McCANN FITZGERALD

Financial Services Regulatory Group

Bulletin

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Financial Services Regulatory Group Bulletin

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Introduction

Our latest Financial Services Regulatory Group bulletin contains new updates on significant developments in financial services regulation, including the revised Payment Services Directive, the proposed Central Credit Register, the EU Commission's draft Regulation establishing a European Deposit Insurance Scheme and the Law Reform Commission's Issues Paper on Regulatory Enforcement and Corporate Offences. We have also included the second part of our regulatory tracker for 2015, covering significant regulatory developments from June to December 2015.

Because of the fast-moving nature of financial services regulation and the sheer volume of regulatory material being produced, we regularly upload briefings on the firm's website dealing with significant developments. In this bulletin we have included an easy way to access the briefings we have published since we sent our last FinReg Bulletin on 13 November 2015 (available here), in case you have not had a chance to look at them yet.

Financial Services Regulatory Group

The Financial Services Regulatory Group forms part of McCann FitzGerald's wider Finance Group which is the leading Finance practice in the Irish market. Our Financial Services Regulatory Group advises regulated Financial Services Providers and other clients on the complex regulatory and compliance issues that arise in the area of the establishment and authorisation of new financial services providers, corporate governance and conduct of business issues, the provision of retail and wholesale financial services, regulatory capital requirements, insider dealing and market abuse issues, consumer credit matters, anti-money laundering issues and the administrative sanctions process.

Ambrose Loughlin

Partner, Head of Financial Services Regulatory Group

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Banking

Over the past few months we have published a briefing on the European Union (Deposit Guarantee Schemes) Regulations 2015. These Regulations introduce a number of changes to the previous framework for protecting certain deposits, with consequent implications for credit institutions, including regarding the applicable funding arrangements.

Link to briefing: *European Union (Deposit Guarantee Schemes) Regulations 2015*

EMIR

Our briefings provide updates on the implementation of the central clearing obligation for certain OTC interest rate swaps denominated in a G4 currency, fixed-to-float interest rate swaps and forward rate agreements denominated in Norwegian Krone, Polish Zloty and Swedish Krona, and for certain credit default swaps. We have also published a briefing on EMIR clearing by US central counterparties that are regulated by the US Commodity Futures Trading Commission.

Link to briefing: *EMIR Update - Central Clearing to Begin*

Link to briefing: *EMIR Update: Clearing for OTC Interest Rate Derivatives in EEA Currencies*

Link to briefing: *EMIR Clearing for Credit Default Swaps*

Link to briefing: *EMIR Equivalence – EMIR Clearing by US Central Counterparties*

Investment Management Updates

It's been a busy few months for investment managers and our briefings below provide a useful overview of some of the more significant developments since mid-November at both domestic and EU level. Investment Managers may also be interested in the briefing on the new Regulation on the Transparency of Securities Financing Transactions and of Reuse, which is listed under Financial Services Regulation.

Link to briefing: *Christmas Update for Investment Managers*

Link to briefing: *Regulatory Deadlines for Irish Funds and Fund Service Providers*

Link to briefing: *Central Bank Update on Revised Managerial Functions and Organisational Effectiveness Role*

Link to briefing: *Good News for UCITS V Documentation Updates*

Link to briefing: *New Implementation Date for Investor Money Regulations*

Link to briefing: *UCITS V Transposed into Irish law*

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Three of our briefings below relate to developments in financial technology or FinTech. Others address developments impacting on lending, namely the briefings on: authorisation requirements and standards for credit servicing firms, following the entry into force of the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015; and the replacement of the Central Bank's existing Code of Conduct for Business Lending to Small and Medium Enterprises with new Central Bank Regulations. We have also published briefings on the European Commission's draft Prospectus Regulation as well as on the new Regulation on the Transparency of Securities Financing Transactions and of Reuse, and on the Bankruptcy (Amendment) Act 2015.

Link to briefing: *FinTech and IFS2020 - Q3 Progress Report*

Link to briefing: *New Discussion Paper on Automation in Financial Advice*

Link to briefing: *Credit Servicing Firms – Authorisation Requirements and Standards*

Link to briefing: *Central Bank Publishes SME Lending Regulations 2015*

Link to briefing: *Draft Prospectus Regulation Published*

Link to briefing: *Crowdfunding – No Common International Supervisory Approach for Now*

Link to briefing: *The Transparency of Securities Financing Transactions Regulation Enters into Force*

Link to briefing: *Bankruptcy (Amendment) Act 2015*

General

You may also be interested in the following video published by McCann FitzGerald and discussing the amendments made to the Fourth Money Laundering Directive. We have also published a short video on the Regulation of Lobbying Act 2015.

Link to video: *Money Laundering - All Change Again*

Link to video: *The Regulation of Lobbying Act 2015*

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Coming Soon: A New Regulatory Framework for Payment Service Providers

The revised Payment Services Directive 2015/2366 ("**PSD2**") has entered into force and Member States have until 13 January 2018 to transpose it into national law. PSD2 introduces a number of key changes to the current regulatory framework for payment services as set out in Directive 2007/64 ("**PSD**"). Among other things, it brings into scope payment service providers ("**PSPs**") that were previously unregulated and raises conduct of business standards in a number of important areas. PSD2 will have implications for all PSPs as well as for consumers.

Background

PSD provides the legal foundation for the creation of an EU-wide single market for payments and for the Single European Payments Area. Its key objective is to make cross-border payments as easy, efficient and secure as domestic payments within a Member State. It also seeks to promote competition by opening up payment markets to new entrants.

In essence, PSD:

- creates a new EU-wide licensing regime for Payment Institutions (*ie*, PSPs that are not credit institutions or E-money issuers); and
- sets out conduct of business rules for all PSPs (including credit institutions and E-money issuers) covering both information requirements and the rights and obligations in relation to the provision and use of payment services.

PSD was transposed into Irish law by the European Communities (Payment Services) Regulations 2009.

Although PSD has brought about significant improvements in many areas, it suffers from a number of shortcomings resulting in a fragmented framework for payment services at national level. In particular, a number of payment-related activities are exempt from its scope and in some instances these exemptions have proved to be ambiguous and uncertain in their application. In addition, Member States have implemented some of the options set out in PSD in very different ways, giving rise to regulatory arbitrage, legal uncertainty, sub-optimum consumer protection and competitive distortions.

Moreover, since PSD's adoption in 2007, payment services have been the subject of unprecedented development including, in particular, the rapid rise of electronic and mobile payments. This has in turn created challenges from a regulatory perspective as many new payment products or services do not fall wholly, or to a large extent, within PSD.

In July 2013, the European Commission published a legislative proposal for PSD2 as part of a legislative package. It also published its proposal for a Regulation on interchange fees for card-based payment transactions (the "**Interchange Fee Regulation**"), which has since come into force (see our related briefing here).

PSD2 Overview

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 payment service providers ("**TPPs**"). 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.

Third Party Payment Providers (TPPs)

PSD2's coverage of TPPs is one of the most significant differences between it and PSD.

TPPs are service providers that, for example, allow consumers to make online payments without the need for a credit card by establishing a link between the payer and

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the online merchant via the payer's online banking module. PSD2 requires TPPs to be authorised when providing Payment Initiation Services ("**PIS**") or Account Information Services ("**AIS**").

PIS are services to initiate a payment order at the request of the payment service user with respect to a payment account held at another PSP. Such services play a part in e-commerce payments by establishing a software bridge between the merchant's website and the online banking platform of a payer's bank in order to initiate a payment transaction. Instead of using a payment card to pay for the relevant goods or services, the payer can select a TPP to act as a medium between the payer and its online payment account. The TPP provides the merchant with immediate confirmation that the requisite funds are available and the payment has been initiated and, in turn, the merchant can immediately dispatch the goods/services.

For its part, AIS are online services to provide consolidated information on one or more payment accounts held by the payment service user with either another or other PSP(s). Essentially, the TPP acts as a data aggregator and provides the payment service user with an overall view of his or her financial situation at a particular point in time. AIS may also, for example, assist customers with budgeting by allowing them to analyse past transactions and spending habits.

Although TPPs must be authorised under PSD2, the relevant authorisation requirements are more lenient then those applicable to other PSPs. In particular, TPPs are not subject to 'own funds' requirements, if they exclusively offer PIS or AIS. Moreover, while PIS providers will need to hold at least €50,000 at the time of authorisation, AIS providers are not subject to initial capital requirements. TPPs are also subject to different security and liability requirements as compared to other PSPs.

PSD2 also ensures that TPPs will be able to access a customer's account(s) once the relevant payment user has given his or her explicit consent and subject to complying with additional security obligations relating to such access. Account-holders cannot make access to and use of payment accounts dependent on any sort of contractual agreement.

Scope

Broadly, PSD only applies to intra-EEA payments involving euro or EEA Member State currencies. In contrast, PSD2 has a more extensive scope both as regards its geographical coverage and the currencies involved. Specifically, for the most part, the provisions on transparency and information requirements also apply in relation to payment transactions in currencies of third countries when one of the PSPs is located within the EEA, in respect of those parts of the payments transaction which are carried out in the EEA.

Exemptions

While most of the exemptions available under PSD remain unchanged, PSD2 updates, and in some instances, narrows several activities currently exempt from regulation under PSD. It has particular implications for the existing exemptions for commercial agents, limited networks, digital downloads, and independent ATMs.

Commercial agents: PSD exempts payment transactions from the payer to the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee. PSD2 amends this exemption so that it only applies to a commercial agent that acts on behalf of either the payer or the payee, but not an agent that acts for both.

Limited networks: Payment services based on instruments used to acquire goods or services within a limited network of services providers are exempted under PSD. PSD2 restricts the scope of this exemption in a number of ways. For example, PSD exempts services based on instruments that can be used to acquire goods or services under a commercial agreement

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with the issuer for a limited range of goods or services. In contrast, for the PSD2 exemption to apply, the relevant instrument must be a "specific payment instrument" and the range of goods or services that can be acquired using that instrument must be "very" limited. PSD2 also requires service providers relying on the limited network exemption to notify its relevant competent authorities where the total value of payment transactions executed over the previous 12 months exceeds €1 million.

Digital downloads: PSD exempts payment transactions for certain goods or services that are executed though a telecommunication, digital or IT device provider unless the relevant operator acts only as an intermediary between the payment service user and the supplier of the goods and services. Under PSD2, this exemption only applies to payment transactions by a provider of electronic communications networks or services that are provided in addition to electronic communication services for a subscriber to the network or service and which fall below €50 per individual transaction and a cumulative value of €300 per billing month. Service providers relying on this exemption must notify the relevant competent authorities and provide them with an annual audit opinion, testifying that the activity complies with the above thresholds.

Independent ATMs: Whereas PSD2 maintains the existing exemption for automated teller machine services offered by independent ATMs, it requires such service providers to provide certain information on withdrawal charges both before carrying out the withdrawal as well as on receipt of the cash at the end of the transaction after withdrawal.

Conduct of Business Requirements

PSD2 affects existing conduct of business requirements in a number of ways, including changes in the rules relating to surcharges, the liability of payment users, and operational and security risks.

Surcharges

Under PSD, Member States have an option as to whether to allow or prohibit surcharging in their territory. This has become a source of confusion for consumers, particular in the e-commerce and cross-border context, as there is more or less an even split between those Member States that allow surcharging and those that prohibit it. In addition, in certain instances the level of surcharges imposed far exceeds the costs borne by the merchant for the use of a specific payment instrument.

Traditionally, surcharging by merchants who accept card payments has been used as a way of off-setting the costs of interchange fees passed on to them by their banks. However, the Interchange Fee Regulation caps interchange fees on in-scope credit and debit card transactions at 0.3% and 0.2% respectively (see our related briefing here). In tandem, PSD2 prohibits surcharging for such transactions. While surcharging is still allowed for payment cards that are not regulated by the Interchange Fee Regulation, any charge applied must not exceed the direct costs borne by the payee for the use of the specific payment instrument.

Liability

PSD2 introduces a number of changes to the liability regime for improperly executed or unauthorised transactions. In particular:

- the maximum liability that can be imposed on a payer when not at fault for a lost, stolen or misappropriated payment instrument is €50, as compared to €150 under PSD;
- where a payment transaction is executed late, the payer may decide that the amount is to be value dated on the payee's account by the date it should have been received, instead of receiving a refund;
- the terms governing a customer's use of a payment instrument must be "objective, non-discriminatory and proportionate"; and

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- where a PSP fails to use "strong customer authentication" when executing a payment transaction, it will have to bear the financial consequences of any loss relating from any unauthorised payment transactions, even in cases of the client's gross negligence.

Security

PSD2 subjects all PSPs to a range of new security requirements for the initiation and processing of electronic payments, and the protection of customers' financial data. In particular, it requires PSPs to apply strong customer authentication including where the payer accesses its payment account online or initiates an electronic payment transaction.

Strong customer authentication is an authentication process that validates customer identity based on the use of two or more elements categorised as knowledge (something only the user knows, *eg* a password or a PIN), possession (something only the user possesses, *eg* the card or an authentication code generating device) and inherence (something the user "is", *eg* the use of a fingerprint or voice recognition).

The provisions on strong customer authentication will not enter into effect until 18 months after the date of entry into force of the related regulatory technical standards. The EBA issued a discussion paper on these standards shortly before Christmas. In the meantime it is worth noting that strong customer authentication is already a requirement under the European Banking Authority's Guidelines on the Security of Internet Payments (see our related briefing here).

Comment and Next Steps

PSD2 includes a wide range of new requirements affecting both firms regulated under the existing legislative payment services framework and those which are currently unregulated but will need to become regulated once PSD2 is transposed into national laws. Existing PSPs should review their business models against the new requirements and update those models if necessary. A currently unregulated firm will need to prepare for regulation, including taking the measures necessary to ensure that it fulfils applicable authorisation requirements. This includes not only TPPs but also firms currently falling within the scope of one of the PSD exemptions which will no longer fall within the relevant exemption under PSD2.

As mentioned, Member States must transpose PSD2 into national law by 13 January 2018. However, PSD2 provides for some transitional arrangements, including, in particular:

- existing payment institutions have until 13 July 2018 to either seek authorisation under PSD2 or to confirm that they comply with the applicable requirements; and
- entities which benefit from a waiver under PSD before 13 January 2018 have until 13 January 2019 to obtain a waiver or to become authorised under PSD2 - under PSD, entities with an average volume of monthly payment transactions below €3 million can benefit from a lighter authorisation regime, if their Member State of establishment makes use of that option.

Significantly, PSPs do not need to wait for PSD2's transposition for positive change in the payments sphere. On 1 March 2016, Mr Colm Kincaid, Head of Consumer Protection: Policy and Authorisations at the Central Bank of Ireland announced measures to streamline and improve the authorisation process for PSPs. Under the new "Gatekeeper Model", applicants no longer need to submit a pre-application submission and the pre-application meeting is also optional. The Central Bank will also confirm its assessment of the application within under three and a half months of submission, excluding time taken for the applicant to respond to any additional queries.

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Creditors will need to start Reporting to the Central Credit Register from September 2016

Banks and other credit providers will be required to report details relating to consumer credit applications and credit agreements to the Central Credit Register ("**CCR**"), maintained by the Central Bank of Ireland ("**Central Bank**") from 30 September 2016. This is according to the Central Bank's recently published Feedback Statement to its earlier consultation on the CCR ("**Statement**"). Reporting for incorporated entities, sole traders, partnerships, clubs and associations will start later, on 30 June 2017.

It is also expected that from mid-2018 credit institutions will be subject to credit reporting requirements for the purposes of the European Central Bank's register, known as the Analytical Credit and Credit Risk Dataset, or "AnaCredit" for short.

Overview of the Credit Reporting Act 2013

The Credit Reporting Act 2013 ("**CRA**") resulted from a Government commitment to the EU and IMF, under the Programme of Financial Support for Ireland, to develop a legal framework for the collection and centralisation of financial information on borrowers.

The CRA provides for the establishment of the CCR, a mandatory credit reporting and credit checking system, whose purpose is to provide a comprehensive "Single Borrower View" showing a borrower's total exposure. This is intended to assist creditors in making informed lending decisions, protect borrowers from incurring excessive debt and facilitate the identification of systemic risk in the credit system. The reporting requirement applies to "qualifying" credit applications or agreements, meaning that the relevant credit must be a minimum of €500 (or such other amount as is prescribed).

Other key elements of the CRA include: the categories of information that the Central Bank may maintain on the CCR; compulsory credit checks; access to information provisions; data protection; and fees and levies (see our related briefing here).

The CRA distinguishes between "Credit Information Providers" ("**CIPs**") and "Credit Information Subjects" ("**CIS**"). All regulated financial services providers are CIPs, as is NAMA, a local authority, as well any other person who provides credit, other than central banks and pawnbrokers. Any entity which acquires an existing loan book from a CIP will take over that CIP's responsibilities in relation to the loans.

The term "CIS" covers any person who has made a credit application, has made a credit agreement for the provision of credit to the person, or is a guarantor. There are no exclusions for categories of CISs whose activities involve raising credit as a core element of their business, such as credit institutions or life insurers.

For the purposes of the CRA, "credit" is defined to include a loan, deferred payment or other financial accommodation. However, certain types of credit are excluded from its scope, including, in particular, trade credit, intercompany finance, loans to general government or credit extended by utility companies or retailers. In addition, the CRA only applies to credit applications or credit agreements where the applicant or borrower is resident in the State at the time the relevant application/agreement is made or where the credit agreement is governed by Irish law.

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The CCR will be regulated and operated by the Central Bank which is also charged with developing regulations setting out how the CCR is to operate in practice, including: the exact detail, timing and format of the personal and credit information that CIPs must report to the CCR, the form and content of reports that are issued from the CCR to both CIPs and CISs, steps that CIPs must undertaking in respect of verifying the identity of a CIS, and the information that CISs must provide to CIPs when making credit applications.

The Central Bank has published FAQs on the CCR (available here).

The Statement

In April 2015 the Central Bank published a consultation paper seeking views on a number of areas in advance of making regulations under the CRA, primarily relating to the pace and extent of the CCR's implementation. The Central Bank published, on 11 February 2016, its decisions regarding the matters covered in the consultation paper in its Statement (available here).

The Central Bank intends to implement the CCR on a phased basis, with Phase 1 generally focusing on consumer lending, and Phase 2 focusing on all other CISs as well as lending to consumers by local authorities and money lenders. According to the Central Bank, phased implementation will allow CIPs to effect changes to their existing data policies, procedures and IT systems in a stepped manner, as well as enabling both CIPs and the Central Bank to "identify, minimise and manage any risks or challenges in a more structured and controlled way."

For the purpose of Phase 1 reporting, a consumer is a natural person acting outside his or her trade, profession or employment. CISs which will fall within the scope of Phase 2 reporting, include incorporated entities, sole traders, partnerships, as well as clubs and associations. Phase 1 reporting will commence on 30 September 2016 and CIPs will have until 31 March 2017 to make their initial submission covering all existing and new credit agreements. A similar 6 month period will apply to Phase 2 reporting, which will commence on 30 June 2017.

The Statement also sets out the Central Bank's position on issues regarding the detailed application of the reporting requirement to: credit applications, credit agreements, foreign credit data, guarantor data, verification procedures; data enquiry; and levies and fees.

Credit Application Data: The Central Bank intends to collect a limited amount of credit information in respect of credit applications, such as product and amount of credit. While the CRA requires a CIS to disclose any foreign debts (debts governed by a law other than Irish law where the CIS is resident in Ireland) exceeding €5,000 when applying for credit and the relevant CIP to report these debts, the Central Bank is not proposing to address this matter in Phase 1 or 2.

Credit Agreements: Generally, the first reporting of credit agreements will be the point of drawdown. However, for specific products such as overdrafts and credit cards, the first point of reporting will be the date from which a limit or facility is available for use by the CIS.

Several respondents to the consultation paper raised concerns regarding the timing of first point of reporting for credit limits or facilities for larger commercial, and in particular, corporate entities. While such entities may have significant credit limits in place, due to the nature of their business, they may not draw those amounts down in certain periods.

Creditors will need to start Reporting to the Central Credit Register from September 2016 (continued)

In addition, permitting other CIPs to access information about such limits could be commercially disadvantageous. In acknowledgement of these concerns, the Central Bank has stated that it will keep an open mind as to what information will be collected and what information will be shared in respect of corporate borrowers, but will consider a range of factors including Central Bank and ECB requirements.

Personal Data: Regarding the collection of a CIS's personal data, the Central Bank is proposing to collect and process PPSN, subject to strict controls to mitigate against potential risks.

Verification Procedures: As set out above, under the CRA, CIPs must verify CISs for the purposes of the CCR, including, for example, core personal information, such as name and address to original documentation. Verification procedures will mirror in so far as possible, existing "know your customer" obligations under anti-money laundering requirements.

Guarantor Data: The collection of guarantor data is to be delayed until after the implementation of Phase 2 reporting.

Data Enquiry: CIPs must access the CCR when considering credit applications for €2,000 or more. In addition, CISs will be entitled to see their credit reports and the history of other parties who accessed their records. The ability to make enquiries in the CCR in respect of Phase 1 reports regarding a CIS's entries in the CCR should apply from the end of March 2017 and CIPs will be obliged to check qualifying applications from 31 December 2017. On a similar basis, in respect of Phase 2, the ability of a CIP to make enquiries in the CCR should apply from the end of 2017 and CIPs will be obliged to check qualifying applications from 30 June 2018. However, the Central Bank may revisit these proposed timelines if the data provided by the CIPs is of insufficient quality to enable the CCR to safely proceed with the data enquiry functionality.

Levies and Fees: The Central Bank will introduce regulations for fees and levies to ensure that all the costs associated with running the CCR are recouped from CIPs, but is still considering how best to strike a fair balance between recouping those costs and the most equitable basis for charging CIPs or varying size and complexity.

The AnaCredit Reporting Project

AnaCredit is an ECB project to set up a dataset containing detailed information on individual loans by credit institutions in the euro area, harmonised across all Member States. The project was sparked by the financial crisis, which demonstrated the insufficiency of aggregate statistics as a basis for a comprehensive understanding of economic and financial developments. Information collected under AnaCredit is to be used to assist the ECB in performing its central banking functions.

On 4 December 2015 the ECB published the AnaCredit draft Regulation, which if adopted, will in the first stage impose reporting requirements on credit institutions, including any branches resident in the Euro Area in respect of credit in excess of an aggregate of €25,000 extended to legal entities and other entities that are not natural persons. The term "credit" covers both loans and deposits, including: overdrafts, certain types of revolving credit and credit lines, reverse repurchase agreements, trade receivables, as well as financial loans. The ECB expects to submit the draft Regulation for adoption not earlier than April 2016. Under the existing draft the first reporting to AnaCredit relates to data for 31 March 2018.

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Comment and Next Steps

Once fully established, the CCR will be an important source of credit intelligence to CIPs and facilitate enhanced creditworthiness assessments and responsible lending. Nevertheless, the broad scope of CIPs, CISs, and forms of credit subject to the CRA is likely to give rise to a broader level of reporting requirements than certain CIPs may expect. Its establishment will impose a significant operational burden on CIPs with implications for IT systems as well as broader business processes. In the case of credit institutions these will be supplemented by any additional implications arising from the reporting obligations imposed under the AnaCredit project.

As is clear from its Statement, the Central Bank has attempted to limit or manage the implications of the new reporting requirements through their phased introduction. It has also acknowledged that harmonising reporting obligations under the AnaCredit project and the CCR could help reduce the degree of change and the reporting burden on CIPs subject to AnaCredit reporting. The Central Bank will monitor and be cognisant of emerging ECB reporting requirements, including in respect of the AnaCredit project, over the coming months.

The Central Bank expects to publish its CRA Regulations shortly, as well as finalising its related operational handbooks. According to the Central Bank, it expects CIPs to submit an implementation plan within three months of the publication of the relevant requirements followed by progress reports on that plan.

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The Proposed European Deposit Insurance Scheme

The process of building a more robust and resilient banking system in Europe has reached a significant milestone with the publication of the European Commission's proposal for establishing a European Deposit Insurance Scheme ("**EDIS**"). The EDIS seeks to address vulnerabilities in the existing system of national deposit guarantee schemes (each, an "**NDGS**") by gradually providing for a full insurance scheme for all deposit-taking banks established in the EU's Banking Union from 2024 onwards. The EDIS will remain closely linked to the NDGSs and its establishment is not expected to give rise to extra costs for the banking sector.

Background

The European Banking Union is an EU-level banking supervision and resolution system. It aims to ensure that the banking sector in the euro area and the wider EU is safe and reliable and that non-viable banks are resolved without recourse to taxpayers' money and with minimal impact on the real economy. One of its key goals is to break the systemic link between struggling banks and an indebted sovereign state, which was one of the principal causes of the euro area debt crisis.

The Banking Union has three main components. The first is the Single Supervisory Mechanism ("**SSM**") which places the European Central Bank ("**ECB**") as the central prudential supervisor of financial institutions in the euro area and in those non-euro EU countries that have joined the SSM. The ECB directly supervises the largest banks, while the national supervisors, including the Central Bank of Ireland, continue to monitor the remaining banks.

The second component is the Single Resolution Mechanism ("**SRM**"), which applies to banks covered by the SSM and which aims at ensuring a consistent framework for the orderly resolution of failing banks, with minimal costs for taxpayers and to the real economy.

The third component is the proposed EDIS, which essentially seeks to ensure that confidence in the safety of bank deposits is the same irrespective of the Member State in which a bank operates, by ensuring the full mutualisation of depositor risk across the Banking Union. Under the European Commission's proposed Regulation (the "**Proposed Regulation**"), which was published in November 2015, the EDIS will be established through an amendment of the SRM Regulation 806/2014.

Currently, each Member State is required to have an NDGS in place pursuant to Directive 2014/49 (the "**DGS Directive**"). The key objective of these NDGSs is to ensure that certain deposits are protected up to an amount of €100,000 (see our related briefing here). However, while the NDGSs share some common aspects, important issues are still left to the discretion of the Member States. Moreover in contrast to banking supervision and resolution, which are exercised at EU level, the NDGSs remain purely national. According to the European Commission tensions could arise if an EU resolution authority were to decide on the liquidation or resolution of a bank without being able to ensure that deposits are protected in the process, causing financial stability risks. There is also some concern that the NDGSs remain vulnerable to large local shocks arising, for example, from the failure of a relatively large bank or the concurrent failure of a part of the national banking sector. The European Commission has also commented that the differences in funding levels and size of existing NDGSs may negatively affect depositors' confidence and could impair the functioning of the internal market.

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The Proposed European Deposit Insurance Scheme *(continued)*

An Overview of the EDIS

Once it is fully implemented, the EDIS will comprise a full insurance scheme that covers all liquidity needs and losses of participating NDGSs. It will intervene in two scenarios, namely when a failing bank is:

- liquidated and deposits need to be paid out ("**a pay-out event**"); or
- resolved and the transfer of the deposits to another institution needs to be financed so that deposit access is not disrupted.

The EDIS builds on the existing NDGSs, which will remain in place but cease to function independently, becoming part of the EDIS. Once fully implemented the NDGSs will remain responsible for administering any pay-out event and will act as a contact point for depositors and banks. The material law on deposit guarantees, as set out in the DGS Directive, will not change.

The EDIS will apply to all NDGSs that are officially recognised in a Member State whose currency is the euro as well as those other Member States that have established close cooperation with the ECB to participate in the SSM. It will also apply to all credit institutions affiliated to such officially recognised DGSs.

EDIS will consist of a Single Resolution and Deposit Insurance Board[1] ("**Board**"), as well as a Deposit Insurance Fund ("**DIF**"). The Board will be entrusted with decision-making, monitoring and enforcement powers relating to the EDIS framework. The DIF will be used primarily for the efficient implementation of deposit guarantee requirements and actions, although under certain conditions it may be used for funding bank resolution. The DIF will be funded by ex-ante contributions from banks and will gradually build up to 0.8% of the covered deposits of all banks in the Banking Union by 2024.

The Proposed Regulation contains a number of provisions designed to limit moral hazard risk and to ensure that EDIS coverage is only provided where NDGSs act in a prudent manner. In particular, a participating NDGS will only be covered by the EDIS where its available financial means raised by contributions required under the DGS Directive meet certain specified percentages. In addition, in certain instances a participating NDGS can be disqualified from coverage, including for non-compliance with the DGS Directive.

The EDIS is to be established in three sequential stages. In the first reinsurance stage, which is to last for three years, the EDIS will provide a specified amount of liquidity assistance and absorb a specified amount of the final loss of the NDGS in the event of a pay-out or resolution procedure. An NDGS will be expected to exhaust its own funds before seeking EDIS funding.

The second co-insurance stage will apply for four years, during which the EDIS will absorb a progressively larger amount of any losses in the event of a pay-out or resolution procedure. While an NDGS will no longer be expected to exhaust its own funds, it will bear part of any losses from a pay-out or contribution to resolution itself.

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

Comment and Next Steps

The Proposed Regulation is in the initial stages of the EU's legislative process. Moreover, it appears that there is strong German opposition to the Commission's proposals, largely on the basis that further

1 It is proposed that the functions of the existing Single Resolution Board – the resolution authority for the existing and cross-border banking groups established within Member States participating in the Single Resolution Mechanism – will be expanded to encompass this.

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The Proposed European Deposit Insurance Scheme *(continued)*

steps towards integration are necessary before a European deposit insurance scheme can be created, such as full implementation of the Bank Recovery and Resolution Directive in all Member States, the harmonisation of insolvency law, and de-risking the banks (including abolishing the preferential supervisory treatment of sovereign exposures).

In addition, once the Proposed Regulation is adopted, it will be a number of years until the EDIS fully enters into effect. This means that deposit insurance will, for the foreseeable future, continue to be primarily regulated by the NDGSs in accordance with the requirements of the DGS Directive and the relevant national implementing legislation.

While the EDIS will be largely funded by ex ante contributions from banks, it will not impose any additional costs on the banking sector. However, it may have some implications for the contribution level of an individual bank. Specifically, while currently and in the reinsurance phase of the EDIS, a bank's individual contribution will depend on its risk profile set at national level, during the co-insurance and full insurance phases, it will be set at European level. This may affect the amount of an individual bank's contribution.

New Directions in Financial Regulation?

In an instance of perfect timing, the Law Reform Commission published its Issues Paper, Regulatory Enforcement and Corporate Offences ("**Issues Paper**") on 27 January 2015, the same day that saw the publication of the long awaited report of the Committee of Inquiry into the Banking Crisis ("**Inquiry Report**").

The Inquiry Report criticises banking regulators for their non-intrusive approach to regulation and for underestimating the risks to the Irish financial system, among other things. For its part, the Issues Paper seeks submissions on a number of questions concerning two related matters. The first is whether the supervisory and enforcement powers of the State's main financial and economic regulators are adequate or need to be supplemented by, for example, civil financial sanctions and more effective co-ordination between regulators. The second is whether there are gaps in the criminal law meaning that it does not deal sufficiently with serious wrongdoing by corporate bodies, in particular regarding current fraud legislation and the general rules for attributing liability to corporate bodies.

Financial Regulation and the Banking Crisis

During the period leading up to and including the crisis, licensing and prudential regulation were within the remit of the Irish Financial Services Regulatory Authority ("**Financial Regulator**") which formed an autonomous part of the Central Bank and Financial Services Authority of Ireland ("**CBFSAI**"). According to a Report published by the Governor of the Central Bank in 2010, (the "**Honohan Report**"), the CBFSAI's role in the crisis was:

- a regulatory approach which was and was perceived to be excessively deferential and accommodating;
- an under-resourced approach to bank supervision that, by relying on good governance and risk management procedures, neglected quantitative assessment and the need to ensure sufficient capital to ensure growing property-related risks; and
- an unwillingness by the CBSFAI to take on board sufficiently the real risks arising in the economy and act with sufficient decision and force to head it off on time.

These findings were largely backed up by the 2011 Nyberg Report and, most recently, by the Inquiry Report.

Much has changed since 2008, both regarding the Central Bank's structure, role and powers and the way in which it fulfils its prudential functions. While many of these changes have been driven by the EU's response to the international financial crisis, some have their genesis in national reforms.

Regarding the Central Bank's structure and role, in 2010, the Central Bank and the Financial Regulator were amalgamated to form the Central Bank of Ireland ("**Central Bank**"), which is responsible for both central banking and financial regulation. The Central Bank has also been given a number of new powers, including through the expansion of the regulatory framework to include previously unregulated entities such as debt management firms and credit servicing firms and a new power to make regulations for the proper and effective regulation of Regulated Financial Services Providers ("**RFSPs**").

More significantly the Central Bank has considerably strengthened its focus on issues such as corporate governance and fitness and probity. In contrast to its pre-financial crisis approach which focused on strict compliance with corporate

New Directions in Financial Regulation? *(continued)*

governance standards, the Central Bank now places considerable emphasis on corporate culture. The Central Bank has also made full use of its new powers under the Central Bank Act 2010 in the area of fitness and probity, through the publication of fitness and probity regulations as well as related guidance and frequently asked questions. It has also issued a considerable amount of guidance on the issue of corporate governance, including in particular on directors' time commitments and outsourcing.

The Central Bank's powers in the area of enforcement have also been significantly strengthened. Among other things, the Central Bank can:

- require an RFSP to furnish the Central Bank with a report on any matter specified by the Central Bank in a written notice;
- instruct an authorised officer of the Central Bank to enter and search premises;
- issue a written notice requiring that an auditor to an RFSP provide the Central Bank with a statement as to the extent to which the RFSP has complied with its obligations under any financial services legislation specified by the Central Bank in the notice; and
- give written directions to an RFSP, where it is satisfied that certain circumstances apply, directing the RFSP to take a variety of steps including suspending certain activities for up to 12 months, disposing of certain assets or liabilities, raising and maintaining capital or other financial resources or modifying systems, controls or business practices.

In 2011, the Central Bank also launched its new risk-based supervision framework, PRISM (Probability Risk and Impact SysteM), which establishes a new approach for supervisory engagement with regulated firms.

Regarding penalties, the Central Bank (Supervision and Enforcement) Act 2013 increased the maximum monetary penalties which can be imposed for non compliance. Under that Act, the maximum civil financial sanction is €1 million for an individual or for a corporate body, the greater of €10 million or 10% of turnover (in the last complete financial year). Further, where the Central Bank finds that an RFSP has committed a 'prescribed contravention' it can suspend the RFSP's authorisation for 12 months, or revoke it entirely.

The Issues Paper – the Shape of Things to Come?

The Law Reform Commission's Issues Paper contains 12 issues, the first six of which concern the supervisory and enforcement powers of financial and economic regulators. A number of these Issues could, if they come to pass, have further implications for the Central Bank's role and powers.

Issue 1: Should some or all regulators be conferred with a standard set of powers?

There is no uniform template for regulatory legislation in Ireland. As a result, powers can differ between regulators, making it difficult for them to cooperate in investigations and preventing the creation of a reliable set of generally applicable precedents. A single regulator's powers may also vary from one piece of legislation to another. This raises the question as to whether the efficiency and effectiveness of regulation in Ireland could be improved by creating a standard set of regulatory powers that could be used by some or all regulators. Such powers could include: inspection and investigation powers, as well as fitness and probity regimes, binding codes of conduct, civil financial sanctions and negotiated compliance agreements.

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Issue 2: Should civil financial sanctions be more widely available to regulators as an enforcement tool?

Civil financial sanctions are a subset of the wider category of administrative sanctions. In contrast to criminal sanctions, they are imposed by means of civil proceedings and subject to the balance of probability standard of proof. Administrative sanctions can include measures such as fixed or variable monetary sanctions, stop notices, enforcement undertakings or supervised compliance regimes. While civil financial sanctions are already a feature in financial services law, as well as in other areas, this Issue solicits feedback on whether they should be used more widely as a means of regulatory enforcement in Ireland. It also raises the question as to whether there are circumstances in the regulation of financial services in which civil financial sanctions would not be appropriate.

Issue 3: Should negotiated compliance agreements ("NCAs") be more widely available?

Broadly, a negotiated compliance agreement is an agreement whereby an entity agrees to follow an agreed course of action, *eg* by desisting from acting in a particular way, in return for a regulator agreeing not to institute civil or criminal litigation. The Central Bank Act 1942 already empowers the Central Bank to enter a settlement agreement with an RFSP suspected of breaching certain provisions of the financial services legislation: between 2006 and 2014, the Central Bank entered into 83 such agreements. This Issue seeks feedback on whether NCAs should be used more broadly, and whether other models of settlement agreement should be considered.

Issue 4: Should Deferred Prosecution Agreements ("DPAs") be more widely available?

Under a DPA, a corporate body typically agrees to cooperate in an investigation of an offence, signs up to a supervised compliance programme and pays a financial penalty. In return, the prosecutor agrees to defer criminal prosecution for a specific period, and to drop all charges if the corporate body complies with the requirements imposed. The advantage of a DPA is that it can achieve both rehabilitation and sanction, without incurring the resources necessary for a criminal trial and without the same level of reputational risks for the corporate body. This Issue seeks feedback on whether DPAs should be introduced into Irish law, and, if so, the appropriate process for determining a DPA's terms.

Issue 5: What improvements can be made to ensure the efficiency and effectiveness of concurrent or overlapping jurisdictions between financial and economic regulators?

There are a number of potential overlaps in the scope of regulators' responsibilities and the powers used to enforce them. This Issue seeks to determine ways of ensuring that regulators can avoid conflicts and improve co-ordination, for example:

- through the appointment of a lead agency to take the central role in investigating a set of events relevant to the remits of multiple regulators;
- by entering co-operation agreements providing for the exchange of information, for co-operation in research, investigations or other matters of mutual concern, and means of dealing with conflicts arising from overlapping or concurrent jurisdictions;

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- by enhancing the powers of regulators to share information with other regulators through introducing more permissive exemptions for sharing information; and/or
- by creating common inspectorates for multiple regulators and using shared information to avoid duplication of effort or inconsistencies in the regulators approaches.

Issue 6: How can the efficiency and effectiveness of the appeals process from financial and economic regulators be improved?

There is no standard process or procedure for appealing a regulatory decision in Ireland and there may be significant differences in the applicable appeals procedure, depending on which regulatory body has made the decision being appealed.

This Issue seeks views as to whether there is a need to reform the appeals processes in place in relation to the adjudicative decisions of financial and economic regulators that have the potential to have a high market impact such as decisions to grant or remove a licence or authorisation of a regulated entity to operate in a regulated market, or the imposition of civil financial sanctions.

Among other things, it solicits feedback on whether provision should be made for a single, uniform regulatory appeals body to hear appeals from regulators' decisions with a high market impact.

Comment and Next Steps

The Central Bank's remit and its powers have increased significantly since the financial crisis, as has it willingness to intervene proactively in the regulatory environment. However, as is clear from the Issues Paper, the Law Reform Commission believes that there is potential scope for further reforms not only in relation to the Central Bank's powers, but regarding its relations with other regulators. While discussions around these reforms are in their incipient stages, they may well lead to further changes in the Central Bank's powers and functions in the future.

Financial Services Regulatory Group Bulletin

IN THIS ISSUE:

Regulatory Developments Tracker

A round-up of some of the significant financial services related EU and domestic regulatory developments between 1 June 2015 and 31 December 2015 (in alphabetical order).

Bank Recovery and Resolution	The European Union (Bank Recovery and Resolution) Regulations 2015 transpose into Irish law EU Directive 2014/59 establishing a framework for the recovery and resolution of credit institutions and investment firms. For the most part, the Regulations entered into force on 15 July 2015 with the exception of regulations 79 to 94 which came into operation on 1 January 2016.
Capital Markets Union (“**CMU**”)	The European Commission launched the CMU Action Plan on 30 September 2015 with the aim of building a single market for capital across the EU Member States. Among other things, the Action Plan was accompanied by a call for evidence on the cumulative impact of financial legislation. This call for evidence is now closed.
Capital Requirements Directive 2013/36 (“**CRD IV**”) Capital Requirements Regulation 575/2013 (“**CRR**”)	Commission Delegated Regulation 2015/850 amending Delegated Regulation 241/2014 which sets out the regulatory technical standards (“**RTS**”) on own funds requirements for institutions under the CRR was published in the EU’s Official Journal (“**OJ**”) on 2 June 2015. European Commission Implementing Regulation 2015/880 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in the CRR and EMIR was published in the EU’s OJ on 9 June 2015. Commission Delegated Regulation 2015/923 amending Delegated Regulation 241/2014 which sets out RTS on own funds requirements for institutions under the CRR was published in the EU’s OJ on 17 June 2015. Commission Delegated Regulation 2015/1555 on RTS on the disclosure of information in relation to the compliance of institutions with the requirement for a countercyclical capital buffer in accordance with Article 440 of the CRR was published in the EU’s OJ on 19 September 2015. Commission Implementing Regulation 2015/2197 laying down implementing technical standards with regard to closely correlated currencies in accordance with the CRR was published in the EU’s OJ on 28 November 2015. On 21 December 2015 the European Banking Authority published its final Guidelines on sound remuneration policies together with an Opinion on proportionality recommending exemptions from the remuneration principles in CRD IV. The Guidelines apply from 1 January 2017.

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Client Assets/Investor Money Regulations	The Central Bank published the first edition of the Investor Money Q&A on 5 October 2015. These Q&A supplement the Central Bank's earlier Guidance which was published to assist in the implementation of the Investor Money Regulations.
Corporate Governance	The Central Bank has split the Corporate Governance Code for Credit Institutions and Insurance Undertakings 2013 into two separate codes for insurance undertakings and credit institutions, respectively. The separate codes apply from 1 January 2016. The Central Bank has also published updated Corporate Governance Requirements for Captive Insurance and Captive Reinsurance Undertakings 2015, which take into consideration the publication of the European Union (Insurance and Reinsurance) Regulations 2015 ("**Solvency II**").
Credit Unions	On 31 July 2015 the Central Bank published the Credit Union Act 1997 (Regulatory Requirements) Regulations 2015 for credit unions along with a feedback statement and submissions received on Consultation Paper 88 relating to the Regulations. In November 2015, the Central Bank published related Frequently Asked Questions.
Cyber Security	The Central Bank published a "Dear CEO" letter regarding the results of its thematic inspection relating to cyber security/operational risk, on 23 September 2015. Among other things, the letter emphasises that cyber security is the board's responsibility and that it should develop a culture of security and resilience throughout the firm and ensure that the firm has the necessary plans in place to deal with a cyber security breach. An earlier "Dear CEO" letter was published in July 2015 in which the Central Bank emphasised to investment fund boards the need for delegate oversight and the importance of specific reporting by delegates at board meetings on the policies and procedures in place to counter cyber attacks.
Credit Servicing	The Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 entered into effect on 8 July 2015. The purpose of the 2015 Act is to ensure that those who enter into a credit agreement with a regulated entity retain their regulatory protections in the event that the agreement is subsequently sold to an unregulated third party. It amends the Central Bank Acts 1942 to 2014 in several ways.

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European Market Infrastructure Regulation 648/2012 ("**EMIR**")	European Commission Delegated Regulation 2015/2205 on the introduction of the central clearing obligation for over-the-counter interest rate swaps ("**IRS**") under EMIR was published in the EU's OJ on 1 December 2015. The Delegated Regulation covers IRS denominated in euro, pounds sterling, Japanese yen or US dollars that have specific features. The clearing obligation will start from 21 June 2016. Commission Delegated Regulation 2015/1515 amending EMIR as regards the extension of the transitional periods relating to Pension Scheme Arrangements entered into force on 16 September 2015. The Delegated Regulation exempts such arrangements from the EMIR clearing obligation until 16 August 2017.
Investment Funds - Alternative Investment Fund Managers Directive 2011/61 ("**AIFMD**")	On 30 July 2015 ESMA published its advice on the application of the AIFMD passport to non-EU alternative investment fund managers and alternative investment funds ("**AIF**"), together with an opinion on the functioning of the passport for EU Alternative Investment Fund Managers and national private placement regimes. The Central Bank published the latest version of the AIF Rulebook on 4 November 2015. This latest version reflects the requirements of the Central Bank's fund management company guidance including the reduction in number of managerial functions to six and the requirement to appoint a director with responsibility for "organisational effectiveness".
Investment Funds – European Long Term Investment Funds	The European Union (European long-term investment funds) Regulations 2015 came into force on 9 December 2015. These Regulations facilitate the implementation of EU Regulation 2015/760 on European Long Term Investment Funds in Ireland.
Investment Funds - Fund Management Companies	In November 2015 the Central Bank published "Fund Management Companies – Guidance which sets out the Central Bank's guidance on a) oversight of delegates; b) the independent organisational effectiveness role; and c) directors' time commitments.
Investment Funds – Irish Collective Asset Management Vehicle	On 3 September 2015 the Minister for Finance signed the following Regulations into law: • Irish Collective Asset-Management Vehicles Act 2015 (Section 145(2) (Relevant Jurisdictions) Regulations 2015; and • Irish Collective Asset-Management Vehicles Act 2015 (Section 149(2)) (Relevant Jurisdictions) Regulations 2015.

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Investment Funds – Undertakings for Collective Investment in Transferable Securities (“**UCITS**”)	On 5 October 2015 the Central Bank issued the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015. The Central Bank UCITS Regulations consolidated the requirements previously set out in the Central Bank’s UCITS Notices and Guidance Notes and replaced these requirements from 1 November 2015. There are a number of differences between the requirements set out in the Regulations and those previously contained in the Notices and Guidance Notes.
Lobbying	The Regulation of Lobbying Act 2015 came into force on 1 September 2015. It imposes registration and disclosure requirements on those carrying out lobbying activities.
Market Abuse Regulation 596/2014 (“**MAR**”)	The European Commission Implementing Directive 2015/2392 on MAR, relating to reporting to competent authorities of actual or potential infringements of MAR was published in the EU’s OJ on 18 December 2015. The Implementing Directive lays down rules specifying the procedures relating to reporting actual or potential breaches of MAR set out in Article 32(1), including the arrangements for reporting and for following-up reports, measures for the protection of persons working under a contract of employment and measures for the protection of personal data.
Money Laundering	The Directive on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing (“**MLD4**”) was published in the EU’s OJ on 5 June 2015. MLD4 seeks to strengthen the EU’s anti-money laundering framework and in doing so recasts and replaces the Third Money Laundering Directive which sets out the existing rules for combatting money laundering and terrorist financing. MLD4 places an increased emphasis on the “risk-based approach” to anti-money laundering/counter terrorist financing and includes a new requirement to set up a central register of beneficial owners. The Central Bank published a Report on Anti-Money Laundering, Countering the Financing of Terrorism and Financial Sanctions Compliance in the Irish Funds Sector, on 18 November 2015. The Report sets out the Central Bank’s expectations regarding Funds and Fund Service Providers’ compliance with requirements in the areas of anti-money laundering, terrorist financing and economic sanctions. It is based on on-site inspections carried out by the Central Bank over the course of 2014.

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Regulatory Developments Tracker (continued)

Mortgages	The EBA published its final Guidelines on creditworthiness assessment, as well as its final Guidelines on arrears and foreclosures on 1 June 2015. The EBA also published its Opinion on Good Practices for Mortgage Creditworthiness Assessments and Arrears and Foreclosures, including expected mortgage payment difficulties. On 11 August 2015 the EBA published its final Guidelines on passport notifications for mortgage credit intermediaries which seek to ensure that information about credit intermediaries carrying out business in more than one Member State is exchanged consistently between national authorities.
Personal Insolvency	The Personal Insolvency (Amendment) Act 2015 was signed into law on 28 July 2015. The new Act amends the Personal Insolvency Act 2012 to give the courts the power to review and, where appropriate, to approve certain insolvency deals that have been rejected by creditors. The 2015 Act also makes a number of other amendments which impact, among other things, on the Debt Relief Notice procedure and on the powers of the Insolvency Service of Ireland. The Act is fully in force.
Payments Services	The revised Payment Services Directive 2015/2366 was published in the EU's OJ on 23 December 2015. Among other things, the new Directive brings into scope payment service providers that were previously unregulated and raises conduct of business standards in a number of important areas. Member States have until 13 January 2018 to transpose the Directive into national law.
Prospectus Regulation	On 30 November 2015 the European Commission adopted a legislative proposal for a new Prospectus Regulation which is intended to repeal and replace the Prospectus Directive 2003/71 along with its corresponding implementing measures.
Registration and Reporting Requirements	From November 2015 the Central Bank requires Section 110 companies that are not financial vehicle corporations to provide it with a quarterly balance sheet and annual profit and loss data. The first quarterly returns were due on 20 November 2015.
Securities Financing Transactions	Regulation 2015/2365 on transparency of securities financing transactions and of reuse was published in the EU's OJ on 23 December 2015. This Regulation introduces requirements regarding the 'reuse' by a recipient of financial instruments received as collateral, the reporting of SFTs to trade repositories by both financial and non-financial counterparties, and investor disclosure requirements for UCITS and investment managers and for alternative investment fund managers. The Regulation applies from 12 January 2016, subject to the application of a number of transitional arrangements.

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Regulatory Developments Tracker (continued)

SME Lending	On 18 December 2015 the Central Bank published the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015. These Regulations impact on SME lending and set out a number of protections for SMEs when borrowing from regulated lenders including banks and credit unions. Regulated lenders must comply with the new Regulations from 1 July 2016, with the exception of credit unions which must comply with them from 1 January 2017.
Solvency II Directive 2009/138	The European Union (Insurance and Reinsurance) Regulations 2015 were signed into law in order to transpose the Solvency II Directive into Irish law on 11 November 2015. For the most part, the 2015 Regulations came into operation on 1 January 2016.
Wire Transfer Regulation 2015/847	The revised Wire Transfer Regulation 2015/847 was published in the EU's OJ on 5 June 2015. This Regulation sets out the minimum requirements that are essential to ensure the traceability of transfers of funds. It also ensures a sufficient level of consistency between national rules and provides for a more targeted and focused risk-based approach. The Regulation will apply from 26 June 2017.

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