under MLD4. The European Commission adopted the Delegated Regulation on 24 November 2016.

The new Delegated Regulation, which is binding in all Member States, entered into force on the 26 November 2016. A copy is available at the following link:

http://data.consilium.europa.eu/doc/document/ST-14857-2016-INIT/en/pdf

(v) Central Bank publishes Bulletin on Anti-Money Laundering and Third Party Reliance

On 6 December 2016, the Central Bank published the first publication of the Anti-Money Laundering bulletin, which focuses on third party reliance and sets out the Central Bank's expectations in this area (the "**Bulletin**"). The Bulletin seeks to provide guidance and feedback for credit and financial institutions in relation to anti money laundering and counter-terrorist financing.

In relation to third party reliance, the Central Bank expects that:

- There is a signed agreement in place between the firm and the third party;
- Firms only rely on third parties to perform Customer Due Diligence; and
- Firms should conduct regular assurance testing to ensure documentation can be retrieved quickly and without undue delay, and that the quality of the underlying documents obtained is sufficient.

The Bulletin can be found via the following link:

http://www.centralbank.ie/regulation/processes/anti-money-laundering/Documents/Anti-Money%20Laundering%20bulletin%20on%20Third%20Party%20Reliance%20-%20December%202016.pdf

(vi) European Commission publishes a proposal for a Directive on criminalisation of money laundering

On 21 December 2016, the European Commission published a Proposal for a Directive on criminalisation of money laundering (the **"Proposal"**). On 2 February 2016, the European Commission presented an Action Plan against terrorism financing, with a key action being to consider a possible proposal for a Directive to introduce minimum rules regarding the definition of the criminal offence of money laundering and to approximate sanctions. This complements other initiatives such as the proposed Directive on combating terrorism and the amendments to MLD4 published in July 2016.

The Proposal acknowledges that all Member States criminalise money laundering but there are some differences that require change:

- There are significant differences in the respective definitions of what constitutes money laundering, on the predicate offences, for example the underlying criminal activity which generated the property laundered, and the level of sanctions;

- The current legislative framework is neither comprehensive nor sufficiently coherent to be fully effective and can be exploited by criminals and terrorists who can choose to carry out their financial transactions where they perceive anti-money laundering measures to be weakest; and

- At the operational level, the differences in the definitions, scope and sanctions of money laundering offences affect cross-border police and judicial cooperation between national authorities and the exchange of information. For example, differences in the scope of predicate offences make it difficult for Financial Intelligence Units and law enforcement authorities in one Member State to coordinate with other EU jurisdictions to tackle cross-border money laundering.

The Proposal can be found at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2016:826:FIN&qid=1378484867646&from=EN

(vii) Council of the EU compromise proposal on MLD5

The European Commission published the proposed Directive amending the Fourth Money Laundering Directive (**"MLD4"**) in July 2016, which is known as the Fifth Money Laundering Directive (**"MLD5"**).

The Council has proposed a number of amendments to the European Commission's MLD5 proposal including to the transposition date for MLD4 and MLD5, provision on group supervision and provisions on implementing acts relating to interconnectivity of EU Member States' beneficial ownership registers.

The Council has advised that Member States will have 12 months to transpose MLD5 into national laws and regulations following its publication in the Official Journal of the EU, although there will be longer periods (24 or 36 months) in which to implement the various provisions on beneficial ownership registers.

The Council's negotiating mandate on MLD5 was agreed on 20 December 2016, with a view to enabling negotiations with the Parliament to start in early 2017. A vote is scheduled for 25 January 2017.

The latest text from the Council is set out below:

http://data.consilium.europa.eu/doc/document/ST-15605-2016-INIT/en/pdf

Data Protection

(i) European Commission proposes amendments to adequacy decisions on "white-listed" countries and decisions on standard contractual clauses

Following the presentation of two draft Commission Implementing Decisions (the "**Decisions**") proposing amendments to the existing adequacy decisions on "white-listed" countries and the decisions on standard contractual clauses (**"SCCs"**) permitting the transfer of personal data outside of the European Economic Area at the Article 31 Committee meeting on 3 October 2016, the European Commission published Commission Implementing Decision (EU) 2016/2295 and Commission Implementing Decision (EU) 2016/2297 on 16 December 2016.

The purpose the Decisions is to comply with ruling in Max Schrems, the ruling of the European Court of Justice, which invalidated Article 3 of the Safe Harbor adequacy decision.

As recorded in the Max Schrems ruling, national data protection authorities' ("**NDPA's**") powers to suspend and prohibit data flows were limited. The Decisions attempt to remove comparable provisions and restrictions in the existing adequacy and SCCs decisions, thereby ensuring that the NDPAs can use all the powers provided under EU and national law.

Following the introduction of the Decisions, whenever NDPAs exercise their powers leading to the suspension or definitive ban of data flows to third countries, for the protection of individuals personal data, the Member State concerned shall without delay inform the European Commission, which will then forward the information to the other member states.

The Decisions are available via the following links:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D2295&from=EN

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D2297&from=EN

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