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Introduction & Impacts COVID-19 sur l’assurance vie
COVID-19: impacts on the ORSA framework

ORSA Framework key components
COVID-19: Insurance impacts

- Improvement of claims ratio (MTPL, fire insurance, ...)
- Economic slowdown will reduce the commercial activities and the related insurance premiums based on the volume
- Time-lag for insurance claims to be notified to insurance undertaking
- Deterioration of claims ratio (credit insurance, WC, business interruption, event cancellation, ...)
- Adverse movements in the financial markets, declines in bond yields, equity markets, and real estate
- The public authorities (government, court, ...) may be tempted to transfer a part of the “burden” to the insurance industry
- Strategic project (M&A, restructuring, ...) may be delayed or cancelled
- Supervisor will increase their capital requirement and may be tempted to suspend dividend payment
- The public authorities (government, court, ...) may be tempted to transfer a part of the “burden” to the insurance industry

COVID-19
### Key factors triggering the entire ORSA process

<table>
<thead>
<tr>
<th>Triggers</th>
<th>Business planning</th>
<th>Solvency &amp; capital assessment</th>
<th>Capital planning</th>
<th>Risk profile</th>
<th>Governance (risk appetite, …)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adverse movements in the financial markets</td>
<td>⬤</td>
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<td>Significant claims ratio changes</td>
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<tr>
<td>Default of reinsurer /treaties renewal issues</td>
<td>⬤</td>
<td>⬤</td>
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<tr>
<td>Commercial development slowdown</td>
<td>⬤</td>
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<tr>
<td>Claims reporting pattern changes</td>
<td>⬤</td>
<td>⬤</td>
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<tr>
<td>Delayed dividend payment</td>
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<tr>
<td>Legal actions</td>
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<td>⬤</td>
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<tr>
<td>Project “renouncement”</td>
<td>⬤</td>
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</tbody>
</table>
COVID-19: Impacts on the Life Industry

Challenges

- Business continuity
- Customer service capability reinforcement
- Exposure assessment (GTC review)
- Rising claims (death, disability)
- Business decline (Layoffs, ...)
- Assets depreciation / Reduction of the Assets under Administration
Impacts on the Life Insurance Industry

<table>
<thead>
<tr>
<th>Challenges</th>
<th>Individual business (HNWI)</th>
<th>Group Business</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unit-Linked</td>
<td>Interest Rates Guaranteed</td>
</tr>
<tr>
<td>Rising claims (death, disability, lapses)</td>
<td>![Strong]</td>
<td>![Strong]</td>
</tr>
<tr>
<td>Business decline</td>
<td>![Strong]</td>
<td>![Weak]</td>
</tr>
<tr>
<td>Business continuity</td>
<td>![Weak]</td>
<td>![Weak]</td>
</tr>
</tbody>
</table>
## Initial response measures

<table>
<thead>
<tr>
<th>Challenges</th>
<th>Individual business (HNWI)</th>
<th>Group business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer service capability</td>
<td>Elevating advice and engagement: Policyholders are looking to their providers for financial advice, coaching and support – now is not the time to be silent. Sharp market declines have shaken investor confidence as many have witnessed their retirement savings rapidly deteriorate, driving an increased need for more frequent financial advice and guidance during these turbulent times.</td>
<td>Elevating advice and engagement: Customers are looking to their providers for health-related advice, coaching and support – now is not the time to be silent.</td>
</tr>
<tr>
<td>Rising claims (death, disability, lapses)</td>
<td>Back office reinforcement: Beneficiaries are looking to their providers for efficient claims management and advice.</td>
<td>Back office reinforcement: Beneficiaries are looking to their providers for efficient claims management and advice in particular in case of layoff.</td>
</tr>
</tbody>
</table>
| Business decline            | Launching COVID-19-retention campaign: due to the average age of the policyholders and the exposure on the French and Italian markets, a dedicated retention campaign should be launched.  
Launching COVID-19-specific offerings: In the near future, we will likely see a spike in demand for insurance coverage based on wealth products.                                                        | Launching COVID-19-retention campaign: due to the expected layoffs, a dedicated retention campaign should be launched including the “agreed regime”. |
| Business continuity         | Accelerating the launch of digital capabilities (policyholders, intermediaries, custodian banks, asset managers)                                                                                                                                                           | Accelerating the launch of digital capabilities (Employers, affiliates, intermediaries, custodian banks, asset managers) |

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Solvency II

2020 review
**Planning**

Solvency II harmonised the prudential framework for (re)insurers in the EU with its entry into application on 1 January 2016 through the definition of a **single rule book for risk based capital requirements and advanced risk management**.

After the technical review of the Solvency II Delegated Regulation in 2018, the Commission is conducting a broader **review of SII which cover the entire regulatory approach** by impacting all three pillars and extending the regulatory content.

The objective to this review is to **maintain the regime fit for purpose** in the current economic environment.

*“The new timing will allow an update of the holistic impact assessment in view of the impact of the pandemic on the financial markets and insurance business and to take that impact into account in EIOPA’s advice. The new timing strikes a balance between the need to use the opportunity of reviewing the Solvency II directive and the need for the advice to reflect recent developments”* – EIOPA, 30 Apr. 2020
Amendments

According to Article 77f of the Solvency II Directive, specific Articles are to be reviewed by the end of 2020, for example:

- Extrapolation of the risk-free yield curve;
- Volatility adjustment and matching adjustment;
- Equity risk mitigation measures (symmetric adjustment and duration-based equity risk module);
- Extended SCR recovery period in case of crisis; and
- Transitional measures.

In addition, according to Articles 111(3), 129(5) and 242(2), the SCR standard formula at the level of the Directive, the calculation of the Minimum Capital Requirements (MCR) and group aspects shall also be reviewed.

Extrapolation of the risk-free interest rate term structure

Matching adjustment and volatility adjustment

Transitional measures

Risk margin

Capital Market Union aspects

Dynamic modelling of the volatility adjustment

SCR-standard formula: interest rate risk

SCR-standard formula: counterparty default risk

Quantitative

SCR-standard formula: vt. risks, CAT, simplifications

Risk-mitigation techniques and other techniques to reduce SCR

Group supervision

Risk-management provisions on LTG measures

MCR

Best estimate

Own funds at solo level

Reducing reliance on external ratings

Supervisory measures

Macroprudential issues

Recovery and resolution

Proportionality and thresholds

Impact on the technical provisions

Impact on the SCR

Common impact on TP, SCR and other elements

“Cumulating the EIOPA’s estimates for the three most important measures, the interest rate stress, the last liquid point and the volatility adjustment, we estimate the impact on the Solvency II ratio could be anywhere from 30 to 70 percentage points on average per country (before diversification and potential loss-absorbing capacities), and for some life insurers by over 100 percentage points” - S&P Global Rating, 13 Jan 2020

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Solvency II 2020 review
Technical provisions and own funds

**Technical provisions**

Several aspect of the technical provisions have been reviewed by the EIOPA, such as:

**Interest rate term structure**

- EIOPA considers to choose a [later starting point (last liquid point - LLP)](last liquid point) for the extrapolation of risk-free interest rates for the euro or to [change the extrapolation method](change the extrapolation method) to take into account market information beyond the starting point. Changes are considered with the aim to avoid the underestimation of technical provisions and wrong risk management incentives.
- EIOPA considers potential changes in the approach to the [calculation of the volatility adjustment](calculation of the volatility adjustment) and whether should be subject to [supervisory approval](supervisory approval).

**Risk margin**

With regard to the risk margin of technical provisions, the sensitivity of the risk margin to interest rate changes and the calculation of the risk margin for undertakings that apply the matching adjustment or the volatility adjustment were analysed. The analysis did not result in a proposal to change the calculation of the risk margin.

**Own funds**

EIOPA has reviewed the differences in [tiering and limits approaches within the insurance and banking framework](tiering and limits approaches), utilising quantitative and qualitative assessment. EIOPA has found that they are justifiable in view of the differences in the business of both sectors. No changes have been proposed relating to the tiering structure or limits.
Extrapolation of the risk-free interest rate term structure

Current regulation

The last liquid point (LLP) corresponds to the transition point between the liquid part of the risk-free curve derived from observable market (swap rates) and illiquid part extrapolated to the ultimate forward rate (UFR) and is currently set at 20 years.

Current issues (some of them)

• **Underestimation of TPs:** the current difference between the UFR and the swap rates is important. This induces a large difference between observed level of swap rates and the extrapolated rates. This raise the concern that TPs might be underestimated as long-term liabilities are higher than observed rates.

• **Risk management incentives:** management decisions to hedge the risk in the financial market depend on the interest rate term structure used for the valuation of TPs. Any deviation may give the wrong incentives for adequate risk management.

Proposition

**Pillar 1**

- extension of the starting point for the extrapolation of the Euro risk-free interest rates i.e. extension of the LLP to 30 or 50 years; or
- Potential change to the extrapolation methodology taking into consideration market data beyond LLP.

**Pillar 2** – power to limit or prevent dividend payments or capital distribution granted to NSAs based on the 50 year LLP extrapolation (together with non-application of MA, VA and the transitionals and decrease of the level of the UFR of 100 basis points).

**Pillar 3** – Sensitivities to changes in the LLP and UFR disclosed in the RSR and SFCR.
Solvency II 2020 review
SCR standard formula (1/3)

EIOPA has reviewed the SCR calculation methodology in order to assess if the standard formula still adequately reflects the risks faced by (re)insurers:

**Interest rate risk**
EIOPA confirms its advice provided in 2018 to increase the calibration of the interest rate risk sub-module. The current calibration underestimates the risk and does not take into account the possibility of a steep fall of interest rate as experienced during the past years and the existence of negative interest rates.

**Counterparty default risk**
Optional simplified calculations in the counterparty default risk module for the risk mitigating effect of derivatives, reinsurance, SPV and insurance securitisations are proposed.

**Other relevant topics**
The review of the spread risk sub-module and the correlation matrices did not result in proposals for change. EIOPA is asking for quantitative evidence of any views that correlations should be changed within market risk or between lapse risk and market risk.

Regarding property risk, given the scarce available data and the on-going analyses, EIOPA is, at the time of the draft opinion, not in a position to provide the EC with a definitive advice implying a change to the current approach. Therefore EIOPA will continue its analyses towards a potential change to the capital requirement calculation method for this risk.
Solvency II 2020 review
SCR standard formula (2/3)

Interest rate risk

Current issue

- EIOPA reviewed the current calibration of the interest rate risk sub-module from 2017 to 2018 for its advice to the EC on the review of specific items in the Delegated regulation.
- Strong evidence was gathered demonstrating that the current approach for calculating capital requirements for interest rate risk leads to a severe under-estimation of the risks:
  - The reality of interest rate movements which have been much stronger than those provided by the stresses in the Delegated Regulation;
  - The fact that the current approach does not stress negative rates, although reality has proven that rates can continue to decrease;
  - The way internal model users measure interest rate risk significantly deviates from the current standard formula;
  - The impact assessment of proposals demonstrates that the risk is material and that current capital requirements are not sufficient;
  - There is a wide agreement among stakeholders that the current approach has severe flaws.

- The calibration set out in the Delegated Regulation was not changed when the European Commission amended that Regulation in 2019. In terms of timing, it has been favoured to revisit the topic during the 2020 review of the Solvency II Directive where also other elements affecting insurers’ exposure to interest rates will be reviewed.
- EIOPA upholds its view that the risk-free interest rate sub-module severely underestimates the risk and strongly advise to change the way capital requirements for interest rate risk are calculated in the Delegated Regulation.

Proposition

- EIOPA suggested to model interest rate risk with a relative shift approach which parameters vary in function of the maturity and set out a calibration proposal on that basis.
- The relative shift approach is recommended by EIOPA because it is a simple and transparent, purely data-driven, risk-sensitive approach applicable to any yield environment and which can well cope with low and negative interest rates.
- The proposed increased and decreased term structures for a given currency correspond to:

\[
\begin{align*}
  r_{\text{up}}^u(m) &= r_t(m) \cdot (1 + s_{\text{up}}^u(\theta_m)) + b_{\text{up}}^u, \\
  r_{\text{down}}^d(m) &= r_t(m) \cdot (1 - s_{\text{down}}^d(\theta_m)) - b_{\text{down}}^d
\end{align*}
\]

Where:
- \( r_t(m) \) denotes the risk-free interest rate in the corresponding currency;
- \( m \) denotes the maturity;
- \( b_{\text{up/down}}^u/d \) and \( s_{\text{up/down}}^u/d \) are the calibrated maturity dependent up/down-shock components.
- EIOPA advises that those parameters should take into account the starting point of the extrapolation of the euro term structure.
Counterparty default risk

Current issue

- The calculation of the risk mitigating effect for reinsurance, special purpose vehicles (SPV), securitisation and derivatives is considered the most burdensome part of the counterparty default risk module. Accordingly, it seems desirable to further simplify this part of the counterparty risk module if possible.

- The scenario-based calculations of the SCR, hypothetical SCR for man-made catastrophe risk for marine, aviation and fire risk should be based on the largest exposures after deduction of amounts recoverable from reinsurance or special purpose vehicles. In the fire, marine and aviation risk, changing the identification of the largest risks to be on a net of reinsurance basis may impact the counterparty default risk submodule, especially the calculations of the risk mitigating effect on underwriting risk of the reinsurance arrangement.

Proposition

- Amongst proposals regarding counterparty default risk, a simplified calculation of the risk-mitigating effect of derivatives, reinsurance arrangement, SPV and insurance securitisations is proposed. EIOPA proposes an additional optional simplification where the risk-mitigating effect for reinsurance arrangements and simple derivative structures can be computed in two steps:

  1. The total risk mitigating effect is calculated as:

     \[ RM_{total} = BSCR^{*,without} - BSCR^* \]

     Where:

     - \( BSCR^{*,without} \) is the BSCR without counterparty default risk that would result if no derivatives, reinsurance arrangement, SPV and insurance securitization were in force;
     - \( BSCR^* \) is the current BSCR if the counterparty default risk module is excluded.

  2. The risk mitigating effect of the derivative or reinsurance arrangement, SPV and insurance securitisation is calculated by:

     \[ RM_i = \frac{|EAD_i|}{\sum_{i=1}^{n}|EAD_i|} \times RM_{total} \]

     Where \( |EAD_i| \) denotes the absolute value of the exposure at default of the derivatives, reinsurance arrangement, SPV and insurance securitization towards counterparty \( i \) which corresponds to:

     - The absolute value of the derivative according to Article 75 of the Directive in case of derivative;
     - The absolute value of the best estimate of amounts recoverable towards counterparty \( i \) in case of reinsurance arrangement, SPV and insurance securitization.

- Another proposal with respect to the counterparty default risk corresponds to the calculation of the hypothetical SCR for the risk-mitigation effect of reinsurance arrangements. The hypothetical SCR for the fire, marine and aviation risk for the purpose of determining the risk mitigation effect in the counterparty default risk module should be calculated on the basis of the largest gross risk concentration for the fire, marine and aviation risk.
Solvency II 2020 review
Reporting and disclosure

EIOPA has been asked by the EC to assess and advice on the ongoing appropriateness of the requirements related to supervisory reporting and public disclosure. This consultation have been conducted in two waves. The main impacted public disclosure requirements are depicted below:

**SFCR – A dedicated part addressed to policyholders and another dedicated to other users**

EIOPA proposes amendments in the Directive and Delegated Regulation to distinguish the SFCR part addressed to policyholders from the part addressed to other users focused on a more quantitative and professional public information in order to specify the different addresses and clearly set expectation to the part of the SFCR addressing policyholders.

EIOPA proposes amendments in the Directive and Delegated Regulation regarding the section of the SFCR which address other users than policyholders:

- **Streamline the structure into only 4 areas:** Business and performance, System of Governance, Valuation for solvency purposes and Risk and capital management.
- **Use of standardised information** in the SFCR addressing other users than policyholders regarding the impact on the SCR coverage ratio and impact on the amount of the Own Funds with key sensitivity tests and triggers for changes in the amount of Own Funds.
- **Strengthening of some principles** either through Guidelines, Supervisory Statements or other tool deemed adequate:
  - No padding with information not explicitly required, no repetition of legal requirements;
  - No generic statements but relevant undertaking-specific information;
  - More structured formats (graphs, tables) could be prescribed in order to improve readability and comparability (collect good practice examples).

**SFCR – Other relevant topics**

**Audit of the SFCR information**

EIOPA proposes to introduce an auditing requirement in the Solvency II Directive. This should ensure that as a minimum the Solvency II Balance-Sheet is subject in all Member States to external auditing by a qualified auditor. The output should be an audit opinion published together with the SFCR.

Each Member State/NCA could on top of this minimum requirement request additional auditing requirements, namely covering the MCR, SCR and EOF. EIOPA also proposes an extension of the annual reporting and disclosure by 2 weeks to accommodate this audit requirement.

**Additional disclosure regarding LGT measures**

Regarding the disclosure of qualitative information on the use of LTG-measures, EIOPA advises to define and prescribe minimum information requirements. Special consideration should be given to the inclusion of the LTG-measures in the part of the SFCR which is addressed to policyholders. EIOPA holds the view that the SFCR template on the impact of the LTG measures should also show the impact on the SCR and MCR ratios.

EIOPA recommends that (re)insurance undertakings should disclose in their SFCR the outcome of a sensitivity analysis regarding the ultimate forward rates (UFRs) used in the extrapolation of risk-free interest rates. The sensitivity to assess is a fixed downward shift of the UFRs by 100 basis points.
Contacts

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IFRS 17
IFRS 17 amendments

Introduction

- At its October 2018 meeting, the Board identified 25 concerns raised by various stakeholders for potential amendments to IFRS 17 which have been analysed against the criteria for evaluating possible amendments between December 2018 and March 2019.

- In order to draw a plan for redeliberating on some of the matters raised by the respondents, the topics have been grouped into 3 lists:
  - The first list includes topics that were planned to be deliberated with limited discussion because of the general support coming from the respondents;
  - The second list includes topics for which the IASB tentatively decided to consider feedback received from respondents for further discussion;
  - The third list includes topics the IASB tentatively decided not to consider further because of either the general support received from the respondents for the IASB not to further consider these topics or because there are no new information received from the comment letters to warrant further discussion.

- Amongst the original 25 concerns raised by stakeholders, 12 concerns were identified by the Board as not meeting the criteria for potential amendments. Moreover, the concerns regarding the level of aggregation and VFA applicability to reinsurance contract held did not result in any amendment.

- We will mainly discuss the following concerns that resulted in amendments to IFRS 17, as published in the final version of IFRS 17 amendments on 25 June 2020.

<table>
<thead>
<tr>
<th>Concerns which resulted in amendments</th>
<th>List of topics</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Loans and other forms of credit that transfer insurance risk being within the scope of IFRS 17</td>
<td>for loans, for credit cards</td>
</tr>
<tr>
<td>2 Insurance acquisition cash flows for renewals outside the contract boundary</td>
<td></td>
</tr>
<tr>
<td>3 Contractual service margin: coverage units in the general model</td>
<td>for insurance contracts with direct participation features, for insurance contracts without direct participation features</td>
</tr>
<tr>
<td>4 Contractual service margin: limited applicability of risk mitigation option exception</td>
<td>for reinsurance held and application from transition date, for non-derivative financial instruments</td>
</tr>
<tr>
<td>5 Business combination: contracts acquired during settlement period</td>
<td>for transition relief, when full restatement is practicable</td>
</tr>
<tr>
<td>6 Transition: modified retrospective approach – further modifications</td>
<td></td>
</tr>
<tr>
<td>7 Reinsurance contract held: initial recognition when underlying insurance contracts are onerous</td>
<td></td>
</tr>
<tr>
<td>8 Presentation in the statement of financial position: need to allocate cash flows to each group of insurance contracts for separate presentation of groups of contracts in an asset and in a liability position</td>
<td></td>
</tr>
<tr>
<td>9 Interim financial statements: treatment of accounting estimates</td>
<td></td>
</tr>
<tr>
<td>10 Effective date: date of initial application of IFRS 17</td>
<td></td>
</tr>
<tr>
<td>11 Effective date: temporary exemption from applying IFRS 9</td>
<td></td>
</tr>
</tbody>
</table>
IFRS 17 amendments
Main amendments and their implication for insurers – Effective date

Date of initial application of IFRS 17 and temporary exemption from applying IFRS 9

Concerns and challenge raised
• Limitations in the availability of internal or third party experts, particularly actuaries and IT systems providers;
• Entities need more time to prepare than they originally expected;
• Uncertainty arising from discussion about possible amendments to IFRS 17 and subsequent changes affects planning and budget of entities implementing IFRS 17.

Amendments to IFRS 17
With a majority of vote, the IASB approved:
• The deferral of the effective date of IFRS 17 (incorporating amendments) for an additional year compared to the proposal in the ED to 1 January 2023;
• The extension of the expiry date of the temporary exemption from applying IFRS 9 for qualifying entities as set out in IFRS 4 to 1 January 2023.

The effective transition date is the 1 January 2022.

Implication for insurers
• The implications for insurers of the further deferral of IFRS 17 effective date can be seen as favourable by some insurers who are still in the early stages of their implementation projects or those that require more time due to challenges arising from implementing IFRS 17, such as systems, data, technical accounting issues.
• For insurers who are in the advanced stages of implementation project, the delay can be seen as unfavourable given the need to retain existing IFRS 17 resources and maintain two systems, i.e. existing systems and IFRS 17 compliant systems. Similar implications for the delay in the application of IFRS 9 can be observed.
IFRS 17 amendments
Main amendments and their implication for insurers - Measurement

Insurance acquisition cash flows

Concerns and challenge raised

• Commissions paid unconditionally on contracts that have been issued cannot be allocated to expected contract renewals.
• In some cases, commissions may exceed the premium for the initially written contracts causing the contracts to be onerous – viewed as being inconsistent with economics.

Amendments to IFRS 17

• Additional guidance on the accounting for pre-coverage IACF assets including impairment tests, and related disclosures required to provide users with useful information of IACF;
• IACF is recognised across coverage periods i.e. initial contract and expected renewals.

The IASB unanimously agreed on the Staff recommendations for each of the IACF areas discussed:

<table>
<thead>
<tr>
<th>Areas</th>
<th>Staff recommendations</th>
</tr>
</thead>
</table>
| Allocation of IACF     | • Finalisation of the proposed amendments to IFRS 17 that would require an entity to allocate IACF that are directly attributable to a group of insurance contracts applying a systematic and rational method:  
                        - To that group; and  
                        - To any future groups that include contracts that are expected to arise from renewals of the contracts in that group.  
                        • Clarification that once an entity allocates an IACF to a group of insurance contracts, they cannot be treated as a separate asset again. When allocated to a group, the IACF cannot be extracted from that group and reallocated to another. |
| Recognition of an asset| • Clarification of the unit of account (UoA) for an asset for IACF as the GIC to which those cash flows have been allocated.  
                        • The Board agreed with the Staff recommendations to amend IFRS 17 to provide guidance relating to:  
                          - Recognition of an IACF asset at transition;  
                          - Recognition of an IACF asset for acquired contracts at transition. |
| Impairment test        | Applying the proposed amendments to IFRS 17, an entity is required to perform the impairment test on assets for IACF only when facts and circumstances indicate that the asset may be impaired. An entity is required to perform a two step test: group level impairment test and an additional impairment test on expected future renewals.  
                        The Board agreed with the Staff recommendations to amend IFRS 17 to provide guidance relating to impairment test considerations on transition. |
| Disclosures            | Finalisation of the proposed disclosure requirements to include:  
                        • A reconciliation from the opening to the closing balances of assets for IACF, showing separately any recognition of impairment losses and reversals of impairment losses; and  
                        • Quantitative information in appropriate time bands, about when an entity expects to derecognize an asset for IACF and include those cash flows in the measurement of the GIC to which they are allocated. |
| Presentation           | Clarification that the asset will be shown in the same line item in the statement of financial position as the portfolio to which those future groups will be added, i.e. no separate presentation, only separate disclosures will be required. |
IFRS 17 amendments
Amendments and their implication for insurers - Measurement

Reinsurance contracts held - initial recognition when underlying insurance contracts are onerous

Concerns and challenge raised
- On initial recognition of onerous insurance contracts losses are recognized immediately;
- When those losses are covered by a reinsurance contract held any corresponding gains are recognised over the coverage period;
- Accounting mismatch may arise.

Amendments to IFRS 17
- An entity that recognises losses on onerous insurance contracts at initial recognition would also recognise a gain on reinsurance contracts held, to the extent that the reinsurance contracts.
- Calculation basis for the reinsurance recovery in P&L has been simplified and made applicable to all reinsurance contracts held. The calculation is based on the percentage of recovery from the reinsurance contracts held.
- At its December 2019 meeting, the IASB confirmed that the amendment to IFRS 17 applies only when the reinsurance contract held is recognised before or at the same time as the loss is recognised on the underlying insurance contract.

The following is an simplified illustrative example from Agenda Paper 2C, which demonstrates the result of applying the amendment when both premiums and claims are proportionate:

<table>
<thead>
<tr>
<th></th>
<th>Recognised immediately</th>
<th>Recognised over time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance contracts issued</td>
<td>(50)</td>
<td></td>
</tr>
<tr>
<td>Reinsurance contract held</td>
<td>-</td>
<td>20</td>
</tr>
<tr>
<td>Profit/(loss)</td>
<td>(50)</td>
<td>20</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Proposed amendment</th>
<th>Recognised immediately</th>
<th>Recognised over time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance contracts issued</td>
<td>(50)</td>
<td></td>
</tr>
<tr>
<td>Reinsurance contract held</td>
<td>20</td>
<td>-</td>
</tr>
<tr>
<td>Profit/(loss)</td>
<td>(30)</td>
<td>-</td>
</tr>
</tbody>
</table>

Implication for insurers
- Expected to improve consistency;
- Might disrupt implementations that are underway, thereby increasing costs for entities that have started processes.
IFRS 17 amendments
Amendments and their implication for insurers - Measurement

Contractual service margin – limited applicability of risk mitigation option exception

Concerns and challenge raised

Risk mitigation option applicability:

- Derivatives or reinsurance contracts may be used to mitigate financial risks arising from insurance contracts with direct participation features;
- When derivatives mitigate financial risks, the entity can choose to recognise changes in insurance contracts in profit or loss, rather than as adjustments to the CSM, to offset the changes in fair value of derivatives (risk mitigation option).

Risk mitigation option at the transition:

- Prohibition from applying the risk mitigation option retrospectively. The risk mitigation option cannot be applied for periods before the date of initial application of IFRS 17 – i.e. before the beginning of the annual reporting period in which IFRS 17 is first applied.
- This prohibition may affect comparative information for the period immediately before the date of initial application.

Amendments to IFRS 17

- Prospective application from transition date (instead of initial application date) for risk mitigation option applied to direct participating contracts;
- The applicability of the risk mitigation option is extended to permit the use of reinsurance contracts held and non-derivative financial instruments measured at fair value through profit or loss as hedging instruments.

Implication for insurers

- The extension of the risk mitigation option is expected to reduce accounting mismatches and therefore the complexity for users of financial statements in understanding the accounting.

Remark: some respondents proposed to extend the eligibility for the VFA to reinsurance contract held rather than extending the scope of the risk mitigation. The Board decided to retain the prohibition to apply the VFA to reinsurance contracts issued.
**IFRS 17 amendments**

Amendments and their implication for insurers – Interim financial statement

**Treatment of accounting estimates**

**Concerns and challenge raised**

Most of the respondents who provided feedback on the initial requirement concerning interim financial statements expressed concerns about the application of the requirement. These respondents noted that the previous requirement:

- Does not ensure comparability between entities with different reporting frequency;
- Results in a more significant practical burden, especially for entities in a consolidated group with different frequency of reporting;
- Results in a fundamental change to existing insurance accounting practices for entities that currently use a year-to-date basis in interim financial statements, therefore presenting a major implementation challenge;
- Does not result in useful information given that many entities currently do not fully update actuarial assumptions at interim periods for the purpose of applying IAS 34.

The following is an illustrative example from Agenda Paper 2D applying initial requirement concerning interim financial statements:

- At the beginning of year 1, Entity A and Entity B issue the same two-year insurance contract with a premium of CU100, expected claims of CU50, and a contractual service margin (CSM) of CU50 which is allocated based on coverage units on a straight-line basis.
- In Q4 of Year 1, Entity A and Entity B change their expectations and now expect an additional amount of claims of CU30 to be incurred in Year 2.

<table>
<thead>
<tr>
<th>CSM recognized in profit or loss</th>
<th>Q1</th>
<th>Q2</th>
<th>Q3</th>
<th>Q4</th>
<th>Year 1</th>
<th>Remaining CSM EoY 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entity A (quarterly reporting as defined in B137)</td>
<td>6.25</td>
<td>6.25</td>
<td>6.25</td>
<td>0.25</td>
<td>19.00</td>
<td>1.00</td>
</tr>
<tr>
<td>Entity B (annual reporting)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>10.00</td>
<td>10.00</td>
</tr>
</tbody>
</table>

**Amendments to IFRS 17**

- An **accounting policy choice** at the reporting entity level is provided as to whether to change the treatment of accounting estimates made in previous interim financial statement.
- **Transition relief** has been provided for entities that apply the MRA and the accounting policy choice above, to determine CSM, loss component and amounts related to insurance finance income or expenses at the transition date as if the entity had not prepared any interim financial statement before the transition date.

**Implication for insurers**

Expected to reduce implementation costs, as entities are given the ability to adopt a choice that will be less burdensome from a practical perspective, especially for entities within a consolidated group with different reporting periods.
IFRS 17 amendments
Concerns regarding the annual cohorts for insurance contracts with intergenerational sharing of risks

- The Board did not ask a question on the annual cohort requirement in the ED. However, some respondents commented on the Board’s decision to retain the requirements unchanged. This was a decision the Board reached in March 2019.

- The IASB included in its deliberations the question of annual cohort requirement for insurance contracts with intergenerational sharing of risks between policyholders in February 2020 once more. However, it came to the same conclusion as before and decided to retain, unchanged, the annual cohort requirement in IFRS 17.

- Consequently, entities are required to apply, with no exception, the annual cohort requirement to insurance contracts with intergenerational sharing of risks between policyholders.

- The main rationale supporting IASB decisions to retain unchanged the annual cohort requirement is that annual cohort requirement is essential for prudent planning as it provides information about changes in profitability of insurance contracts over time and a timely recognition of losses.

- IASB responded in an article to the three key concerns raised by various stakeholders on the annual cohort requirement in particular, as it applies to contracts with intergenerational sharing of risks:

  - Extent of mutualisation varies widely across different contracts.
  - Contracts that share all types of risks fully across policyholders with the insurer bearing no risk are very uncommon.
  - Significant differences in financial performance can occur between different annual cohorts, particularly when contracts include minimum guarantees.
  - The effect of the minimum guarantee on the insurer’s share could cause an individual annual cohort to become onerous, especially in an ultra-low or negative interest environment.
  - If the CSM is not accounted by annual cohort, it may result in:
    - Losses not recognised on a timely basis;
    - Financial statements not representing meaningful trends in profitability.

  - Subsidisation is a fundamental principle for contracts with intergenerational sharing of risk. Accordingly, IFRS 17 requires the effect of that subsidisation to be included in the measurement of the annual cohorts.
  - The adjustments to allow for changes in the fulfilment cash flows and the CSM of each annual cohort, depict the extent to which profit from existing contracts are expected to subsidise future/other contracts or vice versa.
  - The annual cohort requirement provides useful insights about how management expects the business to develop.

  - Although the use of annual cohorts adds complexity to accounting systems, the requirement remains appropriate as the costs of the requirement are outweighed by the benefits of the resulting information.
  - Any exemption would add further complexity to IFRS 17, and may result in an unacceptable loss of useful information.
  - In practice, annual cohorts may not always be necessary. The requirements in IFRS 17 specify the amounts to be reported, not the methodology to be used to arrive at those amounts.
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Tax compliance

- Corporate direct tax
- DAC 6
- VAT
Corporate direct tax
Corporate tax hot topics

**ATAD I**
- ATAD I is the EU version of BEPS dealing notably with:
  - (i) interest limitation,
  - (ii) exit taxation,
  - (iii) general anti-abuse rule - GAAR,
  - (iv) CFC rules and
  - (v) hybrid mismatches in EU.
- Apply to fiscal years starting on or after 1 January 2019.

**ATAD II**
The objective of the provision regarding hybrid mismatches is to neutralize the tax effects of hybrid arrangements, exploiting differences in the tax treatment of an entity or instrument under the laws of two countries to achieve a deduction in both States. ATAD 2 extends the scope of ATAD 1 to hybrid mismatches involving third countries (i.e., non-EU countries) and concerning forms of hybrid mismatches not covered by ATAD 1.

**CRS/FATCA Audit**
Following the announcement of the Luxembourg Tax Authorities ("LTA") to perform audits in order to review the compliance of the Financial Institutions with AEOI regulations, many of them already received a formal request to provide in a short timeframe (i.e. 1.5 months) a list of information and documentation.

**Transfer Pricing rules**
The transfer pricing rules of 2015 continue to have effects today:
- Impact of BEPS
- Campaign by Luxembourg tax authorities
- Tax Audit Environment
- Focus by regulators on Tax governance as indicator of proper management as part of on-site visits
- Impacts of regulatory developments
- IP Regime
- Impact of Tax rulings
New DTT Lux-France
### Extension of the concept of PE

<table>
<thead>
<tr>
<th>Current Taxation Rules in relation to Business Profits</th>
<th>Luxembourg MLI position</th>
<th>New DTT Luxembourg / France</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fixed Place of Business</strong></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Fixed place of business through which the business of an enterprise is wholly or partly carried on (e.g. branch).</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Dependent Agent</strong></td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>A person who acts on behalf of an enterprise and has, and habitually exercises, in a State an authority to conclude contracts in the name of the enterprise.</td>
<td>Luxembourg reserves its right to not apply the extension of definition in its future DTTs.</td>
<td>Luxembourg has decided to follow the French position (e.g. extension of the PE definition).</td>
</tr>
<tr>
<td><strong>Independent Agent</strong></td>
<td>✗</td>
<td>✓</td>
</tr>
<tr>
<td>A broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business. Special rules may apply for insurance business in some tax treaties.</td>
<td>Luxembourg reserve its right to maintain the definition as it is in current rules.</td>
<td>Luxembourg has decided to follow the French position (e.g. extension of the PE definition).</td>
</tr>
<tr>
<td><strong>Nature of the activities</strong></td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Insurance companies which, through a representative other than an independent agent, receive premiums in the territory of the other State or insure risks in that territory.</td>
<td></td>
<td>Additional comments on the factors to be considered to determine if an agent is independent or not (i.e. Activities (almost) exclusively performed on behalf of one or closely related enterprise(s)).</td>
</tr>
<tr>
<td><strong>Preparatory and auxiliary activities</strong></td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>List of specific activity exemptions which does not constitute a PE (e.g. preparatory and auxiliary activities).</td>
<td></td>
<td>The list of specific preparatory and auxiliary activities is more restrictive.</td>
</tr>
</tbody>
</table>

**Extension of the PE definition** to capture situations where a Dependent Agent not only has the authority to conclude contracts, BUT also habitually plays the principal role leading to the conclusion of contracts under conditions.

**Luxembourg MLI position**

- Luxembourg reserves its right to not apply the extension of definition in its future DTTs.

**New DTT Luxembourg / France**

- Luxembourg has decided to follow the French position (e.g. extension of the PE definition).
Practical impact on insurance companies

Dependent/Independent agents

- «Carte de démarchage» (depending of the numbers);
- Trip (depending of the numbers and the duration);
- Real function (depending of the type);
- Social network impact;
- Role and responsibility of the LuxCo Vs the sales man in France;
- Applicable procedures

- A sales person who have the power to conclude contracts on behalf of the Luxembourg company ("LuxCo");
- A sales man who performed routine negotiation on behalf of the LuxCO;
- An independent agent with an exclusivity for one LuxCo.

- Recognized as PE
- Non-recognized as PE

- An independent agent without any exclusivity to one LuxCo;
- Purely preparatory and auxiliary activities;
- Could be challenged by the French Tax Administration.
DAC 6
Cross border transaction: the rules

Cross-border arrangement means an arrangement concerning either more than one Member State or a Member State and a third country where at least one of the following conditions is met:
(a) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;
(b) ... 

Cross border transaction: the guidelines/project of law insists on notion of “participant”

In Luxembourg (guidelines):
« Il n’y a pas de dispositif transfrontière au sens de l’article 1er, point 1, lettres a)-d) si tous les participants au dispositif sont résidents à des fins fiscales dans le même État membre (qui n’est pas le Luxembourg), que l’intermédiaire n’est pas un participant au dispositif et qu’il est le seul à présenter un lien avec le Luxembourg ».
« Un intermédiaire qui exerce, en relation avec un dispositif transfrontière, exclusivement les activités telles la conception la commercialisation, l’organisation d’un dispositif transfrontière, la mise à disposition d’un tel dispositif aux fins de sa mise en œuvre, n’est pas à qualifier de participant au dispositif à moins que cet intermédiaire ne soit également actif dans le dispositif qu’il a lui-même imaginé, proposé, mis en place, mis à disposition pour l’implémentation ou en a géré l’implémentation pour le bénéfice du contribuable concerné ».

In Belgium (project of law):
Ainsi, l’inscription d’une branche 23 luxembourgeoise par un Belge, en supposant que cela ne fasse pas partie d’un ensemble plus grand d’étapes ou parties, n’est pas un dispositif transfrontière, car les conditions posées dans la définition du dispositif transfrontière ne sont pas remplies. Dans l’exemple, la branche 23 n’est d’ailleurs pas un participant en soi. Un participant a une résidence fiscale ou dirige une entreprise/exerce une activité, comme il ressort de la définition d’un dispositif transfrontière. Ce n’est pas le cas pour une branche 23.

=> The role of the intermediary is key as it allows to qualify it as a participant or not entailing the qualification of a cross border arrangement

DAC6
Only hallmarks of categories A, B and some of the C category are subject to a Main Benefit Test (MBT).

“where the main benefit or one of the main benefits, which having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is obtaining of a tax advantage”

The MBT will have to be met with respect to covered taxes. A tax advantage can be obtained in an EU member state or in a third country.

The MBT should be met if an arrangement, taken as a whole, is not consistent with the object or purpose of the applicable legislation and with legislative intent.

DAC6 transposition in Luxembourg law

Hallmark categories

A - GENERIC HALLMARKS
- Confidentiality clause
- Success fee
- Standardized documentation and/or structure

B - SPECIFIC HALLMARKS
- A loss-making company acquired and the use of losses
- Conversion of income into other types of income taxed at a lower level
- Round tripping of funds using conduits/entities without substance

C - SPECIFIC HALLMARKS RELATED TO CROSS BORDER TRANSACTIONS (C1)
Deductible cross-border payments made between associated enterprises where the recipient’s country applies:
- a zero or almost zero tax rate
- a full tax exemption
- a preferential tax regime

D - HALLMARKS RELATED TO AUTOMATIC EXCHANGE OF INFORMATION AND BENEFICIAL OWNERSHIP
- EU legislation or any equivalent agreements related to the automatic exchange of information on financial accounts circumvented
- Non-transparent legal or beneficial ownership chains used

E - SPECIFIC TRANSFER PRICING HALLMARKS
- Unilateral safe harbor rules used
- Transfers of hard-to-value intangibles
- Intra cross-border transfer of functions and/or risks and/or assets resulting in profit shifts (50% of EBIT)
DAC6 transposition in Luxembourg law

Impacts of COVID 19 on deadlines*

- 01.07.2020: Effective application of the law
- 30.07.2020: First reporting on new arrangements

2020

- 01.01.2021: Beginning of reporting
- 30.01.2021: First reporting on arrangements**

2021

*The Luxembourg text amending DAC6 is not yet available yet
**Arrangements from 01.07.2020 until 31 December 2020 + new arrangements as from 01.01.2020

EU Proposal
Option to delay DAC 6 deadlines of 6 months

EU Member States reactions

 Luxembourg decided to opt
The Luxembourg Ministry of Finance has just published on its website a communication stating that DAC6 reporting obligations could be deferred by six months and would introduce a draft law to transpose this deferral. The Luxembourg Ministry of Finance also commits to not applying any penalties for the late transmission of information under DAC6 until the amendments are transposed in domestic law

Almost all EU countries should in principle opt for the delay except Finland. Duration of 6 months not confirmed by Sweden.
# DAC6 transposition in Luxembourg law

## What needs to be reported to the Luxembourg tax authorities?

**Reportable information includes**

- Identification of intermediaries and relevant taxpayers: names, place of tax residence, TIN
- Also identification also of associated enterprises participating in the arrangement

- Details of hallmark(s) that make the cross-border arrangement reportable

- A summary of the arrangement, including the name by which it is known and an adequate description of the relevant business activities

- The date on which the first stage of the reportable cross-border arrangement was implemented or will be implemented

- Details of the national provisions of the concerned countries that form the basis of the arrangement

- The value of the reportable cross-border arrangement

- The EU member state of the relevant taxpayer(s) and any other EU member state(s) likely to be concerned by the arrangement

- The identity of any other person likely to be affected by the cross-border arrangement, indicating to which member state(s) this person is linked
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Out/in-sourcing – VAT

• 2017: CJEU ruled that financial and insurance sectors could not set up “independent group of persons”
• 2018: Luxembourg introduces the VAT group

• As from 1 January 2018, the management of collective life insurance funds under the CAA supervision could be VAT exempt (“unit link”)

• The VAT Directive does not define the criteria an outsourced service should meet to be VAT exempt, the CJEU has provided some guidance

• Abbey National (2006): “if, viewed broadly, they form a distinct whole, and are specific to, and essential for”

• GfBk (2013): “services intrinsically connected to”

• CJEU - Aspiro (2016): claims settlement services not VAT exempt, no systematic reference to the insurance directive
European review of VAT exemption of financial and insurance services: Need to keep contacts with Luxembourg authorities

- Study conducted by consultants for the EC started Q2 2019
- Interviews of professional associations (e.g., ACA, Insurance Europe) and businesses
- Report expected for Q3 2020

Main messages of associations and businesses:
- Need to maintain the VAT exemptions and to clarify them; including outsourcing
- Need to reintroduce the “independent group of persons” on a cross-border basis and/or a cross-border VAT

- A similar review was conducted between 2006 and 2011

Example of proposed definition of outsourced services (not adopted):

« supply of any consistent element of an insurance or financial service which itself forms a distinct whole and is specific

- The main un-resolved difficulties were:
  - Definition of outsourcing
  - Rules applicable to IGP and VAT group
  - Definition of investment funds
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GES

Cross-border workers working from Home during COVID-19 crisis

Français Belge Allemand
Cross-border workers / Luxembourg
Social security impact

Social security impact (out of Covid-19 crisis considerations)

Based on the EU Social Security Regulations, cross-border commuters working for a Luxembourg employer should be affiliated to Luxembourg social security system, if less than 25 percent of their working time (or remuneration) on a 12-month period (hereafter “the 25 percent threshold”) is performed in their State of residence. In principle, homeworking is counted as working activity in the State of residence, therefore taken into account in the 25 percent threshold calculation.

‘Force majeure’ exceptions

<table>
<thead>
<tr>
<th>Country</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>France confirmed on 19 March 2020 that an increase in the time spent on the French territory due to the increased use of remote working will not have any impact with respect to social security coverage. This exceptional position remains applicable until further notice, and is expected to be extended until 31 August 2020.</td>
</tr>
<tr>
<td>Belgium</td>
<td>Belgian authorities have confirmed that the homeworking linked to COVID-19 pandemic will not be considered in the 25% threshold calculation from 13 March 2020. This exceptional position remains applicable until further notice, and is expected to be extended until 31 August 2020.</td>
</tr>
<tr>
<td>Germany</td>
<td>As per the information posted on the German ‘DVKA’ website, temporary homeworking linked to COVID-19 pandemic will not create social security implications for German cross-border workers, who work for a Luxembourg employer. This exceptional position remains applicable until further notice, and is expected to be extended until 31 August 2020.</td>
</tr>
</tbody>
</table>
Personal Tax impact (out of Covid-19 crisis considerations)

Basic assumption of individuals working full-time and full-year in Luxembourg:

<table>
<thead>
<tr>
<th>Country</th>
<th>Workdays outside Luxembourg</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>Up to 29 workdays per year</td>
</tr>
<tr>
<td>Belgium</td>
<td>Up to 24 workdays per year</td>
</tr>
<tr>
<td>Germany</td>
<td>Up to 19 workdays per year</td>
</tr>
</tbody>
</table>

If the threshold is exceeded, workdays worked out of Luxembourg, i.e. workdays worked in the worker's home country and/or other non-Luxembourg days would be taxable in the worker's home country. Related employment income would enjoy a subsequent tax exemption in the Luxembourg payroll.

‘Force majeure’ exceptions

<table>
<thead>
<tr>
<th>Country</th>
<th>Exception</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>From Saturday 14 March 2020, the presence of a worker at his home office to carry out his activity will not be taken into account in calculating the 29 days threshold (applicable until 31 August 2020).</td>
</tr>
<tr>
<td>Belgium</td>
<td>From 11 March 2020 to 30 June 2020 according to the amicable arrangement related to the Belgium-Luxembourg tax treaty: teleworking activities (performed from home in Belgium) are not taken into account while assessing the 24 days threshold allowed outside Luxembourg territory, while remaining exclusively taxable in Luxembourg. This agreement has been extended until 31 August 2020 based on a joint decision taken by both Contracting States.</td>
</tr>
<tr>
<td>Germany</td>
<td>Luxembourg and Germany signed an agreement (Memorandum of Understanding) which states that, are not taken into account in the 19 days threshold, the days worked by German resident cross-border workers in their Home office due to Covid-19 from 11 March 2020 to 31 July 2020. This agreement remains applicable unless one of the Contracting States decide to terminate the Memorandum of Understanding in a due time.</td>
</tr>
</tbody>
</table>
Social Security ‘Force majeure’ exceptions / Luxembourg

- Dates from 13 March 2020 to 19 March 2020:
  - Start
  - Days worked from Home are not taken into account in the computation of the 25% threshold

- Tolerance applicable until further notice and expected to be extended until 31 August 2020

Personal Tax ‘Force majeure’ exceptions / Luxembourg

- Dates from 11 March 2020 to 14 March 2020:
  - Start
  - Days worked from Home are not taken into account in the computation of the tolerance thresholds

- Expected end and potential impact zone
Key focus on exception cases

Cross-border workers working in Luxembourg may face personal tax and social implications arising from their employment activities (i.e. working from Home, business trip out of Luxembourg, aso) during/after the COVID-19 crisis.

The consideration of exception cases (i.e. employees under special holiday, part-time employees, exposed workers unable to work from the office for a longer term) is strongly recommended for review as well as the specificities of certain tax treaty provisions on the implemented new working from Home policy.
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PRIIPs
Les ESAs ont lancé une consultation en Octobre 2019 qui a été commentée massivement par les associations et les acteurs de la place. Une nouvelle version des RTS tenant compte des commentaires était attendue premier trimestre 2020. La CE a demandé aux ESAs de réexaminer leur projet avant même leur présentation à la CE/PE. La révision est toujours en cours. Une nouvelle version est attendue au plus tôt fin juin 2020.

Scénarios de performance: scénarios intermédiaires, scénario de stress, probabilité de «survenance», performances passées par rapport à futures, ajout d'informations sur la garantie minimale, etc.

Présentation des coûts: Plusieurs nouvelles options de présentation.

Traitement des MOPs: Nouvelle approche pour les options les plus communes, Cost over time par classe de risque, etc.

→ Temps d’implémentation limité
Luxembourg – LC 20/2 et LC 20/3

**LC 20/2**
Relative aux modalités de fourniture, de format et de contenu du document d’informations clés (KID) requis par la règlementation PRIIPs

Quelques points d’attention
- Art 2.3 clarifie les modalités de fourniture d’un KID pour des contrat souscrits avant le 1/1/2018.
- Art 4.2 clarifie les obligations d’information des garanties optionnelles et/ou obligatoires.
- Art 4.3 recommande l’ajout d’un disclaimer sur les calculs des performances.

**LC 20/3**
Modifie la LC 09/1 relative au rapport distinct à fournir par le réviseur des entreprises d’assurances directes (entrée en vigueur sur l’exercice 2019)
La partie 1 du rapport distinct a été enrichie des questions suivantes:

a) L’entreprise dispose-t-elle de documents d’informations clés tels que prévus par le règlement PRIIPs pour chaque produit commercialisé au ou après le 1er janvier de l’exercice faisant l’objet de la révision des comptes ?
b) Les documents d’informations clés existants sont-ils publiés conformément à l’article 5 du Règlement PRIIPs ?
c) Sur base d’un contrôle exhaustif ou d’un sondage, y a-t-il des violations quant à la conformité des documents d’informations clés par rapport au règlement délégué (UE) 2017/653 de la Commission du 8 mars 2017 complétant le Règlement PRIIPs ?

En cas de réponse négative à l’une des deux premières questions ou de réponse positive à la troisième question, la partie 2 donnera des précisions sur les produits concernés et les manquements constatés. »
France – Reporting additionnel de la loi Pacte

- Précontractuel
  - Le distributeur doit fournir des informations objectives sur le produit d'assurance sous une forme « compréhensible » (en lieu et place de « claire » dans l’ancienne version)
  - Le distributeur doit communiquer au client pour chaque UC, la performance « nette » des frais et les éventuelles rétrocessions perçues

- Trimestriellement
  - Information trimestrielle sur la valeur de rachat
  - et, à partir de 2022, sur la proportion investie sur les actifs ISR/solidaire/transition énergétique
  - Ce qui sera aussi un enjeu en termes de référentiel

- Annuellement
  - Le souscripteur doit également être informé annuellement :
    - de l’évolution annuelle de la valeur des UC à compter de la souscription du contrat
    - des frais prélevés par l’assureur au titre de chaque UC
    - des frais supportés par l’actif en représentation de l’engagement en UC au cours du dernier exercice connu
    - et, le cas échéant, des rétrocessions de commission perçues au titre de la gestion financière des actifs représentatifs des UC par l’assureur, par ses gestionnaires délégués (y compris les OPC), ou par le dépositaire des actifs du contrat
    - ainsi que des modifications significatives affectant chaque unité de compte.
  - Impact encore à clarifier pour les gestions sous-mandats et par conséquent sur les FID, FIC et FAS
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ESG

Sustainable Finance
Impacts and challenges for the insurance industry
European Legislative framework

- **Paris Climate Agreement**
- **UN Agenda 2030 and the SDG**

- **12/2015**: High-level Expert Group on Sustainable Finance (HLEG)
- **07/2016**: HLEG Interim report
- **12/2016**: **One Planet Summit**
- **12/2017**: HLEG Final Report
- **01/2018**: EU Action plan on Financing sustainable Growth
- **03/2018**: Technical Expert Group (TEG) starts their work
- **05/2018**: EU Action Plan – Legislatives Proposals
- **07/2018**: Development of the regulatory context
Objectives and key actions of the EU Action Plan on Financing Sustainable Growth

EU Action Plan on Financing Sustainable Growth published in March 2018, is paving the way for implementing 10 key actions following 3 main objectives:

1. Better integrating ESG in ratings and market research
2. Clarifying institutional investors and asset managers’ duties
3. Incorporating sustainability in prudential requirements

4. Manage financial risks stemming from climate change, resource depletion, environmental degradation and social issues

5. Reorient capital flows towards sustainable investment, in order to achieve sustainable and inclusive growth

6. Foster transparency and long-termism in financial and economic activity

7. Strengthening sustainability disclosure and accounting rule-making
8. Fostering sustainable corporate governance and attenuating short-termism in capital markets

• Establishing an EU classification system for sustainability activities
• Creating standards and labels for green financial products
• Fostering investment in sustainable projects
• Incorporate sustainability in investments advice
• Developing sustainability benchmarks
A more stringent regulatory context

| Non-Financial Reporting Disclosure (Revision) | Report on Corporate Responsibility, Business model, risks and environment and diversity policies + EFRAG Climate-related disclosures |
| Preferences on sustainability (MiFID II & IDD) | Assess client’s ESG preferences and integration of the client preferences into the investment decision process |
| Shareholders Right Directive | Integration of ESG criteria in engagement policy, voting report and investment strategy |
| Integrating sustainability in UCITS Directive & AIFMD | Obligation related to sustainability risks, conflict of interest, due diligences, resources & expertise and senior management responsibilities |
| Sustainability-related disclosures in the financial services sector | Disclosure obligation at entity level on risk and remuneration policy and at product level on sustainability risk and adverse impact and additional reporting requirements for ESG products |
| EU Taxonomy | Reference to be done on the application of the EU Taxonomy and additional reporting requirements for products considering environmental objectives |
| Climate benchmarks and ESG disclosures benchmarks | Additional reporting requirements when using index as reference benchmark |
| EU Green Bond Standard and labels | Consideration of GBS when issuing Green bonds |
EU Action Plan on Sustainable Finance
Insurers will be impacted in their role of insurance undertaking promotors and distributors

- Harmonized rules on the **transparency to be applied by financial advisors** with regard to the **integration of sustainability risks** in their advisory process, as part of their duties towards investors.
- Harmonized rules with regard to the **transparency of financial products** that have as their targets sustainable investments.
- Financial advisors **offering products marketed as sustainable** would have to provide clients with information on **how the product achieves its sustainability targets and what is the sustainability-related impact.**

Sustainability-related disclosures in the financial services sector (regulation 2019/2088)

**Insurance distributor**

**Manufacturers**

**Asset Manager**

- Description of the manner in which sustainability risks are integrated into their investment and the result of the assessment of the likely impact of sustainability risks on the returns of financial products.
- Description on how adverse sustainability impacts are considered

**Additional reporting requirements for**

- Products promoting environmental or social characteristics
- Product having sustainable investment as its objective
- For product promoting environmental characteristics or that invests in an activity that contributes to an environmental objective

Reporting on risk policy, remuneration policy and on whether they consider in the insurance advice the principal adverse impacts on sustainability factors.
Insurers will be impacted in their role of insurance undertaking promotors and distributors

- Solvency II - Organisational requirements – include a reference to sustainability risks under the tasks of the risk management function
- Solvency II - Operating condition – Integrate the sustainability risks within the prudent person principle
- Solvency II - Risk Management - Integrate the sustainability risks in the underlying risk management area
- IDD – Organizational requirements – Assess the conflict of interest that may arise with regard to the ESG preferences of the customers
- IDD - Product oversight and governance – Integrate the sustainability factors in the target market definition and assessment

Delegated Regulation amending Delegated Regulation (EU) 2017/2358 and Delegated Regulation (EU) 2017/2359 as regards the integration of sustainability factors and preferences into the product oversight and governance requirements for insurance undertakings and insurance distributors and into the rules on conduct of business and investment advice for insurance-based investment products.
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EMIR Refit & uncleared Margin Rules
EMIR Reminder: 3 main pillars

EMIR introduced the following risk mitigation techniques to reduce the operational risk of bilateral (non-centrally cleared) OTC derivative transactions:

1. **Timely confirmation**: Counterparties must document the agreement of all the terms of a contract and must report discrepancies outstanding more than 5 days;

2. **Daily valuation**: Counterparties must evaluate their contracts on a daily basis using a mark-to-market method. Where this method cannot be used, a mark-to-model approach must be applied and the method must be calibrated and validated;

3. **Portfolio reconciliation**: Counterparties must reconcile the key terms (e.g. valuation, asset class, underlying, etc.) of each trade with each counterparty to identify any discrepancies;

4. **Dispute resolution**: Counterparties must have agreed procedures and processes to identify, record and monitor disputes relating to contract recognition or valuation and exchange of collateral, and to resolve disputes in a timely manner;

5. **Portfolio compression**: When counterparties have at any given time at least 500 trades outstanding between them, the counterparties must assess whether compression of the number of trades is appropriate (i.e. to achieve a risk exposure reduction).

6. **Exchange of Collateral**: Risk management procedures that require the timely, accurate and appropriately segregated exchange of collateral:
   - Daily exchange of Variation Margin (VM)
   - Exchange two-way Initial Margin (IM)

- **Reporting**:
  - All OTC and ETD contracts should be reported to trade repositories on T+1
  - EMIR level 3

- **Clearing Obligations**:
  - Standardized derivative contracts (OTC derivatives) should be cleared through central counterparties in order to reduce the risk in the financial system

**Required starting from:**

- March 2013
- September 2013
- Phase-in as from February 2017
- February 12th 2014
- October 30th 2017
- June 21st 2016
EMIR Refit

Key elements

<table>
<thead>
<tr>
<th>Other changes</th>
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<tbody>
<tr>
<td><strong>CCPs and clearing members</strong></td>
</tr>
<tr>
<td>• Client margin</td>
</tr>
<tr>
<td>Article 39 of EMIR is amended by inserting a new provision requiring that member states’ national insolvency laws shall not prevent a CCP from distributing client margin of a defaulting clearing member to its underlying clients.</td>
</tr>
<tr>
<td>• Information from CCPs</td>
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<td>CCPs will be required to provide clearing members with a tool (and certain related info) which simulates the IM requirement upon the clearing of a new transaction.</td>
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<tr>
<td>• FRANDT principle</td>
</tr>
<tr>
<td>Entities which provide direct or indirect clearing services must do so under terms which are “fair, reasonable, non-discriminatory and transparent”.</td>
</tr>
<tr>
<td>• Reporting by funds and IORPs</td>
</tr>
<tr>
<td>The EMIR REFIT regulation clarifies that the management company of a UCITS or AIF is legally responsible for making the reports on the latter’s behalf. The same applies to management companies of institutions for occupational retirement provisions (IORPs) where the IORP does not have legal personality.</td>
</tr>
<tr>
<td><strong>Risk-mitigation for un-cleared derivatives</strong></td>
</tr>
<tr>
<td>• Margin requirements</td>
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<tr>
<td>The EMIR REFIT regulation includes a recital acknowledging that the need for international convergence means that marging of both FX forwards and FX swaps should be limited to transactions between the most systemic counterparties (i.e. credit institutions and investment firms).</td>
</tr>
<tr>
<td><strong>Trade repositories</strong></td>
</tr>
<tr>
<td>• New article 76a</td>
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<tr>
<td>A new article 76a of EMIR is being introduced, to allow the Commission to approve arrangements for EU authorities to have direct access to information held by TRs in a third country, and to allow relevant authorities in that third country to have access to information held by EU TRs. This could potentially be relevant in future years to arrangements between the UK and the EU.</td>
</tr>
</tbody>
</table>

| Brexit |
| If a withdrawal agreement is agreed, with an implementation period to the end of 2020, as EMIR REFIT is phased-in during that period, it will apply in the UK as if the UK was still a member of the EU. |
| In the event of a no-deal Brexit, only EU legislation that is in force and applying as at exit day will be onshored as part of UK law under the European Union Withdrawal Act. Therefore, If the UK leaves the EU at the end of March without a withdrawal agreement, EMIR will be onshored, but without the EMIR REFIT changes. |
| There is a separate piece of legislation, The Financial Services (Implementation of Legislation) Bill, giving the Treasury power, after exit day, to bring into force various pieces of EU legislation that are currently in progress but not yet in force – and these include EMIR REFIT. |
EMIR REFIT
Timelines for entry into force

17 June 2019 EMIR REFIT effective date for all amendments (SFC, backloading for reporting, frontloading for clearing, Fines for TRs,...) except:

18 December 2019 effective date for:
• CCPs shall provide an additional initial margin simulation tool (Art. 38(6))
• CCPs shall provide information on the initial margin model used (Art. 38(7))
• National solvency laws shall not prevent CCPs from acting on the default procedures in Article 48(5-7) (Art. 39(11))

18 June 2020 Effective date for:
• Delegated reporting responsibility to TRs from NFC- to FC (Art. 9(1a))
• Management Companies responsible for reporting to TRs on behalf of AIF, UCITS and IORP (Art. 9(1b-d))

18 June 2021 Effective date for:
• CCPs shall provide clearing services on FRANDT commercial terms (Art. 4(3a))
• TRs need policies and procedures for Reconciliation, Completeness and Correctness, Data transfer (Art. 78(9))
• Technical standards for reporting (XML) will be published by ESMA (Art. 78(10))
Securities Finance Transactions Regulation

Regulatory timeline

SFTR adopted by EU council

- Re-use requirements
  - Nov 2015: SFTR adopted by EU council
  - 13th July 2016: Counterparties to comply with requirements on re-use of collateral

- Disclosure requirements
  - 13th Jan 2017: UCITS and AIFMs to disclose their use of SFTs and total return swaps in the periodic reports
  - 13th July 2017: UCITS and AIFMs to disclose their use of SFTs and total return swaps in the pre-contractual documents

- Reporting requirement*
  - Q2 2020*: Investment firms and credit institutions
  - Q3 2020: Insurance/reinsurance undertakings, UCITS/UCITS managers, AIFs/AIFMs and institutions for occupational retirement provision
  - Q4 2020: Central securities depositories and central counterparties
  - Q1 2020: Non-financial counterparties

Today

Regulation Implementation Period

* Supervision postponed due to COVID-19
Transparency of SFT’s through reporting in line with EMIR approach

Article 4 of Regulation EU 2015/2365: phased in as from publication of RTS, from Q2 2020

- All SFT transactions concluded, modified or terminated after entry into force
- Transition measures for SFTs open when regulation enters into force
- Transactions with any member of the European System of Central Banks do not require reporting

- Trade repositories recognised for SFTR, extended approval may apply for trade repositories recognised under EMIR
- ESMA if no trade repository is recognised

- All transactions which are concluded, modified or terminated must be reported on T+1
- All counterparties to SFT must report.
- Like EMIR, SFTR will be double-sided where each counterparty to a transaction will report
- If the counterparty is a non-financial party, the financial counterparty must report both sides of the transaction
- For undertakings in collective investment, the ManCo of the UCITS or AIFM are responsible for performing the reporting
- The reporting may be delegated

- Interdependencies between reporting regimes under MiFID II/MiFIR, EMIR and SFTR
- Stakeholders to reuse components across the three pieces of legislation
- Most of data requirements are known: currency, asset type used as collateral, collateral value, method used to provide collateral, reuse allowed, collateral reused, repo/lending/margin lending rate, haircut, maturity, callable date, market segment
Regulator’s expectations
Building on EMIR and MiFIR transaction reporting experience

**Governance and exception handling**

Appropriate governance will need to be in place around the reporting framework. Consisting of policies and procedures. A specific focus exists on accurate and timely reporting. Rejected and unreconciled trades are expected to be identified and resolved in a timely manner.

**Reconciliation**

Counterparties will need to agree on the common data from the outset as part of the process. The fields which are to be reconciled by trade repositories are public and margins are very small (third decimal or 0,0005%)

**Data management**

Accurate reflection of contractual details and static data management are key in ensuring accurate reporting, from counterparty data to issuer LEI's.
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PEPP – Pan-European Pension Plan
The Functioning of the European Union

**1957** - “Freedom of movement for workers shall be secured within the Union.” Treaty on the Functioning of the European Union (Art 45)
A limit to the Functioning of the European Union

2017 - Personal Pension Products (PPP), an impediment?
The solution: A PEPP

Pan-European Pension Product (PEPP)

- Individual non-occupational PPP
- Offered by a PEPP provider
- Registered as per the regulation 2019/1238
- Ruled by this Regulation + the national laws
- Complement the existing national PPP

2021 - Solution

PEPP Providers

- Insurance undertakings
- IORP
- Credit institutions
- Management companies
- EU AIF
- Investment firms
The PEPP’s key concepts: Portability & Switch

PEPP account in Country A with sub-account in Country A

Change of country
Country A -> Country B

Possibility to open a sub-account in country B

Impossibility to open a sub-account in country B

Switch PEPP provider (without fees (>5 years))
- Domestic and cross-border switch
- In the accumulation and decumulation phases
- Switch of the balance in the format of assets in kind or their corresponding amount

Decision to carry on contributing in the sub-account of country A
The PEPP’s limitations: Taxation & Fees

**Taxation**
- Local tax law per sub-account
- Quid of its application for PEPP savers who change countries very often?

**Fees**
- Maximum of the PEPP fees (including the cost of advice) set to 1% of the accumulated capital
  - Starting phase -> not profitable for PEPP providers
  - What if change of countries? Set-up costs not recovered
- Push for the provision of a guarantee to protect the capital during the accumulation and decumulation phases
  - Still relevant in a 0% growth rate world?
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Unclaimed assets
Introduction
Projet de loi n°7348 relative aux comptes inactifs, aux coffres-forts inactifs et aux contrats d'assurance en déshérence

Objectif du projet de loi
Le projet de loi a pour objet de définir le cadre légal régissant les comptes et coffres-forts dits « dormants » ou « inactifs » et les contrats d'assurance vie tombés en déshérence. L'objectif est :
• d'une part, de renforcer la protection des épargnants et bénéficiaires de certaines prestations d'assurance en leur facilitant la recherche de leurs comptes, coffres-forts et contrats d'assurance et,
• d'autre part, de renforcer la sécurité juridique pour les banques et assureurs en précisant leurs obligations professionnelles. Le cadre légal est censé répondre aux attentes des clients des banques et entreprises d'assurance à l'égard d'une place financière internationale moderne et ouverte.
Le projet de loi comporte ainsi trois volets principaux :
• un volet préventif
• un volet consignation
• un volet restitution

Avis

- Le conseil de gouvernement approuve le projet de loi (07/2018)
- Avis négatif de la chambre de commerce (12/2018):
  Les trois points d'achoppement principaux du Projet portent sur l'accord préalable de la caisse de consignation et les informations à fournir, les différents délais et les sanctions administratives et pénales.
- Avis négatif de la CNPD (02/2019):
  La Commission nationale limite ses observations aux aspects liés au respect de la vie privée et à la protection des données à caractère personnel. Les points soulevés sont essentiellement liés à la nature de l'information collectée ainsi que les délais de conservation de cette information.
- Avis négatif du conseil d'état (22/05/2019):
  Le principal point est lié à l'accord préalable de la caisse de consignation.

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<td>Dépôt</td>
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<tr>
<td>12-12-2018</td>
<td>Avis de la Chambre de Commerce (12-12-2018)</td>
<td><img src="#" alt="Document 7348/01" /></td>
</tr>
<tr>
<td>13-12-2018</td>
<td>Renouvel en commission(s) : Commission des Finances et du Budget</td>
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<tr>
<td>27-02-2019</td>
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<tr>
<td>20-05-2019</td>
<td>Nomination de rapporteur(s)</td>
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<td>Rapporleur(s) : M. André Boulet</td>
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Introduction
Ligne du temps

<table>
<thead>
<tr>
<th>Souscription</th>
<th>Terme</th>
<th>E + 2 ans</th>
<th>E + 6 ans</th>
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<td>6 mois</td>
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**Activités**

- **Prendre les mesures de vigilance visant à surveiller l’exigibilité de la prestation**
- **Informér des conséquences de la déshérence**
- **Recherches complémentaires pour retrouver les titulaires / bénéficiaires**
- **Calcul de la valeur de la prestation pour définir si des recherches complémentaires sont obligatoires**
- **Fin ultime des recherches complémentaires**

**Légende**

- **E** Début de la connaissance par l’entreprise de l’exigibilité de la prestation
- **D** Début de la déshérence
- **DC** Demande de consignation
Case Study
Acteurs en présence

Le “case study” présente une mise en œuvre récente (2020) d’un schéma de liquidation d’un portefeuille d’assurance vie impliquant un assureur vie ayant renoncé à son agrément d’assurance.

Le schéma a reçu l’accord du commissariat aux assurances.

1. L’assureur
   - Entreprise d’assurance vie de droit Luxembourgeois
   - Renonciation à l’agrément pour effectuer des opérations d’assurances
   - Passeport européen: LPS:
     - France, Irlande, Royaume-Uni, Allemagne, Danemark, Belgique, Pays-Bas.

2. Le contrat
   - Contrats d’assurance vie
   - Contrat prévoyant une prestation en cas de survie au terme du contrat
   - Contrat prévoyant une prestation en cas de décès avant le terme
   - Contrats pour lesquels le terme est dépassé depuis plus de trois mois

3. Le preneur
   - Personnes physiques
   - Domicile déclaré au moment de la souscription dans un des états pour lequel l’entreprise d’assurance a notifié une activité en libre prestation de services

4. Autorités
   - Autorité compétente: Commissariat aux Assurances
   - Caisse de consignation: Dépend de la trésorerie de l’état, et étant placée sous les compétence du ministre des finances

5. Règleur de sinistres
   - Professionnel du secteur des assurances (PSA)
   - L’activité consiste à fournir des services en relation avec l’indemnisation des bénéficiaires de contrats d’assurance
**Case Study**

**Processus avant la consignation**

1. **Preneurs / Bénéficiaires**
   - Demande de paiement / signe de vie
   - Recherche du preneur / bénéficiaires
   - Contrôle des ayants droits
   - Contrôle AML
   - Préparation des instructions de paiement
   - Instruction de paiement dans Multiline + Signature 1
   - Tenue à jour du dossier papier
   - Accord pour paiement
   - Signature 2 de l'Instruction de paiement
   - Paiement + Situation de compte

2. **Réglueur de sinistres**
   - Tenue à jour du dossier papier
   - Réconciliation comptable
   - Reporting trimestriel

3. **Assureur (n'ayant plus le statut d'assureur)**
   - Accord pour paiement
   - Signature 2 de l'Instruction de paiement
   - Réception de la réconciliation comptable

4. **Banque**
   - Réception du reporting trimestriel

5. **CAA**
   - Preneurs / Bénéficiaires
   - Contrôle des ayants droits
   - Contrôle AML
   - Préparation des instructions de paiement
   - Instruction de paiement dans Multiline + Signature 1
   - Tenue à jour du dossier papier
   - Accord pour paiement
   - Signature 2 de l'Instruction de paiement
   - Paiement + Situation de compte

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GDPR: an update
Overview

**Fines**

- There were more than **€50 million of fines** issued by the authorities in the EU, in the first year after GDPR came into force (May 2019), and more than **€400 million** at the end of 2019.
- This year has seen record fines that have resulted in considerable jumps in the statistics.

**Rulings**

- Since the entry into force of the GDPR, the European Court of Justice issued important decisions clarifying the scope in the application of the law.
GDPR: What happened in 2019?

Key figures

According to the Article 83 of the GDPR, a Controller or a Processor could be subject to administrative fines up to 20 million EUR, or in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher.

Since the entry into force of the GDPR:
A total of 134 fines recorded at the end of December 2019
A record was set in November 2019 as 24 fines have been registered only in one month.

GDPR enforcement actions have resulted in +€417 millions of fines
There is a wide variety in fine amounts. Two important fines have resulted in significant jumps in the statistics:
• January 2019: The French supervisory authority (the CNIL) imposed record €50 millions fine on Google, for a lack of transparency and lack of meaningful consent.
• In July 2019, a record of more than €200 millions was proposed against British Airways for the airline’s 2018 data breach.

Overall sum of fines within the EU (cumulative)

Overall number of fines within the EU (cumulative)

Source: https://www.enforcementtracker.com/?
GDPR: What happened in 2019?

Fines

In general, cases, formal notices, ruling against processors and controllers happen when:

• There is a lack cooperation with the data protection authority
• The appropriate safeguards were not (properly) implemented
• In a case of a major data breach

The data protection authorities (DPA) of each EU country will use the following criteria to determine whether a fine will be assessed and in what amount:

**Gravity and nature**
The overall picture of the infringement taking into account the nature scope or purpose of the processing concerned as well as the number of data subjects affected and the level of damage suffered by them.

**Intention**
The intentional or negligent character of the infringement.

**Mitigation**
Any action taken by the controller or processor to mitigate the damage suffered by data subjects.

**Precautionary measures**
The degree of responsibility of the controller or processor taking into account technical and organisational measures implemented by them.

**History**
Any relevant previous infringements by the controller or processor.

**Cooperation**
The degree of cooperation with the supervisory authority, in order to remedy the infringement and mitigate the possible adverse effects of the infringement.

**Data category**
The categories of personal data affected by the infringement.

**Notification**
The manner in which the infringement became known to the supervisory authority, in particular whether, and if so to what extent, the controller or processor notified the infringement.

**Certification**
Adherence to approved codes of conduct or approved certification mechanisms.

**Aggravating/mitigating factors** — Any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement.

Source: General Data Protection Regulation – Art. 83
Cooperation criteria - Examples

GDPR: What happened in 2019?

Germany

A German social media platform called Knuddels.de has been fined with €20,000 following a breach that exposed the personal information of 330,000 users, including their passwords and e-mail addresses.

The media site, which is one of the country’s largest chat platforms, notified the authority in September 2018 after it learned that 1.87 million username/password combinations and over 800,000 e-mail addresses were leaked.

The data protection authority acknowledged what it called “very good cooperation” and “exemplary transparency” on the platform’s part, as well as a range of enhanced security measures that the site has put in place since the incident occurred and that continue to be implemented in conjunction with the authority.

France

Prior to GDPR, further to an inspection from the French data protection authority (CNIL), Editions Croque Futur, publisher of the website www.challenges.fr, had received a notice to comply with the French Data Protection Act. As the company did not comply with the requirements set out in that notification, and for its lack of cooperation, the French Authority filed sanction proceedings leading the company to pay a fine of €25,000.

The company was charged for not mentioning the mandatory notices required by the French Data Protection Act on the forms enabling to create an account on the company’s website, and for not implementing an opt-out mechanism to the storage of cookies on web users’ device.
Cooperation criteria - Examples

GDPR: What happened in 2019?

UK
Doorstep Dispensaree which supplies medicines to thousands of care homes has been fined £275,000 because it left about 500,000 documents containing personal data in unlocked containers in the back of its premises.

The documents, dating from June 2016 to June 2018, included patients’ names, addresses, dates of birth, NHS numbers, medical information and prescriptions.

Doorstep Dispensaree violated the GDPR’s integrity and confidentiality principle, as it didn’t implement measures to guard against unauthorised access, instead leaving the personal data in an unlocked box that anyone could view.

Second, it failed to protect against accidental destruction, with the ICO noting that the boxes were exposed to the elements and had become water damaged.

Precautionary measures

UK
In July 2019, a record of more than £180 million fine (more than €200 million) was proposed against British Airways for the airline’s 2018 data breach impacted 500,000 of the airline’s customers.

This incident in part involved user traffic to the British Airways website being diverted to a fraudulent site. Through this false site, customer details were harvested by the attackers.

The ICO’s investigation has found that a variety of information was compromised by poor security arrangements at the company, including log in, payment card, and travel booking details as well name and address information.
Examples of fines since the beginning of 2020

**Romania**
The Romanian National supervisory Authority for Personal Data processing imposed a fine of €6000 to an electricity distributor. It pointed out that the operator had not taken the necessary measures to stop the transmission of notifications, despite the fact that the person had repeatedly exercised his right to object.

**Italia**
The Italian Data Protection Authority has issued two very significant fines to Eni Gas e Luce, the Italian gas, power and energy solution provider, for a total of Euro 11.5 million. The fines were respectively issued for unsolicited telemarketing and telesales (Euro 8.5 million) and the activation of unsolicited contracts (Euro 3 million).

**Spain**
EDP España S.A.U, a global energy company, has been fined with €75,000 because it processed personal data such as first and last name, tax number, address and mobile phone number without the consent of the data subject.
Ruling & open cases

In the last months, the Court of Justice of the European Union (CJEU) has ruled on the right to be forgotten, and also on international transfers and mechanisms.

‘Right to be forgotten’ privacy rule is limited by Europe’s Top Court.

In 2015, CNIL ordered the firm to globally remove search result listings to pages containing damaging or false information about a person.

The European Court of Justice said the landmark privacy law can not be enforced beyond the European Union.

It means Google only needs to remove links from its search results in Europe and not elsewhere – after receiving an appropriate request.

On July 9, 2019, Schrems II case (case C-311/18) took place at the Court of Justice of the European Union (CJEU) in Luxembourg. The austrian activist Max Schrem decided to challenge the transfers performed on the basis of the EU Standard Contractual Clauses (“SCC”), the alternative mechanism Facebook has chosen to rely on to legitimize its EU-U.S transfers.

The CJEU's judgment in the Schrems II case, which is not expected before early 2020, could cause a real earthquake in the EU data protection landscape as it may result in the invalidation of the SCC, the mechanism that is most commonly used in practice to legitimize transfers of personal data from the EU to non-EU countries.

These cases reflect the difficulty that sometimes appears in the definition of the territorial scope and extraterritorial application of the EU law.
In the past, the Court of Justice of the European Union has also ruled on joint controllers and on cookies management.

**Fashion ID GmbH & Co. KG v Verbraucherzentrale NRW**

Fashion ID, a German online clothing retailer, embedded on its website the Facebook ‘Like’ button. The consequence of that button is that when a visitor consults the website of Fashion ID, that **visitor’s personal data are transmitted to Facebook Ireland** (without that visitor being aware of it and regardless of whether or not he or she is a member of the social network Facebook or has clicked on the ‘Like’ button).

Verbraucherzentrale NRW, a German public-service association tasked with safeguarding the interests of consumers, challenged Fashion ID for transmitting to Facebook Ireland personal data of visitors to its website, first, without their consent and, second, in breach of the duties to inform set out in the provisions relating to the protection of personal data.

The Court said that the operator of a website that features a Facebook ‘Like’ button can be a **controller jointly** with Facebook in respect of the collection and transmission to Facebook of the personal data of visitors to its website.

**German Federation of Consumer Organisations v Planet49**

The German Federation of Consumer Organisations has challenged before the German courts the use by the German company, Planet49, of a **pre-ticked checkbox** in connection with online promotional games, by which internet users wishing to participate consent to the storage of cookies. The cookies in question aim to **collect information for the purposes of advertising** Planet49’s partners’ products.

The Court decides that the consent which a website user must give to the storage of and access to cookies on his or her equipment is **not validly** constituted by way of a **prechecked checkbox which that user must deselect to refuse his or her consent**.

The Court notes that **consent** must be **specific** so that the fact that a user selects the button to participate in a promotional lottery is not sufficient for it to be concluded that the user validly gave his or her consent to the storage of cookies.
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EIOPA Cloud Outsourcing Guidelines
Agenda

01 Context
02 Key information
03 Key requirements
04 Contacts
Context
EIOPA follows the example of the EBA

**Context**

EIOPA - European Insurance and Occupational Pensions Authority

EBA – European Banking Authority

CAA - Commissariat aux Assurances

The EIOPA Guidelines are available in several languages (incl. English and French) on the website: [https://www.eiopa.europa.eu/content/guidelines-outsourcing-cloud-service-providers_en](https://www.eiopa.europa.eu/content/guidelines-outsourcing-cloud-service-providers_en)
The EIOPA Cloud Outsourcing Guidelines (Guidelines) apply to insurance and reinsurance undertakings.

Some insurance groups may be subject to both the Guidelines and the EBA Outsourcing Guidelines where the group includes, for example, an insurance company and a MiFID investment firm.

‘Insurance undertaking’ means a direct life or non-life insurance undertaking which has received authorization in accordance with Article 14 of the Solvency II Directive.

‘Reinsurance undertaking’ means an undertaking which has received authorization in accordance with Article 14 of the Solvency II Directive to pursue reinsurance activities.
Key information

Which arrangements do the Guidelines apply to?

The Guidelines apply to all outsourcing arrangements with cloud providers whereas many of the requirements of the Guidelines apply only to cloud outsourcings concerning critical or important function or activity.

**Outsourcing** means an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself.

Within this assessment, consideration should be given to whether the function or activity (or a part thereof) that is outsourced to a service provider is performed on a recurrent or an ongoing basis and whether this function or activity (or part thereof) would normally fall within the scope of functions or activities that would or could normally be performed by undertaking, even if the undertaking has not performed this function or activity in the past itself.

In cases where the undertaking outsources operational functions or activities to service providers which are not cloud service providers but rely significantly on cloud infrastructures to deliver their services (for example, where the cloud service provider is part of a sub-outsourcing chain), the arrangement for such outsourcing falls within the scope of the EIOPA Guidelines.

In case of intra-group outsourcing and sub-outsourcing to cloud service providers, the Guidelines should be applied in conjunction with the provisions of EIOPA Guidelines on System of Governance on intra-group outsourcing.
Outsourcing of critical or important function or activity

Prior to entering into any outsourcing arrangement with cloud service providers, the undertaking should assess if the cloud outsourcing arrangement relates to an operational function or activity that is critical or important as further specified in Guideline 7.

Guideline 7

Cloud outsourcing of a critical or important operational function as referred to in Solvency II Directive and in Delegated Regulation

Identification of critical or important functions should be performed in accordance with EIOPA Guideline on System Governance (Guideline 60)

The critical or important functions as outcome of the risk assessment taking into account:

- Potential impact of outages, disruptive events or failure of cloud service provider
- Potential impact of cloud outsourcing arrangement on the ability to manage risk, comply with legal and regulatory requirements and conduct appropriate audits
- Undertakings aggregated exposure to the same cloud service provider
- Size and complexity of the undertaking’s business areas affected by the cloud outsourcing arrangement
- The ability to transfer the proposed cloud outsourcing to another cloud service provider or reintegrate the services
- The protection of personal and non-personal data and the potential impact of a confidentiality breach or failure (GDPR)
Considerations for personal data and professional secrecy

The Guidelines requires to take into consideration data that is business secret and/or sensitive when outsourcing with cloud providers. However, the Guidelines does not include specific requirement regarding professional secrecy. Given that outsourced resources may contain client confidential information subject to professional secrecy, Article 300 (2bis) of Law of 7 December 2015 as amended must be taken into account in combination of the Guidelines when outsourcing with cloud providers.

The protection of personal and non-personal data and the potential impact on the undertaking, policyholders or other relevant subjects of a confidentiality breach or failure to ensure data availability and integrity based on inter alia Regulation (EU) 2016/679. The undertaking should particularly take into consideration data that is business secret and/or sensitive (for example, policyholders’ health data).

Resources containing client confidential information subject to professional secrecy can’t be outsourced to third parties outside of insurance and reinsurance undertakings or other relevant subjects (like Professionals of the Financial Sector (PSF)).

As per Article 300 (2bis) of Law of 7 December 2015 as amended, the obligation of professional secrecy does not exist for the cloud providers if the policyholders accepted (i) the outsourcing, (ii) the type of outsourced resources, and (iii) the legal country of cloud providers.

However, the policyholders’ authorization may not be required if the undertaking can demonstrate to the regulator that the resources transmitted to cloud provider are encrypted, secured and are therefore inaccessible and unreadable by the cloud provider.

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Key information

When do the Guidelines apply from?

The EIOPA Guidelines will apply from 1 January 2021 with a transition period until 31 December 2022.

By 1 January 2021

Update of the undertaking’s policies and internal processes should be done by 1 January 2021.

1 January 2021

The EIOPA Guidelines on outsourcing to cloud service providers apply to all cloud outsourcing arrangements entered into or amended on or after this date.

By 31 December 2022

Review and amendment of the existing cloud outsourcing arrangements related to critical or important operational functions or activities with a view of ensuring compliance with the EIOPA Guidelines is due by 31 December 2022. Documentation requirements for cloud outsourcing arrangements related to critical or important operational functions or activities should be implemented by 31 December 2022.

After 31 December 2022

Where the review of cloud outsourcing arrangements related to critical or important operational functions or activities is not finalized by 31 December 2022, the undertaking should inform its supervisory authority of that fact, including the measures planned to complete the review or the possible exit strategy.

The supervisory authority may agree with the undertaking on an extended timeline for completing the review.
Key requirements
Key requirements

What are the key requirements of the Guidelines?

1. Outsourcing Policy
2. Record of Cloud Outsourcing Arrangements
3. Regulatory Notification
4. Pre-Outsourcing Analysis
5. Risk Assessment
6. Due Diligence
7. Contractual Requirements
8. Sub-Outsourcing
9. Access and Audit Rights
10. Termination Rights & Exit Strategy
Key requirements
What are the key requirements of the Guidelines?

1. Outsourcing Policy
   A written outsourcing policy and other relevant policies shall be updated to take account of the cloud outsourcing, including roles and responsibilities, processes and reporting procedures required.

2. Record of Cloud Outsourcing Arrangements
   The requirement to maintain an outsourcing register has been removed from the final version of the Guidelines, and replaced with a more flexible requirement to keep a record of cloud outsourcing arrangements.

3. Regulatory Notification
   In the case of critical and important cloud outsourcings institutions should notify the supervisory authority of details of the outsourcing, including, e.g. a brief description of the services being outsourced, details of the cloud provider, the deployment model, etc.

4. Pre-Outsourcing Analysis
   Before entering into any cloud outsourcing arrangement, institutions should (i) assess if the arrangement involves the outsourcing of a critical or important function, (ii) identify and assess all relevant risks, (iii) undertake appropriate due diligence, and (iv) identify and assess any conflicts of interest.
What are the key requirements of the Guidelines?

5. Risk Assessment
In relation to critical or important out委托s, institutions should carry out a cost/benefit analysis, assess the legal, ICT, compliance and reputational risks arising from the outsourcing (and any oversight limitations), the extent of any sub委托ing by the service provider, and any concentration risk.

6. Due Diligence
The Due Diligence should include an evaluation of the suitability of the service provider and, Where appropriate, evidence of certificates as well as third party or internal audit reports can be used to support it.

7. Contractual Requirements
Written agreement should formalise the respective rights and obligations of the service provider and receiver, including but not limited to, description of the outsourced function, start and end date, jurisdiction and governing law, the parties’ financial obligations, sub-委托ing, data storage and processing location(s), security measures.

8. Sub-Commissioning
The outsourcing contract should (i) specify any activities which cannot be sub委托ed, (ii) set out the conditions that must be met for any sub委托ing, (iii) require the cloud provider to inform the firm of any planned significant changes to the subcommissioners, and (iv) include a right for the firm to terminate the contract where the cloud provider plans to make a change to a subcommissionor or subcommissioned services which would have an adverse effect on the risk assessment of the services.
Key requirements

What are the key requirements of the Guidelines?

9. Access and Audit Rights
Outsourced activities should be integrated to the audit plan on a risk-based approach. The agreement should not limit the access and audit rights. Institutions may use third-party certifications and third-party or internal audit reports as well as pooled audits.

10. Termination Rights & Exit Strategy
Institutions are required, for critical or important outsourcings, to have in place a clearly defined exit strategy to ensure that they can, if necessary, terminate the arrangement without impacting the quality and continuity of the services they provide. The exit strategy should include comprehensive, service based and 'sufficiently tested' exit plans, and the identification of alternative solutions and development of appropriate and feasible transition plans to enable the firm to switch to another provider or to take the services back in-house.
Contacts
Risk Advisory services

Compliance assessment

Gap analysis of our client’s cloud projects compliance against laws and regulations and pragmatic recommendations for improvement

Assisting in communications with the regulator

Preparation (or quality assurance) of application files and participation to meetings with the regulator, e.g.:

- Notifications & authorization requests for insurance professionals wishing to use cloud solutions
- Authorization requests for Support PSFs wishing to offer cloud solutions to insurance sector
- Gap analysis to EIOPA requirements for Cloud Service Providers wishing to expand in Luxembourg insurance sector

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