Busy Times Ahead for Financial Service Providers
February 2017

With Brexit dominating the news, it is easy to overlook the significant number of EU financial services measures which will start to apply over the next months with key dates occurring in June 2017, and January, February and May 2018. These measures will affect the majority of financial service providers ("**FSPs**"), including banks, insurers, investment firms and payment institutions. If you require advice about the impact of these measures on your business or assistance with your implementation project, please contact us.

June 2017

Member states must transpose the Fourth Money Laundering Directive 2015/849 ("**MLD4**") into national law by 26 June 2017. The revised Wire Transfer Regulation 2015/847 ("**WTR2**") will also apply from that date.

Fourth Money Laundering Directive (MLD4)

MLD4 will replace the Third Money Laundering Directive ("**MLD3**"), which sets the EU's current framework for anti-money laundering ("**AML**") and countering terrorist financing ("**CTF**") . As compared with MLD3, the two most significant changes introduced by MLD4 are first, an increased emphasis on the "risk-based approach" to AML/CTF and, second, the approach taken to the issue of beneficial ownership, including the requirement to set up a central register of beneficial owners. See our related briefing here.

Ireland partially transposed MLD4 into national law in November 2016 with the adoption of the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulation 2016. See our related briefing here. At the end of January 2017, the Government published the General Scheme of a Criminal Justice (Money Laundering and Terrorist Financing) Amendment Bill which would transpose MLD4 into Irish law by amending the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

Wire Transfer Regulation 2015/847 (WTR2)

Regulation 1781/2006 on information on the payer accompanying transfers of funds ("**WTR1**") sets out the existing regime under which payment service providers ("**PSPs**") are required to send information on the payer throughout the payment chain for the purposes of preventing, investigating and detecting money laundering and terrorist financing.

WTR2 will amend and replace this regime. It covers funds transfers, in any currency, sent or received by a PSP established in an EU member state. WTR2 includes the following new requirements:

- the payer's PSP must ensure that transfers of funds are accompanied by information on the payee - the information required depends on whether the payee's PSP is situated in, or outside of, the EU;
- the payer's PSP must, in certain circumstances, verify the payer's information before the transfer of funds;
- the payee's PSP must detect if any of the payer's required information is missing. If information is missing, the payee's PSP must either reject the transfer of funds or ask for complete information on the payer; and
- PSPs must establish risk-based procedures for determining when to execute, reject or suspend a transfer of funds which lacks the required payer/payee information.

January 2018

January 2018 will be a key month for EU financial services. The Benchmark Regulation 2016/1011 (the "**Benchmark Regulation**") will apply from 1 January as will Regulation 1286/2014 on Packaged Retail Investment and Insurance Products ("**PRIIPs Regulation**"). The new regulatory framework for markets in financial instruments ("**MiFID II**") will commence on 3 January while member states must transpose the revised Payment Services Directive 2015/2366 ("**PSD2**") into national law by 13 January 2018.

Benchmarks

The Benchmark Regulation regulates the production and use of benchmarks. While it applies to a very broad range of benchmarks, it does not apply to them all in the same way. Specifically, the Benchmark Regulation distinguishes between critical, significant and non-significant benchmarks, imposing more stringent requirements on critical benchmarks. In addition, the Benchmark

Regulation details specific regimes for both commodity and interest rate benchmarks, while regulated data benchmarks benefit from certain exemptions. Among other things, the Benchmark Regulation imposes requirements on a supervised entity, (including a bank, investment firm or insurer), that uses a benchmark. Specifically, a supervised entity is restricted as to the types of benchmarks it may use. In addition, a supervised entity that uses a benchmark must:

- produce and maintain robust written plans setting out the actions it would take in the event that a benchmark materially changes or ceases to be provided; and
- provide its relevant competent authority with those plans on request and reflect them in its contractual relationship with clients.

The Benchmark Regulation contains a number of transitional provisions. In particular, a supervised entity may continue to use an existing benchmark until 1 January 2020 in certain circumstances, and beyond this date if permitted by the relevant competent authority.

The Regulation on Packaged Retail Investment and Insurance Products (PRIIPs)

The PRIIPs Regulation seeks to promote investor protection by enhancing transparency over the key features and risks of PRIIPs sold to retail investors. Among other things, it requires a "PRIIP manufacturer" to prepare and produce a standardised fact sheet, known as a Key Information Document, or KID, in accordance with a prescribed format and content. The person advising on or selling the PRIIP must then provide the KID to retail investors. See our related briefing here.

The PRIIPs Regulation was originally intended to apply from 31 December 2016, but its application was delayed after the European Parliament rejected proposed delegated legislation specifying the KID format and the methodology for compiling the KID. The European Commission expects the revised PRIIPs legislative framework to be put in place during the first half of 2017.

Markets in Financial Instruments Directive and Regulation (MiFID II and MiFIR)

The Markets in Financial Instruments Directive 2004/39 ("**MiFID**") is the cornerstone of the EU's regulation of financial markets. Its main objectives are

to improve the competitiveness of EU financial markets by creating a genuine single market for investment services and activities and to ensure a harmonised, high degree of protection for investors in financial instruments. In June 2014, the EU adopted a revised framework MiFID II, which will replace MiFID with Directive 2014/65 on markets in financial instruments ("**MiFID II Directive**") and the complementary Markets in Financial Instruments Regulation ("**MiFIR**").

The MiFID II Directive addresses matters such as authorisation and organisational requirements for investment firms, relevant credit institutions and trading venues, investor protection provisions, and the framework of sanctions for breach of the amended rules. MiFIR contains requirements regarding the public disclosure of trade data, the reporting of transactions to the competent authorities, the obligation to trade derivatives on organised venues and removing barriers to entry to trading venues. See our related briefing here.

As compared with MiFID, the scope of MiFID II is considerably broader in several respects. In particular, it covers a wider range of entities than MiIFD and narrows a number of the MiFID exemptions.

The MiFID II Directive must be transposed into Irish law by 3 July 2017 although implementation will be on 3 January 2018. The Department of Finance set out its general intended approach in relation to the transposition process in its consultation paper on member state discretions, which was published in July 2016 and transposing regulations are currently being prepared. According to Michael Hodson, Director of Asset Management at the Central Bank of Ireland, in a speech delivered on 7 February 2017, the Central Bank is also assessing the potential impact of MiFID II transposition on its own rulebooks and guidance (*eg* Client Asset Regulations).

Payment Services Directive (PSD2)

The Payment Services Directive 2007/64 ("**PSD**") provides the legal foundation for the creation of an EU-wide single market for payments and for the Single European Payments Area. Directive 2015/2366 ("**PSD2**") repeals PSD and member states must transpose it into national law by 13 January 2018. PSD2's main objective is to promote better integration, more innovation and more competition in the EU's payment services market. In achieving this objective, it makes a number of significant changes to the existing regulatory framework set out under PSD. In particular, PSD2 introduces new licensing requirements for third party PSPs. As compared with PSD, it also has a more extensive territorial scope, a revised list of exemptions, enhanced rules on the

authorisation and supervision of payment institutions, and more stringent conduct of business requirements. See our related briefing here.

PSD2 contains a number of transitional provisions which, among other things, defer the application of certain requirements for payment institutions carrying out activities before 13 January 2018, and to persons who benefited from a smaller enterprise waiver under PSD.

February 2018

Insurance Distribution Directive (IDD)

The Insurance Mediation Directive 2002/92 ("**IMD**") contains requirements for member states' regulation of insurance intermediaries. The Insurance Distribution Directive 2016/97 ("**IDD**") will repeal the IMD from 23 February 2018 and member states must also transpose the IDD into national law by that date.

- The IDD establishes new rules on insurance distribution and seeks to:
- improve regulation in the retail insurance market and create more opportunities for cross-border business;
- establish the conditions necessary for fair competition between distributors of insurance products; and
- strengthen consumer protection, in particular with regard to the distribution of insurance-based investment products ("**IBIPs**").

As compared with the IMD, the IDD has a significantly broader scope. In particular, it applies to direct sales of insurance products as well as sales via an intermediary and ancillary sales. It also applies to those persons managing websites offering a ranking of insurance products, when these websites permit customers to "directly or indirectly conclude an insurance contract".

Broadly, the IDD contains registration requirements; passporting provisions for intermediaries; professional and organisational requirements, as well as information and conduct of business requirements. It also contains additional requirements which relate to IBIPs.

Intermediaries registered under the IMD have until 23 February 2019 to comply with the professional and organisational requirements set out in the IDD.

May 2018

Network Information Security Directive

The NIS Directive 2016/1148 is the EU's first cybersecurity directive. It aims at ensuring a high common level of network and information security across the EU through improved cybersecurity capabilities at a national level and increased EU-level cooperation. See our related briefing here.

The NIS Directive imposes obligations on member states, operators of essential services and digital service providers. The NIS Directive defines an operator of essential services as a public or private entity, which provides an essential service for the maintenance of critical societal and/or economic activities, depends on networks and information systems, and for which an impact on these systems would produce "significant disruptive effects" on its ability to provide its service. According to the NIS Directive, such an operator may include a bank, central counterparty or an operator of a MiFID II trading venue. Member states must identify banks, central counterparties and operators which fulfil the critera set out in the NIS Directive by October 2018.

An operator of essential services must:

- take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network and information systems which it uses in its operations;
- take appropriate measures to prevent and minimise the impact of incidents affecting the security of the network and information systems used for the provision of such essential services, with a view to ensuring the continuity of those services, for instance resilience and business continuity measures; and
- report incidents having a significant impact on the continuity of the essential services it provides without undue delay. Notification will have to be made to "competent authorities" or Computer Security Incident Response Teams that each member state must set up, as designated by the relevant member state.

Conclusion

Over the course of the next several months, FSPs will need to start complying with requirements set out in several significant financial services measures and we expect that, for the most part, in-scope FSPs are already working on their compliance arrangements. In some cases, however, the delegated legislation setting out more detailed provisions in respect of those measures has yet to be adopted, meaning that the exact nature and extent of the relevant requirements is as of yet unclear. FSPs will therefore need to ensure that they adapt their compliance arrangements to take into account any applicable delegated legislation once it has been finalised.

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