

## Newsletter Actuarial Association of Europe issue n° 2 – 2016

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*This Newsletter is written by **Lieve Lowet and Lodewijk Buschkens, partners, ICODA European Affairs**. Both have extensive experience in European Affairs. ICODA was founded in 1991. Its office is located in the European district of Brussels. From this central position, the consultancy services business, national and local governments, NGOs, European umbrella organisations, and focuses on selective sectors. Besides translating Europe to organizations and businesses, its services consist mainly of consulting and advice to its clients on their positioning and lobbying strategy. See [www.icoda.eu](http://www.icoda.eu)*

**Research completed on 1 February 2016.**

## Dutch EU-Presidency

*The Dutch Presidency wants to make important steps to complete the Banking Union and the Capital Markets Union.*

On 1 January, the Netherlands succeeded Luxembourg as the President of the Council of the European Union. The priorities of the Presidency have been proclaimed by Dutch Prime Minister Mark Rutte and Minister of Foreign Affairs Bert Koenders. The Netherlands wants the EU to focus on the essentials and wants to focus on innovation and creating jobs. One of the main issues the presidency will have to deal with is migration.

### *Priorities financial sector*

The Netherlands has several priorities for the financial sector. It wants the trilogue negotiations on IORP II to go smoothly and to reach a general approach in the Council on the securitisation and prospectus initiatives. Furthermore, during the Presidency, the Netherlands wants to make important steps towards finishing the Capital Markets Union and the Banking Union.

For more information: <http://english.eu2016.nl/>

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## Brexit

*The United Kingdom is negotiating with the EU. Cameron is confident he can reach a deal at the February Council meeting.*

Another political challenge for the Dutch Presidency will be to prevent the UK from leaving the European Union. The British population shall vote before the end of 2017. It is likely that the referendum will take place in June 2016 conforming to David Cameron's intention. In order to do so, he needs to reach an agreement on his demands by the February EU summit. The reasoning behind the desire to go quickly is that the longer Member States bicker over proposed changes, the higher the chances are that the electorate will vote to leave the EU. In Brussels, there seems to be optimism about a possible deal at the February summit, planned for 18-19 February.

Britain, the second largest economy in Europe, leaving the EU would have serious economic impact on the Union and the British economy. According to Eurosceptic think tank Open Europe, the UK would lose 2.2 percent of its GDP by 2030 if it leaves the EU single market. An advantage might be sovereignty on policy, but the big disadvantage includes losing access to the internal market. Brexit also entails other complications such as the need for the UK to work out new trade agreements, and financial institutions with offices in London considering relocating, which would result in job losses. The effect of Brexit on UK financial services will largely depend on the kind of arrangements the UK will be able to negotiate to replace EU membership. Certainly, under the SII framework, a non-EU jurisdiction is a third country, subject to an equivalence decision. It should also be noted that EEA countries are expected to apply EU legislation but are not part of its genesis.

Jonathan Faull, the former European Union's top civil servant for financial services regulation heads up a special European Commission "Brexit" taskforce dedicated to the UK's referendum on its membership of the Union. Implications for the insurance sector are as of yet not spelled out.

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# Capital Markets Union

Amendments to the Prospectus Directive and the Securitisation initiative have been proposed. Several consultations have taken place or are ongoing, also on the Green Paper on retail financial services.

## Prospectus Regulation

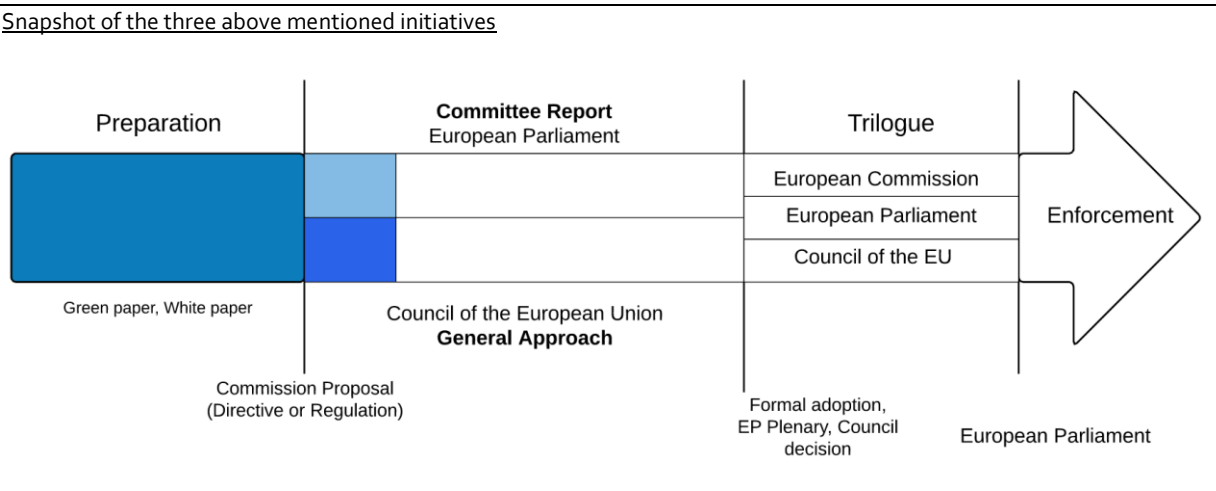
The European Commission presented its [new Prospectus Regulation](#) on 30 November 2015. to replace the current Prospectus Directive (2003/71/EG). The revision of the Prospectus Directive pursues a simple goal: to provide all types of issuers with disclosure rules tailored to their specific needs while making the prospectus a more relevant tool of informing potential investors. By replacing the Directive with a Regulation, the approach towards Prospectuses should become more coherent and less fragmented amongst Member States. Jonathan Hill, the European Commissioner on Financial Stability, Financial Services and Capital Markets Union (DG FISMA), explained that the new Prospectus Regulation will make the process of drafting a prospectus easier, faster and cheaper. The most important changes in the Prospectus Regulation are:

- Exempting the smallest capital raisings: No EU prospectus will be required for capital raisings below €500,000 (up from €100,000)
- Creating a lighter prospectus for smaller companies
- Shorter prospectuses and better investor information
- Simplifying secondary issuance for listed firms
- Fast track and simplified frequent issuer regime: Companies that frequently issue will also be able to use an annual "Universal Registration Document" (URD), a sort of "shelf registration". If kept updated with their supervisors, issuers will benefit from a five-day fast track approval when they actually want to tap into capital markets by issuing shares, bonds or derivatives
- Single access point for all EU prospectuses: ESMA (European Securities and Markets Authority) will provide free and searchable online access to all prospectuses approved in the European Economic Area.

The new regulation foresees also in several delegated and implementing acts.

## Securitisation initiative

The European Commission proposed the Securitisation initiative on 30 September 2015. The initiative will allow securitisation to function as an effective funding mechanism for European markets, while still maintaining a high level of security for investors. The initiative consists of two legislative proposals. One is a proposal to create a Securitisation Regulation and one is a proposal to amend the Capital Requirements Regulation (CRR).



Source: ICODA European Affairs

### **Where are we now?**

The Securitisation Regulation and Prospectus Regulation have been sent to the Council and the European Parliament. The ECON Committee is responsible for both initiatives, as well as for the CRR suggested changes. The Rapporteur for the Securitisation Regulation is Paul Tang (S&D, NL), for the Prospectus Regulation is Philippe De Backer (ALDE, BE), and for the CRR changes is Pablo Zalba Bibegain (EPP, ES). The European Parliament and Council can now amend the proposals. The Dutch Presidency hopes to be able to reach a general approach on these proposals in June 2016.

### **Open Consultations/Call for Evidence**

The European Commission launched several Open Consultations and a Call for Evidence together with the Capital Markets Union Action Plan. The Open Consultation on EuVECA and EuSEF and the Open Consultation on Covered bonds were closed on 6 January 2016. The results haven't been published yet. The deadline for the Call for Evidence on the EU regulatory framework for financial services was moved to the end of January, due to the broad scope of the exercise.

### **Green paper on retail financial services**

The Commission is working on the removal of barriers in retail financial services in the context of the CMU. The Commission [published](#) on 10 December 2015 a [Green Paper on retail financial services](#), including insurance, that will seek views on how to increase choice, competition and cross-border supply of retail financial products, as well as the impact of digitalization on retail financial services. Stakeholders will have the opportunity to comment till **18 March 2016**. A [conference](#) is foreseen on 2 March 2016 in which session 2 will deal with pan-European insurance products. An action plan on retail financial services can be expected by summer 2016.

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## **Solvency II**

*The legal framework is complete. The directive is transposed in nearly all Member States. The amendments to the delegated regulation on certain assets classes is still pending.*

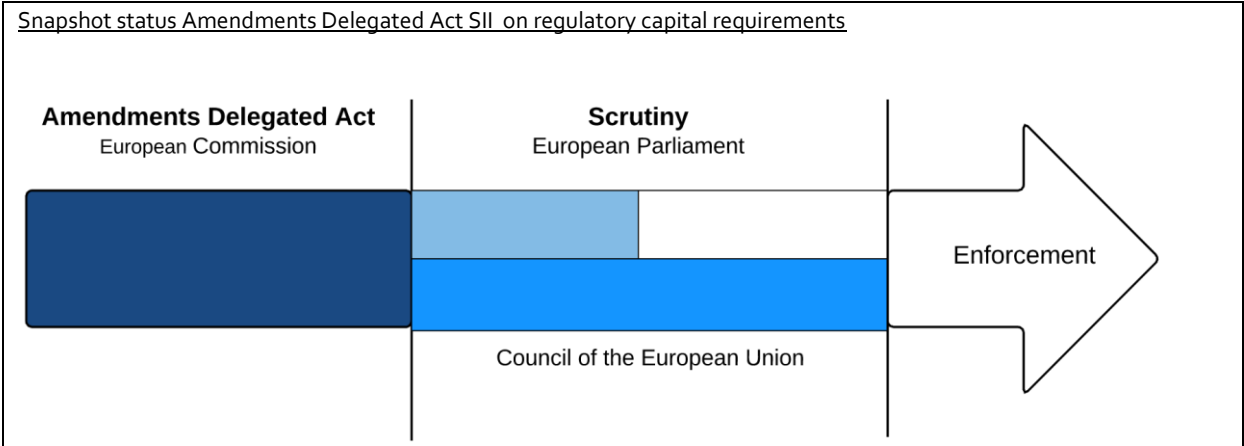
### **Level 1**

Solvency II (SII) has entered into force on 1 January, 2016 after more than a decade of preparation. As a reminder, the Commission adopted its SII directive on 10 July 2007 and its Omnibus I Directive on 19 January 2011. Not all Member States have yet transposed the directive(s) into national law: the Commission addressed letters to Cyprus, Bulgaria, Greece, Luxembourg, Slovenia and Sweden regarding the non-compliance with the end date of national transposition (31 March 2015).

### **Level 2 - Delegated Regulation: amended delegated regulation**

As part of the Capital Markets Union, the Commission adopted a [Commission delegated regulation amending Commission Delegated Regulation \(EU\) 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings](#) on 30 September 2015. The Council, despite some reservations (see the statements of the [Czech Republic and Hungary](#)), did not object. The European Parliament still holds its 'non-objection' under consideration and [announced an extension](#) of the investigation period until 30 March 2016. The ECON members have concerns both about the form and the content of the new delegated regulation. This became clear in the debate on 1 December 2015 in ECON. One of the elements for example, is the fact that barely two weeks after the adoption of the amendments the Commission sent a [new request to EIOPA](#), calling for further technical advice on the identification and calibration of other infrastructure risk categories, such as infrastructure corporates. Given the very short deadline, only 6 [replies](#) were received. Although the Commission would like advise from EIOPA quite soon, it remains to be seen if there is enough evidence for a robust report in such a short

period. The EP has addressed [a letter](#) to the Commission on the concerns of some ECON members that need further clarifications.



Source: ICODA European Affairs

**Delegated decisions: equivalence**

The [decision to grant provisional equivalence](#) for 10 years to the solvency regimes in force in Australia, Bermuda, Brazil, Canada, Mexico and the United States applicable to insurance and reinsurance undertakings with head offices in third countries was published on 9 December 2015. Based on this positive declaration of equivalence pursuant to Article 227 of the SII Directive such groups may use for the calculation of the solvency requirement of the group and the eligible own funds, the rules of that third country in lieu of calculating it on the basis of the SII directive. The condition is to use as a consolidation method for their group reporting deduction and aggregation. The ten years period started 1 January 2016.

Regarding [Bermuda](#), the Commission amended end November its previous decision of 5 June 2015. Bermuda was granted full equivalence in accordance with the requirements of the three S II Articles: Article 172, related to equivalence of reinsurance, Article 227, regarding group solvency calculation and Article 260, equivalence of group supervision. [Japan](#) gets temporary equivalence with regards to Article 172 (4) relating to reinsurance for five years, and provisional equivalence with regards to Article 227 (5) relating to group solvency for ten years. These decisions must now be scrutinized by the European Parliament and the Council, for which they have a period of three months. Publication in the Official Journal of the EU and the entry into force will only take place after the successful completion of the Parliament and the Council’s scrutiny. The Commission foresees a retroactive application.

**Implementing technical standards**

[All implementing technical standards \(ITS\)](#) in the form of Implementing Regulations have now been published. The last three ITS concern the extensive details on the reporting requirements. For example, the "Implementing Regulation (EU) 2015/2450 of the Commission of December 2, 2015 to adopt implementing technical standards with regard to the templates for the submission of information to the supervisory authorities in accordance with Directive 2009/138 / EC of the European Parliament and the Council" contains more than 1,200 pages templates. There is still one ITS in the pipeline ([Draft ITS on Procedures for the application of the transitional measure for the calculation of the equity risk sub-module](#) of 6 November 2015. Publication can be expected once the 3 month scrutiny period ends.

**Guidelines**

All 19 sets of Guidelines have been published.

## Technical information

- Regarding [the risk-free interest rate term structures](#), the final revised background material (coding, FAQ and technical documentation) was published prior to 1 January 2016. The latest monthly rate dates from 13 January 2016 (with correction for the Hungarian Forint).
- As of 1 January 2016, [the symmetric adjustment of the equity capital charge](#) has to be published by EIOPA on a monthly basis. EIOPA did publish such rate on a monthly basis since January 2015.
- Regarding the ultimate forward rates (UFRs), MEP Sven Giegold (Greens, DE) has voiced [concerns](#) about EIOPA's Board of Supervisors ( i.e. national supervisors) decision to keep the rate unchanged until the end of 2016. A decision on whether or not to overhaul the method for calculating the ultimate forward rate is to be taken by September 2016.

## European Parliament: EU representation in international fora – the Goulard report

The ECON committee initiated an [Own Initiative Report on the EU role in the framework of international financial, monetary and regulatory institutions and bodies](#). The Rapporteur is Sylvie Goulard (FR, ALDE). Compromise amendments are still in the making.

## European Parliament: Stocktaking financial services regulation – the Balz report adopted

Burkhard Balz (EPP, DE) proposed his [Own Initiative Report on Stocktaking and challenges of the EU Financial Services Regulation: Impact and the way forward towards a more efficient and effective EU framework for Financial Regulation and a Capital Markets Union](#) on 26 August 2015. "We need to examine consistency, accuracy, proportionality, complexity, added value and - of course - the economic effects of the rules", said Balz in the Parliament's plenary debate. The Balz [Resolution](#), calling for this overall check-up was adopted on 19 January 2016 by the EP with a large majority (575 votes in favour, 106 against, 32 abstentions). Several points mentioned in the report resurfaced again in the debate on the scrutiny agenda point of the ECON meeting of 26 January 2016, in which the Commission and the ESA's were running the gauntlet.

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## Pensions

*The European Parliament's Economic and Monetary Affairs committee (ECON) has voted on the IORP II draft report. EIOPA has published the results of the first IORP stress test and consults on PEPP advice.*

## Occupational pensions

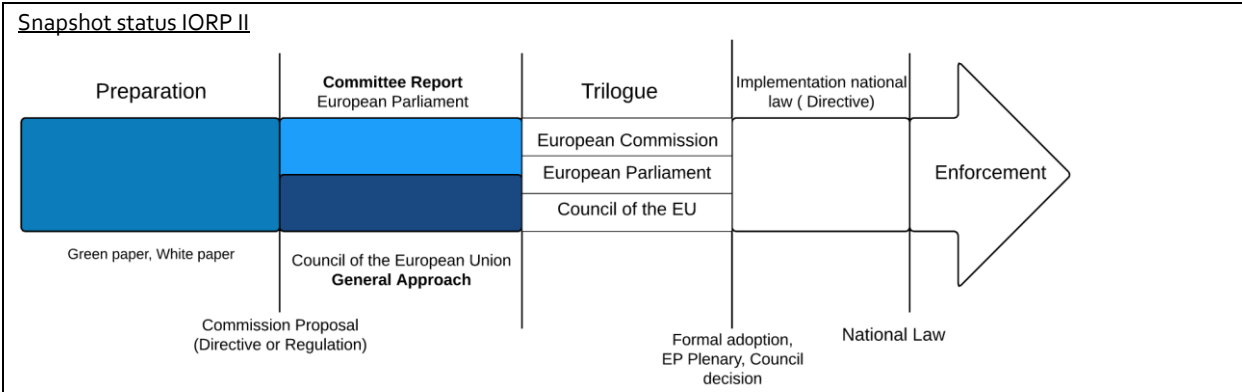
### IORP II

The IORP II draft directive, which the Commission proposed on 27 March 2014, moves closer to its final version. In the European Parliament, the responsible committee, ECON, voted the Hayes report on 26 January 2016 with 47 votes in favour and three votes against. The vote sees the removal of the cross-border funding requirement to have schemes to be fully funded at all times. Instead, the introduction of the IORPs directive would mean cross-border schemes would simply be subject to the same funding rules as single country schemes. ECON also reintroduced a greater focus on environmental concerns, amended out by the Council. The proposed universal benefit statement was revised. Rapporteur Brian Hayes (EPP, IR) who spearheaded these changes especially on the funding part, said this was crucial because pension schemes are not insurance products and adding more costs would not be beneficial. Shadow rapporteur Paul Tang (S&D, NL) is happy with the end result: "pension funds manage other people's money, so it is important that there are strict requirements. In the Netherlands, this protection is well organized, but what if a pension fund moves to another country, because less stringent rules apply there? To avoid this kind of practice, we perform a duty of care in Europe. Because of this duty of care, a pension fund may only move if the supervisor of

*the host country can demonstrate that the members of the fund are adequately protected.* " There are cases of pension funds 'shopping' for a country with a lenient regime. On the IORP draft proposal, the EP's research service published an excellent [briefing](#) including an overview of its genesis, a stakeholder analysis and the changes the proposal would bring.

**What's next?**

A final draft version of the Directive is to be decided among the Commission, Parliament and the Council, represented by the Presidency, in trilogue negotiations, which will commence in the coming weeks. Adoption could well happen during the Dutch Presidency. The Commission has foreseen transposition by the end of 2016 and application by 1 January 2017. This timescale is no longer realistic. As the current ECON text deleted any delegation for secondary legislation, if accepted by trilogue parties, no further delegated acts, RTS or ITS should then need to be developed.



Source: ICODA European Affairs

**IORP stress test**

EIOPA announced on 26 January the results of the first EU stress test for occupational pensions. The objectives of the stress test were to produce a comprehensive picture of the heterogeneous European occupational pensions' landscape; to test resilience of defined benefits (DB) and hybrid pension schemes against adverse market scenarios and increased life expectancy; to identify potential vulnerabilities of defined contribution (DC) schemes; and to reveal areas that require further supervisory focus. The stress test revealed that:

- A prolonged period of low interest rates will pose significant future challenges to the resilience of DB IORPs.
- IORPs are relatively more resilient to an increase in longevity than to market adverse scenarios.
- Absorption of these shocks depends heavily on the time element for realising liabilities and the mitigation and recovery mechanisms in place in each country.
- The results of the severe stress scenarios applied reveal a number of risks and vulnerabilities that deserve proper attention from IORPs and supervisors.

In order to compare diversified stress test results, EIOPA developed for DB schemes a Common Methodology using market-consistent valuation for assets and liabilities. Simultaneously, EIOPA conducted an assessment of DB schemes based on the National Balance Sheets (NBS). The DC part of the exercise is presented in the EIOPA report as a 'satellite module' because it was conducted on a different basis.

DB and hybrid schemes demonstrated relative resilience to a permanent decrease of 20% in mortality rates. At the same time they appeared to be more sensitive to an abrupt drop in interest rates and an increase in inflation rates (under the Common Methodology) and to a severe drop in assets prices (under NBS).

The satellite module for DC schemes showed that the impact on the pensions' level strongly depends on the time which plan members have before retirement. Eldest plan members have the



highest pension wealth and the least time to recover from price falls of assets. Youngest plan members are most heavily impacted by long-term low return on assets.

Seventeen European Economic Area countries with a material occupational pensions sector, which is over EUR 500 million in assets, participated in the exercise. Out of a total 140 Europe-wide participants, 61 were UK DB schemes, representing coverage of over 30% of the Assets Under Management in the UK DB universe and over 40% of the EU-wide participating schemes.

No decisions have been made at an EU level around the use of the holistic balance sheet (HBS) which is still subject to further EIOPA work. The HBS has been used in EIOPA's pension stress test as the basis for the common methodology in order to provide a comparative tool only. The Report on the results of the first EU Stress Test for Occupational Pensions can be [viewed here](#). For more details please click [here](#).

### **What's next?**

According to the Report, *"Further work is needed in order to have a deeper understanding of the impact on financial markets and the real economy of the aforementioned reality, especially concerning the consequences of the extra pressure put on sponsors to increase their future contributions."*

### **Quantitative Assessment (QA)**

EIOPA's 'Opinion to the EU institutions' (based on quantitative assessment) is planned for the first half of April. It should be emphasized that there is no relationship with the current IORP II discussions.

According to EIOPA, its final aim is *"to collect evidence and to assess the appropriateness of EIOPA's proposals that were publicly consulted in 2014. Those proposals elaborate on concepts for the use of the holistic balance sheet and possible supervisory responses, with a focus on the valuation of technical provisions and sponsor support."* At the same time as the advice, EIOPA will also provide the reasoned feedback on the supervisory responses part (Q72-Q111) in 2016 as the reasoned feedback on the valuation part (Q1-71) has already been published.

### **Consultation on Communication Tools**

EIOPA is currently consulting on a [Consultation Paper on Good Practices on communication tools and channels for communicating to occupational pension scheme members](#), due 22 March. These are certainly relevant in the light of the results of the stress tests, and the possible introduction of the Universal Benefit Statement by IORP II.

### **TTYPE (Track and Trace Your Pension in Europe)**

The European Commission has initiated a project to support the development of a tracking service for private pension entitlements, called TTYPE, which focuses more and more only on occupational pensions. The second phase is nearly coming to an end. Final findings and recommendations will be presented in spring 2016. Partners are seven experienced pension operators from five European countries: PGGM, MN Services, APG, Sokabau, Sigedis, the People's Pension, and PKA. The Commission is happy to co-sponsor an initial phase but has indicated that the project should be self-sufficient after a few years. The January expert meeting gave an update on the business plan, processing of feedback from previous expert meetings and discussions about motivation for connecting to ETS on the national level.

### **Personal pensions**

The EU wants to develop a EU Single market for personal pension products (PPPs). [The Commission issued in 2014 a call to EIOPA](#) asking for advice from EIOPA on PPPs and using a large scope. The Commission wanted EIOPA's advice by 1 February 2016. In line with this request, but not quite,

EIOPA published on 1 February a [Consultation Paper on EIOPA's advice on the development of an EU Single Market for personal pension products \(PPP\)](#). Deadline for replies is **26 April 2016**. The advice takes into account the stakeholders' feedback received through the public consultation conducted in summer 2015. It contains EIOPA's final advice on the attractiveness and feasibility of a 2<sup>nd</sup> regime for a Pan-European Personal Pension Product (PEPP). EIOPA hopes that the public consultation will give input on how PPPs and a possible European Union-wide framework can be further developed. The current timeline implies that the final advice to the Commission cannot be expected earlier than **June 2016**.

The main objective of EIOPA's advice is *"to further build on a regulatory environment for PPPs to contribute to the provision of adequate future retirement income. This is also considered to be one of the priority measures for the CMU Action Plan, as recently confirmed by the European Commission."*

In the draft advice, EIOPA confirms its position on the potential and the design of a PEPP, setting out standardised features the product should have (such as information disclosures taking PRIIPs as a base line, or limits on the number of investment choices faced by the customer); and flexible features (such as on the decumulation options available at retirement and guarantees to be offered).

| Pan-European Personal Pension Product (PEPP) |                                  |                   |                         |
|--|----------------------------------|-------------------|-------------------------|
| Standardised elements                        | information provision            | Flexible elements | guarantees              |
|  | default "core" investment option |                   | cap on cost and charges |
|  | limited investment choices       |                   | switching               |

Source: EIOPA

EIOPA invites stakeholders and interested parties to provide feedback particularly on the following proposed areas (through responding to 7 questions):

- Governance standards for providers of PPPs
- Harmonised basis for product governance rules for PPPs
- Harmonised basis for distribution rules for PPPs
- Harmonised disclosure rules for PPPs
- Possible specific additional capital requirement for PPPs
- Further powers for national supervisors that are tailored to PPPs

In function of the features offered by the PEPP, EIOPA recommends an actuarial key function. It should be also be noted that EIOPA is recommending to explore the Caveat Venditor principle as next step, derived from the auto-enrollment world. An end to more than 2000 years of Caveat emptor?

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## News from EIOPA

*EIOPA's chair Bernardino was reconfirmed, a new director general Fausto Parente has been nominated.*

The Board of Supervisors of EIOPA elected early December three new members of EIOPA's Management Board:

- Julia Cillikova, Director of the Regulation Department of the National Bank of Slovakia;
- Frank Grund, Chief Executive Director of BAFIN, the German Federal Financial Supervisory Authority;
- Misu Negrițoiu, President of the Romanian Financial Supervisory Authority.

They will replace Jan Parner, Deputy Director General of Finanstilsynet (Denmark) and Sergej Simoniti, Director of Insurance Supervision Agency (Slovenia), whose terms of office expired, as well as Felix Hufeld, who resigned due to his new position as the President of BaFin.

On 16 December 2015 the EP confirmed the reappointment of Gabriel Bernardino as Chairman of EIOPA. It will be Mr Bernardino's second five-year term, starting on 1 March 2016. Peter Braumüller, Managing Director at the Austrian Financial Market Authority, was re-elected end January as EIOPA's Alternate Chair for a period of five years.

EIOPA's Board of Supervisors selected Fausto Parente to become the Authority's second Executive Director and to succeed Carlos Montalvo. Fausto Parente has a distinguished career in supervisory regulations and policies at the national and international level. Currently, he is Head of the Supervisory Regulation and Policy Directorate at the Italian Insurance Supervisor, IVASS – Istituto di Vigilanza sulle Assicurazioni. The appointment of Fausto Parente is subject to confirmation by the European Parliament, foreseen to take place after a hearing by the end of March.

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## European Banking Union

*The Commission has proposed the creation of a European Deposit Insurance System (EDIS) as third pillar of the Banking Union.*

While the first two steps in the establishment of the European Banking Union are achieved through the establishment of the Single Supervisory Mechanism (SSM) - operational since 4 November 2014 and in hands of the ECB - and the Single Resolution Mechanism (RRM) - operational since 1 January 2016 and executed by the Single Resolution Board (SRB) - there is still no common deposit guarantee system. Therefore, and as a next step in the further development of the European Banking Union, the Commission on 24 November, agreed on a proposal for a regulation on the establishment of a European Deposit Insurance System as the third pillar of the Banking Union.

The scope of EDIS would be every deposit-taking bank established in the Banking Union. The proposal does not exclude any group of deposit-taking banks, irrespective of the type of Deposit Guarantee Scheme (DGS) to which they belong. This means that statutory DGS, but also institutional protection schemes and contractual schemes, are covered if these are recognised as a DGS. Currently, all Member States have deposit guarantee schemes, as the Deposit Guarantee Scheme Directive requires all deposit-taking banks in the EU to be a member of a national DGS. National schemes would continue to co-exist alongside EDIS.

EDIS would be established in three sequential stages:

- The first stage would be a re-insurance scheme and would apply for 3 years until 2020.
- The second stage would be a co-insurance scheme and would apply for 4 years until 2024.

- In the final stage, EDIS would fully insure deposits and would cover all liquidity needs and losses in the event of a pay out or resolution procedure.

The full insurance of depositors in the Banking Union would fall under EDIS from 2024 onwards.

The European Deposit Insurance Fund would be equivalent to 0.8% of the covered deposits of all banks in the Banking Union by 2024. In absolute terms and based on data from 2011 on banks' balance sheets, the fund would reach around €43 billion. The target size of the fund would be dynamic and increase automatically if the banking sector grows. EDIS would be gradually built-up over a period of 8 years. Nevertheless, contributions by banks to EDIS would be risk-based and would take into account both the relative probability that they would require the activation of deposit insurance and the amount of deposits that would need to be covered. This risk profile would become more significant when this calculation switches to a European basis at the start of the co-insurance phase. The precise amount that an individual bank would need to contribute would be determined by a delegated act and take into account the risk profile of a given bank.

The Banking Union is mandatory for all Eurozone countries and consists of 19 members : Austria , Belgium , Cyprus, Estonia , Finland, France , Germany , Greece , Ireland, Italy , Latvia, Lithuania , Luxembourg, Malta , Netherlands , Portugal , Slovakia, Slovenia and Spain. If a non-Eurozone Member State chooses to join the Banking Union, they must apply the three parts: supervision (SSM) , resolution (SRM) , and EDIS.

EDIS is also a priority for the Dutch Presidency.

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## Recovery and resolution of non-banks

*For the time being, the Commission is not proposing a similar framework to the bank recovery and resolution for non-banks.*

Regarding the non-banking sector, the Commission is focusing on a proposal for a recovery and resolution framework for central counterparties (CCPs) expected early this year. There are no signs yet that the Commission is planning a similar initiative for insurers, despite the [letter](#) of EIOPA of February 2015 to which the Commission did not even reply. In that letter, EIOPA said that the existence of non-harmonized recovery and resolution regimes, with non-harmonized insurance guarantee schemes would make the management of a stressed situation much more difficult.

However, the creation of a possible European recovery and resolution framework for the insurance sector may be influenced by international developments on G-SII's, (with the IAIS (and FSB) in the lead), and developments in Europe on the banking side. The SII directive refers only incidentally to recovery and resolution. Since 1 January 2015, date of entry into force of the framework for the recovery and resolution of credit institutions (Directive 2014/59 / EU) recovery plans became an important aspect of planning and risk management in banks as evidenced in [EBA's second report on recovery planning](#) in 19 major European banking groups. In this context it is also relevant to refer to recent guidelines from EBA to specify the conditions for financial support within a group (group support) under Article 23 of Directive 2014/59/EU.

Besides the call from EIOPA, the IAIS/FSB developments, and the banking sector's advancements, the ESRB is also preparing a report for the European Commission on the need for recovery and resolution regimes and a number of common principles for insurance guarantee schemes in the EU (not even all EU countries have an insurance guarantee system). In its recent and comprehensive report entitled "[Report on systemic risk in the EU insurance sector](#)", also the ESRB considers that the current guarantee regime does not suit for a "double hit" scenario.

## Insurers and systemic risks

*The ESRB questions whether NCAs have sufficient tools to address macro-prudential concerns*

The ESRB published on 17 December 2015 the above-mentioned report from its ESRB Insurance expert group, in which it questions whether NCAs have sufficient tools to address macro-prudential concerns. Further analysis and understanding is needed as input for future discussions on the legal framework. The above-mentioned ESRB report is also recommend reading for other reasons. The ESRB is critical of some of the most popular elements of SII, such as the volatility adjustment, the ultimate forward rate (UFR) and the possible new calibrations for infrastructure investments and securitizations. The ESRB proposes to introduce countercyclical capital and liquidity requirements. These proposals may result in positioning the ESRB as a macro-prudential authority in the insurance landscape. The ESRB finds it important to underline that insurers can be systemically important institutions and instruments are needed to address systemic risk.

The ESRB will concentrate in the future on three areas:

- recovery and resolution;
- macro-prudential impact of SII: the strength of the sector, the use of transitional measures and the impact of changes in the calibrations on the investment strategies;
- and the development of macro-prudential tools, lacking in the insurance sector.

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## Data Protection Reform

*The Data Protection Package has been agreed in trilogue; several L2 measures will now need to be developed.*

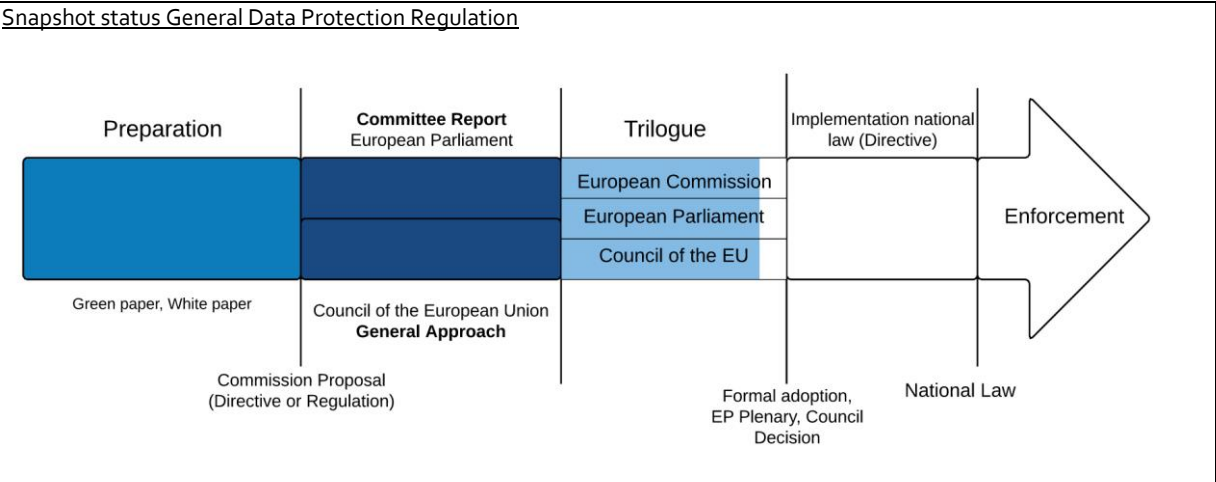
The Data Protection Package consists of the General Data Protection Regulation and the Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data.

Viviane Reding, in her capacity as the then Commissioner for Justice, launched the original proposal in 2012. It is meant to update the European Data Protection rules from 1995. It foresees the unifying of Data Protection rules in the European Union. After the European Parliament voted in favour of the new Regulation by a large majority, the Council of the European Union delayed the negotiation process. The trilogue negotiations between the European Parliament, the European Commission, and the Council could only actually start in the summer of 2015. They have now been completed in record time under the Luxembourg Presidency on 16 December 2015. At an extraordinary meeting on 17 December 2015, the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament endorsed the text of the trilogue. On 18 December 2015, the Committee of Permanent Representatives (Coreper) [approved](#) these compromise texts. After a legal-linguistic review of the texts, they will be submitted for adoption by the Council and, subsequently, by the Parliament. The regulation and the directive are expected to be applicable in spring 2018.

## What's in the final text

The last changes concern the conditions for when a company has to hire a Data Protection Officer (DPO). In earlier drafts, the size of the company determined if a company needed to hire a DPO. The new text states that the controller and the processor of data, so companies and organisations, shall designate a data protection officer in any case where the core activities of the controller or the

processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale. One of the objects of the Data Protection Reform, was to harmonise rules on Data Protection in the EU. This partly succeeded. However, there are a lot of exceptions and possibilities for opt-outs.



Source: ICODA European Affairs

In reaction, Insurance Europe stressed the importance of the new regulation to embrace customer trends in favour of digitalisation and not impose unnecessary constraints that would prevent last minute purchases of online insurance coverage by customers. Similarly, given that fraud can lead to price increases for honest customers, Insurance Europe highlighted why insurers need to be able to retain and process data in order to detect and prevent fraud, as well as to conform to other regulations.

*“Further work will, of course, be needed to bring this regulation into force, and its impact will only truly be known once the delegated acts and implementing measures are finalised. Insurance Europe will continue to closely monitor the situation and engage with the relevant parties throughout this process. This will be done to ensure that the final regulation allows insurers to use data responsibly to innovate for the benefit of their customers, while ensuring that such data is adequately protected.”* thus William Vidonja, head of conduct of business at Insurance Europe, commented.

**Safe harbour 2.0**

The European Court of Justice determined on 6 October 2015 that the European Commission Safe Harbour decision was invalid resulting in thousands of European SMEs left in uncertainty while continuing to operate in legal limbo on data transfers between the two continents. The European Commission and the US have since then negotiated on Safe Harbour 2.0. MEP Axel Voss, EPP Group Spokesman on Data Protection, and MEP Monika Hohlmeier, EPP Group Spokeswoman on Civil Liberties, Justice and Home Affairs, have urged both the European Commission and the US to reach a legally-watertight and durable agreement by the self-imposed deadline of 31 January 2016. Axel Voss commented further that *“that an agreement (...) is followed by a reasonable compliance phase-in period in order to give small enterprises time to adjust to the newly-agreed legal framework”*. The EPP is the largest political group in the European Parliament, with 216 out of 751 seats.

One of the negotiators in a new agreement that has been put forward by the US government, Deputy General Counsel of the Department of Commerce, Justin Antonipillai, noted that the deadline of 31 January was on a Sunday, and so the negotiation team views Tuesday, February 2 – the next meeting date of the Article 29 Working Party – as the true deadline.

## Review of the Insurance Block Exemption Regulation (IBER)

*The studies regarding IBER have been awarded; results are expected in June 2016*

The Commission should review and potentially renew the IBER provisions in a new block exemption regulation before 31 March 2017. The European Commission held an Open Consultation on this issue in 2014 and also tendered a study. The study was split up last year in two different lots, as no candidates tendered for the first call. Lot number 1 is "Switching of tangible and intangible assets between different insurance products", Lot number 2 is "Different forms of cooperation between insurance companies and their respective impact on competition". These two studies have been awarded to the same company, European Economic Research in London. The number of tender offers was still very low. The final report is expected in June 2016.

A block exemption regulation (BER) allows market players the benefit of a safe harbour from the prohibition on anti-competitive agreements. The last IBER agreements related to carrying out joint general impact studies and the joint establishment and to the distribution of calculations of the average costs of covering a specified risk.

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## Consumer protection

*The insurance distribution directive has been approved, signed and published after successful trilogue conclusions. EIOPA has published its conduct of business supervisory approach*

### Insurance distribution directive

The insurance distribution directive (IDD) aims at ensuring a level playing field between all participants involved in the selling of insurance products and strengthening policyholder protection. The agreed trilogue text was voted in the EP's [on 24 November 2015](#). The Council adopted IDD on 14 December 2015 without discussion at a meeting of the Agriculture and Fisheries Council. The text was signed on 20 January 2016 and the IDD will be published in the Official Journal of the EU so as to come into force 20 days after its publication. No later than 1/1/2018 Member States will need to transpose the IDD into national law. A series of delegated acts is foreseen on articles 25, 28, 29 and 30 on which EIOPA has started working, as well as guidelines.

In preparation of the Call for Advice from the European Commission under the IDD, EIOPA has published an [online survey](#), which closed on 22 January. The aim was to involve market participants and stakeholders at an early stage seeking their input for the thorough development of robust policy recommendations. Based upon the feedback EIOPA will draft policy proposals, which will be publicly consulted on later this year.

### **EIOPA's Strategic Approach to developing a comprehensive risk-based and preventive framework for conduct of business supervision on a European level.**

EIOPA published its conduct of business supervision [strategy](#) on 11 January 2016. In this document, EIOPA states that its approach to consumer protection is "to be focused on the whole product life cycle with a greater emphasis on preventive, risk-based conduct supervision". In view of this, EIOPA's perspective should be broadened to the entire value chain and strengthen the focus on risks and their prevention by focusing on key areas such as common language, methodology and indicators that are both qualitative and quantitative. "EIOPA's strategy going forward will continue to focus both on prudential and conduct of business supervision. Ensuring that insurance undertakings are soundly managed, have robust governance procedures and have a robust solvency position in order to make sure that they can fulfil all their commitments is being tackled by Solvency II. In addition to the specific tools

*underlined in this document, consumer protection is also being addressed in the context of the PRIIPs Regulation, the Insurance Distribution Directive (IDD) and Product Oversight and Governance arrangements more generally”.*

### **Further work on Consumer Protection and Financial Innovation**

In line with announcements in the ESA’s [Joint committee work plan for 2016](#), a [consultation](#) on a Joint Discussion Paper on automation in financial advice was issued with a deadline for comments on 4 March 2016.

### **European Agenda**

|                |   |  |
|----------------|---|--|
| February 2016  | Start trilogue IORP II  | Commission, Dutch Presidency for Council, EP |
| February 2016  | Publication ITS on Procedures for the application of the transitional measure for the calculation of the equity risk sub-module | Commission                                   |
| 18-19/2/2016   | February Summit on a.o. Brexit  | European Council                             |
| March 2016     | Advice to the Commission on Solvency requirements for IORPs incl. QA results  | EIOPA  |
| 1/3/2016       | New term Bernardino as EIOPA Chairman   | EIOPA  |
| 2/3/2016       | Public hearing on the Green Paper on retail financial services  | Commission                                   |
| 4/3/2016       | Deadline for comments on Joint Discussion Paper on automation in financial advice   | ESA’s  |
| 18/3/2016      | Deadline comments on Green Paper on retail financial services   | Commission                                   |
| 22/3/2016      | Deadline replies Consultation Paper on Good Practices   | Commission                                   |
| 30/3/2016      | Scrutiny delegated regulation SII finished after extension in Parliament  | EP   |
| 31/3/2016      | Draft RTS on Article 8 PRIIPs submitted to the Commission   | Joint Committee ESAs                         |
| End of March   | Confirmation EP Fausto Parente to become EIOPA’s next Executive Director  | EIOPA, EP                                    |
| 26/4/2016      | Deadline replies CP on EIOPA’s advice on the development of an EU Single Market for personal pension products (PPP)             | Commission                                   |
| April-May 2016 | TTYPE Final findings and recommendations  | Commission                                   |
| June 2016      | Final advice EIOPA to Commission on PPPs  | EIOPA  |
| June 2016      | General approach Securitisation & Prospectus  | Council                                      |
| June 2016      | Final report on studies regarding IBER  | European Economic Research                   |
| Summer 2016    | Action Plan on retail financial services  | Commission                                   |
| September 2016 | Result consultation on UFR methodology  | EIOPA  |
| 31 March 2017  | Renewal IBER?   | Commission                                   |
| 1/1/2018       | Insurance Distribution Directive to be transposed   | Member States                                |
| Spring 2018    | Application of Data Protection Reform   |  |