

## Newsletter for the Actuarial Association of Europe issue n° 3 – 2016

---

### Table of content

#### **Dutch EU-presidency**

*The Dutch Presidency is now halfway. Progress is underway in several key financial sector files.....p 2*

#### **Brexit**

*The European Council agreed on a new settlement with the UK .....p 2*

#### **Capital Markets Union**

*Amendments to the Prospectus Directive and the Securitisation initiative make their way throughout the EU-law making process.....p 3*

#### **Solvency II**

*The legal framework is not yet transposed in all Member States. The amendments to the delegated regulation have been published.....p 5*

#### **Pensions**

*The trilogue on IORP II has started and progressing. EIOPA consults on its Pan-European Personal Pensions advice ..... p 7*

**News from EIOPA.....p 9**

#### **Single Supervisory Mechanism : 1 year anniversary**

*The Banking Union, and its first pillar, the Single Supervisory Mechanism (SSM), exists one year...p 10*

#### **Data Protection Reform**

*The Data Protection Package formal approval is imminent .....p 12*

#### **Review of the Insurance Block Exemption Regulation**

*The Commission in its report is not convinced to extent the exception.....p 13*

#### **Consumer protection issues**

*The insurance distribution directive has been published, L2 work has started .....p 14*

**European Agenda .....p 16**

*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 11 April 2016*

## Dutch EU-Presidency

*The Dutch Presidency is now halfway. Progress is underway in several key financial sector files.*

The Netherlands has several priorities for the financial sector. It aims to make important steps to complete the Banking Union and the Capital Markets Union. Furthermore, 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.

For in-depth information on these topics see the different sections in this Newsletter.

For more general information on the Presidency: <http://english.eu2016.nl/>

---

## Brexit

*The European Council agreed on a new settlement with the UK. Prime minister Cameron is campaigning for a Yes vote in the referendum to be held on 23 July.*

On 23 July 2016, the British will vote for the referendum on their EU membership. Prime minister David Cameron is campaigning for a Yes, after negotiating with his fellow government leaders a new settlement for the United Kingdom within the European Union.

On 19 February 2016, the heads of state and governments, meeting within the European Council, agreed upon a [new settlement](#) for the United Kingdom within the European Union. The settlement will become effective on the date the UK informs the Council that it has decided to remain a member of the European Union.

The possibility to withdraw from the European Union is laid down in article 50 of the [Treaty on the European Union](#), which was added by the Treaty of Lisbon. This article does not provide any substantive conditions but only procedural requirements. After a Member State notifies the European Council of its intention to withdraw from the European Union, the European Council provides guidelines according to which the Union shall negotiate and conclude an agreement with that state on the arrangements for its withdrawal. Either two years after the notification or from the moment that the withdrawal agreement between the withdrawing state and the Union enters into force, the Treaties cease to apply to the state in question, unless the European Council decides to extend the period by unanimity.

According to a study which the [Confederation of British Industry](#) commissioned to PWC, Brexit might cost the UK 100 billion pounds in lost economic output and 950,000 jobs by 2020. The British might want to bear in mind that a Brexit will not only cost the UK the opportunity to have a say in European matters, but also the UK rebate, should the UK wish to rejoin. The UK rebate, also known as UK correction, is a rebate on the UK's contribution to the EU budget. There is resistance against this advantage for the UK, [worth 5.238 million euros in 2016](#), paid by the other Member States.

Meanwhile there are still countries eager to join the European Union, as is demonstrated by [Serbia](#), which started EU accession negotiations.

### Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49

---

## Capital Markets Union

*The Amendments to the Prospectus Directive and the Securitisation initiative make their way throughout the EU law-making process. The CMU consultations are closed and are being processed.*

### Prospectus Regulation

The European Commission presented its [new Prospectus Regulation](#) on 30 November 2015. The most important proposed changes to the Prospectus directive are:

- Exempting the smallest capital raisings
- 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
- Single access point for all EU prospectuses: ESMA

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

At the side of the Council, attachés and experts continue the examination of the prospectus proposal in the Working Party on Financial Services. Their next meeting is planned for 14 April.

To prepare the parliamentary debate, the EP prepared an [implementation appraisal](#) of the current prospectus directive: *“The European Commission decided to make recourse to the instrument of a regulation to replace the existing directive. This choice was due to the heterogeneous implementation of the existing directive in some Member States.”* ECON rapporteur Philippe De Backer (ALDE, BE) published his [draft report](#) on 17 March, which was debated on 7 April. One of the elements the rapporteur proposes is to increase the application threshold to a total of a 1 million euro offering to the public and to 20 million euro, expressed as the total consideration of the offer over a period of 12 months in the Union (“the EU Growth prospectus”). Amendments are welcome till 19 April,

consideration of amendments is foreseen for 23 May and vote in ECON on 13 June 2016.

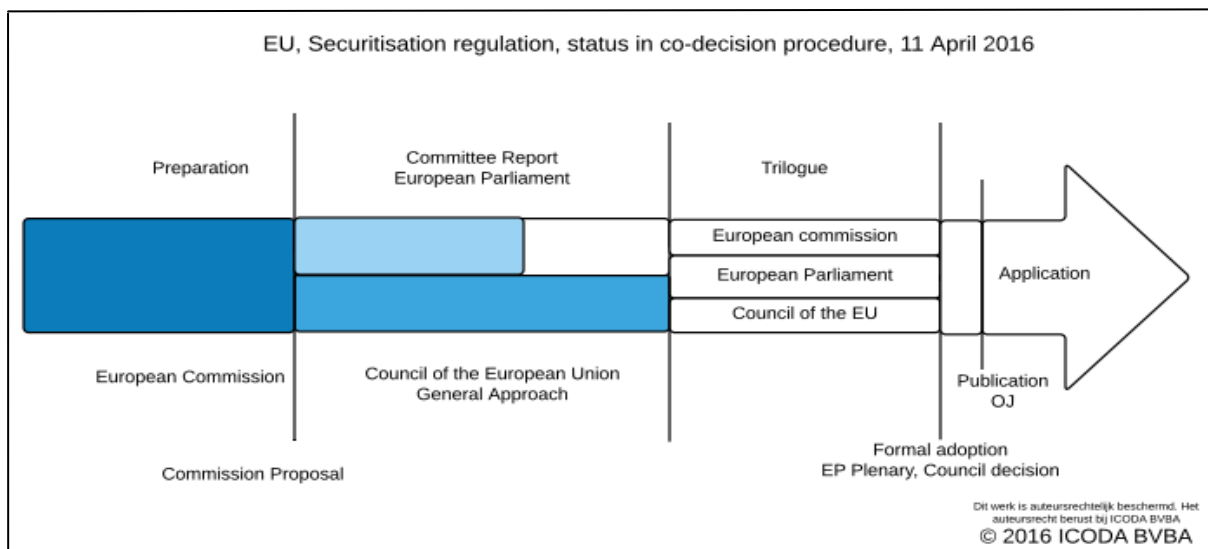
### Securitisation initiative

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 the other is a proposal to amend the Capital Requirements Regulation (CRR).

The Council negotiations are finalized. COREPER confirmed on 2 December 2015 for both proposals the [general approach](#) which the attachés had reached at the end of November 2015. ECOFIN approved it on 8 December 2015.

ECON is the responsible committee for the European Parliament. The Rapporteur for the Securitisation Regulation is Paul Tang (S&D, NL), and for the CRR changes is Pablo Zalba Bidegain (EPP, ES). In order to prepare the debates, the EP's research service issued a [briefing paper](#). The process is still at an early stage in Parliament. The draft report has yet to be published and the ECON committee has not yet started substantive discussions. Hence, the Council is waiting for the EP to finish its procedure.

In the meantime, four leading European trade associations representing investors, issuers and other market participants have come together for the first time to support the new framework for securitisation regulation. The Association for Financial Markets in Europe (AFME), the European Fund and Asset Management Association (EFAMA), the International Capital Market Association (ICMA) and Insurance Europe have issued a joint paper, backing efforts by EU policymakers to develop a robust and successful framework for simple, transparent and standardised (STS) securitisation.



### CMU consultations

The Open Consultation on EuVECA (European Venture Capital Funds) and EuSEF (European Social Enterprise Funds) yielded 46 responses, of which 22 from investment management companies, 6 from insurers and 5 from pension providers. Most found that AIF (Alternative Investment Fund) managers should be able to offer EuVECAs and EuSEFs. The Commission's provisional college agenda foresees a revised regulation for July 2016.

61 stakeholders replied to the [Open Consultation on Covered bonds](#), which closed on 6 January 2016. Nine replies came from the insurance and 5 came from the pension sector. At the end of the

[Commission's conference on Covered Bonds](#), Olivier Guersent, director-general of DG FISMA, noted the value of the European Bond Label. On a pan-European framework, there are potential advantages, although it would not lead to homogenous ratings. On the next steps, he explained that the Commission will look closely at the results of the Consultation. The Commission will also commission a study to increase their understanding of the covered bond markets and to assess the impact of any European initiative.

Regarding the [Call for Evidence on the EU regulatory framework for financial services](#), 288 responses were received, individual responses are available but not yet the summary.

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

The consultation of the Commission on the [Green Paper on retail financial services](#) is now closed. More than 300 answers were received, of which more than 100 private individuals; 56% from companies or organisations (mainly industry associations) and 8% from public authorities or international organisations. The majority of contributions came from the UK (more than a third) and Belgium. 16% of all respondents identified with the insurance sector, 24% with banking.

During the [public hearing on Retail Financial Services on 2 March 2016](#), it became clear that the focus was no longer on providers exploiting the Single Market but how to make it work for consumers? Are pan-European products solutions? What about an EU IBAN number or other ways to have an EU digital identification? Can digital innovation help? Does Europe need a regulatory sandbox? Should regulations be fit for digital enhancements, and are they? An action plan on retail financial services can be expected by summer 2016.

In the EP, ECON decided to write an own initiative report, with Olle Ludvigsson (S&D, SE) as the rapporteur. A first exchange of views was foreseen for 22 March but due to the tragic events in Brussels, that debate was postponed and no new time slot has been scheduled yet.

---

## **Solvency II**

*The legal framework is not yet transposed in all Member States. The amendments to the delegated regulation on certain assets classes have been published on 2 April 2016.*

### **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 proposed its SII directive on 10 July 2007, approved by co-legislators Council and European Parliament end 2009, and its Omnibus I Directive on 19 January 2011, approved spring 2014. But not all Member States have yet transposed the directive(s) into national law: the Commission addressed in 2015 letters to Cyprus, Bulgaria, Greece, Luxembourg, Slovenia and Sweden regarding the non-compliance with the end date of national transposition which was 31 March 2015. This early deadline was necessary, for example to allow undertakings and supervisors to make the necessary preparations, i.a. for the approval of internal models.

According to the most recent information of the [Commission](#), 24 Member States (86%) transposed the Solvency II Directive. Cyprus is the only Member State which has still not communicated anything to the Commission regarding transposition measures. The Commission formally asked Cyprus in December 2015 to transpose the directive after they first sent a letter of formal notice in May 2015. Bulgaria, the Czech Republic and Belgium have only partially informed the Commission about the transposition. All other Member States have notified complete transposition. However, the Commission says it has launched [infringement proceedings](#) against 21 Member States as they were formally too late.

With regard to the Omnibus II Directive (OII), 75% or 21 of the Member States made the conversion. Denmark is the only Member State that has not communicated the transposition measures to the Commission. Six states have only partially transposed OII: Cyprus, Greece, Luxembourg, Slovenia, the Czech Republic, Belgium. However, there are infringement procedures pending against 23 Member States.

Currently, the insurance sector's attention goes to the delivery of the first Solvency II prudential reporting with reference to the first day of the application (for companies that close their fiscal year on December 31) by mid-April 2016.

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

As part of the Capital Markets Union Action Plan, launched 20 September 2015, the Commission adopted ten days later new delegated Regulation. This initiative is called [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](#). This regulation proposes an amendment to Solvency II. As neither the Council, nor the European Parliament objected, the [regulation](#) was published 1 April in the OJ, to enter into force 2 April 2016. As it is a regulation, no transposition actions are needed.

Some changes in the delegated regulation include the lowering of the risk charges for insurers' equity and debt investments in qualifying infrastructure projects under the standard formula for calculating capital requirements in Solvency II. The risk calibration for investment in unlisted equity shares of such projects is reduced from 49% to 30%. Risk charges for investments in infrastructure debt are reduced by up to 40%. Transitional provisions for equity investments, phasing in Solvency II capital charges over 7 years, are now extended to unlisted equities.

In a [letter](#) to ECON on this, Commissioner Hill refers to a pending ITS on the equity transitional for unlisted equities ([Draft ITS on Procedures for the application of the transitional measure for the calculation of the equity risk sub-module](#) of 6 November 2015) but he gives no further details about publication date. He also refers to the review of the SII standard formula which is to be conducted before 2018 at the latest.

As a consequence of the changed delegated regulation, EIOPA [consults](#) now about amendments to the ITS on the templates for the submission of information to the supervisory authorities. EIOPA is also using this opportunity to introduce corrective provisions aimed to correct minor drafting mistakes to avoid misinterpretations. Deadline is 3 May 2016.

### **Delegated decisions: equivalence**

Regarding Bermuda, the Commission amended end November its previous decision of 5 June 2015 and changed the provisional equivalence into full equivalence in accordance with the requirements of the three SII Articles: Article 172, related to equivalence of reinsurance, Article 227, regarding group solvency calculation and Article 260, equivalence of group supervision. This [decision](#), after scrutiny, was published in the OJ on 4 March 2016 and entered retroactively into force on 1 January 2016.

On 25 March 2016, [Japan](#) obtained 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 starting 1 January 2016.

For an overview of the equivalence decisions: see [here](#).

### **Guidelines**

A [new version](#) of the Guidelines on the supervision of third country branches has been published. [EIOPA consults](#) currently about amendments to its Guidelines on Reporting and disclosure following the amendment to the Solvency II Delegated Act (p 19 of the consultation paper). Deadline is 3 May.

EIOPA is currently also consulting about a proposal for Guidelines on facilitating an effective dialogue between competent authorities supervising insurance undertakings and statutory auditor(s) and the audit firm(s); deadline is 28 April 2016. .

### **Relevant Technical information for actuaries**

The Commission Implementing Regulation (EU) 2016/165 of 5 February 2016 and applicable as of 1 January 2016 lays down a series of technical details for the calculation of basic own funds and technical provisions, for reporting with reference dates from 1 January until 30 March 2016. These are the relevant risk-free interest rate term structures to calculate the best estimate, without any matching adjustment or volatility adjustment, fundamental spreads for the calculation of the matching adjustment, and the volatility adjustment to the relevant risk-free interest rate term structure.

For other technical information: see [here](#).

### **Ready, Steady, Go**

To mark the start of Solvency II, EIOPA organized an event on 10 March 2016 in Frankfurt (Solvency II event: Ready, Steady, Go). EIOPA took the opportunity to present its vision under the new framework, for the areas of: supervision, financial stability, crisis management and data collection and analysis.

### **2016 Insurance Stress test**

EIOPA will soon launch a [Europe-wide insurance stress test](#). Templates and specifications are expected in the second half of May. Submission deadline for industry participants to the national supervisory authorities is the first half of July. Disclosure of results of the stress test analysis is foreseen for December. On 13 April, EIOPA organizes a workshop with industry participants.

### **European Parliament: the Goulard report – impact of IAIS on (the revision of) Solvency II?**

The ECON committee initiated an Own Initiative Report on the EU role in the framework of international financial, monetary and regulatory institutions and bodies (rapporteur Sylvie Goulard (FR, ALDE). The rapporteur takes the view that the EU should streamline and codify its representation in multilateral organisations/bodies such as IAIS. IAIS is now working on International Capital Standards which could influence (the revision of) Solvency II. The report aims to increase the transparency, integrity and accountability of the Union's involvement in these bodies, its influence and the promotion of the legislation it has adopted through a democratic process. Involving EIOPA would bring the benefit of strengthening the contribution of European insurance-specific expertise and would ensure that the standards developed at global level do not go against the logic the EU has been the first to develop. In her explanatory statement, Goulard questions the competence of the FSB to deal with issues relating to insurance, including the identification of 'systemic' insurers, despite the fact that ECB supervision of the insurance sector is excluded under the Treaty.

---

## **Pensions**

*The trilogue on IORP II has started and progressing. EIOPA consults on its Pan-European Personal Pension advice.*

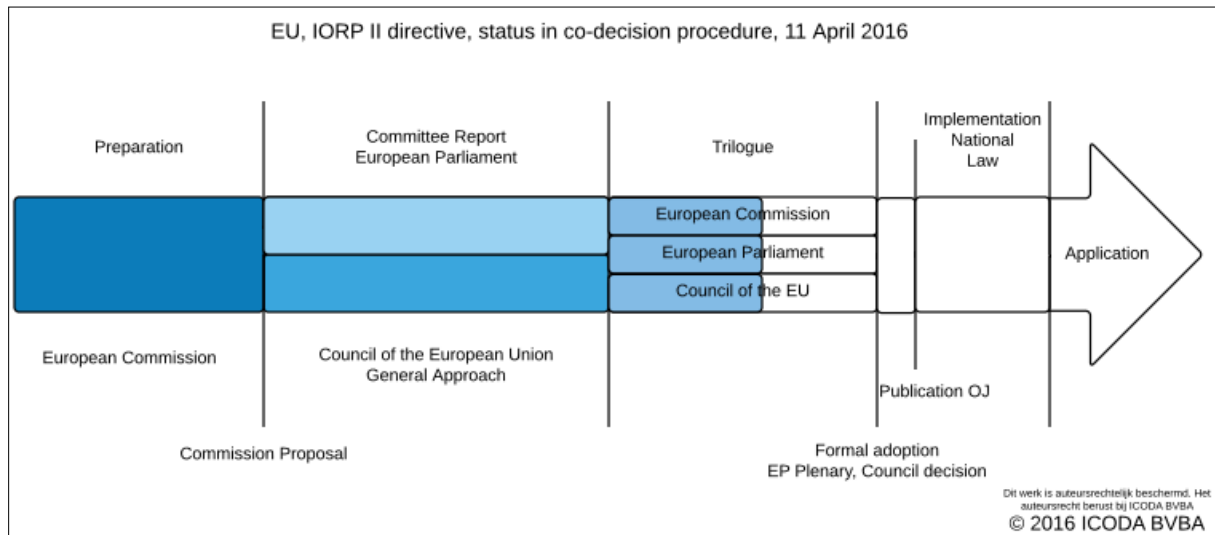
### **Occupational pensions**

#### **IORP II**

The IORP II draft directive, which the Commission proposed on 27 March 2014, moves closer to its final version as the trilogue meetings began in February. Trilogue meetings are negotiations where a final draft version of the Directive is to be decided among the Parliament, the Council,

represented by the Presidency, and the Commission. Three trilogue meetings have taken place. Adoption could well happen during the Dutch Presidency, with trilogue conclusions in June 2016. The Commission has foreseen transposition by the end of 2016 and application by 1 January 2017. This timescale is no longer realistic. A more realistic timescale might well be publication in the OJ by year-end and application by 1 January 2019.

As the current ECON text deleted all delegations for secondary legislation in line with the Council, if accepted by trilogue parties, no further delegated acts, RTS or ITS will need to be developed



### Quantitative Assessment (QA)- HBS ?

EIOPA's 'Opinion to the EU institutions' (based on quantitative assessment) on the Holistic Balance Sheet (HBS) 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's consultation on [Good Practices on communication tools and channels for communicating to occupational pension scheme members](#) has now ended. A final report is being prepared.

### 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](#). It focuses on occupational pensions. The project will [present](#) the business plan to the Commission and other stakeholders in the European pension industry in May 2016 in Brussels.

### Personal pensions

The EU wants to develop an EU Single market for personal pension products (PPPs). For this reason, [the Commission issued on 23 July 2014 a call for advice to EIOPA](#), requesting its technical advisor "to consider a large scope, which would include PPP's in the form of life insurance products, group pensions/contracts and Pillar 1bis schemes as well as other types of PPP's such as annuity products and in particular reverse mortgages (or equity release schemes)".



On 1 February, EIOPA issued its consultation paper on [EIOPA's advice](#) on the development of an EU Single Market for personal pension products (PPP). Consultation is open till 26 April. The current timeline implies that the final advice to the Commission cannot be expected earlier than **June 2016**.

In the meantime, the Commission continues its reflection on how to bring about a single market in personal pensions and is planning to hold - following EIOPA's consultation - a Commission's consultation in turn later this spring. According to the survey the FSUG (Financial Services Users Group) undertook in the context of the Green paper on cross-border financial services, pensions came out as the # 1 item for which a European solution was needed. Commissioner Hill is very interested, dicit Ms Berger, the Insurance and Pensions unit head of DG FISMA. Also, the Commission is open to suggestions and does not want to limit input to a certain number of stakeholders. It is now examining the legislative framework in the Member States. EIOPA has no competence beyond insurance and pension funds and there is room for other suppliers. EIOPA has also no competence in tax matters or other sectors beyond prudential regulation. Therefore, the planned Commission consultation will be much broader than the current EIOPA one. A conclusion as to the principle (to have or not to have a Pan-European Personal Pension) will be taken later this year by the Commission upon proposal of Commissioner Hill. Elements included may be an overview of the state of affairs and some orientations.

If the Commission decides to undertake an initiative in the area of PEPP, this will be a major dossier for which it needs sufficient backing from Member States .

- From the side of the buyers of a PEPP: these should not only be expats. Will non-expats use these products? The Commission would need more information on this point.
- From the side of the suppliers/distributors: will there be interest to develop such product in several markets?

Many questions are still open and the interaction between SII and long term investing for personal pensions may just be one of the many thorny issues to solve.

---

## **News from EIOPA**

*Since 1 April, EIOPA has a new director general, Fausto Parente. The stakeholders groups have been partially renewed.*

On 1 March, Gabriel Bernardino started his second and last five-year term as chair of EIOPA.

On 1 April, the Italian supervisor Fausto Parente started as new executive director, after confirmation by the European Parliament for a five-year term. His appointment followed an open selection procedure, a nomination by EIOPA's Board of Supervisors and a public hearing at the European Parliament's ECON Committee. *"The next five years are extremely important for EIOPA in managing, adopting and fostering the necessary changes to move from regulation to supervision in the insurance sector"*, said Fausto Parente.

The Insurance and Reinsurance Stakeholder Group (IRSG) and the Occupational Pensions Stakeholder Group (OPSG) are partially renewed. EIOPA's Board of Supervisors, following an open selection process, appointed several new members of both Stakeholder Groups. EIOPA analysed 176 applications of candidates of 23 different nationalities. Noteworthy is that EIOPA increased the number of independent academics in both groups from five (the required minimum) to six members. The new chair of the IRSG will be elected on the first meeting of the new IRSG. The newly appointed IRSG represents members of 15 different nationalities, where 23% (7 members) stand for consumers and users of (re)insurance services. The new OPSG consists of members of 16 different

nationalities, where employees and beneficiaries are represented by 23% (7 members). 26% (8 members) in both groups are females. 11 (IRSG) and 9 (OPSG) members have been re-appointed, preserving core knowledge and intelligence and guaranteeing continuity.

Members of the EIOPA Stakeholder Groups are appointed for 2.5 years with the possibility of one re-election, i.e. in total a maximum of five years' appointment per member. The first meetings of the Stakeholder Groups in the new composition will take place on 26 April 2016 (IRSG) and on 28 April 2016 (OPSG).

The Actuarial Association of Europe has 2 members in the IRSG: Annette Olesen, DK (re-elected) and Tony O'Riordan, Ireland (out of the 4 members from professional associations) and two in the OPSG: Falco Valkenburg, the Netherlands and Paul Kelly, UK (out of the 6 members from professional associations). The EIOPA regulation does not foresee a minimum nor a maximum for representatives of representative professional associations.

For the full Lists of Stakeholder Groups members: see [IRSG](#), [OPSG](#).

---

### **Single Supervisory Mechanism: 1 year anniversary**

*The Banking Union, and especially its first pillar, the Single Supervisory Mechanism (SSM), exists one year. In plenary, MEPs debated several outstanding items such as refinements to the construction, and the completion of EDIS. The issue of sovereign exposures was repetitively mentioned.*

The European Parliament [debated](#) and voted on 10 March, the draft report "Banking Union – Annual Report 2015". The report was adopted with 351 votes in favour, 112 against and 30 abstentions. Please find hereunder excerpts of that debate.

ECON Chairman and rapporteur Roberto Gualtieri (S&D, IT) said that the Banking Union is the most important step since the introduction of the Euro. The SSM and the establishment of the [Single Resolution Board \(SRB\)](#) represent a significant transfer of sovereign power to European institutions ensuring stability and confidence in European banks and reducing and sharing of risks. But a transfer of responsibility requires an appropriate level of Parliamentary scrutiny of which the EP's Banking Union report represents the first concrete action.

After one year, the establishment of the SSM is to be considered a success both from an operational viewpoint and in terms of supervisory quality. According to rapporteur Gualtieri, however, some problems have been identified, in particular effective coordination between micro and macro prudential policies. The comprehension of a common supervisory approach is also needed, along with proportionality. Furthermore, the market needs predictability and transparency with regard to the setting of capital requirements. The SSM should fully take into account where it makes a distinction between pillar II capital requirements and capital guidance. The revision of options and national discretions are supported in order to achieve a homogenization of practices and standards. Further steps are necessary to reinforce the scrutiny of bank supervisory activity and to go beyond credit risks to all forms of bank risks, including an in-depth analysis of financial portfolio. The report supports bail in and its application.

The report also calls for the completion of the Banking Union. Gualtieri repeated that therefore the EP welcomes the proposal for a European Deposit Insurance System and the commitment to work on risk reduction. Regarding risk reduction, it is important to emphasise that it is a broad concept related to a number of measures. For the most controversial, related to sovereign exposures, the work of the Basel Committee is noted and any change should be carefully assessed and done in the medium term at international level, and not affect the financial capacity of Member State stability.

**Commissioner Jonathan Hill** agreed with Gualtieri's excellent overview of what has been achieved as Europe has worked to overhaul the regulatory framework for the financial sector in recent years.

The Banking Union is central to this new architecture. It is easy to forget that the supervisory tasks only shifted from national to European level one year ago, or that the SRB only became fully operational in January 2016. The SSM already feels very well established. The Banking Union report covers a lot of ground. But there is still the need at EU and Member States level to tackle non-performing loans which weigh heavily on some parts of the banking sector. He agreed further that legislation should be checked to ensure that it is proportionate, it is sensitive to different business models and that compliance requirements are appropriate for smaller banks. The CRR review will cover this. Supporting lending to SMEs remains a core aim for the Commission.

On Banking Union, the focus remains creating an EDIS by 2024 which is a key part to deepening EMU. Ensuring the transposition of existing legislation is also very important, as well as addressing insolvency regimes. Pillar II capital requirements for banks, and their relationship with the capital buffers, has been raised. The Commission is aware that differences in how these rules are applied by supervisors exist and this is now being reflected on to make the legislation work as was originally intended. The goals of pillar I requirements (which apply to all banks) and pillar II requirements (which are bank specific, and depend on the level of risk banks bear) need to be separated.

**Eva Paunova (EPP, BG)** referred to the fact that the report importantly calls for further risk reduction measures, which will prevent moral hazard. If the costs for bank failures and insolvencies are to be mutualised, the risk must be contained to the maximum extent possible. Risk reduction should not be seen as a vague concept; there are concrete steps that can be taken. This is why we encourage the Commission to propose such measures, and the Member States to implement existing rules. But the key role of this report is providing a clear incentive for reducing sovereign exposure and a balanced approach towards the third pillar of the Banking Union. She concluded by making a strong statement for a prudent and forward-looking system.

**Elisa Ferreira (S&D, PT)** said that Banking Union is the only project in the Euro zone which faces up to the 2008 crisis. The SSM and SRM have seen some success. The project is worthwhile but risky and more detail is needed for the third pillar to stabilise the Banking Union. Without the backstop a risk arises of undoing everything which has already been achieved.

**Beatrix von Storch (ECR, DE)** said that supervision and monetary policy have been confused now and independent monetary policy does not exist. On EDIS, she asked if German savers really want to be footing the bill for national and foreign banks. Alternative für Deutschland does not support EDIS.

**Sylvie Goulard (ALDE, FR)** said on EDIS that the relationship between savers and their money is important, and this solution should not be returned to national level. The health of the banking sector is a common interest, especially in the euro zone.

**Roni Kari (GUE/NGL, DK)** said that when the banks were saved with taxpayers money during the crisis, it is because they were too big to fail. One step to safeguard taxpayers is to stop making banks so big that it forces them to be bailed out but this has not happened and the sector remains even more integrated.

**Sven Giegold (Greens-EFA, DE)** wanted to know what is being done to reduce regulatory arbitrage between banks and insurers.

**Burkhard Balz (EPP, DE)** said that before Banking Union is expanded, what has been begun must be completed. Member States must implement and apply what has been agreed. The Commission should apply more pressure to the Member States. A further risk reduction in the banking sector is indispensable and he called for legislative proposals.

**Pervenche Berès (S&D, FR)** agreed with Burkhard Balz in saying that the work started should be completed. A backstop is needed and a deposit guarantee scheme, otherwise everything which has been achieved will be turned against the EU. It has been claimed that risks must be reduced before they are shared; behind this idea is a substantive view on the role of sovereign debt. She said that

she is surprised that those who are opposed to an international approach are also those refusing to remove sovereign debt from the debate, or make it subject to an FTT.

---

## Data Protection Reform

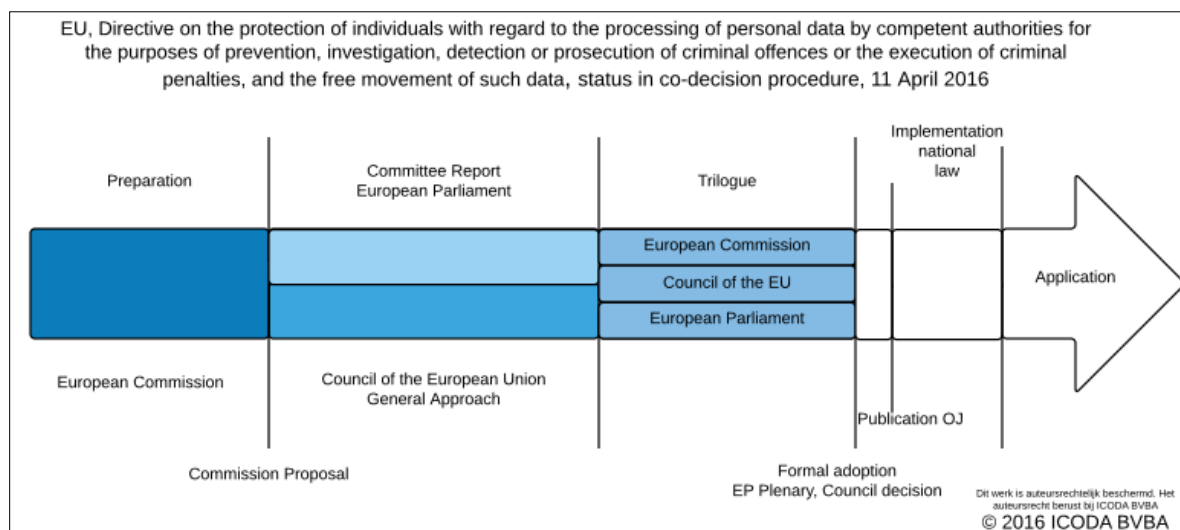
*The Data Protection Package's formal approval is imminent. The Commission has proposed the EU-US privacy shield.*

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. A trilogue agreement was reached 15 December 2015.

The Council [agreed](#) on the Directive on the protection of individuals with regard to the processing of personal data on 8 April 2016 as well as on the [General Data Protection Regulation](#).

The Directive and the Regulation are scheduled for a plenary debate on 13-April 2016 and a plenary vote on 14 April 2016 in the [European Parliament](#).

Once the Regulation and the Directive are formally adopted by the European Parliament and Council, the official text, once signed, will be published in the Official Journal of the European Union in all official languages. The new rules will become applicable roughly two years thereafter, so probably summer 2018.



## EU-U.S. Privacy Shield

On 29 February 2016 the European Commission and the United States issued the legal text that will put in place the EU-U.S. Privacy Shield and a Communication summarising the actions taken over the last years to restore trust in transatlantic data flows since the 2013 surveillance revelations. The Privacy Shield is aimed at replacing the defunct Safe Harbour agreement which was struck down by the European Court of Justice last October.

In the words of the Commission the new agreement provides stronger obligations on companies in the U.S. to protect the personal data of Europeans. It requires stronger monitoring and enforcement by the U.S. Department of Commerce (DoC) and the Federal Trade Commission (FTC), including

through increased cooperation with European Data Protection Authorities. The agreement also includes safeguards and transparency obligations on U.S. government access. An Ombudsman mechanism establishes a redress possibility for Europeans in the area of national intelligence. The European Commission negotiated the deal with the United States.

Although the text contains new improvements regarding EU-U.S. data transfers, it by far does not comply with EU law according to Max Schrems (the Austrian law student turned privacy activist, whose court case against Facebook led to Safe Harbour's downfall) and other data protection law experts. In the words of Schrems, the Privacy Shield is basically Safe Harbour once again, since the Privacy Shield does not change anything regarding government surveillance and only brings teeny tiny limitations for the commercial sector which can be easily overwritten in their privacy policies.

The Council's Article 29 Working Party has to give its opinion on the framework, and representatives from EU Member State governments must assent to it. Despite the inability to officially reject the framework, the view of the Working Party is important because the individual Data Protection Authorities that make up the working party can challenge the framework in future court actions. While a negative opinion of the framework is not fatal to finalization, it could signal future challenges to the framework in European courts.

Also the European Parliament must give its opinion before the Commission can adopt an "[adequacy decision](#)" declaring that the framework offer a sufficient level of data protection, as a prerequisite for the deal to enter into force. In addition, Parliament's consent will be needed for the [umbrella agreement](#) dealing with privacy guarantees for data transfers in the area of law enforcement.

The European Commission hopes to finalize the Privacy Shield this summer.

---

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

*The Commission published its report on the functioning of the Insurance Block Exemption Regulation on 17 March 2016, stating that it appears that the functioning of the insurance industry no longer requires a block exemption regulation.*

A block exemption regulation (BER) allows market players the benefit of a safe harbour from the prohibition on anti-competitive agreements.

The [Insurance Block Exemption Regulation \(IBER\)](#) grants an exemption to the application of competition rules to certain types of agreements in the insurance sector, namely agreements on: joint compilations, tables and studies and co-(re)insurance pools (common coverage of certain types of risks). These IBER came into force on 1 April 2010 and will expire on 31 March 2017. This means that the Commission needs to decide whether to renew the Regulation in its current form, modify it or let it lapse. Part of the review procedure is a public consultation which took place in 2014, targeted questionnaires for and meetings with several stakeholders. The preliminary findings of this review were published on 17 March 2016 in a "*Report from the Commission to the European Parliament and the Council on the functioning of Commission Regulation (EU) No 267/2010 on the application of Article 101(3) of the Treaty on the functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector.*"

In that *report*, the Commission considers that, although there are indications of an enhanced need for cooperation in the insurance sector in relation to the compilation and distribution of joint calculations, tables and studies, and the co-(re)insurance of specific types or risk, the strict conditions for the creation of a sector-specific BER with respect to these categories of agreement

seem no longer to be met. The Commission's view at this moment is that the functioning of the insurance industry no longer requires an IBER. With lapsing of the IBER, the Commission does not intend to prohibit the enhanced cooperation, but intends to assess them under the same competition rules as other sectors. The Commission considers that a case-by-case self-assessment on the basis of the Horizontal Guidelines, will ensure net positive effects for consumers and competition within the meaning of Article 101(3) TFEU.

On 26 April 2016, the Commission will organise a meeting with stakeholders to provide an opportunity to discuss the report's findings. *You will find the registration for the event here.*

In the meantime, the two studies on issues raised by stakeholders in the consultation process which the Commission has commissioned are yet to be finished and published. They are expected in June 2016. Expected is that the Commission will make its final proposal on the future of the IBER, including an impact assessment report, taking in to account the commissioned studies, in early 2017.

---

## **Consumer protection**

*The insurance distribution directive has been published; work on L2 has started via a call for advice from the Commission to EIOPA*

### **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 [on 24 November 2015](#). The Council adopted IDD on 14 December 2015. The text was signed on 20 January 2016 and published in the Official Journal of the EU on 2 February. The IDD will come into force 20 days after its publication. No later than 23 February 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 the meantime, the Commission has [published](#) a Call for Advice to EIOPA, which is intended to enable the Commission to adopt delegated acts on 4 topics: (a) product oversight & governance; (b) conflicts of interest; (c) inducements; and (d) the assessment of suitability & appropriateness, and reporting.

EIOPA has been asked to provide its final technical advice to the Commission by 1 February 2017, so the Commission can decide whether to adopt delegated acts under article 290 of the Treaty on the Functioning of the European Union, and articles 10 to 14 of the EIOPA Regulation. If the Commission chooses to adopt delegated acts, the Call for Advice implies that the Commission will draft them with the help of Member State appointed experts, instead of asking EIOPA to draft them.

In preparation of the Call for Advice from the 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 will work closely with ESMA to make sure that its advice in connection with the sale or distribution of insurance-based investment products is appropriately aligned with MiFID II. Customers should be able to expect equivalent / consistent protection, whether they're buying an insurance or a non-insurance based investment product. EIOPA will consult its stakeholder group as

it prepares its advice; and carry out a public consultation before finalizing its advice and submitting it to the Commission.

### **Automation in financial advice**

In December 2015 the three ESA's issued a joint [Discussion paper](#) on automation in financial advice. 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. The replies have not been published yet.

### **Retail Risk Indicators Methodology Report**

The European Insurance and Occupational Pensions Authority (EIOPA) has published on 15 February the Retail Risk Indicators Methodology Report. This publication represents one of the initial steps in the implementation of [EIOPA's Strategy towards a comprehensive risk-based and preventive framework for conduct of business supervision](#).

### **Regulatory technical standards on Key Information Documents (PRIIPs)**

The Joint Committee of the European Supervisory Authorities (ESA) - EBA, EIOPA, ESMA - has finalised its proposal for regulatory technical standards (RTS) on Key Information Documents (KIDs) for Packaged Retail and Insurance-based Investment Products (PRIIPs). The new rules will contribute to enhancing the confidence and strengthening the protection of EU consumers of banking, insurance and securities products. See EBA's [press release](#) on this topic.

PRIIPs Regulation (1286/2014) has been adopted but is not yet in force until 31 December 2016.

PRIIPs is a 'horizontal' category of products that may take a variety of different forms (including funds, structured deposits, some pensions and insurance products) but which fulfill similar functions: capital accumulation over the medium-to-long term at more than the risk-free rate, where the investor does not hold assets directly but by means of some sort of 'wrapper'.

PRIIPs introduces a key information document (KID – a simple document giving key facts to investors in a clear and understandable manner) covering not only collective investment schemes but also other 'packaged' investment products offered by banks or insurance companies.

### **Joint consumer protection day**

The Joint Committee of the ESAs organises its 4<sup>th</sup> Consumer Protection Day on 16 September 2016 in Paris.

.....

## **European Agenda**

April 2016	Opinion to the EU institutions (based) on quantitative assessment on the HBS (expected)	EIOPA
12/04/2016	Plenary vote on the Own Initiative Report on the EU role in the framework of international financial, monetary and regulatory institutions and bodies	European Parliament, plenary
13/04/2016	Workshop on the 2016 Insurance Stress test	EIOPA
14/04/2016	Working Party on Financial Services meeting on the Prospectus Regulation proposal	Council
14/04/2016	Plenary vote on the Data Protection Package	European Parliament, plenary
19/04/2016	Deadline Amendments on the Prospectus Regulation	European Parliament, ECON Committee
26/04/2016	Deadline replies CP on EIOPA's advice on the development of an EU Single Market for personal pension products (PPP)	EIOPA

26/04/2016	1 <sup>st</sup> meeting EIOPA IRSG in new composition	EIOPA
26/04/2016	Stakeholder meeting on IBER	European Commission
28/04/2016	1 <sup>st</sup> meeting EIOPA OPSG in new composition	EIOPA
28/04/2016	Deadline EIOPA consultation about proposal for Guidelines on facilitating an effective dialogue between competent authorities supervising insurance undertakings and statutory auditor(s) and the audit firm(s)	EIOPA
03/05/2016	Deadline EIOPA consultation about amendments to Guidelines on Reporting	EIOPA
03/05/2016	Deadline EIOPA consultation about amendments to ITS on the templates for the submission of information to the supervisory authorities	EIOPA
23/05/2016	Consideration of amendments on the Prospectus Regulation	European Parliament, ECON Committee
May 2016	2016 Insurance Stress test templates and specifications expected	EIOPA
May 2016	TTYPE Final findings and recommendations	
13/06/2016	Vote on the Prospectus Regulation	European Parliament, ECON Committee
June 2016	Trilogue agreement IORP II (expected)	
June 2016	Final advice EIOPA on the development of an EU Single Market for personal pension products (PPP) (expected)	EIOPA
June 2016	Final report on studies regarding IBER	European Economic Research
June 2016	General approach Securitisation & Prospectus	Council
July 2016	Deadline submission to the national supervisory authorities for the 2016 Insurance Stress test	
July 2016	Revised regulation EUVeCa and EUSeF (expected)	European Commission
Summer 2016	Action Plan on retail financial services	Commission
Summer 2016	EU-US Privacy Shield finalisation	
September 2016	Result consultation on UFR methodology	EIOPA
16/09/2016	ESA's Consumer Protection Day	ESA's
01/01/2017	Application PRIIPs Regulation (12/86/2014)	
Early 2017	Expected proposal on the future of IBER	European Commission
01/02/2017	Deadline to provide final technical advice on L2 IDD	EIOPA
23/2/2018	Insurance Distribution Directive to be transposed	Member States
Summer 2018	Application Data Protection Package	
01/01/2019	Expected Application IORP II Directive	

#### Disclaimer

This work and the contents of this work are copyrighted. It is not allowed to copy this work, in whole or part, reproduce or otherwise disclose without the express permission of ICODA.

Although this work has been prepared on the basis of reliable sources and scrutiny, ICODA is in no way responsible for the information presented in this work due to the political nature of the workstreams monitored.

For questions about reproduction, distribution and copyright please contact [info@icoda.eu](mailto:info@icoda.eu).