Newsletter for the Actuarial Association of Europe issue n° 4 – 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* ------------------------------------**Research completed on 28 June 2016**

EU-Presidency

On 1 July 2016 the Slovak Presidency starts, following the Dutch Presidency. As a presidency, Slovakia wants to deepen the Economic and Monetary Union, to increase competitiveness.

The Dutch Presidency has been focusing on a common border, migration and asylum policy. To tackle the refugee crisis, it agreed a deal between the EU and Turkey in the ambition to target people smugglers and to remove the incentive to seek irregular routes to the EU. Another accomplishment is the agreement on the Fourth Railway Package, a series of measures that aim to make EU railways more attractive, innovative and competitive.

Regarding economic policy, the Dutch Presidency has continued the work on several legislative proposals. These included important topics such as the Capital Markets Union (CMU) proposals, and IORP II on which there is a trilogue agreement. One other priority was the completion of the Banking Union, where the first and second pillar are in place, and the third pillar (EDIS) should hopefully be completed soon. The Presidency also managed to reach an agreement on the Anti-Tax Avoidance Package, which was considered to be very ambitious. The Package includes an Anti-Tax Avoidance Directive, containing a set of legally binding anti-avoidance measures for all Member States to implement to shut off major areas of aggressive tax planning. It also includes a revision of the Administrative Cooperation Directive, which introduces country-by-country reporting between tax authorities on key tax related information on multinationals. Both legislative proposals were accepted by unanimity in the Council.

Slovakia wants to further deepen the Economic and Monetary Union (EMU), to help increase competitiveness. Negotiations about the Union's budget for 2017 and the building of the CMU will also feature high on the economic agenda.

The themes that will be of central importance during the Slovak presidency are:

- Economic growth;
- Digital Single Market;
- The creation of an Energy Union;
- Migration;
- EU enlargement (Serbia).

For more general information on the next Presidency: http://www.eu2016.sk/en.

Member states holding the Presidency work closely together in groups of three, called 'trios'. After Slovakia, the Presidency will be held by Malta (January – June 2017). The programme of the trio can be found here. In the light of current events, it is unclear what will happen with the British presidency, which is scheduled for the second half of 2017. The program of the next Presidencies will also be influenced by Brexit.

Brexit

On 23 June 2016, a majority of British citizens decided to discontinue further membership of the European Union. Until an exit treaty between the EU and the UK has been negotiated and ratified in 27 Member States, the rights and duties of the UK (and its financial service sector) in the EU remain valid. In the meantime, Commissioner Hill resigned.

On 23 July 2016, the British voted in a referendum on the UK's EU membership. After the results in favour of a Brexit, Prime minister David Cameron who had been campaigning for a Yes stepped down. The new settlement for the UK within the European Union, agreed upon on 19 February 2016, is no longer valid as it contained a self-destruct clause in case of a pro-Brexit vote. The UK has not

yet formally informed the Council that is has decided to leave as a member of the European Union. Whether or not there will be a formal request depends on the procedure foreseen in UK law on what happens after a referendum, although outgoing premier Cameron said that *"The will of the British people is an instruction that must be delivered"*. The legal argument is that the result is advisory, and not binding. In any case, it seems logical that the UK Parliament debates the referendum outcome and decides whether or not to endorse it – but that is a political decision. Upon endorsement, it will then have to ask the (new) Prime Minister to act on it (if and when elected by the Conservative Party, and after the formation of a new UK government). If this will be the UK procedure to follow, a formal request is theoretically possible as of October 2016. It is therefore improbable that the UK will do so at the European Council 28-29 June. Outgoing premier Cameron will attend that summit to explain the decision the British people have taken and his own decision but *"A negotiation with the European Union will need to begin under a new prime minister and I think it's right that this new prime minister takes the decision about when to trigger Article 50 and start the formal and legal process of leaving the EU"* according to Cameron.

That Council meeting will be followed by a first exchange of views. On Wednesday morning the 27 Heads of State or Government will meet informally over breakfast to discuss the political and practical implications of Brexit. Leaders will discuss the so called divorce process as described in Article 50 of the Treaty. At this occasion President Tusk will also launch a wider reflection on the future of the European Union with 27 member states.

Press statement by President Donald Tusk on the outcome of the UK referendum

Joint statement by the EU leaders and the Netherlands Presidency on the outcome of the UK referendum

In case of a formal request for withdrawal, article 50 TFEU kicks in which indirectly gives a two year period : *"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".* The negotiation of a withdrawal agreement will be a Herculean task: it implies *"setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union".* This means that the EU and the UK need in that period to negotiate the exit terms and have already *"a framework for its future relationship".* And that future relationship is even more an unknown but may well end up to be a third-country arrangement. Further, is it realistic that two years after the withdrawal notification a treaty can enter into force? It would require not only the approval of the EU institutions but probably also a ratification of the withdrawal agreement by 27 Member States, some of which in turn will need to hold a referendum. All of this is legal "terra incognita".

In the EP, a joint motion for a resolution on the decision of the UK to leave the European Union was introduced calling for a swift and coherent implementation of the withdrawal procedure.

As a result of the outcome of the referendum, Commissioner Lord Hill, in charge of Financial Stability, Financial Services and Capital Markets Union on Saturday, 25 June, decided to resign with the following statement: *"Like many people here and in the UK, I am obviously very disappointed about the result of the referendum. I wanted it to end differently and had hoped that Britain would want to play a role in arguing for an outward-looking, flexible, competitive, free trade Europe. But the British people took a different decision, and that is the way that democracy works.*
As we move to a new phase, I don't believe it is right that I should carry on as the British Commissioner as though nothing had happened. In line with what I discussed with the President of the Commission some weeks ago, I have therefore told him that I shall stand down. At the same time, there needs to be an orderly handover, so I have said that I will work with him to make sure that happens in the weeks ahead.
I am very grateful to Jean-Claude Juncker for giving me the chance to work on financial services and for

the opportunity to help support jobs and growth in Europe. I was also glad to have worked with other Commissioners in trying to take forward our programme of reform, and to have had the chance to work with excellent officials at DG FISMA and in my own team.
I came to Brussels as someone who had campaigned against Britain joining the euro and who was sceptical about Europe. I will leave it certain that, despite its frustrations, our membership was good for our place in the world and good for our economy. But what is done cannot be undone and now we have to get on with making our new relationship with Europe work as well as possible."

Commission President Juncker has asked Valdis Dombrovskis, the Commission's Vice-President responsible for the Euro and Social Dialogue, to take over Lord Hill's portfolio. As Vice-President, Dombrovskis is already coordinating many of the key files under this portfolio, working closely with other Commissioners, the European Parliament and the Council on several important legislative proposals in this area, such as EDIS. The relevant parliamentary consultation will now have to take place. Lord Hill's resignation will take effect on 15 July (midnight), while President Juncker's decision to transfer his portfolio will take effect on 16 July, allowing for an orderly transition.
Normally, the UK must now suggest a new Commissioner which must be agreed by the Council and assessed by the European Parliament. But no new Commissioner was nominated yet.

What does this mean in the meantime? From a purely legal point of view, nothing has changed. The UK continues to be an EU Member State. All Member State's rights and duties remain in force, and the UK firms will continue to benefit from the Single Market and its single license. The UK and UK firms will also continue to be obliged to implement and comply with EU law such as Solvency II, IDD, MiFID II, PRIIPs, and in due time IORP II. UK nationals can continue to work in the EU and vice versa.

But it may imply that, according to SII and also according to the future IORP II, the risk assessments of UK (re)insurers and pension funds will have to consider the Brexit factor on e.g. underwriting and reserving risk (lapses?), market risk, operational risk, ... Will a Brexit need to be part of contingency planning? The corporate structures and potential future changes will also impact this risk assessment. What does Brexit mean for outsourcing contracts? Intermediaries currently using the single passport will not be able anymore in the future to underwrite from the UK. What about products using UK domiciled asset managers? The UK, in case of a full and effective Brexit, will no longer benefit from the EU treaties with third countries, so this may also require attention. What will it mean for group supervision? The full impact will unfold over the days, weeks and months to come, not only for UK firms but also for non-UK (re)insurers and pensions funds which may have to do the same exercise. Our worlds are so intertwined.

Capital Markets Union

An Action Plan on retail financial services can be expected. The Commission is also continuing its analysis on the replies to the Call for evidence.

The Capital Markets Union (CMU) is due to be fully functional by the end of 2019. It is aimed at strengthening the role of market-based finance, alongside bank finance, in the EU economy in the hope to catch up with the US where businesses raise three times more funding from capital markets.

Prospectus Regulation
The European Commission presented its new Prospectus Regulation on 30 November 2015. The draft regulation is aimed at reducing one of the main regulatory hurdles that companies face when issuing equity and debt securities. It sets out to simplify administrative obligations whilst still ensuring that investors are well informed. A reform of prospectus rules is amongst measures announced by the Commission under its 2014 "*investment plan for Europe*" with the aim of improving the business environment. It is a second major building block of the EU's 2015 plan to

develop a CMU. The importance of the Prospectus Directive cannot be underestimated. The prospectus is at the same time a registration document and a securities note. Once an EU-Prospectus has been approved by the regulator of the issuer's Member State, this issuer may raise capital across the European Economic Area (EEA) based on the "*single passport*" principle.

ECON rapporteur Philippe De Backer (ALDE, BE), who had to leave the European Parliament for a Belgian ministerial position, was replaced by Petr Jezek (ALDE, CZ). About 650 amendments have been tabled. But the debate and vote in ECON, scheduled for 23 May and 13 June 2016 did not take place due to the change in rapporteur. No new dates have been scheduled.

The Council on 17 June 2016 agreed a general approach. Thus the Slovak Presidency can start the (so called) trilogue discussions (Council, Presidency, and Parliament). These are likely to begin in September. If they are successful, the trilogue will generate a version of the Regulation which the European Parliament can adopt at first reading, and the Council can approve after that.

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. The ECOFIN Council approved the general approach on 8 December 2015. The Council is waiting for the EP to finish its procedure.

ECON is the responsible committee for the EP. The Rapporteur for the Securitisation Regulation is Paul Tang (S&D, NL), and for the CRR changes is Pablo Zalba Bidegain (EPP, ES). The draft report on the Securitisation Regulation was published on 6 June 2016 but the ECON committee has not yet started substantive discussions. Hence, the indicative plenary sitting date is 13 December 2016.

Green paper on retail financial services

The consultation of the Commission on the Green Paper on retail financial services is now closed. At least 428 answers were received. A summary of responses is not yet available. (Outgoing) Commissioner Hill, in his latest speech before the European Parliament spoke about digital innovation as an opportunity to link up markets better. "*This is an area where we can learn from each other, including new approaches to regulation such as regulatory safe spaces and Fintech hubs. An action plan on retail financial services can be expected by summer 2016*".

In the EP, Olle Ludvigsson (S&D, SE) presented his draft own initiative report on the Green paper on 25 May 2016. Vote in ECON on this report is scheduled for 29 September 2016.

Call for evidence

The (first) factual overview of the contributions of the Call for Evidence is now available. 50 responses came from insurance and 30 from pension provision respondents. Overall, stakeholders did not dispute the reforms of recent years and many expressed support, highlighting the benefits of the new rules. But interested parties concluded mainly that 1) the legislation is not sufficiently proportionate, 2) hinders the available financing and that 3) the compliance burden is too heavy.

Before resigning, (outgoing) Commissioner Hill said that further analysis will come before the summer break, but some things seem clear already. We have to make rules more proportionate for smaller banks under the CRR review to make their reporting lighter, he stated. For investment firms, we will see if we can differentiate better, he said. The Commission will also look at asset managers and whether their reporting burden could be lowered without affecting quality. He pledged keeping the supporting factor for SMEs under the CRR, and to check if we have got the right threshold. If the same prudential objectives can be achieved in a growth-friendly way, he is willing to explore that route. All of this will obviously need to be reconfirmed as direction by the new Commissioner.

In the overview of contributions, one can read in the chapter "unintended consequences", in the part "risk" : "*As regards Solvency II, the issues addressed were broad and included differences between the application of the internal ratings-based model and the standard risk formula, as well as gold-plating and charges on long-term investment in real estate. Other points made by insurers related to charges for currency risk at group level, reinsurance-specific items, the volatility adjustment, reference to credit ratings, equity investments in strategic participations, treatment of CMBS, and macro-prudential implications of the long-term guarantee package*."

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
According to the Member States, a full Solvency II **transposition** in all 28 jurisdictions is imminent.

There is a lot of commotion around the review of the methodology to derive the **ultimate forward rate (UFR)** referred to in Article 77a of the Solvency II Directive. According that Article, the risk-free interest rates should be extrapolated towards an ultimate forward rate (UFR). EIOPA is currently applying an UFR of 4.2% for most currencies, including for the euro. That 4,2% is based on QIS5 data and consists of a 2% estimated long-term inflation and 2.2% long-term interest rate. For EIOPA, the review aims to fill gaps: the 2010 description does not constitute a specified methodology. Furthermore, the current UFRs in 2010 were determined before the UFR derivation was specified in the Delegated Regulation. The review should, where necessary, align the methodology to the legal provisions. To prepare the review, EIOPA recently launched a public consultation on the methodology to derive the UFR and its implementation (EIOPA-CP-16/03) . It runs from 20 April to 18 July 2016. The CP does not consult on the choice of the last liquid point, the convergence period and the extrapolation method. EIOPA is proposing an UFR of 3,7% for the Euro and an annual review (minus 5 bps, up 20 bps). In terms of timing, the new method could be applied immediately by 1 January 2017, or in phases until 2019 or 2021. The effects may vary from country to country (dependent whether the transitional measures of Article 308c were transposed nationally), and also from insurer to insurer, depending on the product (with or without guaranteed interest rates). EIOPA intends to present the results to its Board in September 2016. It should be noted that in the final agreement on Omnibus II between the Commission, EP and Council, the 4,2% was an important element. In the latest Expert Group meeting the Commission questioned the timing and appropriateness of the review and also Member States have different views on the timing.

Level 2 - Delegated Regulation: further amendments expected ?
As part of the CMU Action Plan, the Commission issued its *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* published 1 April in the OJ, to enter into force on 2 April 2016. However, the Commission asked last October additional technical advice to EIOPA to extend potentially the infrastructure assets definition to "*infrastructure corporates*". EIOPA's answer to the Commission is imminent.

Level 2 – ITS
Following delegated regulation 2016/467 EIOPA has published after a short consultation, a proposal to adjust the **reporting templates** in the implementing regulation for the introduction of, inter alia ELTIFs (along with some other minor changes). A short public consultation on this topic took place in April 2016 and the final report has been published on 31 May 2016. The Commission now has three months to decide to endorse the proposal of ITS. To allow for the year-end reporting of 31 December

2016 EIOPA promptly published on 1 June 2016 a Public Working Draft (2.1.0 PWD) of the taxonomy with the intention to release version 2.1.0 in July 2016.

Until further notice, the proposal of ITS on the procedures for applying the **transitional measures** for the calculation of the equity sub-module which EIOPA on 6 November 2015 sent as draft to the Commission has still not been adopted. According to the EIOPA regulation, the Commission has three months plus one to endorse a draft ITS. The Commission's Legal Service is currently working on some legal drafting issues in the text of the draft ITS.

L3 - Guidelines
There are **no new guidelines** released by EIOPA in 2016. There are however new entries in the Q&A section on the Guidelines. Answers are of non-binding nature and do not constitute professional or legal advice. Answers on Guidelines are without prejudice to the discretion of national competent authorities to decide how to comply with Guidelines.

The replies and feedback statement on the recent EIOPA consultation 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) are not yet made public.

Relevant Technical information for actuaries
On 3 June, the Commission adopted the Commission Implementing Regulation (EU) 2016/869 of 27 May 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March until 29 June 2016 in accordance with Directive 2009/138/EC. This technical information includes the relevant risk-free interest rate term structures to calculate the best estimate. It does so without including 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.

The May 2016 version of the symmetrical adjustment of the capital requirement on equities is here.

The latest version of the technical information on the risk-free interest rate term structure (RFR) has been updated with a new version of the risk-free interest rate term structure coding (07/06/2016).

Financial conglomerates
The Commission is evaluating the performance of the financial conglomerate directive ("FICOD") as implemented to date within the framework of the regulatory fitness and performance program ("REFIT"). A consultation is taking place between 9 June and 20 September 2016. The purpose is to assess whether the current FICOD regulatory framework is proportionate, fit for purpose, and delivering as expected. Its objective is to identify and manage risks inherent to financial conglomerates to ensure financial stability.

Stress tests

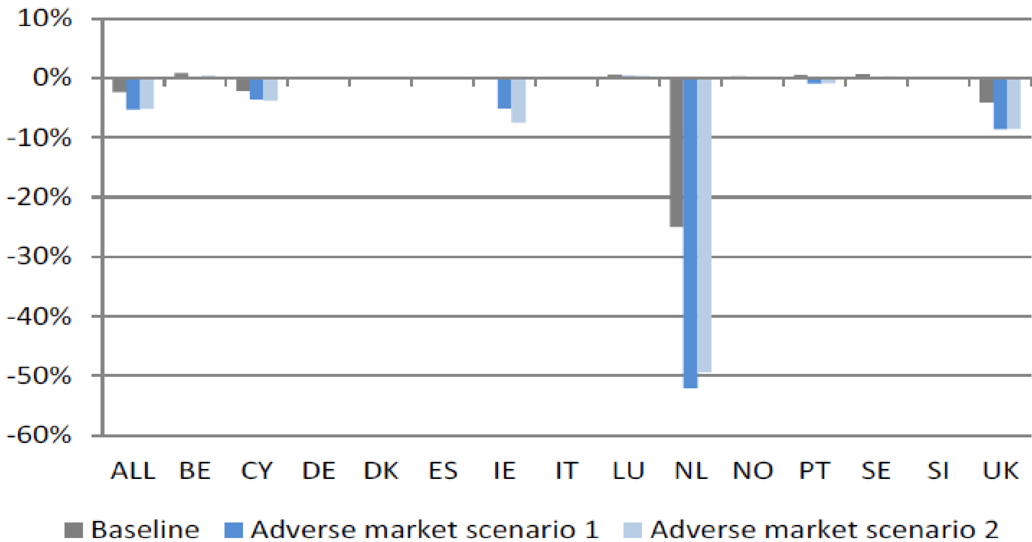
2016 Insurance stress test
EIOPA launched 24 May 2016 the third Europe-wide insurance stress test with a deadline of 15 July 2016. EIOPA aims to reach 75% of each national market. The test focuses on two market risk scenarios for long-term insurance. One scenario concerns a protracted period of very low risk-free interest rates and a second scenario concerns sudden losses on both the asset side and the liability side. Insurers have to apply these scenarios to their SII balance sheet of 1 January 2016 and calculate the impact on assets, liabilities, capital position and cash flows. The final report of this stress test is expected in December 2016. Based on this stress test, EIOPA will also retrieve information both on the SII measures relating to equity risk and long-term guarantees in the context of the revision of the standard formula foreseen for 2018, said (outgoing) Commissioner Hill recently.

Note: the latest technical specifications, reporting templates and third Q&A date from 15 June 2016.

2016 Pensions stress test

The results of the first IORP stress test were published end January 2016. EIOPA explains in its Financial Stability Report June 2016 that until 2015, in the absence of a harmonised market-based valuation reporting regime for pension fund liabilities, it was difficult to assess the impact of the persistent low-interest rate environment on schemes across countries on a consistent basis. Consequently, in countries, where national prudential regimes were not sensitive to market price changes, risks may have been underestimated. EIOPA's first stress test exercise on the occupational pensions sector identifies these vulnerabilities. A common methodology was applied in this stress test to tackle the issue of heterogeneity in reporting regimes of different Member States.

EU IORP market, surplus or deficit over the national funding requirement before and after stress per Member State, in percent of nominal annual GDP, NBS approach



Source: 2015 IORP stress test, EIOPA Financial Stability Report, June 2016

Note: the results do not only depend on the scenario but also on the national regulatory framework

2016 Banking stress tests

Several supervisory stress tests have been carried out in the European Union (2009, 2010, 2011 and 2014) and the US (2009, 2012, 2013, 2014 and 2015) since the beginning of the financial crisis. In the European Union, the European Banking Authority (EBA) bears responsibility for the overall stress test design (including the choice of the sample and simulation horizon), while macroeconomic scenarios are provided by the European Commission (base-case) and the European Systemic Risk Board (adverse). EBA released 24 February 2016 the methodology and macroeconomic scenarios for the 2016 EU-wide stress test. The stress test is designed to provide supervisors, banks and other market participants with a common analytical framework to consistently compare and assess the resilience of EU banks to economic shocks. For this exercise, no single capital thresholds have been defined as the results will inform the 2016 round of Supervisory Review and Evaluation Processes (SREP) under which decisions are made on appropriate capital resources. EBA expects to publish the results of the exercise in early Q3 2016.

The EP published a study explaining the new elements of the banking stress test. One of the new elements of the stress test is conduct risk which will need to be estimated: *"the request for specific forecasts concerning "conduct risk" (also known as financial misconduct risk), broadly defined by the EBA as "the current or prospective risk of losses to an institution arising from an inappropriate supply of financial services, including cases of willful or negligent misconduct".* According to EBA *"Conduct risk represents a type of legal risk, which in turn falls into the definition of operational risk provided by the*

CRR (Capital Requirements Regulation).".

2016 Deposit guarantee schemes stress test
EBA published its final Guidelines on stress tests for deposit guarantee schemes (DGS). The Guidelines provide a systematic methodology for planning, running and reporting on stress tests conducted by DGS to assess their resilience to various types of scenarios in times of banking stress. In line with the DGS Directive (DGSD), these Guidelines will promote the quality and the consistency of these stress tests. The resulting data will also facilitate future peer reviews by EBA, contributing to a safe and sound EU framework for the benefit of depositors and financial stability. The first stress test should take place by 3 July 2017.

Pensions

The trilogue on IORP II resulted in an agreement. EIOPA's second recommendation on Pan-European Personal Pension is expected.

Occupational pensions

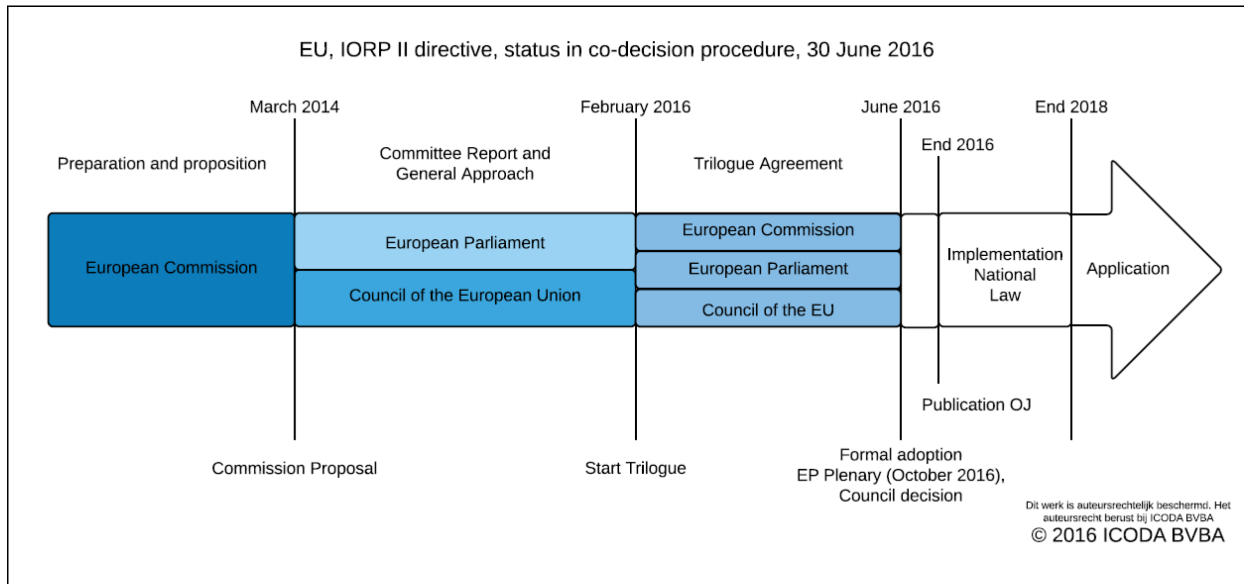
IORP II
According to EIOPA's latest financial stability report, UK and NL account for most of the European occupational pensions sector (about 86 per cent of total assets). Cross-country differences are mainly driven by the relative share of private and public provisions of pensions based on countries' legislations and state supports. Pension funds under Pillar I are not included.

EU IORP market, total assets per country as a share of total assets reported for 2015 (in%)

UK	NL	DE	IT	ES	NO	IS	AT	SE	PT	DK
52.14%	34.18%	5.45%	3.34%	1.07%	0.91%	0.61%	0.57%	0.54%	0.49%	0.23%
LI	**FI**	**LU**	**SK**	**GR**	**SI**	**PL**	**LV**	**RO**	**HR**	**HU**
0.15%	0.12%	0.05%	0.05%	0.033%	0.018%	0.012%	0.010%	0.007%	0.003%	0.0001%

Source: 2015 IORP stress test, EIOPA Financial Stability Report, June 2016
Note: for many countries 2015 figures are preliminary and subject to major revisions. Penetration rates for GR, HR, RO, PL are lower than 1 per cent.

The adoption of the draft IORP II Directive, proposed by the Commission in 2014, is imminent: the Dutch Presidency has obtained a trilogue agreement before the end of its Presidency, which is scheduled as an A item on the COREPER meeting of 30 June 2016 .
Since February, trilogue negotiations are taking place between the Council, Commission and the European Parliament. A trilogue aim is to arrive at one single and unique text. Several meetings have taken place over the last months. The last trilogue meeting of 16 June failed to reach an agreement, but the last negotiations between co-legislators resulted in a compromise.
The EP plenary vote is currently slotted for 25 October 2016. The Commission had foreseen transposition by the end of 2016 and application by 1 January 2017. This timescale is no longer realistic. A more realistic timescale both for transposition and application might well be 24 months after publication in the OJ, estimated to be end 2018.
The current trilogue text deletes all delegations for secondary legislation (demand from both Parliament and Council), so no further delegated act, RTS or ITS will be expected.



Quantitative Assessment (QA) : a common framework for risk assessment and transparency
EIOPA published on 14 April, as part of its work on the Holistic Balance Sheet, the results of the IORP QA. The report "*Opinion to EU Institutions on a Common Framework for Risk Assessment and Transparency for IORPs*" concludes a cycle of roughly three years with various consultations and evaluations. The quantitative assessment was conducted last year in six Member States (BE, DE, IE, NL, PT and UK). The aim was to collect data on the supervisory frameworks discussed in the consultation paper and to test the improved valuation methods and simplifications. A total of 101 IORPs participated in the exercise, representing a market coverage of 41% in terms of assets.

In its report, EIOPA states explicitly that it has no intention to amend the IORP II proposal now. However, to ensure the long-term sustainability of occupational pension promises, EIOPA recommends strengthening the IORP directive with a "*common framework for risk assessment and transparency*" . The terms "*holistic balance sheet*" and "*SCR*" are replaced by "*common framework*" and "*standard risk*" because these terms are relevant in relation to risk assessment and transparency, according to EIOPA. The framework applies to all IORPs providing occupational pension schemes in which risks are shared to differing degrees between the sponsor, plan members and the institution itself but not to IORPs providing pure DC schemes.

According to EIOPA the following risk factors, considered to be the most relevant for IORPs, should be included: "*operational risk, risk free interest rate risk, property risk, equity risk, spread risk, currency risk, concentration risk, counterparty default risk (incl. default risk of the sponsor) and longevity risk. In the quantitative assessment the pre-defined stressed risk factors were calibrated to a 0.5% probability of occurrence over a one-year horizon, and it would therefore be most practical for EIOPA to recommend this confidence level*". Also, "*the common risk assessment and transparency framework is not intended to replace other risk management tools or techniques currently used by IORPs, such as ALM studies, neither does it replace national regulatory frameworks in this respect*."
EIOPA sees only benefits in this proposal, such as increased protection for members and beneficiaries, improving the internal market, reducing the potential for regulatory arbitrage, and gradual convergence of funding regimes. In order to limit the cost for the small and medium-sized IORPs, EIOPA recommends a proportional application with different methods and approaches. EIOPA is not in favour of grandfathering nor of transitional measures, but favours a preparatory phase before reporting on a common framework can commence. EIOPA agrees with many respondents that harmonized solvency requirements currently cannot be inserted.
Outgoing Commissioner Hill however stated last week at the Pensions Europe conference : "*And once this (IORP II) legislation is agreed, that will be it. We don't have any more changes up our sleeve.*

There are no plans to harmonise solvency rules for occupational pensions and there are no plans to introduce a standardised risk assessment process."

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 final report was presented on 1 June to Commissioner Thyssen and other stakeholders in the European pension industry. The initial costs will be 13.3 million euro. It will take six years for a pan-European pension tracking service (ETS) to break even. TTYPE will initially be reliant on grants from the European Commission. A staged rollout is envisaged: the ETS will in phase 1 focus on countries with existing national tracking services (NTS) and significant cross-border worker flow: the Netherlands and Belgium, eventually being deployed across the Scandinavian countries and Poland, then across countries neighbouring the seven initial participating member states already in possession of an NTS, such as Latvia and Estonia and also Lithuania (because of the small number of local pension providers in need of connection), Austria (which has an NTS) and France.

Personal pensions

Pan-European Personal Pension Product

The EU wants to develop an EU Single market for personal pension products (PPPs). The Commission asked EIOPA the first time for advice in 2013. In 2014, EIOPA gave its first recommendation. A second call for advice followed. To prepare its second advice to the Commission, EIOPA launched a consultation in 2015 (EIOPA-CP-15/006). The Final Report on the creation of a standardised Pan-European Personal Pension product (PEPP) was published in April 2016. The Actuarial Association of Europe replied, as well as insurance companies, asset managers and consumer groups.

EIOPA's Consultation paper on EIOPA's advice on the development of an EU Single Market for personal pension products (PPP) (EIOPA-CP-16/001) to the Commission was closed for final comments on 26 April 2016. EIOPA's second recommendation, which will supplement the opinion of 2014, is expected any moment.

According to the annex of the consultation paper, EIOPA found that there are 72 different types of PPPs, coming from 27 EEA countries (not included are Finland, Sweden and Slovenia and three countries Greece, Cyprus and Liechtenstein, where no PPP is available). About half are products falling under the European life insurance regime (LAD), a quarter are domestic products (NEL, or Not subject to European Legislation), 13 % of the schemes are regulated by the IORP directive , and the remaining by the Banking Directive (CRD IV) or the UCITS Directive. A split by assets shows unsurprisingly an even bigger coverage by the LAD regime: without the German PPP market, 82 % of the product assets are covered by the LAD, 14 % by national law and 3 % by the IORP Directive and CRD IV. Products covered by the UCITS Directive are marginal in terms of assets.

In the meantime, DG FISMA wrote out a tender (0,5 million euro) for a study on the feasibility of a European personal pensions framework. It aims at mapping the tax regimes applicable to personal pensions products within the 28 EU Member States. In addition, the study should identify the five most successful personal pension products. For each of the five identified reference personal pension products in the Member States in the sample, the study should look at a number of product features such as investment strategy, return, out-payments, fees, time horizon. Furthermore, the study should conduct a feasibility analysis of a possible European personal pensions framework to foster simple, efficient and competitive personal pensions within the EU. The outcome of this analysis should assist the European Commission in assessing the feasibility of a European personal pensions framework. Tenders must be submitted by 5 July 2016.

Motor third party liability

Following the Vnuk case, the Commission reconsiders the revision of the material and geographical scope of the Motor Insurance Directive.

On 4 September 2014, the Court of Justice of the European Union ruled on a question by the Slovenian Supreme Court to interpret the scope of the Motor Insurance Directive 2009/103/EC. The context were proceedings that concerned an accident on a private property caused by a tractor (C-162/13 Vnuk), and the question was whether the obligation of third party liability cover extended to private properties. The Court ruled that the concept of 'use of vehicles' covers any use of a motor vehicle that is consistent with the normal function of that vehicle. It was implied in the ruling that there was no difference between private or public properties as regards the obligation of cover.

The effect of the ruling is that vehicles used in certain locations and/or certain activities by vehicles which may not have been initially understood to be regulated under the Directive by some Member States are covered by the obligation of insurance cover in the Directive. Also some non-road-traffic motoring activities must be covered by third party liability insurance. Consequently, accidents that are the result of purely agricultural, construction, industrial, motor sports or fairground activities in Member States which exempt these vehicles from the requirement to hold third party liability coverage, may be compensated from motor third party liability policies.

The Commission published on 8 June 2016 an Inception Impact Assessment (IIA) on the revision of material and geographical scope of the Motor Insurance Directive. Inception Impact Assessments contain information on stakeholder consultations and outline when and how stakeholders will have the opportunity to provide input. In the IIA, the Commission states that it is not envisaged to change the definition of motor vehicle, because the existing definition is technology-neutral and will in the future capture all types of vehicle with a driver intended for travel on land and propelled by mechanical power (including e.g. automated vehicles). However, the Commission also states that it intends to launch a wider REFIT review of all aspects of the Directive in the third quarter of 2016.

Data Protection Reform

The Data Protection Package was been formally approved, it will overhaul data protection legislation across the EU and increase the responsibility and accountability of data controllers. The European Commission and the United States are still negotiating on Privacy Shield, which has to replace Safe Harbour.

The Data Protection Package, consisting of the General Data Protection Regulation (GDPR) and the Data Protection Directive in the field of law enforcement has been published in the Official Journal of the European Union of 4 May 2016. The General Data Protection Regulation shall apply from 25 May 2018. The Data protection directive in the field of law enforcement must be implemented in national law by 6 May 2018. From that date on, Member States shall apply the provisions regarding data protection in the field of law enforcement.

The GDPR strengthens data protections rights and gives data subjects (the individuals whose personal data is being processed) more control over their personal data:

- it provides more specific rules allowing data controllers (those responsible for the processing of data) to process personal data, including through requiring consent of the individuals concerned;
- it provides individuals easier access to their personal data;
- individuals need to be better informed what happens to personal data once it is shared. This

must happen in clear and plain language, which can also be done via standardised icons;
- individuals have the right to erase personal data and "to be forgotten";
- individuals have a right to portability, facilitating the transmission of personal data from one service provider to another.

A key article is article 20 of the GDPR: data protection by design and by default.

- Protection by Design means for insurers and pension funds that each new service or business process that makes use of personal data must take the protection of such data into consideration. The organisation needs to be able to show that it has adequate security in place and that compliance is monitored. In practice this could mean that among others product designers, claims managers and IT departments must work together to take privacy into account during the whole life cycle of the system or process or product development.
- Privacy by Default simply means that the strictest privacy settings automatically apply once a customer acquires a new product or service. In other words, no manual change to the privacy settings should be required on the part of the user. There is also a temporal element to this principle, as personal information must by default only be kept for the amount of time necessary to provide the product or service.

The Regulation increases the responsibility and accountability of data controllers, which have to implement a number of security measures. The Regulation requires companies doing business in the EU, including companies from third countries, need to report to authorities within 72 hours if consumers' personal data has been compromised during an attack on their digital systems. Public authorities and companies that perform certain risky data processing must designate a data protection officer to ensure compliance with the rules. If data controllers do not comply with the rules, they can face maximum fines of up to 20 million euro or 4% of their global annual turnover.
This means that data protection is to be an integral part of both the technological development as well as the organisation structure of a new product or service.

"*Privacy by design and by default*" should become the guiding principle embedded at the core of the Digital Single Market, according to BEUC.

In the meantime, the review process of the e-Privacy Directive has been launched, and the European Commission is expected to put forward a proposal towards the end of 2016.

EU-US Privacy Shield

The Safe Harbour decision stated the conditions U.S. companies had to meet to comply with European privacy laws in the case of data transfers between the EU and the U.S. In October 2015, the European Court of Justice invalidated in the Schrems case indirectly the Safe Harbour decision, because legislation permitting public authorities to have access on a generalised basis to the content of electronic communications must be regarded as compromising the essence of the fundamental right to respect for private life. One of the ramifications of that case was that the U.S. data protection legislation, and thus the Safe Harbour deal between the U.S. and the EU was not considered 'adequate'. In the case of the EU and the U.S., U.S.data protection should essentially be guaranteed to be equivalent to the current protection level in the EU, in line with EU data protection laws and the EU Charter of Fundamental Rights.

Since then, the European Commission has been negotiating with the U.S. about the replacement of Safe Harbour by the EU-US Privacy Shield. The latter is no agreement yet, but a draft, leaving companies on both sides of the ocean in limbo. Whilst the call for a sustainable legal framework regarding commercial transfer of personal data from the EU to the United States is strong, there is a lot of criticism on the current draft version.

- The European Parliament approved a non-binding resolution on Privacy Shield on 26 May 2016. The resolution generally supported the proposals for Privacy Shield, but nevertheless identified some "deficiencies" in the draft, namely the current complexity of the redress system and the need to make this more user-friendly; the lack of independence of the proposed U.S.

Ombudsperson and the inadequacy of the powers to effectively carry out the duties; and the lack of clarity on the written assurances provided by the U.S. relative to the proposed safeguards for bulk collection for national security purposes of EU citizens' personal data.

- The European Data Protection Supervisor, which advises the EU institutions on data protection issues, also sets out concerns in its report on the current draft of Privacy Shield. These are the fact that Privacy Shield does not provide individuals with any judicial redress in the event that their personal data is misused. The EU also needs more reassurance from the U.S. that the US will only access the transferred personal data when necessary and proportionate, instead of allowing routine access to the data.

Although a legal framework on transatlantic commercial transfer of personal data is needed, it appears that an agreement which is in line with European privacy law is difficult to reach.

Meanwhile, the European Commission and the U.S. concluded an agreement "on the protection of personal information relating to to the prevention, investigation, detection and prosecution of criminal offenses". The agreement covers the exchange between law enforcers, during their investigations, of personal data. This includes names, addresses and criminal records.

Big data

The Financial Services User Group advises the Commission to launch a formal policy process to prevent future consumer detriment by the increasing use of Big Data.

Data are increasingly being considered as a valuable corporate asset. The Financial Services User Group (FSUG) is an expert group set up by the European Commission. It aims to secure high quality expert input to the Commission's financial services initiatives from representatives of financial services users and from individual financial services experts. It issued in June 2016 a paper dealing with Big Data, the internet of things and artificial intelligence and algorithms. In theory, one of the effects of these three revolutions, combined, is a frighteningly accurate "*predictability*" of future behavior of any user, and thus, of future risk. The paper looks at detriments and benefits.

In terms of recommendations, the FSUG recommended that the European Commission should recognize the impact of Big Data on financial services and:

- launch a **formal policy process**, in cooperation with the EP, to prevent any potential future consumer detriment due to the increasing use of Big Data;
- also define **governance rules** for all actors providing personal data to financial service providers. This includes credit bureaus, but also any potential actor which may provide personal information about a financial services user (for instance, a company selling health sensors sharing data with insurance companies). The governance rules should ensure that decisions about the use of data and the extent to which risk is mutualized or socialized is a collective decision by all interested stakeholders (public authorities, financial services providers, consumers, data protection authorities). Such bodies need to decide about the proportionality of using personal data;
- consider the impact of Big Data and the importance of **ethical use of data**, however, which goes much beyond the scope of financial services alone. The future European Data Protection Board (EDPB), which will gather all the European Data Protection Authorities, should specifically analyse what the GDPR rules mean for Big Data and Fintech. Their mandate should extend to assessing how data is used, whether it respects certain ethical criteria or proportionality, and the likely impact on consumers/society (will it fuel discrimination, contribute to the intergenerational transmission of poverty…);
- discuss openly the issue of cyber-security between a variety of stakeholders, building on the philosophy of **Open Source** software and solutions and **strong open standards** to ensure the

highest level of security for consumer's private data. Innovative solutions exist to keep data safe and all of them should be explored:

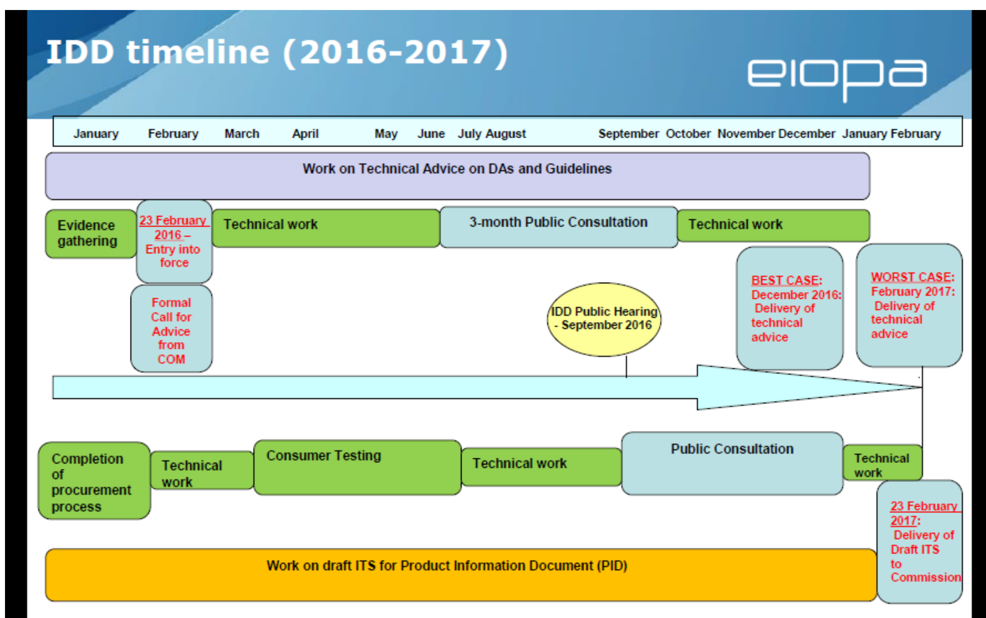
- The "FreedomBox" is a personal server where consumers can store **all** of their online data. Social networks, emails... Consumers have full control over who has access to their data
- Using encryption for sensitive information such as credit card numbers
- Storing user data on own personal "cloud" account (vs centralizing it in company databases)
- Mainstreaming two-factor or even three-factor authentication.

Initiatives which make **Big Data analytics work in the interest of consumers** and under their control should be encouraged and promoted.

Further reflection needs to be given to consumer information, consumer control and consumer consent in the digital world, and applied to Big Data.

Insurance distribution directive

The insurance distribution directive is being transposed into national law. Preparatory work on the delegated acts is underway.



Source: EIOPA, presentation to IRSG, February 2016

The insurance distribution directive (IDD) regulates the way insurance products are sold. It lays down the information that should be given to consumers before they sign an insurance contract, imposes certain conduct of business and transparency rules on distributors, clarifies procedures and rules for cross-border business and contains rules for the supervision and sanctioning of insurance distributors when they breach the Directives provisions. The IDD was published 2 February 2016 and will need to be transposed in national law no later than 23 February 2018.
A series of delegated acts is foreseen on articles 25,28, 29 and 30, on which EIOPA has started working, as well as guidelines. EIOPA is invited to provide a final Technical Advice by February 2017, including a cost-benefit analysis. The Commission will hold a workshop for Member States on the IDD transposition early July.

Consumer protection

Several initiatives to strengthen consumer protection are being developed. The KID technical standard for investment products is expected soon.

(Outgoing) Commissioner Jonathan Hill, DG FISMA, stated in 2015 that the interests of consumers represent 'the bedrock of our financial system' and stressed that the regulation of financial retail services should be based on the three key principles: transparency, choice and competition.

Consumer and investor protection is a common statutory objective of the three ESAs. Throughout 2015-16, they published regulatory requirements in fulfilment of their consumer protection mandates. These include: a) guidelines or technical advice on product oversight and governance b) the technical standards for the Key Information Document (KID) under the PRIIPS Regulation, and c) the requirements related to sales incentives and the remuneration of sales staff.

Preparatory Guidelines on Product Oversight and Governance (POG)
EIOPA published the "Preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors" in all languages. Publication of the all languages versions triggered the Member States' National Competent Authorities' "comply or explain" obligations. They now have two months to tell EIOPA whether they comply, or intend to comply, with the Guidelines, or not.

The preparatory Guidelines are issued to ensure that competent authorities have a consistent and convergent approach concerning arrangements to be followed by insurers (manufacturers of insurance products) and distributors in preparation for formal requirements provided for in the IDD.

Another aim of the Preparatory Guidelines is to achieve cross-sectoral consistency : ESMA (see forthcoming delegated act on MiFID II) and EBA (Guidelines, July 2015) already have issued guidance on these topics (for mortgages, personal loans, deposits, payment accounts, payment services, and electronic money). However, it should be noted that their application will be only as of 2017, or 2018 in case of MiFID II. In the press release, Gabriel Bernardino states: '*These preparatory guidelines will ensure that during 2016 and 2017 supervisors will early engage with the Board and senior managers of market participants to make sure that in 2018 the IDD product governance requirements are in place*'.

Regulatory Technical Standards on Key Information Documents
The Regulation on Key Information Documents for Investment Products requires that intermediaries provide retail customers with a short, standard form called Key Information Document (KID) before they invest in any packaged retail and insurance-based investment product (PRIIPs). The regulation has been adopted but is not yet in force until 31 December 2016. The KID is a simple document giving key facts to investors in a clear and understandable manner, covering collective investment schemes and other "*packaged*" investment products offered by banks or insurance companies.
The Joint Committee of the European Supervisory Authorities (ESA) finalised its proposal for regulatory technical standards (RTS) on Key Information Documents (KIDs) for PRIIPs. The European Commission will endorse or not this final RTS during the summer.
In March 2016, ESMA's Securities and Markets Shareholder Group published a letter sent to Jonathan Hill regarding concerns over aspects of the PRIIPs regulation. They urged amendments to be made to the Level 1 before it enters into force this year. Insurance Europe published a press release in April 2016 in which it maintains that the proposed PRIIPs KID will mislead consumers owing to design faults. Insurance Europe also published a paper in May 2016 highlighting technical concerns over final draft RTS.

Also the timing is considered an issue. It should be noted that the EP agreed in June with the Commission's 'quick fix' proposal to give firms a further year to implement MiFID II/MIFIR. Firms

have been given until 3 January 2018 to implement laws overhauling the EU's existing regulation of financial markets. The one year deferral was triggered by the European Commission and the European Securities and Markets Authority's (ESMA) delay in coming up with the necessary technical standards. Some would like the deadline of MiFID II and PRIIPs to be aligned.

Guidelines on remuneration policies and practices

EBA launched a consultation on its draft guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services. EBA identified poor remuneration policies and practices as a key driver of miss-selling of financial products and services. The Guidelines are aimed at protecting consumers and reducing conduct costs of providers. The consultation ran until 22 March 2016. EBA will assess the responses received and finalise the Guidelines, expected in summer 2016. (see also EBA's report on high earners).

Automation in Financial Advice

The ESAs have noted the continued increase in the digitalisation of financial services across the banking, insurance and securities sectors. Of particular interest is the phenomenon of automation in financial advice, i.e. the various ways in which consumers can use automated tools (websites) to receive financial advice, almost without human intervention. In December 2015 the three ESA's issued a joint Discussion paper on automation in financial advice with a deadline for comments on 4 March. The replies are not yet published.

Joint consumer protection day

The Joint Committee of the ESAs organises its 4th Consumer Protection Day on 16 September 2016 in Paris. The abovementioned issues will of course be addressed at the event. The ESAs also seek views from participants on questions like: Will the single market financial services directives such as the Mortgage Credit Directive, Payment Accounts Directive, Insurance Distribution Directive and Markets in Financial Instruments Directive (MiFID) II succeed in achieving an integrated single market ensuring a high level of protection for consumers? What changes will the CMU and Action Plan on Retail Financial Services bring to consumers?

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European Agenda

June 2016	Final advice EIOPA on the development of an EU Single Market for PPP (expected)	EIOPA
June 2016	Final report on IBER studies (expected)	European Economic Research
June 2016	Deadline Member States' NCA's comply or explain reply to Guidelines on POG	Member States
June 2016	Technical advice to the Commission on potential extension of infrastructure assets definition (SII Delegated Regulation)	EIOPA
01/07/2016	Start Slovak Presidency	Council
05/07/2016	Deadline Submission tenders PPP	European Commission
15/07/2016	Deadline 2016 Insurance stress test	EIOPA
15/07/2016	Lord Hill's resignation (DG FISMA)	European Commission
16/07/2016	Dombrovskis takes over DG FISMA	European Commission
18/07/2016	Deadline public consultation on the UFR methodology	EIOPA
July 2016	Workshop for Member States on the IDD transposition	European Commission
July 2016	Revised regulation European Venture Capital Funds and European Social Enterprise Funds (expected)	European Commission
Before summer break 2016	Further analysis on the Call for Evidence	European Commission
Summer 2016	Action Plan on retail financial services	European Commission
August 2016	Deadline Commission decision on endorsement ITS proposal on procedures for applying transitional measures for calculation of equity sub-module	European Commission
3th quarter 2016	Banking stress test results (expected)	EBA
3th quarter 2016	Motor Insurance Directive REFIT (expected)	European Commission
September 2016	Result consultation on UFR methodology	EIOPA
16/09/2016	ESA's Consumer Protection Day	ESA's
20/09/2016	Deadline consultation FICOD	European Commission
29/09/2016	Vote on the draft own initiative report on the Green Paper on Retail Financial Services	European Parliament, ECON Committee
October 2016	Possible Brexit request UK government	
25/10/2016	Vote IORP II	European Parliament, plenary
31/12/2016	Application Regulation on KID for PRIIPs	
01/01/2017	Application PRIIPs Regulation	
March 2017	Expected proposal on the future of IBER	European Commission
01/02/2017	Deadline for EIOPA to provide final technical advice on L2 IDD	European Commission
03/07/2017	First DGS stress test	EBA
23/2/2018	IDD to be transposed	Member States
06/05/2018	Data protection directive in the field of law enforcement to be transposed	Member States
25/05/2016	Application GDPR	
End 2018	Expected transposition and application IORP II Directive	Member States

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