DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

Payments, E-Money and Crypto-Assets

Quarterly Legal and Regulatory Update

Period covered: 1 April 2021 – 30 June 2021

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1. PAYMENTS

1.1 EBA updates Single Rulebook Q&A on PSD2

During the period 1 April 2021 to 30 June 2021, the European Banking Authority (**EBA**) updated its Single Rulebook Questions and Answers publication (**Single Rulebook Q&A**) on the Revised Payment Services Directive (2015/2366/EU) (**PSD2**). The Q&As in respect of the following articles have been updated:

- Article 5 – Applications for authorisation;
- Article 96(6) – Incident reporting;
- Article 97 - Authentication; and
- Article 98 - Regulatory technical standards on authentication and communication.

The Single Rulebook Q&A can be accessed here.

1.2 EBA publishes Guidelines on major incident reporting under PSD2

On 10 June 2021, the EBA published final revised Guidelines on major incident reporting under PSD2 (**Guidelines**).

The Guidelines apply in relation to the classification and reporting of major operational or security incidents in accordance with Article 96 PSD2. The Guidelines are addressed to payment service providers (**PSPs**) and the national competent authorities (**NCAs**) under PSD2. The Guidelines will be translated into the official EU languages and published on the EBA website. NCAs will then have two months within which to confirm whether they will comply with the Guidelines. We expect that the Central Bank of Ireland (**CBI**) will report that they intend to comply in full.

The Guidelines will apply as of 1 January 2022.

The Guidelines can be accessed here.

1.3 EBA publishes report on the data provided by PSPs on their readiness to apply strong customer authentication for certain transactions

On 11 June 2021, the EBA published a report on the data provided by PSPs on their readiness to apply strong customer authentication (**SCA**) for the subset of payment transactions that are e-commerce card-based payment transactions (**Report**).

The regulatory technical standards (**RTS**) on SCA and common and secure communication have applied since 14 September 2019. These requirements were introduced to decrease the risk of payment fraud and to ensure the safety of payment service users' funds and personal data. In 2019, the EBA granted supervisory flexibility for NCAs not to enforce the RTS until 31 December 2020, in order to allow issuing and acquiring PSPs to migrate to SCA-compliant approaches.

Based on the data received from PSPs, the EBA observed that significant progress has been made with regard to SCA-compliance, with large sections of the industry prepared for the application of SCA to e-commerce and card-based transactions. However, the EBA noted with concern that some jurisdictions are lagging behind others in enabling SCA on their payment cards and enrolling payment service users to SCA-compliant authentication solutions.

The Report can be accessed here.

1.4 European Commission adopts Delegated Regulation supplementing PSD2 on framework for home-host co-operation and information exchange

On 21 June 2021, the European Commission published a draft delegated regulation supplementing PSD2 with regard to RTS specifying the framework for cooperation and the exchange of information between competent authorities of the home and the host Member States in the context of supervision of payment institutions and electronic money institutions exercising cross-border provision of payment services (**Delegated Regulation**). The RTS specify:

- The framework for cooperation and for exchanging information between the competent authorities of the home Member State and of the host Member State under Title II PSD2; and
- How to monitor compliance with national law transposing Titles III and IV PSD2.

The Delegated Regulation will enter into force 20 days following its publication in the Official Journal of the European Union (**OJ**).

The Delegated Regulation, and its accompanying annex, can be accessed here.

1.5 Update on the proposal for codification of Regulation on cross-border payments

On 23 June 2021, the European Parliament adopted its position at first reading on the Commission proposal for a Regulation on cross-border payments in the European Union (**Proposed Regulation**). The purpose of the Proposed Regulation is to undertake a codification of the current Regulation on cross-border payments (Regulation (EC) No 924/2009), with the aim of simplifying and clarifying the law. The current Regulation has been amended several times. The Proposed Regulation will supersede the current Regulation and the various acts incorporated in it, however no changes of substance will be made.

The outcome of voting in the European Parliament reflects the compromise agreement reached between the institutions and should, therefore, be acceptable to the European Council.

If the Council approves the European Parliament's position, the Proposed Regulation will be adopted. The Proposed Regulation will then be published in the OJ.

The text of the Proposed Regulation can be accessed here, its accompanying annexes can be accessed here.

2. DIGITAL FINANCE & CRYPTO-ASSETS

2.1 ECB publishes report on public consultation on a digital euro

On 14 April 2021, the European Central Bank (**ECB**) published a report on its public consultation on a digital euro (**Report**).

On 8 October 2020, the ECB published a report on the digital euro which examined the issuance of a digital euro - that is an electronic form of central bank money similar to banknotes but in a digital form. The report was followed by a public consultation. The Report sets out the findings of the public consultation, notably:

- Privacy is considered the most important feature of a digital euro by both citizens and professionals - a digital euro should also be secure, cheap and easy to use throughout the euro area;

- Integration with existing payment solutions is important - licensed intermediaries should play a role in the provision of digital euro services. They would be best suited to provide innovative and efficient services, integrating them into existing banking and payment systems; and

- Cards, wallets and smartphones could provide cash-like features - all currently available hardware and software solutions could be adapted to use a digital euro and make payments similar to cash transactions, so long as they continue to do so safely and securely.

The Report will be considered by the Eurosystem (that is, the ECB and the national central banks of those countries that have adopted the euro) when deciding on the possible launch of a digital euro project, as well as in any potential related work on the design and future launch of a digital euro.

The Report can be accessed here.

2.2 Update on the proposal for a Regulation on a pilot regime for market infrastructures based on DLT

On 23 April 2021, the European Data Protection Supervisor (**EDPS**) published its opinion on the proposal for a Regulation on a pilot regime for market infrastructures based on distributed ledger technology (**Proposed Regulation**) (**EDPS Opinion**).

The purpose of the pilot regime is to allow regulators to gain experience of the use of distributed ledger technology (**DLT**) in market infrastructures and to allow companies to test out solutions using DLT, for example by providing derogations from existing legislation.

In the EDPS Opinion, it is noted that depending on the DLT's configuration, the meta or transactional data stored therein may be considered personal data if it relates to an identified or identifiable natural person. The EDPS Opinion also makes a number of recommendations with a view to improving the data protection elements of the Proposed Regulation.

The EDPS Opinion can be accessed here.

On 28 April 2021, the ECB published its opinion on the Proposed Regulation (**ECB Opinion**). In its opinion, the ECB welcomes the Proposed Regulation, and raises a number of specific observations with regard to monetary policy, oversight and systemic/financial stability and prudential supervisory powers. The ECB also sets out a number of drafting proposals in relation to the Proposed Regulation.

The ECB Opinion can be accessed here.

2.3 ESMA calls for evidence on digital finance

On 25 May 2021, the European Securities and Markets Authority (**ESMA**) launched its call for evidence on digital finance, in particular seeking feedback on the regulatory and supervisory challenges brought about by developments in digital finance and the way in which they could be addressed.

The call for evidence aims to gather relevant information on particular issues including value chains, platforms and groups' provision of financial and non-financial services.

The feedback will contribute to ESMA's technical advice to the European Commission regarding its digital finance package, due to be delivered by 31 January 2022.

The call for evidence is open until 1 August 2021 and seeks feedback from all interested stakeholders.

The call for evidence can be found here.

2.4 Update on the proposal for a Regulation on Markets in Crypto-assets

On 24 June 2021, the EDPS published its Opinion on the Proposal for a regulation on markets in crypto-assets (**MiCA**) (**Opinion**).

MiCA will replace existing national frameworks applicable to crypto-assets not covered by existing EU financial services legislation and will establish rules for 'stablecoins', including when these are e-money. It will establish uniform rules for crypto-asset service providers and issuers at EU level. In its Opinion, the EDPS:

- Invites the EU legislature to explicitly designate the issuers of crypto-assets as data controllers under Regulation (EU) 2016/679 (**General Data Protection Regulation** or **GDPR**) in order to increase legal certainty;
- Notes that given the processing of personal data by the issuers of crypto-assets is likely to result in a 'high-risk' classification, the issuers may fall under the obligation pursuant to Article 35 GDPR to perform a Data Protection Impact Assessment prior to the processing of personal data; and
- Considers that the MiCA should include an obligation for issuers to make particularly prominent certain guarantees regarding data protection in order to better protect data subjects.

The Opinion can be accessed here.

3. CYBERSECURITY

3.1 Update regarding Cybersecurity initiatives at European level

On 5 May 2021, the European Economic and Social Committee (**EESC**) published its opinion on the:

- Proposal for a Directive on measures for a high common level of cybersecurity across the Union, repealing Directive (EU) 2016/1148; and
- Proposal for a Directive of the European Parliament and of the Council on the resilience of critical entities.

(**Proposed Directives**) (**Opinion**).

In its Opinion, the EESC welcomed the Proposed Directives. It recommended that, given the two proposals are closely linked, the possibility of combining the two texts is considered. With regard to the scope of application of the Proposal for a Directive on measures for a high common level of cybersecurity across the Union, the EESC suggested that clearer guidelines are needed to identify those parties bound by it, for example the distinction between "essential" and "important" entities should be more precisely defined.

The Opinion can be accessed here.

On 8 June 2021, the Regulation establishing the European Cybersecurity Industrial, Technology and Research Competence Centre (**ECCC**) and the Network of National Coordination Centres (**NCCs**) ((EU) 2021/887) was published in the OJ (**Regulation**).

The Regulation establishes the ECCC, which will be located in Bucharest. The ECCC will develop and implement, with Member States, industry and the cybersecurity technology community, a common agenda for technology development and for its wide deployment in areas of public interest and in businesses, in particular SMEs.

The ECCC and the NCCs will make strategic investment decisions and pool resources from the EU, Member States and, indirectly, industry to improve and strengthen technology and industrial cybersecurity capacities.

The Regulation entered into force on 28 June (that is, twenty days after publication in the OJ). The Regulation can be accessed here.

On 23 June 2021, the European Commission announced a proposal to establish a Joint Cyber Unit to tackle the rising number of major malicious cyber incidents. The Joint Cyber Unit will act as a platform to ensure an EU coordinated response to large-scale cyber incidents. Participants will be asked to provide operational resources for mutual assistance within the Joint Cyber Unit. The aim is to ensure that the Joint Cyber Unit will move to an operational phase by 30 June 2022 and that it will be fully established by 30 June 2023.

The European Union press release can be accessed here, and an accompanying fact sheet can be accessed here.

4. THE CENTRAL BANK OF IRELAND

4.1 CBI publishes updated Guidance on Fitness & Probity for firms authorised under PSD2

In April 2021, the CBI published updated Guidance on Fitness and Probity for a Payment Institution, Electronic Money Institution or Account Information Service Provider under the European Union (Payment Services) Regulations 2018 and the European Communities (Electronic Money) Regulations 2011 (as amended) (**Guidance**).

The Guidance can be accessed here.

4.2 CP140 - Consultation on Cross Industry Guidance on Operational Resilience

On 9 April 2021, the CBI published its Consultation Paper 136 on Cross Industry Guidance on Operational Resilience (**CP140**). The draft guidance is contained in Schedule 1 to CP140 (**Guidance**). The Guidance, once finalised, will be cross-sectoral and will apply to all regulated financial services providers regulated by the CBI.

The Guidance is intended to outline the CBI's expectations of the design and management of operational resilience and to outline the responsibilities of the boards and senior management of regulated firms to consider and appropriately manage operational risk and will focus on risk management, business continuity, incident management, third party risk management, ICT and cyber risk and recovery and resolution planning.

It will supplement (rather than replace) any existing sectoral legislation or guidance and the CBI notes that it should be read in conjunction with its existing guidance on cybersecurity and IT risk management as well as its proposed guidance on outsourcing, once finalised.

Under CP140, the CBI has proposed that firms will be required to be in a position to demonstrate compliance with the Guidance within two years of the finalised Guidance being issued.

The CBI is inviting stakeholders to submit feedback on the Guidance. The consultation period closes on 9 July 2021, and feedback may be submitted by email to Opresilience@centralbank.ie.

Please see the Dillon Eustace briefing paper entitled "CBI Consultation on Cross Industry Guidance on Operational Resilience". The Dillon Eustace briefing paper can be accessed here.

CP140 can be accessed here.

4.3 Central Bank Deputy Governor delivers speech on "The Future of Payments in Ireland and Europe"

On 28 April 2021, Sharon Donnery, Deputy Governor of the CBI, delivered a speech at the Irish Retail Payments Forum entitled "The Future of Payments in Ireland and Europe". Topics of note include:

- The CBI has been engaging closely with industry to ensure the successful implementation of SCA, a PSD2 mandate, aiming to strengthen resilience against fraud and make online payments more secure.

- The impact of Covid-19: in Ireland, the value of point-of-sale transactions increased due to the pandemic, with June to October 2020 transactions 17 per cent higher compared to the same months in 2019. In terms of contactless payments, as the Irish economy re-opened in large part in the third quarter of 2020, the volume of contactless payments increased by 36 per cent compared to the third quarter of 2019.

- The CBI highlighted its support of the development of an instant payments solution in Ireland that is linked to pan-European systems. It encouraged banks and other PSPs to move forward towards implementing instant payment solutions in the near term that can be offered to Irish consumers and businesses. The CBI emphasised that providers need to adopt a forward-looking strategic outlook towards payments rather than wait for instant payments to become a mandatory requirement. The CBI noted the need to make sure instant payment solutions and systems at the national level can interact seamlessly with European counterparts, and the need to ensure interoperability.

- The CBI also referenced its support of the European Commission's work on advancing an EU framework for markets in crypto-assets and welcomed the development of a more harmonised approach to crypto-assets.

The text of the speech can be accessed here.

4.4 Central Bank publishes the Fitness & Probity Interview Guide

In June 2021, the CBI launched a new publication, the Fitness & Probity Interview Guide, to assist applicants for certain senior roles who have been called to attend an interview with the CBI. The Guide sets out for Pre-Approval Controlled Function (**PCF**) applicants and firms the practicalities around attending both assessment and specific interviews.

A copy of the Guide can be accessed here.

4.5 CBI publishes feedback statement on new methodology to calculate funding levies payable by payment institutions

On 8 June 2021, the CBI published its Feedback Statement following its Consultation on New Levy Methodology to calculate Funding Levies payable by Payment Institutions & E-Money Institutions (**CP137**) (**Feedback Statement**).

The CBI has proposed that, from the 2020 levy period onwards, firms will be charged a levy comprising of a flat fee and a variable element. The charging structure will be reflective of the prudential, conduct and AML/CTF risks attributable by the CBI to each firm. In February 2021, the CBI published a consultation paper seeking feedback from stakeholders on the new methodology.

The Feedback Statement sets out the CBI feedback on responses received to CP137.

The Feedback Statement can be accessed here.

CP137 can be accessed here.

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

5.1 Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 and its implications for crypto-assets

On 27 April 2021, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 (Commencement) Order 2021 (S.I. No. 188 of 2021) was published (**Order**). The Order brings the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 (**Act**) into operation, effective from 23 April 2021, with the exception of Section 8, which is effective from 24 April 2021.

The purpose of the Act is to transpose the criminal justice elements of Directive (EU) 2018/843 (**Fifth EU Anti-Money Laundering Directive** or **AMLD 5**) by amending the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (**CJA 2010**) in line with AMLD 5.

Following commencement of the Act, crypto-asset services have become, for the first time, subject to regulation in Ireland.

The new legislation introduces the concept of a "virtual asset service provider" (**VASP**). A VASP is defined as a person or firm who by way of business carries out one or more of the following activities on behalf of another:

- exchange between virtual assets and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets, that is to say, conduct a transaction on behalf of another person that moves a virtual asset from one virtual asset address or account to another;
- custodian wallet provider, that is to say, provide services to safeguard private cryptographic keys on behalf of customers, to hold, store and transfer virtual currencies;
- participation in, and provision of, financial services related to an issuer's offer or sale of a virtual asset or both.

VASPs are now required to register with the CBI for AML/CFT purposes by submitting an application form together with supporting documentation. The CBI will undertake a detailed assessment of a proposed VASP's policies and procedures, risk assessments, ownership and organisational structure and other relevant information before granting registration.

VASPs are now subject to the same AML/CFT requirements as other financial service providers. Incumbent or proposed VASPS should review and prepare their AML/CFT frameworks to comply with the ongoing AML/CFT requirements. Transitional arrangements apply to those already operating as VASPs. Such VASPs can continue to provide services but must apply to be registered by 23 July 2021.

Dillon Eustace has prepared a briefing entitled "Coming in from the cold – crypto-asset regulation" on the implications of the Act for crypto-asset services, which can be accessed here.

The Order can be accessed here.

The Act can be accessed here.

5.2 Central Bank publishes Guidance for completion of the AML/CFT Risk Evaluation Questionnaire

In May 2021, the CBI published Instructions and Guidance for Completion of the AML, CFT and Financial Sanctions (**FS**) Risk Evaluation Questionnaire (**REQ**) (**Guidance**). The REQ seeks to gather:

- Information on the way in which a firm has assessed the AML/CFT/FS risks posed by its business model (based on high level information provided by the firm); and
- Information on the AML/CFT/FS framework put in place by the firm.

The purpose of the Guidance is to provide information to firms who are required by the CBI to file a REQ using the ONR. The Guidance focuses on the structure and content of the REQ and provides clarity for relevant fields contained within the REQ. The Guidance also provides information on accessing and submitting the REQ via ONR.

The Guidance can be accessed here.

5.3 EBA launches consultation on draft RTS establishing a central database on AML and CFT in the EU

On 6 May 2021, the EBA published a consultation paper on draft RTS establishing a central database on AML and CFT in the EU (**Consultation Paper**).

The database will contain information on AML/CFT weaknesses that have been identified by competent authorities and on the measures taken by them in response to those material weaknesses. In addition to using the database to inform its view of AML/CFT risk affecting the EU's financial sector, the EBA will also use the database to facilitate cross-border cooperation.

The draft RTS specify the materiality of weaknesses, the type of information collected, the practical implementation of the information collection and the analysis and dissemination of the information contained therein. The draft RTS also set out the rules to ensure confidentiality of data and the efficiency of the database.

The consultation period closed on 17 June 2021.

The Consultation Paper can be accessed here.

5.4 European Commissioner speech on AML and CFT Action Plan

On 17 May 2021, the European Commissioner for Financial Services, Financial Stability and Capital Markets Union, Mairead McGuinness gave a speech at the AML Intelligence Boardroom Series, outlining elements of the European Commission's AML and CFT action plan. Central to the action plan is the increased harmonisation of AML rules and a new AML authority at EU level. The European Commissioner explained that the publication of details regarding the proposed new EU AML and CFT framework would be delayed until Q3 2021 due to technical issues and the volume of measures. In the speech, the European Commissioner addressed:

- the single AML and CFT rulebook;
- the new AML and CFT authority, which is expected to start carrying out direct supervision in 2026;
- consultation on information exchange and public-private partnerships;
- international co-operation with FATF and a European Union coordination on global AML issues;

- enforcement of AML framework implementation in each Member State; and
- cross-border connection between national beneficial ownership registers.

The text of the speech can be accessed here.

5.5 Updated Central Bank AML/CFT Guidelines for the financial sector

On 23 June 2021, the CBI published updated AML/CFT guidelines for the financial sector (**Guidelines**). The updated Guidelines seek to highlight where the CJA 2010 has been materially amended since the initial publication of the Guidelines on 6 September 2019.

The updated Guidelines can be accessed here.

6. DATA PROTECTION

6.1 European Commission adopts new standard contractual clauses in respect of third-country transfers and controller-processor arrangements

On 4 June 2021, the European Commission, adopted two separate decisions adopting two new sets of standard contractual clauses (**SCCs**) as follows:

- Commission Implementing Decision (EU) 2021/914 containing SCCs for transferring personal data to non-EU countries in the absence of an adequacy decision under Article 46 GDPR (**Third Country SCCs**); and
- Commission Implementing Decision (EU) 2021/915 containing SCCs for use between controllers and processors located in the EU in accordance with the requirements of Article 28 GDPR (**Controller-Processor SCCs**).

The European Commission's decisions adopting the final sets of SCCs were published in the OJ on 7 June 2021.

These "new" SCCs are intended to replace the "old" SCCs, which were developed under the predecessor of the GDPR, the European Union Directive 95/46/EC. The new types of SCCs address (i) Controller-to-Controller, (ii) Controller-to-Processor, (iii) Processor-to-(Sub)Processor and (iv) Processor-to-Controller transfers and incorporate the various types of data transfers in a modular concept. It should be possible for more than two parties to adhere to the SCCs. Additional data controllers and processors should be allowed to accede to the SCCs as data exporters or importers from time to time as appropriate.

Controller – Processor SCCs

These become effective from 27 June 2021.

The Controller-Processor SCCs can be accessed here.

The Third Country SCCs

The Third Country SCCs incorporate elements of the Schrems II decision of the European Court of Justice (*Data Protection Commissioner v Facebook Ireland Limited, Maximillian Schrems*). The SCCs impose an obligation on the data exporter (assisted by the data importer) to consider the level of protection of personal data in the third country. The European Commission's decision makes it clear that the transfer and processing of personal data under SCCs should not take place if the laws and practices of the third country of destination prevent the data importer from complying with the clauses in the SCCs. The SCCs also contain an obligation on the data

importer to notify the data exporter of any inability on the part of the data importer to comply with the SCCs (whereupon the exporter must suspend/ terminate the agreement). The new SCCs also contain additional provisions, such as the requirement that transfer impact assessments shall be carried out by the data exporter and made available to the competent supervisory authority on request, as well as setting out the factors that the data exporter (with the mandated help of the data importer) must consider in a transfer impact assessment.

From 27 June 2021 the new Third Country SCCs become effective and can be used. Parties can choose to continue to use the old Third Country SCCs until 27 September 2021 provided that (i) the processing operations remain unchanged and (ii) by relying on such clauses, this ensures that the transfer of personal data is subject to appropriate safeguards. After that date, parties must use the new Third Country SCCs. For contracts concluded before 27 September 2021, the parties can continue to rely on the old Third Country SCCs until 27 December 2022. However as and from that date the new Third Country SCCs must be adopted to comply with Chapter V of GDPR.

The Third-Country SCCs decision can be accessed here.

On 24 June 2021, the European Union (Enforcement of data subjects' rights on transfer of personal data outside the European Union) Regulations 2021 were adopted (**Regulations**). The Regulations insert a new Section 117A into the Data Protection Act 2018. Section 117A provides an express right on the part of individuals to enforce third party beneficiary rights conferred on data subjects under SCCs adopted by the Commission. Prior to this, Irish law did not provide for third party beneficiary rights for data subjects.

The Regulations can be accessed here.

6.2 EDPB adopts final Recommendations on 'supplementary measures' relating to third country transfers

On 18 June 2021, the EDPB adopted the final version of its Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data following public consultation (Volume 2.0) (**Recommendations**).

The Recommendations were subject to a public consultation, which closed on 21 December 2020.

Recommendations 01/2020 were adopted with the aim of assisting controllers and processors acting as data exporters comply with their duty to identify and implement appropriate "supplementary measures" and promote the consistent application of the GDPR across the EEA, particularly in light of the CJEU's recent "Schrems II" ruling (*Case C-311/18 Data Protection Commissioner v Facebook Ireland Ltd and Maximillian Schrems*).

The Recommendations can be accessed here.

6.3 European Commission publishes adequacy decisions for transfers of personal data to the UK

On 28 June 2021, the European Commission adopted two adequacy decisions for transfers of personal data to the UK under the GDPR and Directive (EU) 2016/680 (**Law Enforcement Directive**).

The Decision concludes, following assessment by the European Commission that the UK ensures an essentially equivalent level of protection to that guaranteed under the GDPR and the Law Enforcement Directive. Personal data can now flow freely from the European Union to the UK.

Both adequacy decisions contain a 'sunset clause' which limits the duration of adequacy to four years. After four years, it will be possible to renew the adequacy finding if the level of protection in the UK continues to be adequate.

The adequacy decision concerning GDPR can be accessed here.

The adequacy decision concerning the Law Enforcement Directive can be accessed here.

7. MISCELLANEOUS

7.1 European Commission publishes proposal for a Regulation establishing a framework for a European Digital Identity

On 3 June 2021, the European Commission published a proposal for a Regulation amending Regulation (EU) 910/2014 on electronic identification and trust services for electronic transactions in the internal market (**eIDAS**) as regards establishing a framework for a European Digital Identity (**Proposed Regulation**). The purpose of the Proposed Regulation is to improve the percentage of EU citizens with access to the use of a digital ID solution to access key public services by 2030.

The Proposed Regulation can be accessed here, its accompanying annex can be accessed here. It will now be subject to the legislative process.

On 14 June 2021, the European Commission published in the OJ its Recommendation (EU) 2021/946 of 3 June 2021 on a common Union Toolbox for a coordinated approach towards a European Digital Identity Framework (**Recommendation**). The Recommendation accompanies the Proposed Regulation. The purpose of the Recommendation is to set out a structured framework for cooperation between Member States, the Commission and private sector operators.

The Recommendation can be accessed here.

7.2 European Commission launches consultation on Distance Marketing Directive

On 22 June 2021, the European Commission published a webpage announcing the launch of a public consultation on the Distance Marketing of Consumer Financial Services Directive (**DMD**). The DMD aims to ensure the free movement of financial services by harmonising consumer protection rules in the single market. Under the DMD, financial services are defined as "any service of a banking, credit, insurance, personal pension, investment or payment nature."

Since the entry into force of the DMD, the retail financial sector has become increasingly digitised, and the progressive introduction of product-specific legislation has reduced its relevance. The Commission is therefore seeking stakeholder views with a view to future-proofing the DMD.

Comments can be made on the DMD by submitting a completed questionnaire. The closing date for participation is 28 September 2021. The Commission intends to publish its proposals for reform in the first quarter of 2022.

Prior to the launch of the consultation, in May 2021, the European Commission published an inception impact assessment on its review of the DMD, in which it explained it was assessing a number of policy options.

The consultation on the DMD can be accessed here.

The text of the impact assessment can be accessed here.

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

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