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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 6 November 2015.

Commission Work Programme 2016

A few weeks ago, the Commission published its 2nd annual work programme, with plans for the next 12 months. It explains what the Commission will emphasize and what it will no longer push forward.

What is it?

The Juncker Commission has published its [2nd annual work programme](#) on 27 October 2015, called 'No time for business as usual' in which it details its plans for the next 12 months. It builds on [the Commission's priorities](#) stated in fall 2014 which include, amongst others, a new boost for jobs, growth and investment, a connected digital single market, a new policy on migration, a deeper and fairer Economic and Monetary Union, and a deeper and fairer Internal Market. The **creation of a yearly work programme follows a well-established route**: this annual cycle is known as the "strategic planning and programming" cycle. **The basis is a dialogue between the Commission and the European Parliament.**

The Work Programme includes six annexes, which give further information:

- [Annex 1](#) details **23 new initiatives**, based on President Juncker's 10 political priorities. Examples are steps towards a European Bank Deposit Insurance Scheme based on a reinsurance mechanism, completion of the Banking Union, a VAT action plan and a corporate tax package;
- [Annex 2](#), called REFIT, lists new initiatives to be undertaken in 2016 not already listed in Annex I. Among the **27 new REFIT actions**, is
 - an evaluation and review of the Prospectus Directive to make it easier for small firms to list and access market funding,
 - an evaluation the Financial Conglomerates Directive, and whether it can be considered to be 'fit for purpose'
 - a review of the European Venture Capital and European Social Entrepreneurship Fund regulations (with a view to improve the take- up of these funds as part of the Capital Markets Union without reducing the level of investors protection),
 - an evaluation of the Motor Insurance Directive and
 - a follow-up to the 'Report of the Financial Legislation Review'.

REFIT is the European Commission's Regulatory Fitness and Performance programme to make EU law simpler and to reduce regulatory costs without compromising policy objectives.

- [Annex 3](#) explains **17 pending proposals which will be treated with priority**; this includes the proposed Directive implementing enhanced cooperation in the area of financial transaction tax, the EU securitization framework, the data protection reform and the anti-discrimination proposal (Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation);
- [Annex 4](#) contains a **list of 20 withdrawals** (by April 2016) or modifications of pending proposals. The list includes a proposal for an amended directive and for implementing measures on the common system of value added tax, as regards the treatment of insurance and financial services,
- [Annex 5](#): list **25 envisaged repeals**. No financial services measure is referred to;
- [Annex 6](#) is a useful overview of **68 items of legislation that become applicable in 2016**, such as the Solvency II directive, MiFID II and the PRIIPs regulation.

What does it mean?

This Programme sets out the Commission's plans for the 12 months ahead **and thus serves as an advanced warning on what to expect between now and October 2016**. The European Commission proves that with this 2016 Work Programme it is still committed to better regulation and “being big on the big things and small on the small things”. The focus remains on the support for jobs and growth.

What's next?

Every year the Commission also produces a synthesis report on the previous year's management achievements. This synthesis report closes the Commission's annual planning, [programming and reporting cycle](#). The 2015 Annual Activity report of the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (FISMA) can be expected in March 2016.

Dutch EU-Presidency

Every half year, the Council of the European Union is presided by a Member State. In the first half of 2016, the Netherlands will hold the EU Presidency for the 12th time. The key words for the Dutch presidency are to serve, to save and to retrench. Certainly, a successful trilogue on IORP II (directive on Institutions for Occupational Retirement Provisions) will be high on the Dutch agenda.

This Dutch Presidency will probably have less impact than its previous editions. Both in 1992 and 1997, the Netherlands was in the lead of crucial treaty negotiations resulting in the Treaties of Maastricht and Amsterdam. The Netherlands will have to focus on keeping everyone on board, from the Member States to the EP. The **large majority of its work will be to continue the work of the previous (Luxembourg) presidency**, and not all proposals launched in early 2016 on which it will start to work will be finished by the Dutch Presidency either.

There are three priorities: an innovative Union , a Union that is limited to essentials and a Union that connects. The key words are to serve, to save and to retrench

Dossiers

Several ongoing dossiers will shape this Presidency, such as:

- 1) The economy stimulating plans of the Juncker Commission
- 2) The digital economy
- 3) Energy and climate
- 4) Foreign policy .

Financial sector Priorities Netherlands

The policy officers of the Netherlands Ministry of Finance have secretly briefed the Parliamentary Commission for Financial Affairs about their priorities. Discussions are still in progress. Certainly, a successful trilogue in IORP II will be high on the Dutch agenda, as well as advancing the Council discussions on [the securitization initiative](#). In the area of insurance, the Presidency has not revealed any priorities.

Slovakia & Malta

To prevent Member States from deciding their own priorities during their Presidency, the priorities are formulated **jointly in a troika constellation**. Three Presidencies establish an **eighteen-month working program** for the Council. For the Dutch, this entails cooperation with the Slovaks and Maltese governments who will hold the Presidency in 2016 and 2017. Given the small size of these

Member States, Dutch diplomats will probably assist them in chairing many meetings in Brussels and abroad.



Capital Markets Union

On 30 September 2015, the Commission adopted an Action Plan and accompanying initiatives on building a Capital Markets Union (CMU) in the EU. For the next 3 years, the Commission will take several further initiatives, which are set out in the timetable of the Action Plan. It should lead to putting in place the basis for a Capital Markets Union by 2019.

What is it?

The [Action Plan on building a Capital Markets Union \(CMU\)](#) is an important part of the Juncker Commission's Investment Plan. It will enable the mobility of capital in Europe. The EU capital markets still rely heavily on banks and are relatively undeveloped and fragmented. With the CMU, the Commission aims to tackle barriers to international investments in the EU and to further develop non-bank lending. The Plan aims at opening up investments for European businesses, especially for SME's, it should make the EU more attractive to foreign investors and reduce the vulnerability of businesses when bank lending tightens. It contains a list of actions and their indicative timeline.

The Commission adopted several accompanying initiatives with the Plan:

- **The Commission Securitization initiative:** This is a package of two legislative proposals. The European Commission plans to restart well-regulated securitization markets in the EU that are simple, transparent, and standardized ([but not everybody agrees](#)). As the prudential treatment of securitizations **for insurers** is laid down in level 2 texts, future adjustments **will come at a later moment**. Also for banks and investment firms, the prudential treatment for liquidity purposes are included in a Delegated Act, and will be amended at a later stage.
- Amendments to the Solvency II Delegated Act:
 - **'Qualifying infrastructure investments'** will now form a **distinct asset category** and will benefit from an appropriate risk calibration, lower than that which would otherwise apply (for example the calibration of the stress factor for such an investment in unlisted equity is lowered from 49% to 30%). This will ultimately lead to a lower capital charge.
 - In addition, investments in **European Long-Term Investment Funds (ELTIFs)** as well as Equities traded on **multilateral trading facilities (MTFs)** will benefit from the same capital charges as **equities traded on regulated markets**. This will bring them in line with investments in European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF), which benefit from this treatment.
 - Finally, a transitional measure for equity investments will be extended to unlisted equities, so that insurers will not suddenly withdraw from unlisted equity investments.

- There is also a clarification on how insurers should apply the transitional measure to equities held in managed funds.
- The Commission also launched two consultations on three topics. These will run till 6 January 2016: a [consultation on EuVECA and EuSEF](#), and a [consultation on covered bonds in the European Union](#).
- Lastly, the Commission launched an important [Call for evidence on the existing EU regulatory framework for financial services](#). The Commission invites all interested parties to **provide feedback and empirical evidence on the benefits, unintended effects, gaps, consistency and coherence of certain legislation, including national implementation issues and its combined or incommensurate impact** regarding the financial legislation of the last 6 years but without listing the legislations to which it particularly refers. The complete list of the issues covered in this public consultation can be found in the consultation document. **One can respond to the call for evidence until the 6th of January 2016 via this [link](#).** The feedback has to **be supported by relevant and verifiable empirical evidence and concrete examples.**

What does it mean?

In general, the Action Plan on the Capital Markets Union is expected to make it **easier to invest for insurance companies and pension funds**, because there will be a more clear and harmonised policy towards investment. Amending the Solvency II Delegated Act stimulates insurance companies to invest more in infrastructure.

What's next?

As the Commission has already adopted the **legislative proposal on securitization**, it has referred it to the Council and the European Parliament. The European Parliament has referred the proposal to the ECON committee but **no rapporteur has been appointed yet**. However, there is broad support. By the **end of 2015**, the Commission hopes to have **reviewed the Prospectus Directive** and to have published a **Green Paper on retail financial services** to boost consumer choice and competition in cross-border retail financial services and insurance. **Other long-term plans** for action that the Commission will start working on in 2016 and beyond can be found in the text and in the **timetable of the Action Plan**.

Solvency II

The legal framework is nearly complete. The directive is (being) transposed in Member States. The delegated regulation with Level 2 measures has been published, an amendment on certain assets classes is underway but the Commission wants more. The first equivalence decisions have been taken, but there is more in the pipeline. EIOPA has submitted a second set of draft ITS, and endorsement by the Commission is expected. In the meantime, the EP is requesting more transparency and accountability both from the international and European standard setters and regulators.

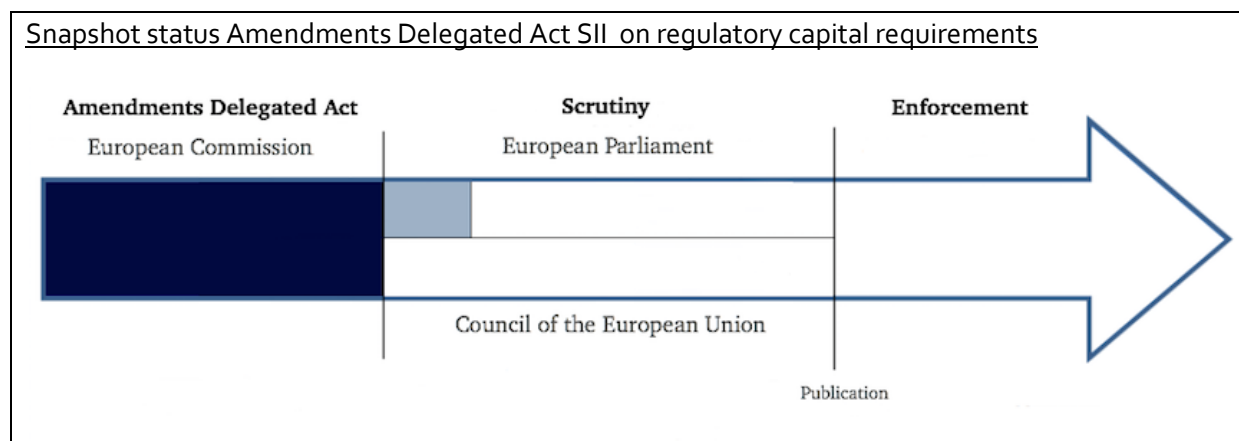
Delegated regulation SII: changed capital requirements for certain asset classes

On 29 September 2015, the Commission proposed as one of the accompanying initiatives of [the Action Plan for a Capital Markets Union](#), a [Commission Delegated Regulation \(EU\) .../... of XXX amending Commission Delegated Regulation \(EU\) 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings](#). This proposal wants to cover the inclusion of ELTIF (on the same footing as EuVECA and EuSEF), to introduce new asset classes "infrastructure assets" and "infrastructure project entity" and to modify the treatment of qualifying infrastructure investment introduced as new submodule

of equity risk.

This proposal has been sent to the Council and the [European Parliament](#) for scrutiny (received 6 October) for which they have 3 months. The EP is currently forming its opinion as this amendment does not seem to take into account all objections the EP formulated to the Commission (see the [exchange of letters](#) between ECON chair Gualtieri (IT, S&D) and Commissioner Hill).

On 14 October, the Commission sent a [new letter to EIOPA](#), calling for further technical advice on the identification and calibration of other infrastructure risk categories.



Source: ICODA European Affairs

Delegated decisions: equivalence

The [Commission delegated decision \(EU\) \(2015/1602\)](#) regarding the **full equivalence of Switzerland** was published 24 September 2015, applicable from 14 October 2015. This means that the Swiss local prudential regime can be substituted for Solvency II in the areas of reinsurance supervision, solvency assessment and group supervision.

Regarding the **provisional equivalence of the solvency regimes in force in Australia, Bermuda, Brazil, Canada, Mexico and the United States**, only relating to article 227 (solvency assessment), the [European Parliament](#) sent a [letter to the Commission](#) and the Council in which it informed them about the extension of the deadline till 7 December 2015. Provisional equivalence lasts for ten years whereas full equivalence is unlimited in time.

In a second round, which is expected in Autumn 2015, it is possible that Japan and Bermuda are granted full equivalence and additional third countries, like China or South Africa, are granted provisional equivalence. This **second package** was discussed with Member States at the EGBPI meeting of 14 July 2015.

EIOPA has published on 4 September an [updated progress report](#) dating from 31 July 2015 regarding Bermuda's Solvency II equivalence assessment. In the meantime, MEP Balz (EPP, DE) reiterates in his own initiative report the **need for unbundled equivalence decisions** (see further).

Implementing technical standards

The **second set of eleven draft ITSs** related to the supervisory approval processes for Solvency II, was published on 6 July 2015 together with [the final reports](#) of the public consultation on the first draft versions. EIOPA [submitted these draft ITSs to the European Commission](#) for **endorsement**. The Commission has three months from the date of submission to decide whether or not to endorse these ITSs. Once endorsed, the ITSs will be translated into all official EU languages and will become legally binding. Endorsement by the Commission was expected by the end of summer. The Commission had till 6 November (3 months plus one) to endorse the draft ITSs (entirely, partially or with amendments) but the draft ITS and annexes are currently in the process of translation into all EU languages, and adoption will be in good time before the end of the year.

The Draft ITS on Procedures for the application of the transitional measure for the calculation of the equity risk sub-module was finally published 6 November 2015.

Guidelines

EIOPA published on 14 September 2015 its [second set of guidelines on 10 topics](#), on which it had consulted between 2 December 2014 and 2 March 2015 (some corrections were published on the guidelines on supervision of branches of third country insurance undertakings and financial stability reporting).

EIOPA clarifies issues via Q&A. All Q&A on all guidelines can be found at: <https://eiopa.europa.eu/Pages/Guidelines/QA-on-Guidelines.aspx>. Answers are of non-binding nature and do not constitute professional or legal advice.

Technical information

EIOPA started to publish technical information regarding the **risk free interest rate term structure** in January 2015 with the aim to have it stable after September 2015. It [published on 27 October an updated version of the technical information](#), as well as the Smith-Wilson risk-free interest rate extrapolation tool (xls workbook), a CoD (cost of downgrade) & PD (probability of default) calculation tool, the User Manual to complement the SII risk free interest rate [coding publication](#) (beta version, 15 July 2015), and [frequently asked questions](#). The final revised coding and methodology will be published prior to 1 January 2016.

EIOPA also publishes [the symmetric adjustment of the equity capital charge](#) on a monthly basis. On [9 October 2015, EIOPA announced](#) that the **ultimate forward rates (UFRs)** to calculate the risk-free interest rate term structures for Solvency II, in particular the UFR of 4.2% for the term structure for obligations denominated in euro, will remain unchanged until at least the end of 2016 to ensure the stability of the framework for the implementation of Solvency II by insurance and reinsurance undertakings and supervisory authorities. However, EIOPA is currently reviewing the methodology to derive the UFRs. The review will include a public consultation in 2016. EIOPA intends to decide on the outcome of the review in September 2016.

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

The ECON committee initiated an [Own Initiative Report on the EU role in the framework of international financial, monetary and regulatory institutions and bodies](#). The Rapporteur is Sylvie Goulard (FR, ALDE). A series of studies was commissioned to research the role of the EU in 9 standard-setting bodies, more specifically, IOSCO, BCBS, IOPS, IAIS, IMF, OECD, World Bank and IASB. The [draft report](#) is being debated in ECON, and amendments discussed. A vote in ECON is foreseen for 30 November and the plenary vote is tabled for 14 December. Ms. Goulard aims with her report to draw attention to the **need for more transparency and accountability** in the work of the large number of **international organisations involved in supra-national decision-making and standard-setting in the financial sector**. Stricter enforcement of the rules and standards they develop is also needed. She considers that the EU should contribute to raising the bar in this regard. In the meantime, the Commission made a [Proposal for a Council decision laying down measures in view of progressively establishing unified representation of the euro area in the International Monetary Fund](#).

European Parliament: Stocktaking financial services regulation – the Balz report

Burkhard Balz (EPP, DE) proposed his [Own Initiative Report on Stocktaking and challenges of the EU Financial Services Regulation: Impact and the way forward towards a more efficient and effective EU framework for Financial Regulation and a Capital Markets Union](#) on 26 August 2015. Vote in ECON is planned for 1 December 2015, and plenary vote 18 January 2016. There have been 431 amendments tabled ([1-212](#) and [213-431](#)). This [draft report](#) is a culmination of the EP's request time and again to take stock of the consequences of the legislation adopted. The EP would like to

see **ex-ante and ex-post assessments, consistency,** and a **comprehensive assessment** of all financial services legislation. Mr. Balz also suggests looking at the **international cooperation and competition** as there are international and European rules impacting the global competitiveness of Europe as a whole. Further, cooperation in law making should be improved. The European Commission and the ESAs need to have a clear requirement along these lines - more **accountability**. He believes that ECON is entitled to be a full participant; but there is the need to see through any work on technical standards and delegated acts openly. In his report, he therefore stresses the need to **respect the interplay, consistency and coherence between the basic acts and delegated and implementing acts,** insisting that the Commission and the ESAs, when drafting delegated and implementing acts and guidelines, **stick to the empowerments** laid down in the basic acts and respect the co-legislators' agreement. He also calls on the Commission to fully **unbundle both delegated and implementing acts and to avoid package approaches.**

Pensions

The European Parliament's Economic and Monetary Affairs committee (ECON) is debating the IORP II dossier; a vote is foreseen towards year-end. Trilogue negotiations will start under the Dutch presidency. In the meantime EIOPA is conducting stress tests and a second quantitative impact study concerning IORPs. Regarding personal pensions, The Commission wants to develop an EU Single Market for personal pensions. EIOPA is focussing on the development of a 2nd regime for personal pensions upon request of the Commission; advice is due 1 February 2016.

Occupational pensions

IORP II

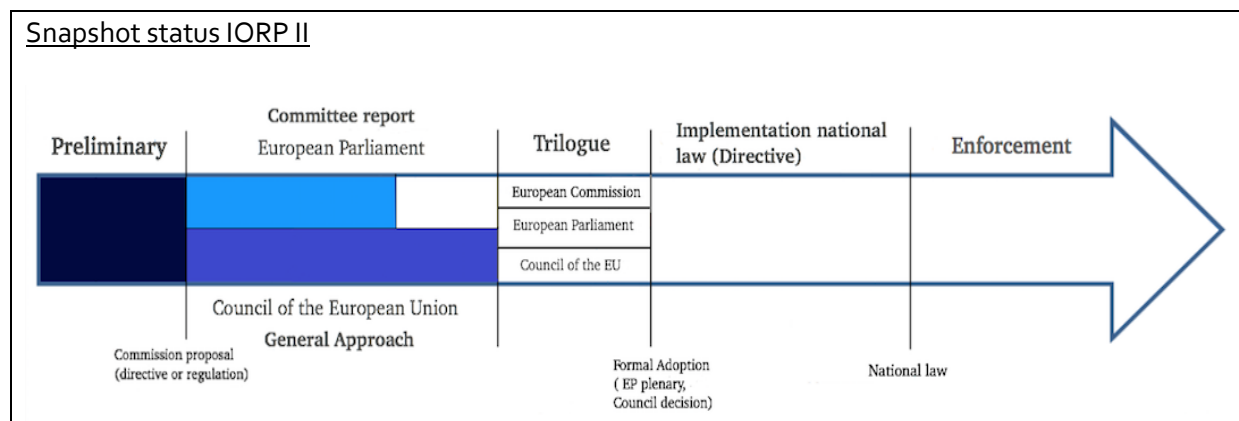
Where do we stand?

The IORP II directive, which the Commission proposed on 27 March 2014, and withheld by the new Commission, is still being studied and debated by the co-legislators.

- The Council advanced quickly: under the Italian Presidency, the 4th presidency compromise published 28 November 2014, together with a negotiating mandate, was approved by COREPER in December 2014.
- In the European Parliament, the Committees for Legal Affairs (JURI), for Women's Rights and Gender Equality (FEMM) and for Employment and Social Affairs (EMPL) produced opinions on this draft Directive, respectively on 16 June 2014, 5 May 2015 and 23 June 2015. The responsible committee, ECON, started with an initial exchange of views on a working document, and organized a hearing. A first exchange of views on rapporteur Hayes (EPP, IR) draft report (with 138 amendments) took place on 15 September. There is large willingness in the EP to align with the Council's text. The shadows (Paul Tang (NL,S&D), Ashley Fox (GB, ECR), Sophie In 't Veld (ALDE, NL) and Bas Eickhout (Greens, NL) were supportive of the overall approach taken by the rapporteur, considering it an improvement on the Commission proposal, while remaining divided on a number of key points (see report). On 1 October, over 700 amendments were tabled by the different MEP of the ECON committee, the leading committee in this file. The amendments will be debated on 10 November in ECON. Rapporteur and shadow rapporteurs need to reach a compromise on these amendments. The ECON vote is scheduled for 1 December 2015 and vote in plenary for 19 January 2016. This is later than the anticipated timeline estimated this spring but it is still optimistic as it implies a trilogue agreement in less than 2 months, despite the Christmas holiday period.

What's next?

Once the European Parliament has voted its report in ECON, the EU Council, under the Dutch Presidency (January-June 2016), and the Parliament will work together in 2015 and 2016 to reach an agreement in the next stage, the Trilogue. Adoption could well happen during the Dutch Presidency. The Commission had foreseen transposition by end 2016 and application by 1 January 2017.



Source: ICODA European Affairs

Example of IORP II amendments

There are 3 amendments under consideration 25 of the draft proposal.

If all 3 amendments would be accepted, the consideration would read as follows:

“(25) A prudent calculation of technical provisions is an essential condition to ensure that obligations to pay retirement benefits can be met *both in the short and in the long-term* (AM 357, Sophia in 't Veld, Philippe De Backer, Marian Harkin (ALDE, NL/IR/BE). Technical provisions should be calculated on the basis of recognised actuarial methods and certified by qualified persons. *A basic minimum level of technical provisions should be available at all times* (AM 355 by Aldo Patriciello (EPP, IT)). The maximum interest rates should be chosen prudently according to any relevant national rules *and in any case should not exceed those used for Life Insurance* (AM 356 by Bas Eickhout (Greens, NL)). The minimum amount of technical provisions should both be sufficient for benefits already in payment to beneficiaries to continue to be paid and reflect the commitments that arise out of members’ accrued pension rights.”

An amendment by Sirpi Pietikainen (EPP, FI) on article 25 suggests besides the internal audit function also an external audit function, and requests all key functions to be filled in in a gender equal way.

Stress tests and Quantitative Assessment

EIOPA's final aim is to deliver robust, tested proposals to the EU political institutions on the HBS and to give its advice on EU solvency rules for IORPs to the Commission in March 2016. Therefore, and in addition to the 2014 consultation paper on further technical work on the holistic balance sheet (HBS), EIOPA has launched a quantitative assessment QA or QIS2 for IORPs. In parallel and to avoid duplication of effort, it also launched stress tests for IORPs. Especially the QA results will eventually shape the basis of advice to the Commission on EU-wide solvency rules for IORPs.

At the same time as the advice, EIOPA will also provide the reasoned feedback on the supervisory responses part (Q72-Q111) in 2016 as the reasoned feedback on the valuation part (Q1-71) has already been published.

- Regarding **QIS2**, the participation of pension funds to the quantitative assessment has been voluntary. Two scenarios are tested: one actualising the liabilities side with the help of a risk-free

interest tax, and another one using an expected efficiency tax. Based on these scenarios, EIOPA will test 6 examples of frameworks for monitoring.

- Regarding the **pensions stress test**, conducted in parallel, EIOPA is taking a two-stage approach: it did the preparatory work in 2014 but is now, in 2015, running the stress test. The aim is to develop a stress test framework that is appropriate and suitable for pension funds. Unlike the QIS₂, where participation is voluntary, for the stress test, the national supervisor indicated several national pensions funds to cover the required percentage of 50% of assets under managements. The stress test will assess the resilience and the behaviour of IORP's in adverse market developments, such as a prolonged low interest environment or a sudden material reassessment of risk premiums. It will also incorporate stresses in longevity as one of the major risks in pension funds overall financial condition. EIOPA intends to cover IORP's that provide defined benefit schemes as well as the ones that finance hybrid or defined contribution plans. The results will be published in December 2015.

EIOPA commented 20 October on the Stress test as follows:

- Satisfactory participation mark for the first EU-wide stress test on occupational pensions, with room for improvement in future exercises. The target was to cover 50% of the IORPs sector in those markets exceeding the threshold of 500 million Euro in total assets.
- Actual sample represents ca. 40% of total IORP market and it is composed of: 64 DC IORPs from 9 countries – AT, CY, ES, IS*, IT, NL, PT, SK and UK and 140 DB IORPS from 14 countries: BE, CY, DE, DK, ES, IE, IT, LU, NL, NO, PT, SE, SI, UK. *IS participated voluntarily
- Areas for improvement in terms of participation: FI was above the threshold but did not participate; IE submitted aggregate results; UK filled in the gaps from UK IORPs' input data with own information and model.

The 2015 Pension Adequacy Report

The European Commission and the Social Protection Committee issued on 5 October its 2015 Pension Adequacy Report: current and future income adequacy in old age in the EU. Overall, the analysis of pension adequacy shows that, in their reform efforts, Member States face important common challenges and concerns, which can benefit from an overall approach. At the same time, though, the risks to current and future pension adequacy in Member States have many country-specific aspects resulting from how national pension system are designed and how they interact with economic and labour market developments. Employment policies **should provide more possibilities** for older workers to **stay longer in the labour market**. However, pension systems must also provide **protection for those who are unable to remain in the labour market** long enough to build up sufficient pension entitlements. For the EU as a whole, pensions currently provide most people with **sufficient protection against poverty** and **adequate income security in old age**.

While volume I of [the report](#) is devoted to a comparative analysis of pension adequacy in EU-28, a detailed discussion of developments in each of the 28 Member States is therefore also provided in volume II. Both volumes demonstrate that there are important gender differences in pension adequacy, both currently and in projections for the future, and that adequacy risks tend to have gender specific dimensions.

TTYPE

The EC has initiated a project to support the development of a tracking service for private pension entitlements, called TTYPE (track and trace your pension in Europe). It awarded the study to a consortium of PGGM, MN Services, APG, Syntrus Achmea, ETK, PKA (TTYPE) in May 2013. The first phase of the project (June 2013 - 1 March 2015) showed that a cross-border European Tracking Service (ETS) *is* feasible but that its success depends on the willingness of providers and national tracking services to connect. The consortium proposed to link ideally national tracking services, but in case such would not exist, to serve as the next best option. The second phase is now running,

started June 2015, going until May 2016. Final findings and recommendations will be presented in spring 2016. Partners are seven experienced pension operators from five European countries: PGGM, MN Services, APG, Sokabau, Sigedis, the People's Pension, and PKA. The consortium is currently reflecting about the legal set-up, the members or participants rights, the fee structure, and the budget, as the Commission is happy to co-sponsor an initial phase but has indicated that the project should be self-sufficient after a few years. The project held an expert meeting on 29 October 2015, the next one is foreseen in January 2016.

Personal pensions

The EU wants to develop a EU Single market for personal pension products (PPP). [The Commission issued on 23 July 2014 a call to EIOPA](#) requesting EIOPA "to consider a large scope, which would include PPP's in the form of life insurance products, group pensions/contracts and Pillar 1bis schemes as well as other types of PPP's such as annuity products and in particular reverse mortgages (or equity release schemes)." The Commission also asked EIOPA to take into account that the Commission is considering at least the following legal approaches:

- A Directive on product features, information disclosure requirements & conduct of business rules providing financial institutions with a "passport" to operate across the EU;
- A Regulation on product features and information disclosure requirements (2nd regime), as well as a Directive on conduct of business rules providing financial institutions with a "passport" to operate across the EU. EU rules in a 2nd regime do not replace national rules but are an alternative to them
- A Regulation on product features, information disclosure requirements and requirements for the financial institutions that sell them (2nd regime).

EIOPA's Task force on personal pensions (TFPP) is currently focussing on the development of a 2nd regime for personal pensions. In order to support such an approach, EIOPA issued a [Consultation Paper on the creation of a standardized pan-European Personal Pension Product \(PEPP\)](#). Deadline for comments was 5 October 2015. EIOPA also organized a [public event](#), which gave stakeholders an opportunity to actively contribute and share ideas on the creation of the PEPP.

Early preview of the responses (65 answers, about 650 pages), indicates broad support for the initiative and the PEPP. It is mostly seen as complementary to 1st and 2nd pillars but also of greater significance for markets with underdeveloped pensions structures. PEPP should not take business away from existing 3rd pillar products. Some comments indicated that EIOPA/Commission should concentrate their efforts in the 2nd pillar area. PEPP should be clearly distinguished from occupational pensions. Some question whether there is demand for PEPP.

EIOPA's advice is due 1 February 2016. In preparation for its advice, EIOPA is comparing the different current legislative initiatives, such as UCITS, IORP, MiFID, SII etc. in specific areas with potential relevance for PPP.

Data Protection Reform

The data protection reform package is entering the last phase; trilogue negotiations are expected to conclude before year-end on the GDPR. The safe harbor case has created recently some uncertainty.

What is it?

The Commission proposed early 2012 a new Data Protection Reform package, a legislative package for the protection of personal data in the EU, consisting out of a [Communication](#), a [draft directive](#) (the Police Directive) and a [draft regulation](#) (the General Data Protection Regulation or GDPR). Its goals are to update and modernise the principles of the 1995 Data Protection Directive.

What does it mean?

According to the [latest Eurobarometer survey](#), a majority of respondents (56%) trust **banks and financial institutions** to protect their personal information (of these, 15% totally trust them, and 41% tend to trust them), this means that still around four out of ten people (41%) say they don't trust banks and financial institutions to protect their personal information, with 25% tending not to trust them and 16% not trusting them at all. This makes this data protection reform package highly relevant.

In addition, the **right to be forgotten or the right to have personal data erased**, a central part of the Data Protection Reform, is a **crucial issue for insurers**. This right exists already but will be expanded in the Data Protection Reform.

- If insurers are not able to analyse individual information because the data subject doesn't want to consent, then insurance companies won't be able to **evaluate risks** on an individual basis, creating a greater level of uncertainty and could eventually result in higher costs for customers.
- The Data Protection Reform could also make it more difficult to **detect fraud**. It will make it more difficult to share data among insurance companies such as claims history data, used in the detection and prevention of insurance fraud.
- Insurers will also **need to document their data processing operations** and this documentation must be made available to the supervisory authority on request. Organizations with over 250 employees will need to appoint a data protection officer (DPO). The DPO is exclusively responsible for the protection of data in the company.
- Finally, there will be a more clear set of rules on the protection of personal data. A main advantage for companies is that organizations will only have **one ruleset** to follow. There will also **probably only be one supervisory authority** that companies have to deal with.

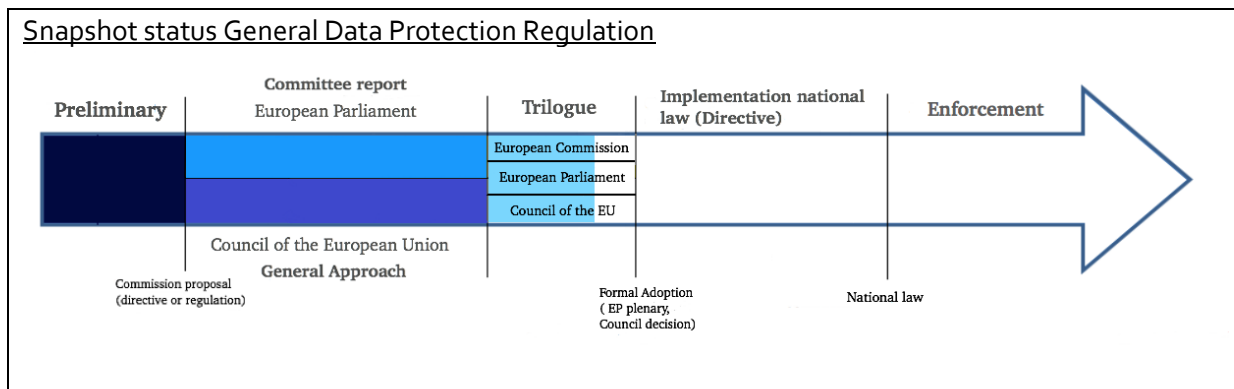
[Insurance Europe](#), in the run up to the trilogue discussion stated this summer in [its position on the GDPR](#): *"The EU Regulation must allow for essential insurance business processes Data processing lies at the very heart of the insurance business. Insurers collect and process data to analyse risks that individuals wish to cover, to tailor products accordingly, to value and pay claims and benefits, and to detect and prevent insurance fraud. Protecting policyholders' data is a priority for insurers, who support effective regulation in this area and the EU objective of further harmonisation of the existing EU data protection framework. However, the proposed Regulation must avoid negative unintended consequences for the insurance industry and consumers."*

Where do we stand in the process?

The co-legislators, Council and Parliament were not able to reach an agreement for a long time, which resulted in a standstill. However, on 12 March 2014, the **European Parliament endorsed** the Commission's proposal for regulation and directive with some amendments, supporting the data protection reform.

- Regarding the **GDPR**, more than a year after the adoption of the European Commission's proposal by the European Parliament, the JHA **Council** finally [reached a compromise](#) and adopted a general approach on 15 June. The **trilogue**, in which the 3 parties (Commission, Council and European Parliament) try to reach a unique text based on [their respective proposals](#) started up immediately thereafter. The negotiators **hope to reach agreement by the end of 2015** under the Luxembourg presidency. The Regulation is expected to enter into force in the first part of 2018.
- On 9 October 2015, Ministers in the Justice Council reached [an overall agreement](#) on the **Police Directive**. The **trilogue** between the Commission, the European Parliament and the Council of the EU on this Directive has also started.

This means the EU is **fully on track to finalise its data protection reform by the end of this year**, as called for by the European Council.



Source: ICODA European Affairs

Latest development: Safe harbor declared invalid

[The European Court of Justice](#), in a referral from the Irish High Court, determined on 6 October 2015 in the case *Schrems vs Data Protection Commissioner (DPC)* that the European Commission [Safe Harbour decision \(2000/520/EC\)](#) was invalid. First, thus the Court, the Commission Decision approving the Safe Harbour was invalid - it failed to sufficiently examine the data protection standards in the US to ensure **an equivalent level of protection** of fundamental rights. Secondly, the Decision potentially deprived data subjects of their **rights of access** to Data Protection Supervisory authority to exercise independent oversight of data controllers within their jurisdiction.

Why is it relevant?

Case law in the EU is a [source of law](#), not of interpretation, unlike in Napoleonic law countries. It is very important that this decision again stresses the right to protection of personal data "guaranteed" by the Charter of Fundamental Rights of the European Union and that the Data Protection Directive and the roles of national supervisory authorities in protecting this right are to be applied in light of that Charter. Two other recent cases (e.g. *Google Spain*, regarding the right to be forgotten) also referred extensively to the Charter to motivate the Court's decision. **Individual data subjects** thus have a strong case **to litigate under EU data protection and human rights laws** to protect their data protection rights, regardless of the location of the processing.

This case has also consequences for **insurers and other companies, their customers and suppliers** which use for example outsourcing services that rely on that certification to legitimize transfers of personal data to the US. The [Commission](#) issued on 6 November a communication giving guidance on transatlantic personal data transfers in the absence of the Safe Harbour Agreement.

Consumer protection

While awaiting the final approval of the insurance distribution directive, EIOPA is consulting on revised preparatory guidelines on product oversight and governance arrangements for insurers and distributors.

Insurance distribution directive

The insurance distribution directive (IDD) aims at ensuring a level playing field between all participants involved in the selling of insurance products and strengthening policyholder protection. An agreement on the insurance distribution directive was reached in trilogue on 30 June 2015. The Council's Permanent Representatives Committee (COREPER) approved on 22 July the agreement reached with the EP on behalf of the Council (see [final compromise text](#)). The Directive is now being translated and checked by the jurist-linguists, and due to be submitted to the EP for a vote at first reading and to the Council for final adoption. [Plenary vote is planned for 24 November 2015](#), signature for December, **publication end 2015 or more probably early 2016**. Member States will

have two years to transpose the IDD into national laws and regulations, meaning that the revised rules for the distribution of insurance products will be in effect towards early 2018 (24 months at the latest, after entry into force which is twenty days after publication).

Product oversight & governance arrangements by insurance undertakings & distributors

On 30 October 2015, EIOPA published a [Consultation Paper on its revised proposal for preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors \(POG Guidelines\)](#). The revised proposal includes comments and suggestions from the respondents to the earlier consultation (Chapter 1 of the draft Guidelines) but has also extended the guidelines to include insurance distributors (Chapter 2 of the draft Guidelines) in line with the requirements under the soon to come IDD (as political agreement has been reached).

The extended guidelines are now relabeled as **preparatory Guidelines**. According to EIOPA, the proposed Guidelines aim to prepare the implementation of the organisational requirements on product oversight and governance arrangements as outlined in Article 21a of the IDD, to bridge the time until those provisions in IDD are fully applicable, and to promote convergent national approaches in the run up to the implementation of IDD. **In view of their preparatory nature, it is envisaged to publish the final Guidelines only once the IDD has been officially adopted and published in the Official Journal of the EU.** The preparatory Guidelines also seek to promote cross-sectoral consistency with similar provisions on product oversight and governance adopted or envisaged in the banking and securities sectors. The consultation period ends on **29 January 2016**.

Further work on Consumer Protection and Financial Innovation

According to the ESA's [Joint committee work plan for 2016](#), the ESAs will continue to ensure through the Joint Committee that consumer protection and financial innovation will be a key element of their regulatory and supervisory activities.

The work on consumer protection and financial innovation will focus on the following:

- a. **Developing draft Regulatory Technical Standards (RTS) in the area of disclosures for PRIIPs**. It should be noted that a final Consultation Paper setting out the draft RTS under Article 8 of the PRIIPs Regulation is expected in November 2015. A separate Consultation Paper will also be published for the draft RTS under Articles 10 and 13. The draft RTS on Article 8 based on both discussion papers will then be finalised and submitted to the Commission by 31 March 2016, as set out in the PRIIPs Regulation. **The publication of the final draft PRIIPs RTS is expected in the first half of 2016. The new KID will have to be used as of 1 January 2017.**
- b. **Continuing its assessment of automation in financial advice**: This initiative was launched in 2015 and assesses the phenomenon of human interaction between consumers and financial institutions being increasingly replaced by algorithms that provide advice or other forms of recommendations. The work analyses the benefits and risks and assesses which, if any, regulatory and/or supervisory measures need to be taken. Based on the outcome of this analysis, including the responses to **the joint Discussion Paper to be launched in the Autumn 2015**, the Joint Committee, will develop in 2016 policy recommendations, where appropriate.
- c. **Focusing on supervisory convergence in the area of investor protection and financial innovation**: This will include some follow-up activities in relation to the implementation by financial institutions of the Complaints-Handling Guidelines that the three ESAs issued previously, with an overall aim to achieve a consistent standard of application across the EU.
- d. A new area of the financial innovation work will **focus on the opportunities and challenges related to the use of "big data", as well as personal data**, by financial institutions to profile consumers, identify patterns of consumption and make targeted offers, which raises questions about expected behaviour in order to comply with overarching obligations. The aim is to **analyse the adequacy of sectoral regulatory frameworks** and identify any regulatory and/or supervisory measures which may need to be taken.

Green paper on retail financial services

The Commission is working on the removal of barriers in retail financial services in the context of the CMU. By the end of 2015, the Commission will publish a Green Paper on retail financial services including insurance that will seek views on how to increase choice, competition and cross-border supply of retail financial products, as well as the impact of digitalization on retail financial services. Stakeholders will have the opportunity to comment on around 30 questions. A conference is foreseen in spring 2016 to examine the evidence obtained and to discuss priority areas. An action plan on retail financial services can be expected by summer 2016.

European Agenda

Autumn 2015	Second SII equivalence package	Commission
Autumn 2015	Joint discussion paper on assessment of automation in financial advice	Joint Committee ESAs
24/11/2015	Plenary vote IDD	EP
November 2015	Consultation Paper setting out the draft RTS under Article 8 of the PRIIPs Regulation	Joint Committee ESAs
7/12/2015	End of scrutiny period of EP for provisional equivalence of the solvency regimes in the US, Australia, Bermuda, Brazil, Canada, Mexico	EP
December 2015	Result stress tests IORPs	EIOPA
14/12/2015	Plenary vote Goulard report	EP
Before end 2015	Publication OJ of 11 new SII ITS	Commission
End 2015	Green Paper on Retail Financial Services	Commission
End 2015	Proposal for review of the prospectus directive	Commission
End 2015	Potential political agreement on GDPR in trilogue	Commission, Luxembourg Presidency for Council, EP
End 2015	Publication final revised coding & methodology for risk free interest rate term structure	EIOPA
1/1/2016	Start Dutch Presidency	Council
6/1/2016	End of consultation on EuVECA, EuSEF, and on covered bonds in the EU	Commission
6/1/2016	End call for evidence on the existing EU regulatory frame-work for financial services	Commission
6/1/2016	End scrutiny period of Delegated Regulation amending Commission Delegated Regulation 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by (re)insurance undertakings	EP/Council
18/1/2016	Plenary vote Balz report	EP
19/1/2016	Plenary vote Hayes report	EP
End January 2016	Commission to receive further technical advice on identification and calibration of other infrastructure risk categories	EIOPA
Jan – March 2016?	Trilogue IORP II	Commission, Dutch Presidency for Council, EP
29/1/2016	End consultation preparatory guidelines product governance	EIOPA
1/2/2016	Advice on the creation of a standardized pan-European personal pension product	EIOPA
March 2016	Advice to the Commission on Solvency requirements for IORPs	EIOPA
March 2016	Annual Activity Report	Commission, DG FISMA
31/3/2016	Draft RTS on Article 8 PRIIPs submitted to the Commission	Joint Committee ESAs
September 2016	Result consultation on UFR methodology	EIOPA

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