



## Insurance

# Quarterly Legal and Regulatory Update

Period covered: 1 October 2022 – 31 December 2022

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## 1. SOLVENCY II

### 1.1 European Union (Insurance and Reinsurance) (Amendment) Regulations 2022 [S.I. No. 509 of 2022]

On 10 October 2022, the European Union (Insurance and Reinsurance) (Amendment) Regulations 2022 [S.I. No. 509 of 2022] (**Regulations**) were published. The Regulations, which became applicable on 19 October 2022, make a number of amendments to the European Union (Insurance and Reinsurance) Regulations 2015 [S.I. No. 485 of 2015].

The principal changes made by the Regulations are as follows:

- The criteria to be considered 'large risks' under classes 3, 8, 9, 10, 13 and 16 have been increased from a balance sheet total of €6.2m to €6.6m in assets and from a net turnover of €12.8m to €13.6m;
- The criteria to be met by an undertaking to avail of the exclusion for 'small undertakings' have been amended to increase the financial amounts applicable; and
- The absolute floor for the Minimum Capital Requirement has been amended to:
  - i. €2.7m for a non-life insurance undertaking, including a captive insurance undertaking, except in the case where all or some of the risks included in one of classes 10 to 15 in Part 1 of Schedule 1 are covered, in which case the absolute floor shall be €4m.
  - ii. €4m for a life insurance undertaking, including a captive insurance undertaking.
  - iii. €3.9m for a reinsurance undertaking, except a captive reinsurance undertaking, in which case the absolute floor shall be €1.3m.

A copy of the Regulations is available [here](#).

### 1.2 Report on the use of limitations and exemptions from Solvency II reporting during 2021 and Q1 2022

On 19 December 2022, the European Insurance and Occupational Pensions Authority (**EIOPA**) published its annual report on the use of limitations and exemptions from Directive 2009/138/EC (**Solvency II**) reporting during 2021 and Q1 2022 (the **Report**). The report highlights the limitations and exemptions from regular supervisory reporting under Solvency II, as granted by the national competent authorities (**NCA**s) to Q1 2022.

The report set out the following findings:

- Compared to the previous report, the same 11 NCAs granted limitations/exemptions to 671 individual undertakings in Q1 2022 reporting (compared with 669 in Q1 2021);
- Three NCAs, the same as in the previous report, granted limitations/exemptions from reporting item-by-item templates to 111 individual undertakings in 2021 with regard to annual reporting at the 2021 year end (compared with 113 in 2020);
- With regards to the quarterly reporting requirements at group level, four NCAs (two in Q1 2021) granted limitations and/or exemptions to 41 groups for Q1 2022 (compared to 27 in Q1 2021); and
- Two NCAs (the same as in 2020) granted limitations and/or exemptions from annual reporting to eight groups in 2021 (seven groups in 2020).

The report reinforces that proportionality is entwined with reporting requirements, reflecting the nature, scale and complexity of the risks inherent to the business. Embodying this, in Q1 2022, large undertakings reported around 10 templates while on average 5 templates were submitted by smaller undertakings.

A copy of the Report is available [here](#).

### 1.3 Insurance Europe views on the integration of sustainability risks in Solvency II

On 21 December 2022, Insurance Europe published its views on the integration of sustainability risks in Directive 2009/138/EU (**Solvency II**). Insurance Europe states that it supports the European Commission in its proposal for incorporating sustainability risks into the review of Solvency II and provides a list of “Do’s” and “Don’ts” for the proposed amendments to the framework.

The Insurance Europe publication can be access [here](#).

## 2. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

### 2.1 Propriety of administrative, management and supervisory body members and qualifying shareholders

On 12 October 2022, EIOPA published a follow up report to the 2019 [Peer Review](#), in which it describes to what extent NCAs have implemented the advised actions put to them as a result of the proprietary assessment of the Administrative Management and Supervisory Body (**AMSB**) members and qualifying shareholders.

The Report outlines that while the development of supervisory practices is still in progress in a number of countries, there has been improvement with regard to the fulfilment of the recommended actions. Out of the total 78 recommended actions issued to 28 NCAs, 47 have been fully fulfilled. Numerous reasons were given by NCAs in respect of the non-fulfilment of the recommended actions which included; lack of internal resources to work on the issue and socio-political issues following the COVID-19 pandemic which triggered additional tasks for supervisors.

The Central Bank of Ireland (**Central Bank**) was issued with a recommended action in the context of ‘ongoing verification of operating condition in relation to proprietary (suitability) of qualifying shareholders’. In response to this recommendation, EIOPA found that the Central Bank developed a detailed and structured concept regarding the assessment of qualifying shareholders on a continuous basis, implementing a new process based on a risk-based and proportionate approach. Based on the assessment, EIOPA found the recommended action fulfilled.

The Report also notes that the majority of the best practices laid out on the 2019 peer review have for the most part been adopted by NCAs. EIOPA encourages NCAs who have not yet fulfilled the recommended actions to build upon the identified best practices in order to develop their national supervisory practices.

A copy of the Report is available [here](#).

### 2.2 Methodology for assessing value for money in the unit-linked market

On 31 October 2022, EIOPA published its methodology for assessing value for money in the unit-linked market (**Methodology**). This follows the publication of the [Supervisory Statement](#) on Value for Money in November 2021, and is intended to ensure a consistent and convergent approach towards its implementation.

The Methodology is intended for the use of and support for the National Competent Authorities (**NCAs**) and aims to provide clarity for insurance manufacturers and distributors on the supervisory approach to addressing value for money risks when supervising product oversight and governance (**POG**) requirements.

The approach is divided into three layers:

- Market wide assessment (**Layer I**);
- Enhanced supervision (**Layer II**); and
- Assessment of Product Oversight and Governance (**POG**) documents (**Layer III**).

A copy of the Methodology is available [here](#).

### 2.3 Proposal for an Insurance Recovery and Resolution Directive

On 10 November 2022, EIOPA published two staff papers to provide clarity on the proposal for an Insurance Recovery and Resolution Directive (IRRD) put forward by the European Commission (**Proposal**).

These staff papers come on the back of the EIOPA Staff Paper published in July 2022 which provided an overview of the proposal for an IRRD. The Proposal itself was published in September 2021 and is currently under consideration by the European Parliament and Council of the European Union.

The first staff paper answers frequently asked questions on the Proposal, providing an overview of the most relevant aspects of the proposal and is seeking to address questions regularly asked by interested stakeholders (**FAQs**). The FAQs answer 15 questions on the IRRD including;

- why the IRRD is needed;
- whether the IRRD is too similar to Directive 2014/59/EU (the **Banking Recovery and Resolution Directive** or **BRRD**);
- how Directive (EU) 2016/97 (the **Insurance Distribution Directive** or **ID**) and BRRD will interact; and
- which companies should be subject to recovery and resolution planning.

In the second staff paper, EIOPA conducts a comparative analysis of IRRD and BRRD to identify similarities and differences between the two legal texts. EIOPA considers that the similarities included are warranted since they concern areas where there is no need for sectoral specificities (e.g. cross-border resolution, penalties in case of law infringement etc.). On the other hand, important differences are foreseen regarding fundamental elements of recovery and resolution, such as resolution tools and preparation, which duly reflect the specificities of the insurance sector.

The FAQs on the IRRD is available [here](#).

The staff paper containing the comparative analysis between IRRD and BRRD is available [here](#).

The Proposal for the IRRD can be accessed [here](#).

### 2.4 EIOPA consults on cyber component in its insurance stress testing framework

On 24 November 2022, EIOPA published a discussion paper on methodological principles of Insurance Stress testing with focus on Cyber Risk (the **Stress Test Discussion Paper**).

The Stress Test Discussion Paper outlines practical and theoretical approaches to support the design phase of potential future insurance stress tests, focusing on cyber risk. With the Stress Test Discussion Paper, EIOPA intends to lay the foundations for an assessment of insurers' capacity to operate under severe but plausible cyber incident scenarios, focusing on two central points:

- Cyber resilience – the capability of an insurance undertaking to sustain the financial effect of an adverse cyber-event;
- Cyber underwriting risk – the capability of an insurance undertaking to sustain the financial impact from a capital and solvency perspective of an adverse cyber-event.

The Stress Test Discussion Paper makes up part of EIOPA's wider campaign to bolster its stress testing framework. It follows on from EIOPA's 2019 [paper](#) on Methodological Principles of Insurance Stress Testing, which was in turn followed its papers Methodological Principles of Insurance Stress Testing with a focus on Liquidity and Methodological Principles of Insurance Stress Testing with a focus on Climate Risks.

The Stress Test Discussion Paper is open for comments until 28 February 2023. Stakeholders are invited to submit their feedback via email by using the template for comments provided below.

The Stress Test Discussion Paper is available [here](#). The template for comments is available [here](#).

## 2.5 Prudential treatment of sustainability risks

On 5 December 2022, EIOPA published a discussion paper on the Prudential Treatment of Sustainability Risks (**Sustainability Risks Discussion Paper**).

Given that sustainability risks can materially impact investment and underwriting activities of insurance undertakings, EIOPA considers it important that Solvency II reflects those risks appropriately. The Sustainability Risks Discussion Paper delineates EIOPA's approach as to whether a dedicated prudential treatment of assets and activities relating to sustainable objectives under Solvency II would be appropriate.

The Sustainability Risks Discussion Paper focuses on three distinct areas of analysis:

- Assets and transition risk exposures – how risks relating to progression to less carbon dependent economy may impact prudential risks related to stocks, bonds and property;
- Underwriting risk and climate change adaptation – analysing the potential for investment in climate-related adaptation measures to reduce loss exposure and underwriting risk in the non-life insurance sector; and
- Social objectives and social risks from a prudential perspective – how social risks could translate into prudential risks and assess their corresponding prudential treatment.

The Sustainability Risks Discussion Paper is open for comments until 5 March 2023. Stakeholders are invited to submit their feedback by responding to the questions through the European Commission's EU Survey Tool, which is available [here](#).

A copy of the Sustainability Risks Discussion Paper is available [here](#).

## 2.6 EIOPA Work Programme 2023-2025

On 21 December 2022, EIOPA published details of its work programme for 2023-2025. The Single Programming Document 2023-2025 outlines EIOPA's strategy for the coming years including its work programme for 2023 (**Work Programme**). EIOPA considers the broader context in which it operates in its Work Programme, including a summary of the evolving macro-economic, political and environmental landscape, as well as technological and sectoral developments.

The Work Programme outlines the six strategic areas that EIOPA will focus on to achieve the twin objectives of ensuring consumer protection and safeguarding financial stability:

- **Sustainable Finance** – EIOPA pledges to contribute to building up sustainable insurance and pensions, including by addressing protection gaps;
- **Digital Transformation** - Support the supervisory community and industry to mitigate the risks and seize the opportunities of the digital transformation;
- **Supervision** - Promote sound, efficient and consistent prudential and conduct supervision throughout Europe, particularly in view of increased cross-border business;
- **Policy** - Deliver high-quality advice and other policy work considering changing and growing needs of society as well as the effects of new horizontal regulation;
- **Risks to Financial Stability** - Further enhance financial stability, with particular focus on the analysis of financial sector risks and vulnerabilities, and emerging threats; and

- **Governance** - Be a model EU supervisory authority setting global high standards of corporate governance and fostering efficient cooperation within the EU and globally.

A copy of the Single Programming Document for 2023-2025, including the Work Programme is available [here](#). A short version of the single programming document is available [here](#).

## 2.7 Supervisory statement on inflation

On 22 December 2022, EIOPA published a supervisory statement on inflation (**Statement**).

The Statement is addressed to NCAs and addresses the main impacts of higher rates of inflation across the globe on insurance and reinsurance undertakings. EIOPA is issuing the Statement to support the end-of-the-year Solvency II calculations. It explains that the impact of the inflation is undertaking-specific, and the statement aims mainly to raise awareness about the relevant Solvency II provisions.

The statement sets out its supervisory expectations in the following areas:

- Impact on undertakings' technical provisions;
- Impact on investments; and
- Impact on solvency capital requirement (**SCR**).

EIOPA expects NCAs to monitor undertakings' assessment of the above impacts and any measures taken as a follow-up.

The Statement also sets out other elements that undertakings and NCAs need to consider. For example, undertakings may need to undertake a review of risk management systems and consider whether the current calibration of the stress test scenarios remains accurate given current economic conditions.

A copy of the Statement is available [here](#).

## 3. INSURANCE DISTRIBUTION DIRECTIVE (IDD)

### 3.1 Warning regarding the sale of credit protection insurance

On 4 October 2022, EIOPA issued a warning to insurers and banks (acting as insurance distributors) to ensure that credit protection insurance (**CPI**) products offer fair value to consumers, or risk facing supervisory measures.

The warning follows the publication of EIOPA's thematic review published on the same day, on the functioning of the EU market for CPI products sold via banks (acting as insurance distributors) and how well it succeeds in delivering good customer outcomes. EIOPA acknowledged the benefits of CPI products but warned of significant risks arising from poor underwriting practices and insufficient safeguarding preventing conflicts of interest.

The thematic review identified the following key issues that could impact negatively on consumers:

- limited choice and barriers to shopping around;
- high product diversity and price dispersion;
- issues with cancellation and switching providers; and
- high remuneration and conflicts of interest.

EIOPA expects all insurers and banks (acting as insurance distributors) to fully comply with Directive (EU) 2016/97 (**Insurance Distribution Directive** or **IDD**) as well as the product oversight and governance (**POG**) requirements and to take action to address issues with high remuneration and prevent detrimental conflicts of interest.

EIOPA and NCAs will prioritise monitoring of the European CPI market and exercise supervisory powers when needed.

A copy of the Thematic Review is available [here](#). A shortened digital report of the thematic review is available [here](#).

A copy of EIOPA's warning Statement is available [here](#).

## 4. PRIIPS

### 4.1 PRIIPS KID- Questions and Answers (updated 14 November and 21 December 2022)

On 14 November 2022, the ESAs published a revised version of their Q&A on the PRIIPs Key Investor Document (**PRIIPs KID**) in which they provided additional guidance on a number of matters, including:

- the product categories which must be used for performing market risk assessment;
- the calculation and disclosure of performance scenarios;
- the calculation and disclosure of costs incurred;
- how past performance signposted to in the PRIIPs KID should be presented on the relevant website/other document; and
- use of “representative” share class PRIIPs KID.

On 21 December 2022, the ESAs subsequently published an updated Q&A on the PRIIPs KID.

The revised Q&A included by the ESAs address the new Level 2 measures introduced via Commission Delegated Regulation (EU) 2021/2268 which apply from 1 January 2023 onwards. It provides updated guidance on the calculation methodology (i) for performance scenarios and (ii) for costs (including transaction costs) as well as providing additional guidance on the presentation of costs.

The updated PRIIPs KID Q&A dated 22 December 2022 is available [here](#).

### 4.2 New Central Bank Webpage on PRIIPs KID

The Central Bank has created a webpage which sets down the filing requirements for PRIIPs KID for UCITS funds. The Central Bank's webpage on PRIIPs KID is available [here](#).

## 5. CENTRAL BANK OF IRELAND

### 5.1 Review of the Consumer Protection Code

On 3 October 2022, the Central Bank published a discussion paper on the review of the Consumer Protection Code (the **Code**) (**Discussion Paper**). The Central Bank recognises the Code as the cornerstone of its consumer protection framework but notes that it is time for its review to ensure that the framework can evolve to address the challenges faced by consumers of financial services both today and in the future.

The Discussion Paper forms part of the Central Bank's five year strategy, and aims to enhance broader understanding of its role in terms of consumer protection. The Discussion Paper and corresponding survey have been launched to invite feedback to the Central Bank. The Central Bank aim to engage on key topics including:

- availability and choice of financial products;
- firms acting in consumers' best interests;
- innovation and disruption;
- digitalisation;
- vulnerability; and
- financial literacy.

The Central Bank are welcoming feedback by interested stakeholders on the Discussion Paper through an online survey, which is available [here](#). The closing date for submissions is 17:00 on Friday 31 March 2023.

A copy of the Discussion Paper is available [here](#).

## 5.2 Guidelines on authorisation applications

On 14 November 2022, the Central Bank published Guidelines on completing and submitting life insurance, non-life insurance and reinsurance applications for authorisation (**Guidelines**).

Under the European Union (Insurance and Reinsurance) Regulations 2015 (as amended) (**Regulations**), any insurance undertaking wishing to establish its head office in Ireland and wishing to carry out the business of insurance or reinsurance must apply for authorisation from the Central Bank.

The Guidelines set out obligations the Regulations impose on prospective insurance providers, setting out the iterative process that involves contact and consultation with personnel from the Central Bank. The Guidelines set out the following:

- criteria for assessing applications;
- making an application;
- application processing;
- authorisation; and
- application fee.

A copy of the Guidelines for submitting applications to the Central Bank is available [here](#).

## 5.3 Fourth Private Motor Insurance Report of the National Claims Information Database

On 15 November 2022, the Central Bank published the fourth annual Private Motor Insurance Report of the National Claims Information Database (**NCID**).

The fourth iteration of the Report of the NCID encompasses aggregate data received from insurers for the calendar years 2009 to 2021. The report notes that data from 2020 and 2021 is influenced by the impact of COVID-19 and ancillary government restrictions, an impact reflected in premiums, claim costs and financial results.

Among the key findings of the Report are:

- Cost of Insurance From 2020 to 2021 and across all years 2009 to 2021;
- Income and expenditure in 2021 and across all years 2009 to 2021;
- Impact of Personal Injury Guidelines 2021;
- Injury claim settlements channels 2019-21; and
- Injury claim settlement durations 2015-21.



A copy of the Report is available [here](#).

#### 5.4 Central Bank (Amendment) Bill 2022

On 18 October 2022, the Central Bank (Amendment) Bill 2022 (**Bill**) progressed to the second stage of its debate in the Seanad.

The proposed Act amends the Central Bank Act 1942 (**1942 Act**), by the insertion of Section 69 which will prohibit financial service providers from discriminating against survivors of cancer in the accessing of financial services or insurance, and to provide for related matters.

The progress of the Bill can be tracked through the stages [here](#). It is currently before the Seanad for debate.

A copy of the Bill is available [here](#).

#### 5.5 “Dear Chair” letter regarding consumer protection

On 17 November 2022, the Central Bank published a “Dear Chair” Letter in which it emphasised the importance of financial services firms meeting the obligations set out in the Central Bank’s Consumer Protection Outlook Report in March 2022 in light of the materialisation of a more challenging economic outlook since the Report’s publication.

The Central Bank outlines additional steps to be taken by firms in the following areas:

- Affordability and suitability;
- Provision of relevant, clear and timely information;
- Effective operational capacity; and
- Sales and product governance.

A copy of the “Dear CEO” Letter is available [here](#).

#### 5.6 Central Bank publishes research on insurance engagement and switching

On 1 December 2022, the Central Bank published an Economic letter, ‘Engagement, switching, and digital usage in consumer and insurance markets: who does it and why does it matter’, in which it examines engagement and switching patterns among car and home insurance consumers in Ireland, including an analysis of the role of digital platforms (the **Letter**).

The Letter draws on a survey of 5,500 insurance policyholders, using behavioural economics to highlight factors that may inhibit engagement and switching among policyholders. Among the key findings were:

- Policyholders are more likely to engage with and/or switch provider if, on renewing their policy, the price increases;
- 8 out of 10 car and home insurance consumers engage with their provider on renewal. Around 1 in 4 switch provider;
- Time-poor consumers are less likely to switch their policies; and
- Perceptions play a role in consumer behaviour - around 1 in 4 believe that loyalty to an existing provider will be rewarded.

The Letter highlights the importance of digital literacy and the role of consumer psychology in inhibiting engagement and switching. The Central Bank expects firms to take the factors outlined in the Letter into account in order to help consumers make informed decisions.

A copy of the Letter is available [here](#)

## 5.7 Central Bank (Individual Accountability Framework) Bill 2022

On 7 December 2022, the Central Bank (Individual Accountability Framework) Bill 2022 (**Bill**) completed the Committee Stage in the Dáil. The Bill will soon move into the Report Stage in the Dáil and is expected to be put before the Seanad for its consideration early this year.

Under the Bill, a new individual accountability framework will include the establishment of a “Senior Executive Accountability Regime” (**SEAR**) as well as the introduction of new enforceable conduct standards (or standards of behaviour) expected of regulated entities, their senior executives and other staff, enhancements to the fitness and probity regime, and a unified enforcement process which aims to break the existing “participation link” whereby the relevant regulated entity must be found to have committed a breach before individuals within it can be held to account.

For more information on the key amendments to the Bill put forward at Committee Stage, please refer to our recent briefing [here](#).

You can access a copy of the text of the Bill and follow the progress of the Bill [here](#).

## 5.8 Quarterly Insurance Newsletter

On 14 December 2022, the Central Bank published its Quarterly Insurance Newsletter (**Newsletter**).

The Newsletter addresses the following key items:

- **Thematic Review of (Re)Insurance Recovery Plans** – This article contains a summary of the Central Bank’s recent Thematic Review, noting common themes identified across the submissions including a variance in the quality of the recovery plans submitted;
- **Key Sectoral Risks for (Re)Insurers in Ireland** – This article provides an overview of the key risks identified by the Central Bank during the risk assessment and scanning process of 2022.
- **NST Taxonomy Updates** – This article highlights upcoming changes to some of the Central Bank’s National Specific Templates.
- **Consumer Protection expectations in relation to Data Migration** – This article outlines the Central Bank’s expectation of insurers in relation to the migration of consumers from one product or provider to another to ensure that consumer interests are protected and potential risks mitigated.

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

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

### 6.1 EBA publishes guidelines on remote customer onboarding

On 22 November 2022, the European Banking Authority (**EBA**) published its final guidelines (**Guidelines**) on the use of Remote Customer Onboarding Solutions under Article 13(1) of Directive 2015/849 (**Fourth Money Laundering Directive** or **MLD4**).

The Guidelines set common EU standards on the development of comprehensive, risk-sensitive initial customer due-diligence (**CDD**) processes in the remote customer onboarding context. The European Commission asked the EBA to issue the Guidelines due to differing supervisory expectations in respect of remote onboarding across Member States. The Covid-19 pandemic accelerated non-face-to-face customer take-on demand, creating more risks and challenges for financial institutions in their CDD processes.

The Guidelines set out steps credit and financial institutions should adhere to when choosing remote customer onboarding tools and what they should do to ensure that the chosen tool is adequate and reliable and enables them to act in accordance with their initial CDD obligations.

The Guidelines will apply 6 months following their publication in the official languages of the European Union on the EBA website.

A copy of the Guidelines is available [here](#).

## 6.2 CJEU judgment on public access to beneficial ownership registers and the implications for AML/CFT rules

On 22 November 2022, the Court of Justice of the European Union (**CJEU**) published a ruling regarding the public access to information on the beneficial owners of companies and certain other entities (**In-Scope Entities**) pursuant to MDL4, deeming such access invalid (the **Judgment**).

In its Judgment, the CJEU found that the unrestricted nature of public access to beneficial ownership registers is repugnant to the fundamental rights to respect for private life and to the protection of personal data, as enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (the **Charter**).

The CJEU ruled that the public access constituted an infringement to individual's rights that was not limited to what was strictly necessary and was not proportionate to the objective of the beneficial ownership register of combatting money laundering and terrorist financing. The CJEU noted that the principle of transparency could not be considered an objective of general interest capable of justifying the interference with fundamental individual rights.

On 6 December 2022, the co-rapporteurs of the upcoming 6th Anti-Money Laundering Directive (**MDL6**), released a statement in light of the Judgment, in which they emphasised the importance of access to the beneficial ownership registers by competent authorities and financial intelligence units (**FIUs**). The co-rapporteurs condemned certain reactive closures to registers, even to competent authorities in the wake of the Judgment, but vowed that the reformative Judgment would be enshrined in any future beneficial ownership rules.

On 6 December 2022, the Central Bank published an updated guidance on beneficial ownership register of certain financial vehicles in response to the CJEU's Judgment, in which they removed reference to access by the public of certain information on the register (**Guidance**).

The Guidance refers to the recent Judgment, stating access requests by members of the public will not be processed, pending clarification of the legislative position by the law-making body. Chapters 3 and 4 have been updated to reflect the recent Judgment.

A copy of the CJEU press release on the Judgment is available [here](#).

A copy of the statement by the co-rapporteurs of MDL6 is available [here](#).

A copy of the updated Guidance by the Central Bank is available [here](#).

## 6.3 Application of Guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT Compliance Officer under Article 8 and Chapter VI of MLD4

On 1 December 2022, the final guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT compliance officer under Article 8 and Chapter VI of MLD4 (**Guidelines**) came into effect.

The key areas addressed in the Guidelines are:

- Role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT;
- Role and responsibilities of the AML/CFT compliance officer; and
- Organisation of the AML/CFT compliance function at group level.

The Guidelines, which were published by the EBA on 14 June 2022 are available [here](#). For more information, please see our Dillon Eustace briefing on this topic which is available [here](#).

#### 6.4 EBA consults on new guidelines amending the ML/TF Risk Factors Guidelines and proposing a new set of guidelines on policies and controls for the effective management of ML/TF risks when providing access to financial services

On 6 December 2022, the EBA launched a public consultation (the **Consultation**) amending the guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions (EBA/2021/02) (The **ML/TF Risk Factors Guidelines**) and proposing new guidelines on the effective management of money laundering and terrorist financing (**ML/TF**) risks when providing access to financial services.

The EBA aim, through these guidelines, to ensure that all customers are not impeded access to financial services without just cause. The draft guidelines set out in the consultation paper have been developed at the European Commission's request following the publication of the [EBA's Opinion and annexed report on de-risking](#), and the EBA's [Opinion](#) on the application of customer due diligence measures to customers who are asylum seekers from higher-risk third countries or territories in 2016.

The first of the draft guidelines under consultation builds on the existing [ML/TF Risk Factors Guidelines](#), adding a new annex, setting out what financial institutions should consider when assessing the ML/TF risks associated with a business relationship with customers that are Not-for-Profit organisations (**NPOs**).

The second of these draft guidelines under consultation addresses the effective management of ML/TF by financial institutions when facilitating access to financial services. These draft guidelines identify the relationship between the access to financial services and the obligation of financial institutions to comply with AML/CFT regulations, including situations where vulnerable customers may have valid reasons to be unable to provide traditional forms of identification.

The deadline for submission of comments on the Consultation is 6 February 2023.

A copy of the consultation paper is available [here](#).

#### 6.5 European Council agrees its position on MLD6

On 7 December 2022, the European Council (the **Council**) agreed its position on an anti-money laundering regulation and a new directive which will replace the existing MDL4 (as amended by Directive 2018/843, the fifth AML Directive) (**MLD6**).

The Council's intention for MLD6 is to close existing loopholes allowing for money laundering and terrorist financing by:

- extending the AML rules to the entire crypto sector, obliging crypto-asset service providers (**CASPs**) to conduct CDD on their customers for any transactions over 1,000 EUR;
- ensuring that large transactions are not used for ML/TF by limiting large cash payments to a maximum EU-wide limit of 10,000 EUR with Member States being given flexibility to impose a lower maximum limit if they wish;
- having third countries with AML deficiencies listed by the Financial Action Task Force (**FATF**) also being listed by the EU, creating two EU lists, the so called "black list" and a "grey list" reflecting the FATF listings;
- clarifying beneficial ownership rules to allow for more transparency and harmonisation across the EU. Both ownership and control needs to be assessed to identify natural persons. The Council has clarified rules applicable to multi-layered ownership and control structures and for the identification of beneficial owners for different types of entities, including non-EU entities; and

- new third party financing intermediaries i.e. jewellers, horologists and goldsmiths will also be covered by the new AML rules.

MLD6 and the new recast regulation for the transfer of funds will form the new strengthened EU AML rulebook.

The next step in the legislative process is to begin triologue negotiations with the European Parliament with the aim of agreeing on a final version of the text.

The Council's press release is available [here](#).

A copy of the proposal for the AML/CFT regulation is available [here](#).

A copy of the proposal for MLD6 is available [here](#).

## 7. DATA PROTECTION

### 7.1 The EU-U.S. Data Privacy Framework: European Commission starts process to adopt adequacy decision for safe data flows with the United States

On 13 December 2022, the European Commission published a draft commission implementing decision on the adequate level of protection of personal data under the EU-US Data Privacy Framework (**Draft Adequacy Decision**). The new privacy framework is based on a self-certification process similar to the original EU-U.S. Privacy Shield which was struck down by the CJEU in the Schrems II<sup>1</sup> ruling of 16 July 2020.

The Draft Adequacy Decision follows the Executive Order signed by President Biden and regulations issued by the US Attorney General introducing the new binding safeguards to address concerns raised by the CJEU in Schrems II by limiting access to EU data by US intelligence agencies and establishing a redress mechanism, namely the Data Protection Review Court (**DPRC**). In relation to the limiting of access to EU data, the Executive Order requires that US intelligence activities should be subject to appropriate measures for safeguards; that the surveillance activities shall be necessary to advance a validated intelligence activity and only conducted in a manner that is proportionate to the intelligence activity itself. The Draft Adequacy Decision follows the European Commission's publication of Questions and Answers on the new EU-U.S. Data Privacy Framework on 7 October 2022.

US companies will be able to certify their participation in the EU-U.S. Data Privacy Framework by committing to comply with a detailed set of privacy obligations (such as purpose limitation and data retention, as well as specific obligations concerning data security and the sharing of data with third parties).

The Draft Adequacy Decision states that the new privacy framework will provide comparable safeguards to those of the EU. The proposal text has been sent to the European Data Protection Board (**EDPB**) for its opinion.

A copy of the Draft Adequacy Decision is available [here](#).

A copy of the EU-U.S. Data Privacy Framework Q&As are available [here](#).

## 8. CONFLICT IN UKRAINE

In reaction to Russia's continued military aggression against Ukraine, the European Union has adopted additional economic sanctions against Russia and Belarus which have been introduced through a suite of additional packages adopted by the Council of the European Union announced on 5 October 2022 and 16 December 2022 respectively.

<sup>1</sup> Case: C-311/18

These packages included, amongst others, an extension to the list of those individuals and entities subject to restrictive measures. Commission Regulation (EU) 2022/2474 also provide individual national competent authorities with the power to authorise specific transactions which are necessary for the divestment and withdrawal by European companies from those Russian state-owned entities subject to the transaction ban subject to such conditions as the relevant national competent authority deems necessary.

For a complete overview of the additional measures introduced by the Council on 6 October 2022, please see the related press release which is available from [here](#).

For a detailed overview of the additional measures introduced by the Council on 16 December 2022, please see the related press release which is available from [here](#).

A consolidated version of the European Commission's frequently asked questions on the range of measures introduced in response to Russia's continued military aggression against Ukraine is available [here](#).

## 9. SUSTAINABILITY

### 9.1 European Commission adopts Commission Delegated Regulation amending existing SFDR Level 2 Regulations to incorporate additional disclosure obligations relating to exposure to investments in Taxonomy-aligned gas and nuclear economic activities.

On 31 October 2022, the European Commission adopted amending SFDR Level 2 Regulations (which include revised pre-contractual and periodic reporting annexes) (**Draft Amending SFDR Level 2 Regulations**) which will require financial markets participants with financial products falling within the scope of the Taxonomy Regulation to use such updated pre-contractual and periodic reporting annexes in order to provide information on investments in taxonomy-aligned fossil gas and nuclear economic activities. In particular, disclosures must make clear the proportion that such investments represent within all investments, and in environmentally sustainable economic activities. The recitals to the Draft Amending SFDR Level 2 Regulations also indicate that such information must be disclosed on the website of the financial market participant.

The European Parliament and the Council of Europe have 3 months from date of receipt from the European Commission to scrutinise the amending SFDR Level 2 Regulations (i.e. until 31 January 2023) which provide that they should take effect on the third day following their formal publication in the OJ.

A copy of the amending SFDR Level 2 Regulations is available [here](#) and a copy of the annexes thereto is available [here](#).

### 9.2 Publication of ESA Q&A on SFDR

On 17 November 2022, the ESAs published a Questions and Answers on the SFDR Delegated Regulation (**Q&A**).

In the Q&A, the ESAs provide additional guidance to financial market participants, including advices on the following matters:

- PAI disclosures to be made by financial market participants falling within the scope of Article 4(1) of the SFDR;
- Calculation of "current value of all investments" under the PAI and Taxonomy frameworks;
- Disclosures to be made by financial products falling within the scope of Article 8 or Article 9 of the SFDR; and
- Taxonomy-aligned investment disclosures and calculation of Taxonomy alignment.

A copy of the Q&A is available [here](#).

### 9.3 EIOPA outlines future sustainable finance initiatives

On 18 November 2022, EIOPA published a press release that provides details of future initiatives relating to sustainable finance. The initiatives that EIOPA intends to undertake include:

- Providing guidance on the application of the Regulation (EU) 2019/2088 (the **Sustainable Finance Disclosure Regulation** or **SFDR**);
- Consulting, before the end of 2022, on a dedicated prudential treatment of environmental and social objectives under Solvency II; and
- Publishing in December 2022 the first European-wide dashboard on natural catastrophe insurance protection gaps.

EIOPA published the press release to mark the conclusion of the 2022 United Nations Climate Change Conference (**COP27**). In its work programme for 2023, which was published in September 2022, EIOPA stated that one of its priorities for 2023 was integrating sustainable finance considerations across all areas of work.

EIOPA also hosted a Sustainable Finance Conference on 7 December 2022.

A copy of EIOPA's press release can be accessed [here](#).

### 9.4 ESA Call for Evidence on Greenwashing

The ESAs also published a Call for Evidence on potential greenwashing practices in the whole EU financial sector on 15 November 2022 (**Call for Evidence**).

In the Call for Evidence, the ESAs seek input from stakeholders across the EU financial sector on examples of potential greenwashing practices at both entity and product level, any available data to help the ESAs gain a concrete sense of the scale of greenwashing and identify areas of high greenwashing risks and views from stakeholders on how to understand greenwashing and what the main drivers of greenwashing might be.

The responses received from stakeholders will inform an interim progress report which the ESAs must each provide to the European Commission by May 2023 and a final report which must be provided to the European Commission by May 2024 detailing greenwashing risks and occurrences in the EU financial sectors and on the supervisory action taken and challenges faced to address those risks.

Responses to the Call for Evidence must be submitted by 10 January 2023.

A copy of the Call for Evidence is available [here](#).

### 9.5 EU Corporate Sustainability Reporting Directive is published in the OJ

On 16 December 2022, the EU Corporate Sustainability Reporting Directive (**CSRD**) was published in the OJ.

The CSRD amends both the scope and the reporting obligations imposed under the existing Non-Financial Reporting Directive (**NFRD**) so that all EU large companies, all EU listed companies and certain non-EU companies meeting specific thresholds will be required to incorporate sustainability-related information relating to environmental matters, social and human rights and governance factors in the non-financial statement included in their annual financial statements, using specific mandatory reporting templates prepared by the European Financial Reporting Advisory Group.

The CSRD will be phased in as follows for financial years starting on or after:

- 1 January 2024 for companies already subject to the NFRD;
- 1 January 2025 for companies that are not presently subject to the NFRD;
- 1 January 2026 for listed SMEs, small and non-complex credit institutions and captive insurance undertakings.

A copy of the CSRD is available [here](#).

## 9.6 Draft Commission notice on the interpretation and implementation of certain legal provisions of the EU Taxonomy Climate Delegated Act

On 19 December 2022, the European Commission issued a draft notice on the interpretation and implementation of certain legal provisions of the EU Taxonomy Climate Delegated Act<sup>2</sup> which sets down the technical screening criteria required to be used to assess whether an activity contributes substantially to the environmental objectives of: (i) climate change mitigation or (ii) climate change adaptation and does no significant harm to any of the other environmental objectives (**Notice**).

The Notice is intended to facilitate the effective application of the EU Taxonomy Climate Delegated Act and to provide technical clarifications responding to FAQs on the technical screening criteria set out therein.

The Notice is divided into the following three sections:

- Horizontal questions on process, updates and further development;
- Sector-specific questions on technical screening criteria; and
- Questions on recurring DNSH (“do no significant harm”) criteria.

The Notice has been approved in principle by the European Commission and its formal adoption will take place at a later date as soon as the language versions are available.

A copy of the Notice is available [here](#).

## 9.7 European Commission publishes notices on the interpretation and implementation of the Disclosures Delegated Act under Article 8 of the Taxonomy Regulation

During the period under review, the European Commission published two separate notices on the interpretation and implementation of the Disclosures Delegated Act<sup>3</sup> which applies to those entities which fall within the scope of Article 8 of the Taxonomy Regulation. Where financial products do not fall within the scope of Article 8 of the Taxonomy Regulation, any financial market participant which falls within the scope of the NFRD reporting requirements (as extended under the CSRD) will be subject to the disclosure obligations set down in Article 8 of the Taxonomy Regulation.

The first of these notices was published on 6 October 2022 and provides general guidance on the disclosure obligations arising under Article 8 of the Taxonomy Regulation, with the notice covering: (i) General FAQ, (ii) Non-Financial Undertakings, (iii) Financial Undertakings, (iv) Asset Managers, (v) Insurers, (vi) Credit Institutions, (vii) Debt Markets and (viii) Interaction with Other Regulations.

<sup>2</sup> Delegated Regulation (EU) 2021/2139 of 4 June 2021 as amended by Commission Delegated Regulation (EU) 2022/1214

<sup>3</sup> Regulation (EU) 2021/2178



The second notice, which was published by the European Commission in draft form on 19 December 2022, is intended to provide specific guidance to non-financial undertakings falling within the scope of Article 8 of the Taxonomy Regulation (who must commence reporting their Taxonomy key performance indicators as of 1 January 2023). It contains General FAQs as well as specific FAQs on turnover, CapEX and OpEX key performance indicators.

A copy of the notice published by the European Commission on 6 October 2022 is available [here](#).

A copy of the draft notice published by the European Commission on 22 December 2022 is available [here](#).

## 10. MISCELLANEOUS

### 10.1 Road Traffic and Roads Bill 2021

On 6 October 2022, the Road Traffic and Roads Bill 2021 (**Bill**) progressed to the third stage of its debate in the Seanad. The Bill will allow motor insurers' access to penalty point records to be extended to cover disqualifications, and to allow such insurers access when a policy is being changed and not only when it is being issued/renewed.

The Bill is now at the Committee Stage of the Seanad. The progress of the Bill can be viewed [here](#).

A copy of the Bill, as passed by Dáil Eireann is available [here](#).

### 10.2 Issues Paper on Insurance Sector Operational Resilience - Draft for public consultation

On 13 October 2022, the International Association of Insurance Supervisors (**IAIS**) published for consultation its Issues Paper on Insurance Sector Operational Resilience (**Issues Paper**). Operational resilience has emerged as an important area of focus in light of rapidly evolving technology and innovation. The IAIS' Operational Resilience Task Force (**ORTF**), has therefore published the Issues Paper, identifying issues impacting operational resilience and provides examples of how supervisors approach the developments.

The paper addresses three specific operational resilience sub-topics concerning areas the ORTF considers as matters of significant and increasing operational risk and, therefore, of immediate interest to supervisors:

- Cyber resilience;
- Third-party outsourcing; and
- Business Continuity Management.

The public consultation on the Issues Paper closes on 13 January. Following which, the IAIS will now review the comments in preparation for publishing the final report.

A copy of the Issues Paper is available [here](#).

### 10.3 Health Insurance Act 1994 (Section 11E(2)) Regulations 2022 [S.I. No. 553 of 2022]

On 11 November 2022, the Health Insurance Act 1994 (Section 11E(2)) Regulations 2022 (S.I. No. 552 of 2022) were published in Iris Oifigiúil (**Regulations**).

The Regulations set out that the Health Insurance Authority is satisfied that the two contracts listed in the schedule do not provide for advanced cover.

A copy of the Regulations is available [here](#).

#### 10.4 Action Plan for Insurance Reform - Implementation Report November 2022

On 14 November 2022, the Department of Enterprise, Trade and Employment published the third implementation report of the Action Plan for Insurance Reform (**Report**).

The Action Plan for Insurance Reform (**Action Plan**) was initially launched in December 2020, setting out 66 actions to deliver on commitments made in the Programme for Government to bring down costs of insurance for consumers and business. The Report sets out that of the 13 principle actions in the Action Plan, 11 are now considered complete, including:

- Consumer Insurance Contracts Act has been commenced;
- the Office to Promote Competition in the Insurance Market has been established;
- a ban on price walking has taken effect;
- the Perjury and Related Offences Act has commenced;
- measures to improve the reporting of insurance fraud have been introduced;
- the Personal Injuries Guidelines have been delivered; and
- Legislation to complete the remaining principal actions in respect of reform of the Personal Injuries Assessment Board and legislation to reform the Occupiers' Liability Act 1995 are being progressed through the Oireachtas.

The Report sets out a table listing the commitments relating to insurance reform and reports on the status of actions as outlined in the Action Plan alongside other recent developments in the Insurance Sector.

A copy of the Report is available [here](#).

#### 10.5 Companies Act 2014 (Section 12A(1)) (Covid-19) (No.2) Order 2022

On 7 December 2022, a statutory instrument further extending the interim period of two measures of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 (**Act**), which makes temporary amendments to the Companies Act 2014 to address certain issues arising from the Covid-19 pandemic, until 31 December 2023 was signed into law.

The measures which have been extended until 31 December 2023 are:

- Increase to the threshold at which a company is deemed unable to pay its debts from €10,000/€20,000 to €50,000; and
- Provision to allow companies to hold AGMs and general meetings virtually.

The below measures were not extended and as a result ceased to be effective as at 31 December 2022:

- Provision to allow documents required to be executed under seal to be executed in counterpart; and
- Extension of the time period for the examinership process from 100 to 150 days, subject to court approval.

A copy of the Order is available [here](#).

#### 10.6 Personal Injuries Resolution Board Act 2022

On 13 December 2022, the Personal Injuries Resolution Board Act 2022 was signed into law (**Act**). The Act amends and extends the Personal Injuries Assessment Board Act 2003 (**2003 Act**), providing for the change of the name of the Personal Injuries Assessment Board to the Personal Injuries Resolution Board (**Board**). The Act also expands the powers of the Board and introduces the following changes:

- To provide that the Board may make provision for a mediation process in respect of claims;
- To provide that the Board may appoint mediators and make rules relating to mediation processes;

- To amend procedures relating to assessment of claims where a long-term prognosis is awaited;
- To provide for additional time to evaluate claims where an injury is yet to settle instead of proceeding to litigation; and
- to amend the Freedom of Information Act 2014.

The Act is yet to be commenced. The date for its commencement will be set down in future commencement order(s).

A copy of the Act is available [here](#)

### 10.7 Health Insurance (Amendment) Act 2022

On 21 December 2022, the Health Insurance (Amendment) Act 2022 (**Act**) was signed into law. The Act amends the Health Insurance Act 1994 to specify the amount of premium to be paid from the Risk Equalisation Fund relating to certain categories of insured persons, effective from 1 April 2023.

The Act also amends the 1994 Act further, by:

- extending the powers of enforcement for authorised officers of the Health Insurance Authority,
- introducing provisions for how certain high cost claims under health insurance contracts are to be treated for risk equalisation purposes; and
- introducing a consequential change to the Stamp Duties Consolidation Act 1999.

The majority of the provisions introduced by the Act came into force on 1 January, while sections 2, 3 and 6 enter into force on 1 April 2023.

A copy of the Act is available [here](#).

### 10.8 Council adopts Digital Operational Resilience Act (DORA)

On 27 December 2022, Regulation (EU) 2022/2554 on digital operational resilience was published in the OJ which creates a harmonised regulatory framework strengthening the information and communication technology (**ICT**) security of financial entities (**DORA Regulation**).

Also published in the OJ on the same date was Directive (EU) 2022/2556 which will, once transposed into national law, amend various other EU directives, including MiFID II, to bring them in line with the DORA Regulation (**DORA Directive**).

Together, the DORA Regulation and the DORA Directive create a regulatory framework on digital operational resilience whereby all financial services firms, including insurance and reinsurance undertakings, will be required to make sure they can withstand, respond to and recover from all types of ICT-related disruptions and threats. The aim of the framework is to replace multiple ICT risk management frameworks with a single unified approach by imposing a common set of standards on in-scope firms to manage and mitigate ICT risks.

The DORA Regulation comprises of five key pillars:

- ICT risk management requirements - Firms will be required to develop and maintain resilient ICT systems to mitigate against cyber risks;
- ICT-related incident management, classification and reporting- Firms will be required to implement a process for monitoring and logging ICT-related incidents;
- Digital operational resilience testing- Firms will be required to periodically test their ICT risk management framework;

- Managing of ICT third-party risk- Firms will be required to implement strong controls around third-party risk management;
- Information-sharing arrangements- Firms will be encouraged to share cyber security information with regulators and other financial institutions.

Firms will be required to comply with the legislation in a manner which is proportionate taking into account their size and overall risk profile and the nature, scale and complexity of their services, activities and operations.

Both the DORA Regulation and the DORA Directive will enter into force on 16 January 2023 and will apply from 17 January 2025.

A copy of the DORA Regulation is available [here](#).

A copy of the DORA Directive is available [here](#).

A Dillon Eustace briefing on the new DORA framework is available [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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