ICO

IRISH COMPLIANCE QUARTERLY

Winter 2017

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ACOI
The Association of Compliance Officers in Ireland

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CEO UPDATE

"In the world we operate in, where business is global, nternational links and contacts are very important."

Hello and welcome to the Winter edition of our ICQ, it's hard to believe we are fast approaching the end of 2017!

It has been a busy quarter in ACOI. In our capacity as President of IFCA, we hosted the IFCA Annual Conference on 9th November last. IFCA, is the International Federation of Compliance Associations, the global body for not for profit compliance associations with representation from Australia, South Korea, South Africa, Spain, Switzerland, USA and Argentina and Ireland. More countries are looking to join.

In the world we operate in, where business is global, international links and contacts are very important, compliance professionals need to have a network to call on when required. We are building relationships with similarly minded associations and are creating meaningful linkages between associations to create a global network for compliance professionals. We found at this year's IFCA Conference in Dublin that the issues facing compliance professionals in the countries represented are remarkably similar. Post the IFCA Conference, we hosted a drinks reception and were joined by representative from the Central Bank, industry and members from our own Committees and Working Groups, connecting our international colleagues with the Irish Compliance community. The next day we held the ACOI Annual Conference where we had a great turnout with 252 registered to attend the event.

You can read more about the Conference and the speakers in this edition and there are plenty of photos included further on. The theme of this year's conference – *Compliance and your Reputation* – focused on the role played by the compliance profession in ensuring that organisations protect their reputation. Our President positively challenged many of our speakers on the day continuing the journey of 'raising the bar' in compliance. There is plenty more on the Conference in this edition.

This is the second year of the Niall Gallagher Professional Diploma in Compliance Scholarship, launched last year. To enter, please submit an essay on one of the titles provided, on or before 4th January 2018. The award is registration onto the Professional Diploma in Compliance, PDC programme and membership of the ACOI. It is open to members and non-members to participate. Please encourage your colleagues and friends to take up the pen and submit an essay, more details are on our website.

In November, we launched the first Regional Chapter, in the south west with the first meeting hosted in Limerick. The launch coincided with the live streaming of the November CPD event which considered Regulatory Investigations and the Central Bank's Guide to Consumer Protection Risk Assessment. We are delighted to have established the Regional Chapter and will follow up with more new Chapters in 2018. They are a forum for members in a specific locality to come together, meet and discuss relevant topics, supported by ACOI Executive. It was an initiative of the Membership Committee.

We had our Conferring Ceremony on the 6th December in the Shelbourne Hotel in Dublin – it was an evening of great celebrations for all those receiving awards who were joined by families and friends. Members awarded the LCOI were also awarded the ICCP (International Certified Compliance Professional) by IFCA, which is recognised by all IFCA member countries.

We had a *Thank You* evening on Monday 18th December where we invited all those participating on Committee and Working Groups to join us in ACOI offices for some festive cheer!

We would like to say a big thank you to all members for being involved in the ACOI in so many ways during the year - from participating on Committees and Working Groups, to coming to our events, both as speakers and attendees, to supporting the ICQ, as contributors and as readers. We could not do what we do without you, Thank You. From all in the Executive in ACOI, we wish you and your families a very happy Christmas and looking forward to seeing you all and working with you in 2018! ICQ

Best wishes to you all,

Evelyn Cregan,
CEO

WELCOME to the WINTER 2017 Edition of ICQ

Dear Member

I'm delighted to be contributing to this edition of our ICQ publication. We've decided to introduce this feature into the ICQ to provide some opportunity for you and indeed myself as a member to raise issues and topics which help our Association represent the membership and also which promote our profession.

The voice of compliance, if you like.

I'd encourage you to reach out to the Executive and to me personally if you have a concern/opinion you wish to "voice" that promotes and represents compliance.

As I reflect on the year and look back on our ICQ we haven't been shy in addressing the pressing issues facing compliance and you our members. Issues such as whistleblowing, dawn raids, GDPR, reputation, the role of compliance, ethics have all been addressed.

In this short article I'd like to touch on two topics which I have addressed recently at ACOI events, reputation and pride.

We are delighted to have Ed Sibley, Deputy Governor, the Central Bank of Ireland, as our cover story in this edition. Ed also kindly spoke at our recent annual conference where we addressed the topic of compliance and your reputation. In Ed's address that day he talked about *liberating* compliance officers to do their job in firms and we had other speakers talk about compliance officers being the contrarian view that is so lacking in some aspects of our society today.

I myself spoke that day of the role compliance can and should play in protecting the reputation of the firms you work for and more importantly the role and duty you have in protecting the reputation of the compliance profession and your own reputation.

We challenged Ed on the day and repeat that challenge now to help the ACOI and its members to be that – at times – dissenting voice that is so important and recognised by the CBI as such. To assist compliance officers to be the voice of the consumer inside the firm and to help us drive a positive value adding culture of compliance through the firms the Central Bank supervises.

ACOI hasn't and won't be found wanting in driving this agenda and raising standards it's the very ethos of why we exist but we need the Central Bank to step up to the plate also and help us in this joint agenda.

Formally recognise the role of the compliance officer in the Corporate Governance Code. Formally and more widely recognise the only Irish university-recognised compliance qualifications in Ireland in your minimum competency regime/standards.

Formally call out the INED community to work with their firms' compliance officers to drive cultural change through their respective firms.

We in the ACOI are the first to acknowledge and thank the Central Bank for the assistance it has given us over the years in speaking at our events and always being so generous with it's time. But there is more we can both do in driving this common agenda of raising standards and I can ensure Ed and the Bank that the ACOI will not be found wanting.

Evelyn Cregan, Chief Executive and ACOI President, Clive Kelly.

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The second topic I briefly want to touch on is *pride*.

I both personally and as your president, your current council members, our executive and all those who have filled these positions before us are immensely proud of how far this Association, your Association, has come in such a relatively short space of time.

The ACOI is now the leading global compliance association and the proud chair of the International Federation of Compliance Associations (IFCA) with an extensive university accredited education framework supporting you through your career from those starting in the profession all the way through to the leaders in the profession at Masters level and meeting your continuous professional development needs each year.

Whilst we are proud of that significant achievement I personally am even more proud of how that has been achieved.

Hundreds of you have given freely and generously of your time over those years to make that happen, to raise the bar on standards, to develop your profession, to formalise the education requirements of the profession to help the lonely compliance officer, to provide that much needed support to your peers.

As I stood at the recent conferring ceremony and handed out awards to our graduates (some 690 people passed exams during 2017) I reminded them of how proud they should be of their own achievements to stand alongside now some 2000 fellow graduates and with an organisation of some 3000 members standing behind and in support of them.

None of the success of the ACOI would have happened without you our members and your tireless dedication and support for the association and each other.

I cannot thank you enough for all that you, our members, have done for the Association, for the profession and for the broader reputation of Ireland as a place to do business with excellent, educated compliance professionals at hand. That is something we all can be proud of.

In conclusion it has been a very busy year, and there is no doubt that I and the Association will be calling on you again in 2018 as we raise the bar even higher within our profession.

I look forward to meeting with you next year and wish you and all those dear to you a very happy and peaceful Christmas.

Thank You.
Clive
December 2017 ICQ

THE DIVERSITY & CULTURE CHALLENGE

Nearly four months into his new job as Deputy Governor of the Central Bank of Ireland, ED SIBLEY talks to ICQ *Magazine* about culture, diversity, Brexit and the need for banks to invest in technology.

You could say it's been a baptism of fire for Ed Sibley. His appointment followed the restructuring of financial regulation at the Central Bank, which also saw Derville Rowland appointed as Director General, Financial Conduct.

As Deputy Governor for Prudential Regulation- with responsibility for the supervision of credit institutions, insurance firms and the asset management industry- he is part of the Central Bank of Ireland's leadership team during one of the most contentious issues to dog the Irish banking sector since the 2010 bank bail-out - the tracker mortgage scandal.

Deputy Governor Sibley has been critical of the banking system for allowing this to happen and he has singled out the prevailing culture that exists within the financial services sector as being a contributing factor. Now, it needs to change, he says.

"I think I have to be a little careful about tarring everyone with the same brush because there are good examples within banks, insurance firms and the credit union sector, where the culture is pretty good and is very focused on doing the right thing and very focused on their customers. But there are also too many cases where the culture that we would like to see within an organisation is absent. We have been looking at the issue of culture from both a prudential and a conduct perspective for a while now and I suppose it's a holy grail for the regulator," he says.

"I remember discussions we had about nine years ago - when I was with the Financial Services Authority in the UK - about how we could supervise culture, because it's an intangible thing. But when you see and experience a poor culture you tend to know it straight away, so how do we address it? We have been quite successful in some instances. We are starting to turn the dial on culture by looking at how firms are behaving and how the boards interact and drive down appropriate behaviours in a firm. We have used international best practice, and have engaged with the likes of the Dutch Central Bank, to enhance our approach. We have seen that many lessons from the crisis have been learned but it does concern me that memories are so short, particularly when we are still dealing with some of the legacy issues and human costs associated with the financial crisis," he says.
He says that a company's culture should

permeate from the top down and, ultimately, it is up to the directors and the board to ensure that an appropriate culture exists and that it is openly embraced at all levels of the company.

"Yes, certainly I think that the board and the senior management are accountable and responsible for the culture. We can look at it from a number of different angles. So, if we look at incentivisation for instance - in a very broad sense not just thinking about financial reward - how people are incentivised to behave, from the top down, is a strong driver of the culture, behaviours and values of an organisation. Often, we see a disconnect between what is being said and articulated and the individual decisions that are being made within that firm. And that's obviously problematic," he adds.

The issue of diversity is also a topic that Sibley feels strongly about, and he believes that culture and diversity are, in many ways, inextricably linked. With diversity in the workplace looming large on the agendas of many companies, across different sectors, it is an issue that he would like to see the financial services sector tackle head-on.

"I've always had a strong interest in behaviour and culture and I've been quite critical of the culture that exists in some institutions recently. It's an area we are focused on. I also have a connected interest in diversity. We are not where we need to be in either area and the two are very much correlated in my mind," he adds.

"I have worked in financial services for a long time. Diversity is starting to be addressed, but it is still a significant issue. If we think about diversity with a very broad definition, including educational background, working background, beliefs as well as gender, ethnicity and disability, then we are not anywhere near where we need to be. I think there is work being done at board level - which is almost simpler because you can parachute people into boards - but I still see very poor diversity at the board level and the next level down. It's not representative of what you would expect in modern Ireland. From a regulatory perspective, it is concerning because there is a very sharp correlation between poor governance and decision making and a lack of diversity." He also raises the possibility that compliance departments could play a role in ensuring that the diversity agenda is embraced by firms at all levels.

> ***"There are too many cases where the culture that we would like to see within an organisation is absent. We have been looking at the issue of culture from both a prudential and a conduct perspective for a while now and I suppose it's a holy grail for the regulator."***

"Interestingly, from a gender perspective, what we see from the data we published last year, is typically the risk functions and the compliance functions tend to be have a higher degree of gender diversity in them. So, there is a better dynamic in those functions than there is in what I call the profit generating or front-line functions. But there is now a requirement in the CRD, diversity is being reinforced under Solvency II, and there is a requirement under our own corporate governance code, for firms to have diversity policies. They are not prescriptive at this stage, but I would say that the compliance functions could legitimately push their firms to think about diversity and address the issues."

Diversity and culture, however, are by no means the only issues that the Deputy Governor is concerned about. In a speech at an ACOI Seminar *'2017 Supervisory Priorities for Credit Unions'* back in March, he stated that one of his major concerns was the IT infrastructure that exists within the Irish financial services and the need for the industry to invest in new systems.

"I don't think the banks are any worse than other sectors. And from my role on the supervisory board in the SSM, I get to see issues on the European stage and I don't think the Irish banks are in any better or worse shape than many of the European banks from an IT perspective. But there is an issue where we've still got a proliferation of legacy systems and hugely complex environments with systems that don't necessarily talk well enough to each other. There was a lack of investment over an extended period during the crisis. But there is a need to invest in people, in processes and in technology across all sectors. In fairness, we are starting to see some major IT investment. That's a good thing, because there are some very sizeable threats out there and financial institutions need to be able to respond to these threats whenever they occur," he says.

"For example, we are seeing an increasing level of complexity and threat in terms of cyber-security and cyber-crime and this will require very significant investment and continued diligence and flexibility. The sophistication of these threats is very significant and, to be honest, it is the thing that worries me most from a prudential perspective as it has the potential to be so quick and so impactful. And, when we think back from a disruption perspective, the level of innovation in technology means that there is also pressure on existing firms to keep pace with the latest changes in technology and this will inevitably impact on business models and competitive behaviours. There are already examples - not necessarily in the financial services sector - where big incumbents have failed because

they haven't kept up with the pace. So, there are multiple threats from a technology perspective that require firms to develop their thinking about strategy, about risk management, about budgeting and resourcing," he says.

While keeping up with developments in technology and ensuring that the IT platforms deployed are robust is one thing, the financial landscape is witnessing a proliferation of technology savvy parvenu players in the Fintech sector, some of which have the potential to upend parts of the financial services sector. Should the sector be worried?

"It's an interesting question and we ourselves need to be alive to it as do other players; but there are multiple scenarios and maybe they can all co-exist," says Sibley.

"If I was in an incumbent insurance firm or bank, I might be worried about the smaller niche players - which are more prevalent in jurisdictions like the UK than they are in Ireland - cherry picking parts of my business, whether it's business banking or payments and so on. You can definitely see that in the UK banking market where there is a proliferation of smaller niche players.

There is another scenario where- and I am going to take an example of banking- where the bigger players become very much more sophisticated and they invest heavily in technology. BBVA, for example, is one that is touted as being very technology savvy and ahead of the pack. But there's little to no barriers of entry for a European bank to offer products in Ireland and they can do it through a branch or online without any real set-up costs. There are, therefore, several existential threats to incumbents but in terms of how the future pans out, it is difficult to know," he says.

"But there will undoubtedly be disruption across the system. We do spend a lot of time thinking about the existing models and the strategies needed to ensure longer-term viability. We would also expect firms to be thinking about these issues and how they continue to evolve their offering, their capabilities to deliver what they say they want to deliver and what the customer proposition is and whether it's a sustainable proposition that treats customers fairly over the long haul and whether it's in the best interest of the customer."

"If I was in an incumbent insurance firm or bank, I might be worried about the smaller niche players - which are more prevalent in jurisdictions like the UK than they are in Ireland - cherry picking parts of my business, whether it's business banking or payments and so on."

"We also think about it from an IT risk perspective. We have spent a good amount of time over the last couple of years building our own capability from an IT risk management perspective and we are much more developed in terms of our ability to look at all regulated firms and how well they are managing their risks. And again, this comes back to resilience, security and capability and you must be doing this well before you think about how to continue to develop and enhance the systems," he adds.

"And then the third part is our thinking about Fintech, new technologies and new companies coming into the market. We see a lot of that already in areas like payment services and payment providers, and we've had lots of engagement with those kinds of firms already. Over the course of the next six to twelve months we will be looking to further develop our approach to financial innovation and Fintech. Up until now, I think we have been doing a lot of monitoring, looking at and engaging with our European colleagues. We haven't gone down the route of the UK in terms of a sandbox, which is not without its controversies in terms of the UK's approach. I'm not saying it is right or wrong but at this stage we will be looking to work with our colleagues in the EBA, EIOPA and ESMA," he says.

On the so-called Brexit dividend that may or may not arise as a result of international financial services firms re-locating their HQs to Ireland, he says the Central Bank has met with many firms looking to move some or all their UK operations here.

"As an ex-pat Brit, I am quite saddened by Brexit, but that's a personal view. From the Central Bank's point of view, we look at Brexit to assess what the risks associated with it are from a macroeconomic perspective and how do those risks impact on existing firms here. We have to be prepared for all eventualities, including a hard Brexit," he says. "There is a lot of conversation and discussion about some kind of Brexit dividend in relation to financial services and what firms might leave the UK to come here and we've had lots of engagement on that issue. We've also been very consistent all the way through in terms of our approach.

"I think early on there was possibly some incidents where it looked like there could have been some regulatory arbitrage going on, but I think, in the main, our strategy was the right one and what we have seen is that we have been influential in the European agenda in terms of what is the right approach to dealing with these firms. We have met with lots of firms who have been exploring different jurisdictions that might be good for their business and some have ultimately decided that they will come to Ireland because it's a good fit in lots of ways in terms of resources, legal framework and so on. Others have decided there are better fits elsewhere and for lots of reasons; that is perfectly normal and understandable. But I think we have been publicly very clear about those engagements and about our approach which is to be open, engaged and consistent and within the European norms," he says.

While it is likely that more UK-based financial institutions may move some, or all, of their UK operations to Ireland over the next twelve months, if the first four months of Ed Sibley's new job on are anything to go by, he will certainly have an eventful stint at as Deputy Governor. ICQ

THE MiFID II CPC ADDENDUM:

WHAT IT MEANS FOR IIA FIRMS

The EU's ambitious regulatory reforms, known as MiFID II, are poised to transform Europe's financial industry by focusing on the creation of fairer, safer and more efficient markets. In Ireland, this aim has been strengthened by an addendum to the Consumer Protection Code.

The Markets in Financial Instrument Directive 2014/65/EU (MiFID II) is due to take effect across the EU on January 3, 2018. The effects of MiFID II are wide-ranging and not limited to MiFID firms. While MiFID II, as a whole, does not apply to non-MiFID firms, certain provisions have been implemented into Irish law by way of an addendum (the Addendum) to the Consumer Protection Code 2012 (the CPC). This decision was taken by the Department of Finance in order to facilitate the exercise of the national discretion under MiFID II to allow certain firms to be exempted from full MiFID requirements. The Addendum was released in August of this year and will have effect from January 3, 2018. The Addendum will amend some of the existing chapters of the CPC and add a new Chapter 14. The Addendum will largely affect firms who provide "MiFID Article 3 Services" (Article 3 Firms), upon whom it will impose requirements in excess of those requirements applying to other regulated entities subject to the CPC, which correspond with certain MiFID II requirements.

MiFID Services

The Addendum also amends Chapter 12 of the CPC to include the definition of "MiFID Article 3 Services" which represents the activities conducted by firms which are exempt from MiFID II by operation of Article 3 of MiFID II. These comprise two services, namely: "(i) receiving and transmitting orders in transferable securities and units in collective investment undertakings; (ii) providing investment advice in relation to those securities and units" The definition of MiFID Article 3 Services only comprises the transmitting of orders to a limited range of entities, namely:

- MiFID authorised firms;
- Credit institutions;

- Branches of investment firms or credit institutions authorised in a non-EU country which is compliant with prudential rules considered to be equivalent to European Capital requirements;
- Collective investment undertakings authorised by an EU member state to market units to the public and to the managers of such undertakings; and
- Investment companies with fixed capital, which are listed or dealt in on a regulated market in an EU member state.

The Addendum will also update the definition of "MiFID Services" contained in Chapter 12 of the CPC to include the MiFID Services set out in the European Union (Markets in Financial Instruments) Regulations 2017 (the "MiFID II Regulations"), which implements MiFID II into Irish law.

Use of "Independent"

The Addendum amends Chapter 4 of the CPC to provide for limitations to the use of the term "independent" by Article 3 Firms. Article 3 Firms will not be permitted use the term "independent" in its legal name, trading name or other description of the firm unless:

- he principal regulated activities of the Article 3 Firm are provided on the basis of a fair analysis of the market; and
- in conducting its fair analysis of the market it considers the risks, costs and complexity of various financial instruments as well as the characteristics of its clients.

An Article 3 Firm will also not be permitted to use the term "independent" in a description of a regulated activity unless it provides the service in question on the basis of a fair analysis of the market and considers the risks, costs and complexity of financial instruments offered as well as the characteristics of its clients in providing the service. Additionally, where not all of an Article 3 Firm's activities are conducted in an independent capacity, it will be required to explain the different nature of its services in a manner that seeks to inform the consumer and ensure that there is no ambiguity about the range of services it provides on an independent basis.

Provision of Information and Advertising

The Addendum amends Chapter 9 of the CPC to provide for limitations in the manner in which Article 3 Firms may advertise both past and simulated performance of its products. While these restrictions are largely similar to those which currently apply to regulated entities under the CPC, there are a few notable differences. The Addendum will require Article 3 Firms who wish to give information in an advertisement regarding the past performance of a product to:

- disclose the effect of commissions, fees or other charges, where the indication is based on gross performance;
- clearly state the period chosen, which must cover the preceding five years, or the whole period for which the advertised product or service has been provided, where less than five years; and
- to comply with the general requirements applicable to regulated entities under the CPD.

In respect of Article 3 Firms who wish to give information in an advertisement regarding the simulated past performance of a product must base such simulated past performance on the actual past performance of one or more investment products which are the same or substantially the same as the advertised product or service in addition to complying with the general requirements applicable to regulated entities in respect of simulated performance.

Chapter 14

The Addendum also introduces a new chapter to the CPC, Chapter 14, which only applies to Article 3 Firms. This chapter introduces a number of requirements which are equivalent to the requirements of MiFID II in a number of areas. Under the new requirements, an Article 3 Firm will be required to:

- Record telephone conversations or electronic communications relating to transactions or that are intended to result in transactions;
- Disclose specific descriptions of conflicts of interest that arise in offering, recommending, arranging or providing an investment product. This description should include information regarding risks arising to clients as a result of the conflicts of interest and the steps undertaken to mitigate those risks, in order to allow them to make an informed decision;
- Identify a target market for an investment product and obtain sufficient information to properly understand the characteristics of the target market and of the investment product;
- Not accept and retain fees, commissions or any monetary or non-monetary benefits provided by any third party, where providing independent investment advice, apart from minor non-monetary benefits capable of enhancing the quality of the service (which must be disclosed);
- Provide certain information to clients in relation to orders which have been carried out on their behalf, regarding the execution of the order;
- Providing information to clients in relation to costs and charges associated with financial instruments and services offered to those clients;
- Inform clients whether the firm will provide them with periodic suitability assessments and the manner in which they will provide them; and
- To ensure that remuneration and similar incentives will not be solely or predominantly based on quantitative commercial criteria and will take into account appropriate qualitative criteria relating to the treatment of clients, the quality of service and compliance with applicable regulations.

These requirements are strongly linked with the provisions of MiFID II and in many cases refer directly to the provisions of either the MiFID II Regulations or Delegated Regulations arising under MiFID II.

Conclusion

For Article 3 Firms, the implementation of CPC changes will present particular challenges. The Addendum introduces rules which derive from MiFID II, which is a piece of legislation they have, up to now, been able to avoid and as such will not be familiar to them. With an implementation date in early January, very little time is left to ensure compliance.

Joe Beashel, Head of Regulatory Risk Management and Compliance, Partner, Matheson. ICQ

Managing Financial Sanctions Risk

The imposition of sanctions on a business can be catastrophic and it is incumbent on businesses, particularly those in the financial services industry to understand their actual risk and be clear of the expectations of the regulators when it comes to ensuring what they do to mitigate the risk is appropriate and effective.

Sanctions are considered an alternative to military force with the purpose of curtailing certain activities such as terrorism, military activity or human rights violations. They are restrictive measures implemented by international bodies such as the European Union (EU), the United Nations (UN), HM Treasury and the US Office of Foreign Assets Control (OFAC).

"Whether you represent a large scale international bank or a smaller scale local business, there is nowhere to hide from the Sanctions regime. "

Whether you represent a large scale international bank or a smaller scale local business, there is nowhere to hide from the Sanctions regime. Making sure you are not associated with names on the sanctions lists or sanctioned countries is critical. The sanctions lists are made up of names of individual people, company names and other entity names such as charities and terrorist organisations, etc. As the Central Bank of Ireland (CBI) states: "All natural and legal persons are obliged to comply with financial sanctions and can do so by monitoring the EU and UN lists and taking appropriate action as required (https://www.centralbank.ie/regulation/how-we-regulate/international-financial-sanctions). You don't want a sanctioned individual or entity as your customer, you don't want to process a payment for them, you don't want to make funds available to them – a bank loan, an insurance policy pay-out, lodging funds into an account for them, paying them for services carried out, etc. These are all prohibited and can result in significant penalties for your organisation. In addition to fines, breaching Sanctions regulations can result in significant reputational damage, criminal proceedings, financial loses, and sanctioning. If you do come across sanctioned individuals/entities, you need to make sure the appropriate procedures are in place for managing the risk, i.e. freezing funds and reporting to the relevant authorities.

What can you do to manage your exposure?

Automated solutions are a key consideration in the identification of sanctioned names on an ongoing basis and while automation is not in any way a legal requirement, in higher-volume environments it may be the only practical solution. Automated sanctions screening can be defined as the use of a technology solution to compare customer names and/or payment information against sanctions lists with the purpose of finding sanctions related activity. The level of automation can range from a user typing the name into the system for comparison against the sanctions lists, to names being automatically passed from your customer system to the screening system for automated checking.

Screening solutions are typically designed to look for possible matches, they are not focused solely on exact matches - this allows for variations in name spellings, typos, use of initials, etc. When a possible match is identified, this will require manual investigation to determine if it is an actual match or whether it can be discounted as a 'false positive'. For example, after investigation the following might be discounted due to a different date of birth or country of residence - Jared Ahmad V's Jarad Ahmad.

As mentioned, no regulator to date has mandated automated screening, it is left up to the individual organisations themselves to determine the appropriate approach to managing sanctions risk. The regulators do provide varying levels of guidance in relation to the use of automated screening solutions, the following are some key themes and expectations:

If you are going to do it, then do it properly;

- **OFAC** – "If your bank does not block and report a transfer and another bank does, then your bank is in trouble" (OFAC Regulations for the financial community 2012);

Know and understand what you are doing;

- **Financial Conduct Authority (FCA)** – "Many banks did not understand how the systems they used had been calibrated and at what thresholds 'fuzzy matching' had been set. We expect banks to understand the systems they use to ensure they mitigate risk as intended." (FCA - How small banks manage money laundering and sanctions risk Update November 2014);

Ensure that the system has been fully tested at the outset and that assurance testing is conducted on a regular basis;

- **CBI** – "the Central Bank expects that firms conduct regular IT assurance testing" (2015 - Report on Anti-Money Laundering/Countering the Financing of Terrorism and Financial Sanctions Compliance in the Irish Banking Sector).
- **Department of Financial Services NY (DFS)** – "shall include the following attributes …[…] …end to end pre and post implementation testing of the Watchlist Filtering program" (Part 504 Banking Division Transaction Monitoring and Filtering Program Requirements and Certifications).

Fuzzy matching should be implemented (i.e. methods of non-exact matching);

- **Joint Money Laundering Steering Group (JMLSG)** – "It is important to consider "fuzzy matching", as names might be missed if only exact matches are screened" (JMLSG – Part 3 Chapter 4).

Former president of Zimbabwe, Robert Mugabe, (pictured below on the left), encouraged the violent seizure of white-owned land from 2000 onwards. Food production was severely impacted, leading to famine and drastic economic decline in Zimbabwe which ultimately resulted in international sanctions.

How do you avoid the fines and consequences?

Understanding your risk is fundamental to ensuring your overall approach to managing sanctions is appropriate and will stand up to scrutiny by both internal auditors and external regulators. A Board mandated Sanctions framework including a Sanctions policy, Standards and a completed Sanctions Risk Assessment are essential for defining your sanctions strategy. This process of documenting your sanctions risk will solidify your requirements and determine whether an automated screening solution is a necessity; this can support the business case to secure necessary budget for implementing and maintaining a solution.

Implementing any technology solution can be a daunting process, adding Sanctions into the mix can seriously heighten the pressure but standard project rules still apply – ensure the right resources are in place, requirements are documented, a project plan is in place, and the risks are identified and managed closely, etc. Specifically, for a sanctions screening solution there are some unique requirements which must be considered, these include:

Sanctions Lists – What lists will you screen against? Where will you source them from, how frequently will list updates be made to the system, what controls will be in place to ensure the lists are complete and up to date on an ongoing basis? Can an internal black list be implemented on the system?

System Tuning and Fuzzy Matching Capability - How do you know the system will be effective at matching before you buy? What testing can you carry out? What are your expectations of matching levels – would you expect for example a match between "Charles Taylor" and "Charles T" to generate a report for manual review? How easy is it to tune the system on an ongoing basis? What level of false positives might you expect the system to generate? These must all be aligned to the internal risk appetite.

Case Management functionality - Can the rationale for the decision regarding the potential match be adequately recorded and is there an effective audit trail? Can a '4 eye process' be implemented allowing two people to add comments/ record actions if required? What management information reports are available on the system?

Resourcing - Who will be the business owner – regulators will expect the compliance/AML function to have clear lines of responsibility (and understanding) albeit the IT function may be responsible for the day to day running of the system.

System reliability & performance – How reliable is the system given the real-time requirements of payment screening and customer onboarding? What service level agreements are in place with IT for issue resolution? Has the business continuity plan been formally approved? Will the system cater for larger peak volumes of traffic (for example increase in payments being sent over Christmas period)? Has someone been assigned the role of relationship manager responsible for liaising with the software vendor on a regular basis?

> ***"To date there have been many fines and reprimands issued to banks and companies regarding failings in their management of sanctions risk. These have predominantly been issued by OFAC but the FCA has also been active ."***

To date there have been many fines and reprimands issued to banks and companies regarding failings in their management of sanctions risk. These have predominantly been issued by OFAC but the FCA has also been active. An example of a non-bank fine is the case of an American seed company which settled a potential civil liability for alleged violations of the Iranian transactions and sanctions regulations. They apparently violated the relevant regulations "by indirectly exporting seeds, primarily of flowers, to two Iranian distributors on 48 occasions" which resulted in a $4.3m fine (https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20160913_panam.pdf). In addition, a recent bank fine was a $2.4m settlement by a bank a for processing 159 transactions for or on behalf of corporate customers that were owned 50 percent or more, directly or indirectly, by a person identified on the OFAC list of Specially Designated Nationals and Blocked Persons (the SDN List) (https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20160208_barclays.pdf).

The following includes an overview of the themes and important lessons for firms emanating from the fines to date:

- Any attempt or help to circumvent Sanctions regulations will result in severe penalties.
- Timely remediation of issues is essential, the longer the delay in addressing the issues the higher the fine.
- Ensuring staff involved in the Sanctions review process are adequately trained is central to ensuring the risk can be managed properly - this goes beyond those staff investigating the screening system outputs and includes for instance staff responsible for account opening, setting up payment requests etc.
- Missing a match due to poor matching capability or poor tuning of the fuzzy matching capability can be a costly mistake.
- It is of limited value screening your customer if you are not also screening their related beneficial owners and relevant directors.
- Lack of adequate assurance processes to ensure systems and processes are working effectively will be detrimental – do not rely on assurances and testing carried out at the time of system implementation. Regular on-going assurance testing is a must.

Regardless of the scale of your business and the scale of the solution in place to manage your Sanctions risk, understanding your actual risk and being clear of the expectations of the regulators are key tools for ensuring what you do is appropriate and effective. In essence, keep your risk assessment current such that you are proactive rather than reactive to any necessary change.

Sarah Connolly, AML Business Unit Manager Ireland, SQA Consulting on behalf of the AML Working Group. ICQ

Q&A *with* THE PENSIONS AUTHORITY

ACOI Pensions WG recently engaged with the Pension Authority on a series of issues looking for further insight to the expectations of the Pensions Authority.

In Early November 2017 the Pensions working group provided the following questions to the Pensions Authority, here are their answers. The Pensions Working Group thanks the Pensions Authority for their time and will consider the responses received and will engage further with them in 2018. If you have any comment that you wish to be addressed after reading the following Q&A, please do provide them to info@acoi.ie.

Q1. Does the Pensions Authority expect those parties who relied on implicit consent from scheme members when providing statutory information to now seek explicit consent and if they do, how do they expect them to obtain it.

On May 25, 2017 the Authority issued a compliance alert which addressed member consent and electronic communications:

"If trustees are satisfied that issuing electronic communications to members is appropriate, the active opt-in consent of scheme members must be obtained in accordance with the principles of data protection law. The Authority has come across several cases where trustees are issuing members with a general notice advising that all communications will be issued electronically in the future unless the member formally objects to this approach.

In the Authority's view, the fact that a member does not respond to such a notice does not indicate member consent. The Authority expects that all necessary actions will be taken by trustees to obtain active consent from a scheme member and that silence or a lack of objection from the member does not automatically indicate consent.

The Authority may look for evidence that trustees have taken all necessary actions to obtain member consent in its scheme audits and inspections. The Authority also recommends that the acquisition and retention of members' consent, together with any associated processes and controls be reviewed periodically."

Q2. Does the Pensions Authority have any issue with companies which (in line with many tech companies) opt to make the basic information required under Schedule C (i.e. scheme booklets) only available online via intranet and company websites, have advised scheme members accordingly and ensured all members have access to the online facility.

The statutory information provided to members has an important role to play in facilitating member confidence and understanding of their retirement savings. This is necessary if members are to be able to make appropriate and fully informed decisions around their retirement savings. Trustees should bear this in mind when considering whether to issue member communications electronically. In particular, trustees should consider if an electronic medium is appropriate based on the general profile and technological proficiency of their scheme members.

Source: http://www.pensionsauthority.ie/en/News_Press/News_Press_Archive/Pensions_Authority_Compliance_Alert_Electronic_communications_and_member_consent.html

Q3. Are there proposed timelines for the proposed reform and simplification of pensions?

Please refer to the Consultation document issued by the Pensions Authority on July 18 2016 on the Reform and simplification of supplementary funded private pensions. Section 5 of that document (Transition) sets out a proposed approach to the adoption of the IORPs II directive and pensions reform, for full information see pages 34 and 35, but the following chart provides summary information on timelines:

> ***"The requirements of the new Directive are consistent with the Authority's views of what changes are needed to the Irish pension system."***

New schemes	All new schemes, irrespective of membership numbers, which are set up on or after September 2018 will have to comply with all obligations, including authorisation, trustee qualifications, codes of practice and, where appropriate, master trust requirements.
Existing schemes with more than 100 members	All existing large schemes will from September 2018, have to comply with trustee qualifications, codes of practice and, where appropriate, master trust requirements.
Existing schemes with 2-100 members	All other existing multi-member schemes will have to comply with trustee qualifications, codes of practice and, where appropriate, master trust requirements from January 2021.
Existing single member schemes	Special provisions may be required for single member schemes set up before September 2018

Source: http://www.pensionsauthority.ie/en/Trustees_Registered_Administrators/Policy/Consultation_Papers/Closed_Consultation_Papers/DC_reform_and_simplification_consultation/Reform_Consulation_Paper_issued_by_the_Pensions_Authority.pdf

In August 2017 when publishing the Pensions Authority's 2016 Annual Report, the Pensions Regulator, Brendan Kennedy, said, "An important event for pensions during 2016 was the adoption of the revised E.U. Directive on pensions, usually referred to as IORPs II. The deadline for transposition into national law is January 2019. Work on IORPs II will therefore be a high priority for the Authority for the next two years, and this will involve providing technical support and advice to the Department of Employment Affairs and Social Protection, and preparing the necessary changes to our oversight of pensions, and communicating with and supporting those affected by the changes. The requirements of the new Directive are consistent with the Authority's views of what changes are needed to the Irish pension system."

For further reading please click on the following link to The Pensions Authority Annual Report 2016: http://www.pensionsauthority.ie/en/About_Us/Annual_reports/The_Pensions_Authority_Annual_Report_and_Accounts_2016.pdf

"The Authority noted that Pensions policy is ultimately a matter for Government."

The Authority noted that Pensions policy is ultimately a matter for Government and advised that The Department of Employment Affairs and Social Protection policy planning unit should be contacted for further detail *http://www.welfare.ie/en/Pages/Pension-Policy.aspx*

Q4. Will there be further engagement with industry regarding the reform and simplification following the 2016 consultation paper?

The Authority proposes that there would be further consultation when more specific transition proposals are developed.

Q5. How do you see the future of the pensions landscape developing?

The Authority Chairman David Begg in the Annual Report 2016 on Pensions Reform, stated: "The current attention on reform requirements is an ideal opportunity to foster a national conversation on the future for pensions and retirement provision. The Authority is concerned by the limited data and research in Ireland about matters such as how people make retirement decisions; their transition to retirement; their experience of the retirement process; and spending patterns during retirement."

Q6. What opportunities / challenges do you think Brexit could present to the pensions industry, if any?

The Authority maintains a watching brief on Brexit as it develops. Outlined below are the responsibilities of the Authority. The Central Bank of Ireland regulates financial services firms, including pension companies and investment intermediaries. The Pensions Authority is a statutory body set up under the Pensions Act, 1990.

The Authority:

- supervises compliance with the requirements of the Pensions Act by trustees of occupational pension schemes and trust RACs, Personal Retirement Savings Account (PRSA) providers, Registered Administrators (RAs) and employers;
- investigates suspected breaches of the Pensions Act;
- conducts on-site inspections and compliance audits;
- instigates prosecutions and other sanctions where breaches of the Pensions Act are found to have occurred;
- provides policy advice and technical support to the work of the Minister and Department of Employment Affairs and Social Protection;
- provides relevant information and guidance to the public and those involved with pensions;
- deals with enquiries received from scheme members, trustees, employers, the pensions industry, the general public and the media.

With the upcoming GDPR, all pension scheme administrators are currently preparing an inventory of the various types of data held. Following a completion of this exercise, data retention periods will be applied to the various types of data held and all data will be erased after the expiration period for Schemes which are no longer under administration. Therefore, removing any records for members for that Scheme under that specific scheme administrator.

Q7. Does the Pensions Authority plan to implement the 'trace my pension facility' so as to help members access pension records which will no longer be available with Scheme Administrators?

The Authority does not hold individual scheme member records, however scheme members may contact the Pensions Authority via email at info@pensionsauthority.ie for assistance with tracing scheme contact information for schemes they may have been a member of. Enquirers will need to provide the name of the employer and/or the pension scheme. The Department of Employment Affairs and Social Protection should be contacted for the tracing of any social welfare pension entitlements.

Q8. Does the Pensions Authority have any expectations of Scheme Administrators to hold data indefinitely so as to facilitate member requests/ queries to ex-scheme administrators?

The Data Protection Commissioner provides guidance on the implementation of GDPR. One of the key requirements of GDPR is that data controllers do not hold personal data for longer than is necessary. Trustees need to consider on a case-by-case basis on whether particular records need to be maintained for the purpose of the scheme.

Q9. Are there any plans to extend the requirement to automatically send annual benefit statements to deferred members?

There are no current plans to require annual benefit statements to be issued to deferred members automatically. Deferred members are entitled to an annual benefit statement upon request to the trustees of the scheme.

Q10. What is their position with regard to the provision of annual benefit statements online as an alternative to producing a hard copy each year?

Please refer to the answer provided under Question 1 above. Also, the Guidance section of the Authority's website includes guidance on Disclosure of Information. *http://www.pensionsauthority.ie/en/Trustees_Registered_Administrators/Guidance/*

Below is an extract from that guidance relating to electronic communications:

The Pensions Act, 1990, (as amended) ("the Act") imposes a legal obligation upon the trustees of occupational pension schemes to furnish members and other parties with certain information. This obligation must now be read in conjunction with the Electronic Commerce Act, 2000 which provides in Section 9 that the production of documentation in electronic form is valid, subject to the following. Disclosure for the purposes of the Act through electronic communication is possible provided certain statutory requirements are fulfilled. Information may be provided electronically to members and other persons by trustees if:

- the information being provided does not create, execute, amend, vary or revoke the trusts;
- the members' consent is obtained for the provision of such information electronically;
- all members have ready access to the facility by which the information is being provided electronically.

The Act provides that the Pensions Authority may require that information be provided to it in such form as the Authority may require, including by electronic means.

Questions provided by the ACOI Pensions Working Group. ICQ

MINIMUM COMPETENCY REQUIREMENTS MAXIMISED

Every firm should check that any non-regulated firm performing functions on its behalf complies with the New Code because failure to do so could result in the firm being subject to administrative sanctions.

"The New Code specifies additional minimum competencies that persons coming within its scope must comply with when performing certain controlled functions."

The Central Bank applies minimum competency requirements to individuals who, for or on behalf of a regulated firm, arrange or offer to arrange retail financial products for consumers, advise on the same or undertake certain specified activities. These requirements are currently set out in the Minimum Competency Code 2011 (the 2011 Code).

The 2011 Code will be replaced from January 3, 2018 with the Minimum Competency Code 2017 (New Code) and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Minimum Competency Regulations 2017 (Regulations) (S.I. No. 391 of 2017).

The new code and regulations are necessary to incorporate updates and changes made at EU level to professional development and competency including, the revised Mortgage Credit Directive which was transposed into Irish law by the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (the Mortgage Credit Regulations), MiFID II, transposed into Irish law by the European Union (Markets in Financial Instruments) Regulations 2017 (With effect from January 3, 2018) and the Insurance Distribution Directive (IDD), which is due to be transposed into Irish law by February 23, 2018.

The New Code and Regulations also incorporate the results of the Central Bank consultation: Review of the Minimum Competency Code 2011 (November 2016) and feedback (CP106 Q&A).

The Structure

Like the 2011 Code, the New Code comprises three parts together with a number of appendices. However, Part 2 of the New Code deals with additional standards for certain functions, while the requirements on regulated financial services providers (Firms), currently set out in Part 2 of the 2011 Code, are now contained in the Regulations.

The Standards

The New Code imposes minimum competency standards on those in a controlled function providing advice or information to consumers on retail financial products or arranging or offering such products for or to consumers. In this context, the New Code widens the definition of retail financial products to include (i) MiFID financial instruments and structured deposits, and (ii) mortgage credit agreements. These standards will also apply to persons in a controlled function to cover the provision of advice or information on, or arranging or offering to arrange MiFID investment products and certain MiFID services to, or for retail clients and elective professional clients.

The New Code

The New Code contains additional provisions which reflect the minimum knowledge and competency requirements set out in the Mortgage Credit Regulations and ESMA's MiFID II-related Guidelines for the assessment of knowledge and competence ("Guidelines"). Those persons carrying out a relevant function in respect of MiFID services or activities, must have a relevant recognised qualification and at least 6 months' relevant experience by 3 January 2018. Persons carrying out any other relevant function must have a relevant recognised qualification or be a grandfathered person.

The New Code specifies additional minimum competencies that persons coming within its scope must comply with when performing certain controlled functions. These apply mostly to non-consumer activities and reflect requirements under the Mortgage Credit Regulations, the IDD and the Guidelines. Additional standards also apply to those who are directly involved in the design of retail financial products. Specifically, at least one person with material influence on the final decision regarding product design must meet the standards of the New Code for that product. It is the Firm that determines who has that material influence.

The Central Bank has developed a Certificate of Experience template (Appendix 5 of the New Code) for written records to be retained in a consistent format to demonstrate that the minimum experience requirement has been met. This Certificate must be completed for new entrants carrying out MiFID services or activities only and signed on behalf of the Firm.

The Regulations

The Regulations set out the requirements on Firms in respect of the minimum professional standards for staff which are currently contained in Part 2 of the 2011 Code and generally impose more onerous record-keeping requirements on Firms.

Those requirements on Firms include obligations to:

- ensure that those who are subject to the New Code and who perform relevant functions on the Firms behalf (including third parties performing outsourced activities) comply with the New Code;
- ensure appropriate competence and skills;
- establish and maintain a register of accredited persons;
- ensure that conditions relating to prescribed script functions are satisfied;
- comply with specific requirements relating to the supervision of new entrants, including maintaining records for those new entrants;
- ensure that relevant persons are clear on the provider's internal policies and procedures surrounding the minimum competency requirements; and
- comply with requirements for approval of online processes.

What Next?

Every firm should check that any non-regulated firm performing functions on its behalf complies with the New Code because failure to do so could result in the firm being subject to administrative sanctions. Each firm should review its existing employees to ensure that they comply with the revised requirements and update its minimum competency related policies and procedures to ensure that they meet the requirements set out in the New Code and in the Regulations.

Frances Bleahene, Solicitor, McCann FitzGerald and member of the Consumer Protection Working Group . ICQ

THE DIRECTIVE ON

SECURITY OF NETWORK AND INFORMATION SYSTEMS

In advance of an announcement by the National Cyber Security Centre on the relevant supervisory authority for cyber-reporting by financial services firms, Marie McGinley Partner Eversheds Sutherland provides an overview of the Directive on security of network and information systems.

The Directive on security of network and information systems (NIS Directive) is the first piece of European Union wide legislation to be introduced in relation to cybersecurity. The European Commission published a policy in 2013 detailing the plan to guarantee a common level of cybersecurity throughout the EU and which recommended the drafting of the NIS Directive. The NIS Directive came into force on 8 August 2016 after it was approved by the European Parliament on 6 July 2016. Member states of the EU have been given 21 months to transpose the Directive into national law and a further six months to identify operators of essential services.

In both Germany and France, regulations have already been implemented in relation to cybersecurity. In 2013, France implemented reporting and breach detection regulations to military programming law. Similarly, Germany implemented in 2015 a minimum level of cybersecurity for essential infrastructure.

Who the NIS Directive affects

The Directive affects two types of entities across Europe, the first being Essential Service Operators (ESO) and the second is Digital Service Providers (DSP). There has been opposition to the inclusion of DSP's in the draft of the Directive from Member States, companies whom the DSP regulation affects and within the European Parliament itself. This opposition was down to the fear of a negative effect on innovation, while the European Parliament did include DSPs in the final draft, the relevant sections are far less restrictive than those of essential service operators.

Objectives of the NIS Directive

The purpose of the NIS Directive is to improve the overall level of cybersecurity within the common market. The Directive aims to:

- achieve this by implementing

"state-of-the-art" security measures across the European Union Member States;

- ensure cooperation between Member States by setting up Computer Security Incident Response Teams (CSIRTs);
- have a minimum level, of cybersecurity throughout the EU;
- ensure that DSP's and essential service operators take appropriate action when an incident occurs, to report it or risk facing fines of up to 2% of their global turnover.
- instil more trust in technology for customers and create a reliable and effective infrastructure for Governments.

All Member States will have to set out national policy and regulation in relation to cybersecurity. They will need to designate a national authority to enforce and implement the regulations along with a CSIRTs team that will be responsible for incidents and reports at a national level. The CSIRTs will be set up in each Member State to ensure cooperation. The CSIRTs and the National Competent Authorities can be together in the one organisation. They must however fulfil separate obligations.

Essential Service Operators

An ESO is an entity that is considered to be a critical societal or economic activity that ensures their maintenance. This is dependent on the service being a network and information systems that would have disruptive effects on the provision of these services. This will require operators in healthcare which includes hospitals and GP surgeries as well as possibly private sector health care businesses to be identified as an ESO. It will also apply to banks, credit institutions operators and trading venues such as the London Stock Exchange. The energy sector including electricity, oil and gas and the transport sector including road, air and rail will all need to be identified also.

It will be up to each individual EU Member State to decide which companies within the sectors mentioned above fall under the NIS Directive of increased scrutiny and regulation before 8 November 2018.

Incident Reporting

An ESO that falls under the NIS Directive must take appropriate measures to minimise the impact of incidents that may affect their services by implementing risk management measures. The ESO must also ensure that they comply with the reporting scheme introduced by the NIS Directive which requires them to report without undue delay any incidents to the National CSIRTs.

The NIS Directive has a set of guidelines which any ESO must follow in reporting an incident including the duration of the incident, the number of service users affected and a geographical spread of those affected.

If an ESO relies on a third party for its provision of services, the onus will fall on the operator to report the incident as opposed to the provider.

Digital Service Providers

A DSP is a provider of an online marketplace, online search engine or a cloud computing service. The DSP's are treated differently to ESO's as they face less stringent rules with the need for only reporting incidents with a significant impact on the provision of the services as opposed to the service operators who must report on an incident with an impact on the continuity of their service.

An online marketplace is a place where traders or consumers can conclude sales and service contracts online with the computer services provided by the online marketplace. If the marketplace is acting merely as an intermediary to a third party, the NIS Directive will not infringe this.

An online search engine is a service allowing users to search websites using a particular language on the basis of a query of any subject in the form of a keyword, phrase or other input. The search engine then returns links to relating to the information you requested. The NIS Directive will not extend to a search engine relating to specific content of a website or price comparison websites.

A cloud computing service is a service that allows you to access resources that are shareable. This will include servers, networks and applications. This will not however include the likes of social media or online computer games.

Obligations

The state of the art measures which are referred to in the Directive require a DSP to ensure they have the correct security of systems, incident management, business continuity management, monitoring, auditing, testing and compliance with International standards. Incident reporting has a similar requirement to the essential operator services.

Impact on Business

Cost will be a major issue with the implementation of the NIS Directive as it will force many organisations to update their technology to fulfil the state of the art obligations. The process of training will also force another expense on companies to ensure that all those falling under the Directive are compliant. Thirdly, the number of incidents will inevitably go up as the capabilities to detect security incidents go up. This will bring another added cost onto organisations as they need to monitor and report them.

An organisation that falls under the NIS Directive may also need to be made aware that an incident could warrant a report through both the General Data Protection Regulation (GDPR) and through the NIS Directive. If there is a breach of personal data it must be reported to national competent authorities and data protection authorities.

Outside of the EU

DSP's can be deemed to be under the jurisdiction of a Member State where its main establishment is located. If the main establishment is in a Member State then the organisation is under the jurisdiction of a Member State and must be cooperated with. If their main establishments are outside of the EU, they will then need to nominate a jurisdiction to comply with.

> *"All Member States will have to set out national policy and regulation in relation to cybersecurity."*

How to Prepare Your Organisation

The NIS Directive will require a review of existing security measures and notification procedures.

Organisations will need to designate a senior management member to evaluate the relevance of the NIS Directive to their organisation. It is expected that in many organisations the nominated person will be the Compliance Officer. These organisations will also need to review any security processes and conduct a security impact assessment. Along with this you will also have to implement an incident response programme to comply with the NIS Directive.

Marie McGinley, Partner, Head of IP, Technology & Data Protection, Corporate & Commercial, Eversheds Sutherland, on behalf of the Data Protection and Technology Working group. ICQ

At time of going to press, the DPT WG understands that a communication is expected to issue shortly from the National Cyber Security Centre concerning the relevant supervisory authority for the reporting of cyber security incidents by financial services firms. Members are reminded that reports may also be required to the Office of the Data Protection Commissioner. On the 15th November a consultation paper was issued on security standards and cyber incident reporting by Operators of Essential Services (OES).

The closing date for submissions is 20th December. For details click here: https://www.dccae.gov.ie/en-ie/communications/consultations/Documents/82/consultations/NIS%20Directive_updated.pdf .

PSD2 THE GAME CHANGER FOR PAYMENTS

The revised European Union Payment Services Directive (PSD2) has been commonly described as a 'game-changer' and is set to revolutionise the provision of banking and payments services within the European Single Market.

In recognising the pace of technological innovation and change, PSD2 provides a legal framework for new payment services and enhances existing services. The most significant PSD2 changes are the obligations on payment service providers (PSPs) to open up their systems in order to provide third party providers wishing to offer financial services to consumers with access to the PSPs customer accounts. Additional important changes include improved consumer protection and payment security requirements.

PSD2 will come into effect on January 13, 2018 and will replace PSD1 which was previously introduced in 2007 to regulate electronic payment services and PSPs. PSD2 is a step further towards complete harmonisation of the EU payments market and will be transposed into Irish law through domestic implementing legislation, a draft of which is due to be published shortly.

Overview

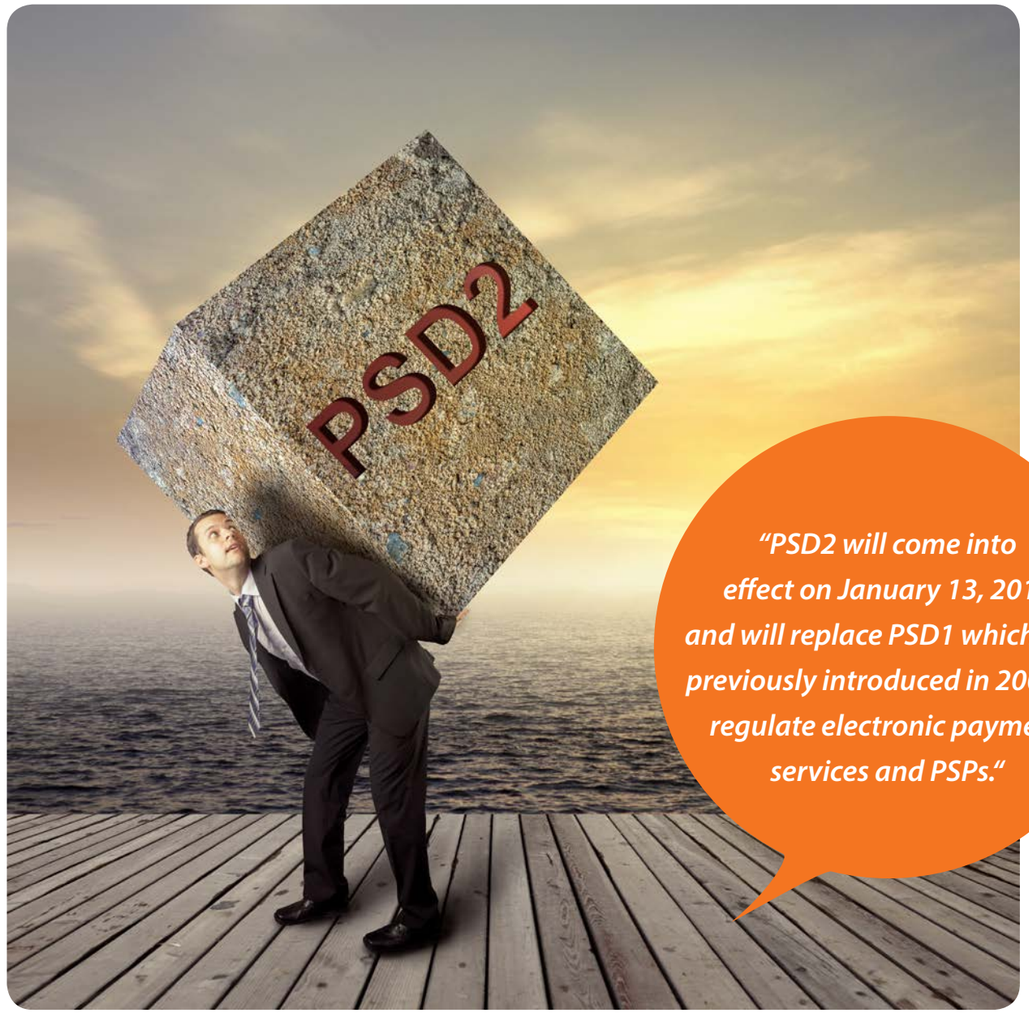
The PSD2 directive contains 117 Articles governing the regulation of payment services and payment service providers. In addition, a set of Guidelines and Regulatory Technical Standards have been developed by the European Banking Authority (EBA) in cooperation with the European Central Bank (ECB) to support and clarify the technical and regulatory aspects of PSD2.

The EBA Guidelines, some of which have yet to be finalised, are scheduled to be adopted and will become effective from 13 January 2018. These Guidelines outline specific adherence and reporting requirements at national and EU level. The main PSD2 EBA Guidelines are:

EBA Guideline	Description
Major Incident Reporting	Criteria to evaluate the relevance of incidents and their notification
Fraud Reporting	Establishes reporting requirements for fraudulent transactions
Security Measures for Operational and Security Risks	Requirements to mitigate operational and security risks
Security of Internet Payments	Security standards for Internet Payments (adopted 2015)
Alleged Infringements of PSD2	Requirements for national authorities to have a complaints process
Professional Indemnity Insurance	Requirements for Professional Indemnity Insurance
Payment Institution Authorisation	Payment Institution authorisation process

Regulatory Technical Standards

The Regulatory Technical Standards (RTS) specify the technical standards and requirements for secure authentication and access between PSPs, payment initiation service providers (AISPs), and account information service providers (PISPs). The RTS have been the subject of extensive consultation and review at both European and national member state level and have been finalised by the European Commission. The RTS will come into force 18 months after approval by the European Council and European Parliament. It is currently expected that the RTS will come into force by September 2019.



"PSD2 will come into effect on January 13, 2018 and will replace PSD1 which was previously introduced in 2007 to regulate electronic payment services and PSPs."

Key Elements:

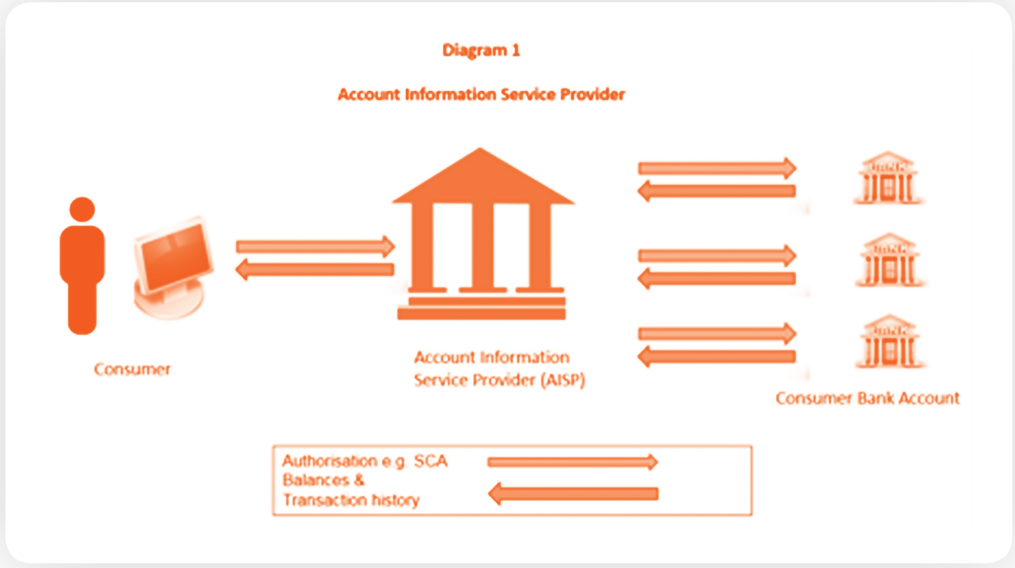
- Enhance consumer protection
- Make payments more secure
- Improve the level playing field for payment service providers (including new players).

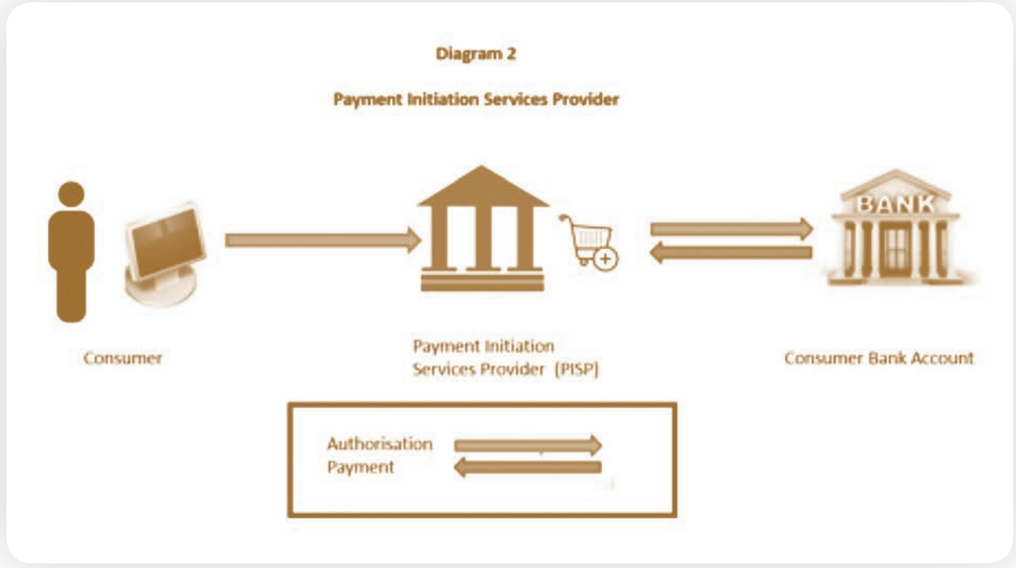
Key Dates:

- PSD2: 13 January 2018
- EBA Guidelines: 13 January 2018
- RTS: September 2019 (tbc)

PSD2 Consultation Process – Ireland

The Department of Finance (DoF) carried out a public consultation process on PSD2 with the purpose of obtaining submissions on its transposition into Irish law and, in particular, the national discretions which have been afforded to Member States. Of note is the Article 2(5) discretion which provides that





Member States may exempt credit unions from all or part of PSD2. The DoF's position on this discretion was that the general policy in place under PSD1 is to be retained and PSD2 will apply to credit unions when providing payment services in the same way as PSD1. However, credit unions will be exempted from the requirements to provide third party providers (TPPs) with access to members' accounts as it was not considered appropriate to extend these new provisions to credit unions at this time.

So, what are the benefits for consumers under PSD2?

Consumer Protection

- EU consumers will be protected for transactions even where the PSP is located outside the EEA as well as for payments in non-EEA currencies.
- Consumers will be better protected against fraud and other abuses as the amount they will be obliged to pay for an unauthorised payment will be reduced from €150 to €50, with exceptions for gross negligence or fraud perpetrated by the payer.
- PSD2 will help lower charges for consumers and ban "surcharging" for card payments in the vast majority of cases, both online and in shops.
- Consumers will benefit from improved security requirements.
- PSD2 provides a legislative basis to the unconditional refund right that already exists for SEPA direct debits.
- Finally, competent authorities must handle complaints from consumers and other interested parties (consumer associations), concerning any alleged infringements of PSD2.

Payment Security

PSD2 stipulates that PSPs must apply strong or 2-factor customer authentication (with some exemptions) where the consumer accesses their accounts online or initiates an electronic payment transaction. PSD2 requires the PSP to apply two or more elements out of the following three when transacting through a remote channel:

1. **Knowledge:** something only the user knows (e.g. a password or PIN)
2. **Possession:** something only the user holds (e.g. a card or a token)
3. **Inherence:** something only the user is (e.g. a finger print or voice)

In addition to the strong or 2-factor authentication requirements, there are additional security measures and reporting requirements effective from 13 January 2018 as outlined in the EBA Guidelines on Security Measures for Operational and Security Risk, Fraud Reporting and Major Incident Reporting.

Third Party Providers (AISPs & PISPs)

PSD2 introduces two new types of third party providers (TPPs) to the financial services market: AISP and PISP. An Account Information Service Provider (AISP) is a service provider who will have authorised access to consumer account details, balance and transaction information; only when appropriate explicit consent has been granted by the consumer. Through this authorised access these service providers will be able to aggregate the account information from multiple accounts across multiple institutions through a single interface. ***See Diagram 1.***

A Payment Information Service

Provider (PISP) is a service provider who is authorized to initiate payments on behalf of a consumer (with their explicit consent) from their payment account. Through this service, consumers are able to purchase goods online using their bank account (IBAN) instead of using a debit or credit card. Today a similar type of access is provided by way of screen-scraping which will continue until the RTS are effective. ***See Diagram 2.***

PISPs and AISPs will need to be authorised by their home state regulator and can also obtain passporting rights to provide services in EU countries. Before a PISP or AISP is granted access to payment account information, the payment account provider must establish that the PISP or AISP is authorised.

General Data Protection Regulation

Access by PISPs and AISPs to accounts will require explicit consent from account holders and in this regard, the General Data Protection Regulations (GDPR) will also need to be considered. PSD2 is very clear that "Payment service providers shall only access, process and retain personal data necessary for the provision of their payment services, with the explicit consent of the payment service user". Information cannot be used for any other purpose than for the processing of the payment service. To use this information for another purpose will require separate and additional explicit consent from the account holder which they must be fully aware of.

PSD2 will undoubtedly have far reaching effects on the provision of payment services and payment service providers. PSD2 will impact payment service providers in two phases; the impact of the initial phase will occur in January 2018 when the Directive comes into force and the impact of the second phase will be the implementation of the RTS subsequent to the European Council and Parliament approval. Although Credit Unions are currently exempt from the RTS TPP requirements, the Credit Union business model is evolving and member services are being enhanced in line with member demands such as the provision of a new account and payment services (i.e. Member Personal Current Account Service) and new access channels (internet and mobile).

The Credit Union Working Group. ICQ

Compliance & Your Reputation

ANNUAL CONFERENCE 2017

Over 250 people were in attendance to hear the thoughts of regulators, policy makers, thought leaders and practitioners on the theme of the conference, *Compliance and Your Reputation*. This subject was considered from a global, European, Irish, organisational and individual perspective through a compliance lens.

Clive Kelly, ACOI President welcomed all and explained the theme of this year's conference and the role of compliance practitioner in safeguarding and enhancing the firm's and their own reputation. Clive also launched and modelled the ACOI Christmas 2017 "We love Compliance" range of gifts!

Ed Sibley, Deputy Governor of the Central Bank in Ireland delivered the Key Note Address stressing the need for compliance practitioners to be "bold" and "noisy" as expectations are high of them. They need to be "liberated" to be able to do their job. Ed acknowledged that the role of the compliance officer is "spread too thinly" and resources are scarce, a matter all firms find challenging. Going forward Ed stated supervision would be more "intrusive" and more data would be required from regulated entities. This data would need to be accurate, timely and verifiable.

The issue that most concerns Ed is a firm's IT Resilience and IT Security. The CBI continues to enhance its capability through its IT Risk Supervision team. They continue to identify material issues in this regard. The Central Bank view on FinTech is evolving and 2018 will provide both opportunities and threats as technologies are incorporated into the system. Another priority in 2018 will be to minimise the impact of a Hard Brexit by maintaining close interaction with their European colleagues.

1 The splendour of the Banking Hall in The Westin. **2** Evelyn Cregan, CEO, ACOI welcomed delegates, speakers, guests, sponsors and partners to the 12th ACOI Annual Conference. **3** First Q&A with Key Note Speaker Ed Sibley, Deputy Governor, Central of Ireland, **4** Clive Kelly, ACOI President, **5** Pat Kenny, Member of CCPC. **6** Keith Packer, former Commercial General Manager of BA World Global. **7** Ed Sibley, Deputy Governor, Prudential Regulation, Central Bank of Ireland with Clive Kelly, ACOI President, Pat Kenny, Member of the CCPC and Keith Packer, former Commercial General Manager of BA World Global.

Other issues requiring attention are;

- An overreliance on group policy on the part of the Irish entity.
- General ineffective board governance of the risks involved.
- Lack of evidence based reporting.
- Inadequate outsourcing governance arrangements.

Trust needs to be restored in the system. Compliance and other 2nd & 3rd line of defence professionals play an essential role in its restoration.

Pat Kenny, Member of Competition & Consumer Protection Commission (CCPC) spoke about the need for personalised penalties to signal to consumers that non-compliance has consequences. This is in addition to administrative sanctions at the CCPC's disposal. Pat spoke about how definitive competition law is, whilst consumer law is "quite diffused". Trust on the part of consumers is at an all-time low.

The CCPC is revising its strategy, in which ACOI participated through consultation. The CCPC approach is to protect and regulate, inform and enforce where necessary. The CCPC identified that informing the consumer enables them to make better choices.

Pat referred to a "Hall of Shame" where the same companies consistently are cited for shortcomings in their dealings with consumers.

Keith Packer, former Commercial General Manager of BA World Cargo shared with delegates the personal cost of falling prey to non-compliance in the price fixing scandal in the aviation business. Keith's frank talk highlighted the behaviours that resulted in him being imprisoned for eight months because of this. Keith stressed the importance of checking information was in the public domain and not to turn a blind eye to inappropriate behaviour of colleagues, even if advantageous to the firm.

> ***"Pat Kenny, Member of Competition & Consumer Protection Commission (CCPC) spoke about the need for personalised penalties to signal to consumers that non-compliance has consequences."***

Despite receiving his annual training Keith admitted to a lack of appreciation of the compliance function being a shield and protector for him. Keith stated that he did not think the contact between competitors by phone and meeting up was price fixing and detrimental to the consumer, despite these interactions leading to a fuel surcharge that exists to this day in the price of air travel.

Sales pressure and a lack of understanding of the risks meant that when one of his staff contacted others inappropriately and he knew about this contact he should have acted and insisted that this behaviour / contact cease.

A question from the floor asked Ed how the Central Bank could assist compliance officers reinforce the importance of their role. Ed's view was the compliance officer role is an essential component in the safeguarding of the financial system. Clive Kelly, President suggested more engagement with, and use of, INEDs could assist this. Clive also highlighted the absence of reference to the role of the compliance officer in the Board of Governance Code. Ed countered that The Board of Governance Code may be reviewed shortly. Diversity on a board is an issue at the forefront of his thoughts. Ed espoused celebrating the failure from what a whistle-blower unveils and stressed the importance of how a firm treats such a disclosure and the person making the disclosure.

Gonzalo Caro, Global Privacy Manager provided an overview of the main provisions of GDPR, how its evolved and discussed the issue of data transfers from a Microsoft perspective and what may evolve because of Brexit. Gonzalo referred to the relatively few countries that have brought Data Adequacy requirements to a comparable EU standard. To illustrate the level of awareness and potential impact of Brexit Gonzalo referred to the concerns of teenagers worrying about sending pictures and messages over Facebook and Snap Chat to their friends in Britain. This resonated will many in the audience, the issue of communication and how people behave post Brexit.

Ronan Gargan, Director of the EU-UK Unit, EU Division of the Dept. of Foreign Affairs outlined the government position highlighting Ireland's unique ties with Britain. Further analysis is now required. Border issues and mobility of EU citizens are two crucial matters currently under discussion.

8 John O'Dwyer, Chief Executive, VHI. **9** Kieran Donoghue, Head of IFS, IDA. **10** Question from the floor to Gonzalo Caro from Aisling Clarke, ACOI Council member. **11** Ronan Gargan, Director of the EU-UK Unit, EU Division of the Dept. of Foreign Affairs. **12 Panel Discussion following John O'Dwyer's speech.** L-R Charlie Boyle, CEO, CSE Ireland, Arndt Harbecke, Chief Compliance Officer, Landis+Gyr AG, John Kielthy, Managing Partner -ReputationInc (Ireland), Clive Kelly, ACOI President and John O'Dwyer, Chief Executive, VHI.

13 ACOI President Clive Kelly with Conference speakers from the second discussion. L-R Brian Hayes, MEP, John Kielthy, Managing Partner -ReputationInc (Ireland), Clive Kelly, ACOI President, Ronan Gargan, Director of the EU-UK Unit, EU Division of the, Dept. of Foreign Affairs, Gonzalo Caro, Global Privacy Manager, Microsoft & Charlie Boyle, CEO, CSE Ireland.

14 ACOI Council members with members of IFCA. L-R; Jason Palmer, ACOI Council Member, Diarmuid Whyte, ACOI Council Member, Liliana Arimany (AAEC) Argentinian Association of Ethnics and Compliance, Melanie Blake, ACOI Council Member, Naomi Burley Australasian Compliance Institute Inc. (GRCI), Silvia Ersenet de Carlos ASCOM (Compliance Association of Spain), Clive Kelly, ACOI President, Kathy Jacobs, ACOI Council Member, Arndt Harbecke Landis+Gyr AG Switzerland, Evelyn Cregan, ACOI Chief Executive, Denise Whelan, ACOI Council Member and Aisling Clarke, ACOI Council Member.

Kieran Donoghue, Head of IFS, IDA said 15% of all IDA companies are in the international financial services portfolio. The IDA view is Brexit will be material and on balance negative to the Irish Economy. Ireland as a place of business has a convincing value proposition as it has an-educated workforce, large pool of professional advisors, a well-respected regulator, is 40% cheaper than London, low corporation tax, is English speaking and has a well established and fair legal system.

Some financial service providers, e.g. JP Morgan, Bank of America etc. have moved people and operations to Dublin. Dublin's proximity, language and cultural ties relative to other locations appeals to such people & companies. London will remain a major global financial centre. Brexit has created an impetus to consider EU and global operations. Issues of access, tariffs and any restrictions on free trade will negatively impact Ireland.

Governance, Risk & Compliance are areas identified in the Irish Government IFS Strategy 2020 that could attract foreign direct investment to Ireland.
In a Q&A with Gonzalo Caro, Aisling Clarke, ACOI Council member of the ACOI asked "what are the key issues to consider before placing data on to the cloud?" Gonzalo said there are many cloud solutions available which depend on data subject's rights. Once you understand the different data subject propositions an appropriate solution can be suggested.

John O'Dwyer, Chief Executive, VHI provided an overview of the Irish health insurance sector referring to the unique rules of the market and the "cherry-picking" nature of the competition in the market. John stressed the customer as being at the centre of everything the VHI do. Despite risk equalisation, VHI has an older client base and this along with changing demographics required VHI to align its customer proposition more to one supporting its customers' desire for well-being and health as opposed to one of funding care provision.

John stated that the current health system was not working. A changing demographic, people living longer, a higher proportion contracting a chronic disease with a high survival rate and a new government strategy, *Slainte*, signalling many changes will all present significant challenges ahead.

In a panel discussion following John O'Dwyer's speech, Clive Kelly, ACOI President posed several questions to the panel. Ardnt Harbecke, Chief Compliance Officer, Landis + Gyr discussed the Swiss view on whistle-blowing following recent scandals in Switzerland and cited a similar case to what Keith Packer discussed- e.g. Azeribaijan Rights Case where a Swiss Lawyer consulted a US investor, never travelled to the US but the US authorities tried to extradite him following a bribery investigation.

Another panellist, John Kielthy, spoke about the lack of understanding on behalf of the board of "reputation governance. John stated that in his experience many organisations have ill-defined purposes and values. A study they conducted highlighted that 50% of the board did not possess the skills to manage reputation. Increasing sub-committees of the board are being formed to consider culture and reputation. This is a welcome initiative. John also considered the emerging trend of conducting reputational due diligence. Clive Kelly identified that apart from this being good-practice that it also met regulator expectations. The ability to measure reputation was discussed too. An organisation needs to define their own desired reputation. Then they can consider this relative to how they are viewed and what they are being viewed on.

In this context Clive asked John O'Dwyer was a cultural change necessary in VHI to affect the changes recently brought in. John said the customer being at the heart of everything is in the "DNA" of VHI Staff. The cultural tone needed to change, which was a more commercial thinking mindset, recruiting the right people and rewarding people for people demonstrating the values and not solely on figures and delivery of a project. HR and Compliance need to collaborate to achieve this goal.

Brian Hayes, MEP was the final speaker. Brian opened with his analysis of the financial crisis and and gave as his view that it was largely a home-grown problem. Brian stressed the importance of listening to contrarian views and creating a culture of compliance. ACOI was commended on "shining the light" on such a crucial matter, particularly for the public sector.

Brian's indicated that he had a somewhat different view on Brexit from that of the Government on the crucial issue of time required to complete analysis. A deal needs to mirror where as close as possible to the single market. The UK need to pay for such a deal. The uncertainty of Brexit has made it difficult for trade. Before December the scope of the relationship between Britain and Europe needs to be defined. That way going into phase two of the negotiations would ensure that the future relationship can be the focus.

The UK cannot be treated like any other country. Some 44% of EU financing is through London.

Ireland needs to foster new alliances as the Franco/German influence in European affairs will be more pronounced with the UK exit. He suggested that Ireland should engage with EU countries with developing economies such as Romania, Latvia and Lithuania along with the Nordic states. ICQ

ACOI Education UPDATE

On December 6th in the Great Room of The Shelbourne Hotel the ACOI conducted its largest Annual Conferring Ceremony since its inception. Graduates received their academic parchments and designation certificates.

In the 2016/17 academic year over 600 people were eligible to receive academic awards or designations. Graduates, designates, their families and friends celebrated the achievement and sacrifices made to realise educational goals.

Students that earned first place for performance in exams in 2016/17 were;

- **Liana Unger** (MSc in Compliance),
- **Claire Breen** (Professional Diploma in Compliance),
- **Ronan Coburn** and **David McVeigh** shared joint first place on the (Professional Certificate in Data Protection).
- **Thore Domeyer** (Professional Certificate in Financial Crime Prevention).

As members of the ACOI you may be considering to study, or know of someone that would like to study, compliance. Performing due diligence is a crucial step in your job and it should also be crucial in selecting the proper programme for you. The ACOI provide offerings that will support you at all stages in your career/education development in the field of compliance from providing core training/education through the PDC programme bringing students all the way through to advanced and specialist knowledge in level 9 programmes and keeping your knowledge relevant and up to date through our extensive CPD offerings. I urge you to visit our website http://www.acoi.ie/education/ to review the various programmes on offer. In semester 2 of the 2017/18 academic year we are now accepting applications from interested and eligible members in the following programmes;

Professional Certificate & Diploma in Compliance (NFQ Level 7)

Those who successfully complete the first two modules (PDC 1 – Compliance and the Regulatory Structure and PDC 2 – Conduct of Business Rule) are awarded the Professional Certificate in Compliance. Upon completion of a further two modules (PDC 3 – Legal and Regulatory Aspects of Compliance and PDC 4 – Compliance Management) the Professional Diploma in Compliance is awarded.

The Professional Diploma in Compliance is considered as the compliance practitioners' benchmark qualification and the only university accredited qualification in compliance. It remains extremely popular with students entering the compliance space, practitioners refreshing their knowledge and/or seeking a formal qualification in the discipline.

Recipients of the Professional Diploma in Compliance are invited to take-up the Licentiate of the Compliance Officers in Ireland (LCOI) designation. This is the industry recognised designation for compliance professionals.

Each module is 5 credits (ECTs). This is a distance learning programme over one semester (12 weeks). The primary learning resource is a comprehensive manual supplemented by online webinars, learning planner and sample questions.

Professional Certificate in Data Protection (NFQ Level 9)

The General Data Protection Regulation (GDPR) comes into force in May 2018. This new EU data protection framework brings the EU one step closer to realising its goal of a Single Digital Market in the EU. It replaces the current Directive and contains many additional obligations, which will take time to prepare for and will have an immediate impact. One such obligation is that in certain circumstances data controllers and processors must designate a Data Protection Officer (the DPO) as part of their accountability programme. The DPO will need sufficient expert knowledge. One of the best ways to acquire knowledge in a fast and efficient manner is to educate yourself.

Completion of this programme will ensure you have the relevant knowledge to manage your organisation's data and mitigate against risks in this area. Graduates of this programme are highly sought after in the marketplace. Topics on this programme range from the regulations, the impact of the cloud, social network, rights of privacy and treatment of data.

" I would recommend that interested parties should apply as early as possible for admission consideration to avoid disappointment. Demand always exceeds the number of places available."

Professional Certificate in Financial Crime Prevention (NFQ Level 9)

This programme considers the non-violent offense of financial/ white-collar crime which is committed by or against an individual or corporation and results in a financial loss. The various forms this crime can take are examined and best practice techniques to manage and control such risks are discussed. A number of topics and suggested methodologies will be introduced requiring input from the student's personal experience to develop a best practice approach in order to counteract, hinder and ultimately safeguard individuals and corporations from the ingenuity of fraudsters in the financial system.

Both the Data Protection and Financial Crime Prevention programmes are one module 10 credits (ECTs) taught graduate programmes. There are assignments and an end of term examination. In addition to receiving an education qualification graduates are invited to take up the professional designations Certified Data Protection Officer (CDPO) and Certified Financial Crime Prevention Practitioner (CFCPP).

They also both attract Summit Finuas Network funding, www.summitfinuasnetwork.ie. This is recognition of the strategic importance placed on the content of each programme. The fee for each programme is €1.450; with Summit Finuas funding the fee is €1,090. Funding is available for a limited number of places on a first come first served basis.

Programmes 1 – 3 are offered in conjunction with our education partner the Institute of Banking in Ireland, a college of UCD. Therefore, all awards are accredited by UCD. In respect of both the Professional Certificate in Data Protection and Financial Crime Prevention I would recommend that interested parties should apply as early as possible for admission consideration to avoid disappointment. Demand always exceeds the number of places available.

Diploma in Risk Management, Internal Audit & Compliance

The ACOI and Chartered Accountants Ireland collaborated to offer its members this six-module programme that can be completed over 6 months. The programme is aimed at those who work or aspire to work in a professional capacity in risk or internal audit or compliance roles. The course will equip you with an understanding of how to build, effectively communicate and influence on risk management, internal audit, governance and regulatory compliance operations. The course is available by classroom and distance learning.

If you should have any queries on any education or designation matters, please do not hesitate to contact education@acoi.ie or 01-779 0200.

It only leaves me to wish you and your families a very happy Christmas and a prosperous New Year.

ACOI Education & Professional Development Team. ICQ

The Art of Mediation

IN THE COMPLIANCE CONVERSATION

The passing of the Mediation Act 2017 was a landmark event by reason of the fact that it is the first comprehensive piece of legislation regulating mediation in a common-law country. Now it provides a legal platform from which mediation will become an integral part of dispute resolution.

In previous articles, we discussed how to influence or make a persuasive case for compliance however, have you ever found yourself in a position where in your efforts to shape the compliance conversation, conflict became an ever present and recurring feature? Becoming dexterous in handling conflict is an essential tool kit of the compliance officer. Does how you interpret conflict guide how you view it? Do you naturally behave competitively, collaboratively, or compromising as your preference, or are you more likely to be accommodative or avoid the issue or are you likely to use a mix of all depending on the relative importance of the issue – like golf clubs in your golf bag, do you select the right tool for the right shot depending on the context or the terrain?

Does conflict too often feel like combat? Do conflicting goals, interests or needs shape and frame the narrative in the compliance conversation often causing opposing parties to lock into their argument and fail to explore or even see the needs and interests of the other side? Mediation is a resolution method, a tool kit to get behind the positions and unlock the story of the conflict and shape a future that both sides are happy to be part of. It is a progressive ethical process where a skilled and accredited interventionist, a mediator, assists disputing parties in a facilitative conversation to resolve a dispute in a timely manner.

Why are we talking about mediation right now? Because mediation in Ireland is at an exciting juncture with the introduction of the Mediation Act 2017. This has been in development for many years following a Law Reform Commission Report in 2010 which recommended that the State enact legislation on mediation. A draft scheme of the Act was published in 2012, and a consultation process followed, resulting in a report from the Joint Committee on Justice and Equality. The final Act was published in February 2017. A variety of amendments followed in both houses of the Oireachtas. The Act was finally signed into law on 2nd October 2017 and is expected to be commenced early in the new year.

The Mediation Act has a number of different features worth noting, from a governance perspective it provides a regulatory framework for the practice of mediation, addressing key aspects of the process such as confidentiality, voluntariness, limitation periods and the enforceability of mediated agreements. It puts new obligations on solicitors and barristers to advise clients to consider using mediation, where appropriate, and gives Judges the power to invite parties to use mediation when cases come before them. It also takes a similar approach to UK case law and imposes cost penalties for unreasonable refusal to engage in mediation.

"Why are we talking about mediation right now? Because mediation in Ireland is at an exciting juncture with the introduction of the Mediation Act 2017."

As regards the mediator's profession, the Act contains a number of provisions – which will require separate commencement by Ministerial Order – that will have an impact on the profession. The first of these are provisions permitting the Minister to "prepare and publish" or "approve" a code or codes of practice "to set standards for the conduct of mediation" (s. 9). This code, or these codes, may address a number of aspects of mediation practice including ethical conduct, mediation procedures and fees. There is no provision for them to set training standards, but it or they may include requirements for continuing professional development for mediators.

Section 12 permits the Minister to recognise a body as the Mediation Council of Ireland, a new professional body, the aim of which is to serve a number of functions, including to raise awareness of mediation, to develop and maintain standards in relation to mediation, to prepare codes of practice, to maintain a register of mediators and to assist the Government in preparing a scheme of mediation information sessions for family disputes.

The Act contains some provisions that could prove challenging in implementation, the first of these actually relate to its scope. The scope of the Act is largely defined by its exceptions, that is, the types of disputes to which it does not apply - including among others, Revenue Commissioner disputes and disputes which fall within the ambit of existing dispute resolution mechanisms such as the Workplace Relations Commission.

The previous framing of the scope of the Act was by reference to "civil proceedings" but this was amended at Committee Stage as the aim of the Act is to divert disputes out of civil proceedings rather than only apply when proceedings have issued. The definition of "dispute" does not assist either as it is defined only as "includes a complaint." It might be anticipated therefore that some discussion, or indeed litigation may result in relation to what types of dispute the Act applies to.

Section 8(4), coming at the end of a section on the role of the mediator, envisages a role for the mediator that can be interpreted as a move away from the purely facilitative model. At the request of the parties, the mediator may "make proposals to resolve the dispute", although it remains up to the parties to decide whether to accept the proposal. This has the potential to raise questions on the level of subject matter expertise mediators may have to have, and what may happen if a mediator proposal is accepted and then proves unworkable or otherwise problematic.

The Mediation Act 2017 is of interest for those outside of Ireland for a number of reasons. Regulating mediation is a notoriously complex task, as legislators struggle to meet the competing needs of fostering predictability and certainty of regulations on the one hand, and maintaining the flexibility of the mediation process on the other. The Mediation Act has gone some way towards addressing this challenge, regulating essential facets of the process, while leaving others to codes of practice and professional organisations.

It is also interesting by reason of the fact that it is the first comprehensive piece of legislation regulating mediation in a common-law country. Under the minimum competency code (discussed earlier) LCOIs can adjudicate on complaints in relation to selling and advice of retail financial products. Now is a great time to become adept at the skill and practice of the mediated conversation as part of the compliance toolkit.

Margaret Considine is CEO of the EQuita Group and President Elect of the Mediators Institute of Ireland. ICQ

1 **29.08.17** **Office of the Data Protection Commissioner (ODPC) – Key messages on Investigations** L-R Aisling Clarke, ACOI Council Member and Chair of the Data Protection and Technology Working Group, John Keyes, Assistant Commissioner – Complaints, Complaints Assessment, Queries-in Triage, Office of the Data Protection Commissioner.

2 **12.09.17** **Building Blocks for Effective Compliance Workshop Series– Compliance Plan and Compliance Monitoring (4/6)** L-R Donal Martin, Member of the EPDS Committee, Karen Nolan, Head of Designated Persons Services, Bridge Consulting, Elaine Staveley, Head of Compliance & Risk at BCWM, Pat Moore, Member of the EPDS Committee.

3 **26.09.17** **Upstream Compliance Briefing – Fourth AML Directive and the FATF Mutual Evaluation Review – An Update** L-R Shane Martin – Regulatory Compliance Director, Walkers, Mairéad Butler – Head of Compliance & Corporate Affairs, Rabobank Dublin, Kathy Jacobs, ACOI Council Member and Chair of the AML Working Group, Brendan Nagle – Funds, Insurance, Markets & Pensions Division, Department of Finance.

4 **18.10.17** **Building Blocks for Effective Compliance Workshop Series – Upstream Regulatory Risk & Reporting (5/6)** L-R Colin McGuirk, Head of Infrastructure and Consolidation – Group Operational Risk, Bank of Ireland, Joyce Byron, MLRO, Bridge Consulting, Rosemarie Kennedy, Senior Manager - Regulatory Risk, Deloitte.

5 **19.10.17** **MiFID II / MiFIR – Transaction Reporting and Transparency** L-R Lorcan Byrne, Market Infrastructure Team, Asset Management Supervision, Central Bank of Ireland, Elaine Staveley, Head of Compliance & Risk at BCWM, Simon Sloan, Asset Management Supervision, Central Bank of Ireland, Anne Marie Pidgeon, Securities and Markets Supervision, Central Bank of Ireland.

6 **14.11.17** **Regulatory Investigations and Consumer Protection Risk Assessment** L-R Muireann Reedy – Senior Associate, Regulatory Investigations Unit, Dillon Eustace, Gerard O'Connell, Chair of the Consumer Protection Working Group.

7 **21.11.17** **The Main Challenges Facing the Funds Sector** L-R Brian Cahalin, Chair of the ACOI Funds Working Group, Niamh Mulholland, Director, Regulatory, KPMG, Martin Anderson, Head of Operations, Capita Financial Managers (Ireland) Ltd.

8 **23.11.17** **GDPR – Data Protection Impact Assessments (DPIAs) Workshop** L-R Kate Colleary, Colleary & Co Solicitors and Co Founder/Director, Frontier Privacy, Elizabeth Dunne, Consultant, Frontier Privacy, Aisling Clarke, ACOI Council Member and Chair of the Data Protection and Technology Working Group.

9 **30.11.17** **Ethical challenges in business going into 2018 - how to meet them?** L-R Sean Wade, Authorisation Advisor, Vhi/Altravia Ltd and Ed McDonald, FCOI, FMII, MBS, MA in Ethics & Corporate Responsibility. ICQ

2017 ACOI Annual Conferring Ceremony

On 6th December over 300 people, graduates, their family, friends and guests of the ACOI were in attendance in the Great Room of The Shelbourne Hotel to acknowledge the achievements of ACOI members who studied on one of the programmes in the ACOI suite of educational offerings and those members that took up ACOI designations in 2017.

The KPMG Sponsored Student of the Year Award – 1st Placed student on the MSc in Compliance in 2017 went to Liana Unger who received her award from Mike Daughton, Partner, Risk Consulting, KPMG. Clive Kelly, ACOI President presented Thore Domeyer with his award from the ACOI for being the 1st place student on the Professional Certificate in Financial Crime Prevention in 2017.

The 1st placed students from the Professional Certificate in Data Protection in 2017 was a joint award to Ronan Coburn and David McVeigh. Unfortunately, David was unable to attend to receive his award on the evening, but Ronan received his award from Clive Kelly, ACOI President.
1st placed student from the Professional Diploma in Compliance 2017 went to Claire Breen and received her award from Clive Kelly, ACOI President.

1 KPMG Sponsored Student Award 1st Placed student MSc in Compliance 2017 L-R Mike Daughton, Partner, Risk Consulting, KPMG and Liana Unger, 1st placed student MSc in Compliance 2017.

2 1st placed student from the Professional Diploma in Compliance 2017 L-R Clive Kelly, ACOI President and Claire Breen, 1st placed student from the Professional Diploma in Compliance 2017.

3 1st place student on the Professional Certificate in Financial Crime Prevention in 2017 L-R Clive Kelly, ACOI President and Thore Domeyer, 1st place student on the Professional Certificate in Financial Crime Prevention in 2017.

4 1st placed students from the Professional Certificate in Data Protection in 2017 L-R Clive Kelly, ACOI President and Ronan Coburn, joint 1st place student from the Professional Certificate in Data Protection in 2017. ICQ

Pamela Nodwell (FCA, LCOI), Manager Governance Risk and Compliance at Crowleys, DFK.

What did you want to do when you left school?
I originally wanted to be a secondary school teacher focusing on business studies, economics and accounting and I went to UCC and completed the B.Comm and then the plan was to continue on and complete the H.Dip. However, working in an accounting firm during the summer months gave me exposure to working as an accountant. I thoroughly enjoyed the accounting and audit side of things and felt that this career might suit me better. So, I qualified as a Chartered Accountant in 2002. I do sometimes wonder, however what my life would be like if I had pursued a career in teaching. But I have no regrets.

How did you enter into the world of compliance?
It wasn't a deliberate move for me but occurred as a result of various roles I took on as my career evolved. In recent times these roles would have been more general management in nature and compliance would have played a significant part of these roles. I was fascinated by how much legislation and regulations impact on just about every aspect of an organisation, across all industries. As I gained experience in the world of compliance I decided it would be beneficial to have a qualification in Compliance and the Diploma in Compliance was a perfect fit for me.

What do you consider are the challenges ahead for your industry?
Keeping up to date with the continuous and rapid changes which are occurring in the industry and ensuring that firms are protected from falling foul of any breaches.

How would you describe your management style?
I have a flexible management style which allows me to adapt to both the people and the areas that need managing. Open communication which works both ways is vitally important and one which I certainly encourage.

What's the most valuable advice that you have been given?
Life is precious, so make the most of it.

An accomplishment you are most proud of?
Professionally: Gaining my qualifications in Accountancy and Compliance and being involved in establishing two financial services firms (one in the Isle of Man) that continue to do well. I am currently back working for the firm where I gained my accounting qualifications and to come back and come full circle is one that perhaps has given me the greatest pleasure professionally.
Personally: Overcoming a recent serious illness that has taught me to value even more those that are close to me and understand what is important in life for me.

What are you currently watching and listening too?
Watching: I have started watching Strictly Come Dancing again. I enjoy the UK shows but I thought the Irish version was just as good. I recently watched an inspiring movie "Hidden Figures" based on the extraordinary lives of three African American women who worked at NASA and played pivotal roles in the launch into orbit of a number of astronauts achieving major advancements in the Space Race.
Listening: I have a wide and varied taste in music but I am currently listening to Susanne Sundorf a lot.

What's your favourite book of all time and what book changed your life?
I am not sure if any book I have read has changed my life but one that I did find quite interesting is The Four Agreements by Don Miguel Ruiz.

How do you relax & unwind?
I enjoy going to concerts and the theatre. Meeting up with family and friends is also a perfect way for me to unwind and relax. Travel allows me to get away from it all and I enjoy immersing myself in the culture of the places I visit.

What's your favourite restaurant?
The Barn, Glanmire, Co. Cork. As a child we were brought there for special occasions and I still enjoying going back every so often. The food, ambience and service are always top class.

Where is your favourite place in Ireland?
There is no place like home – Cork of course.

An interesting fact about you?
I lived in Bermuda for 5 years and Michael Douglas and Catherine Zeta Jones were neighbours of mine. ICQ

Investment Firms

Domestic

- Central Bank publishes document on the reporting requirements for IIA non-retail investment business firms
- Central Bank publishes feedback statement on Consultation Paper 111

European

- European and Securities Market Authority publishes report on access to public capital markets for SMEs
- European and Securities Market Authority report on trends, risks and vulnerabilities No. 2, 2017
- European and Securities Market Authority issues consultation paper on systematic internalisers' quote rules
- European and Securities Market Authority updates questions and answers on MiFID II and MiFIR investor protection and intermediaries topics
- European and Securities Market Authority clarifies trading obligation for shares under MiFID II
- European and Securities Market Authority updates questions and answers on MiFID II and MiFIR market structures topics
- European and Securities Market Authority updates questions and answers on MiFID II and MiFIR commodity derivatives topics
- European and Securities Market Authority updates questions and answers on MiFID II transparency topics
- European and Securities Market Authority updates questions and answers on MiFIR data reporting
- Summary of Conclusions SMSG meeting on 21 September 2017
- European and Securities Market Authority publishes MiFID compliance function peer review results
- MiFID II: European and Securities Market Authority consults on systematic internalisers' quote rules
- The European Commission issues a proposal for a Regulation amending Regulation (EU) No 648/2012 (EMIR)
- European Central Bank issues an opinion on the Commission's proposal for a regulation amending Regulation (EU) No 648/2012 (EMIR)

Insurance

Domestic

- Central Bank consults on approach to third-country branches
- Central Bank publishes information note on major changes to internal models
- Central Bank proposes new insurance renewal requirements
- Civil Liability (Amendment) Act 2017 signed into law

European

- Update on the Insurance Distribution Directive
- European Commission adopts new Solvency II Implementing Regulations
- EU / US bilateral agreement provisionally applied
- EIOPA consults on second set of advice on the Solvency II Delegated Regulation
- EIOPA publishes report on the investment behaviour of insurers
- Court rules obligation to obtain consent before appointing lawyer incompatible with EU law on legal expenses insurance
- Insurance Europe publishes paper on information overload and duplication.

Regulation & Compliance

Domestic

- Central Bank AIFMD Q&A and UCITS Q&A
- Central Bank letter to industry on Brexit

European

- ESMA Q&As on the AIFMD and the UCITS Directive
- Money Market Funds
- EuVECAs and EuSEFs
- ESMA on charges and mutual fund returns
- IOSCO on termination of investment funds
- IOSCO's fourth hedge fund survey

Compliance - Banking

Domestic

- Macro-prudential policy making: where's the evidence? - Deputy Governor Sharon Donnery.
- Central Bank publishes its seventh Consumer Protection Bulletin
- Central Bank announces the outcome of the annual review of macroprudential capital buffers
- Central Bank publishes outcome of 2017 Review of Residential Mortgage Lending Requirements
- Minister D'Arcy's gives statement on tracker mortgages to Seanad Éireann
- European Commission and European Central Bank staff issue statement on eighth post-programme surveillance mission to Ireland

European

- European Central Bank has identified one new bank as significant during 2017
- European Banking Authority publishes Guidelines on procedures for complaints of alleged infringements of Payment Services Directive 2 (PSD2)
- European Commission follows up on the 'Call for Evidence'
- European Commission launches public consultation on supervisory reporting requirements
- European Banking Authority updates list of CET1 instrument
- European Commission publishes proposal for a Directive amending Directive 2014/59/EU (BRRD)
- European Commission publishes proposal for a Regulation amending Regulation EU No 575/2013 (CRR)
- European Commission publishes proposal for a Directive amending Directive 2013/36/EU (CRD IV)
- European Banking Authority publishes 2018 EU-wide stress test methodological note
- European Banking Authority updates Single Rulebook Q&A
- European Banking Authority acknowledges the Commission adoption of amended supervisory reporting standards
- European Central Bank publishes Consolidated Banking Data for end-June 2017
- European Banking Authority republishes DPM and XBRL taxonomy 2.7 for remittance of supervisory reporting
- European Banking Authority publishes Final Peer Review Report on the guidelines on the criteria to determine the conditions of application of Article 131(3) of Directive 2013/36/EU (CRD IV) in relation to the assessment of other systemically important institutions (O-SIIs)
- European Banking Authority publishes final guidance on connected clients
- European Banking Authority report on results from the 2017 market risk benchmarking exercise
- Banking supervision - What next? speech by Sabine Lautenschläger
- Asset purchases, financial regulation and repo market activity - Speech by Benoît Cœuré,
- European Bank Authority report on other financial intermediaries and regulatory perimeter issues
- European Banking Authority publishes an opinion on regulatory perimeter issues relating to the CRDIV/CRR
- European Banking Authority publishes consultation paper on Draft Regulatory Technical Standards on the methods of prudential consolidation under Article 18 of CRR
- The European Commission set out its work programme for 2018
- European Commission publishes Q&A memo on corporate bonds
- European Banking Authority publishes final guidelines on the estimation of risk parameters under the IRB Approach.
- European Banking Authority report on IRB modelling practices - impact assessment for the GLs on PD, LGD and the treatment of defaulted exposures based on the IRB survey results
- European Banking Authority observes good progress in implementation of SREP guidelines
- European Central Bank publishes November 2017 Financial Stability Review
- European Commission publishes report to the European Parliament on the application of Regulation n°260/2012
- European Commission adopts Regulatory Technical Standards concerning electronic payments
- European Banking Authority repeals guidelines on retail deposits subject to different outflows for the purpose of liquidity reporting
- European Banking Authority publishes report on risk assessment
- European Central Bank publishes findings of thematic review on IFRS 9 implementation
- EU ambassadors endorse banking proposals. ICQ

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