



Insurance

Quarterly Legal and Regulatory Update

Period covered: 1 January 2021 – 31 March 2021

TABLE OF CONTENTS

<u>SOLVENCY II</u>	<u>EIOPA</u>	<u>INSURANCE DISTRIBUTION DIRECTIVE (IDD)</u>	<u>PRIIPs</u>
<u>THE INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS (IAIS)</u>	<u>CENTRAL BANK OF IRELAND</u>	<u>ANTI-MONEY LAUNDERING (AML) AND COUNTERING THE FINANCING OF TERRORISM (CFT)</u>	<u>DATA PROTECTION</u>
<u>MISCELLANEOUS</u>			

1. SOLVENCY II

1.1 European Commission publishes summary report on its Solvency II 2020 review consultation

On 1 February 2021, the European Commission published a summary report on its consultation on the review of the Solvency II Directive (2009/138/EC) (the **Solvency II Directive**). The summary report sets out the feedback it received from 73 participants during the consultation, which ran from July to October 2020.

Stakeholders representing insurers, insurance associations, non-governmental organisations (**NGOs**), consumers, citizens and public authorities responded to the consultation. Insurers and insurance associations represent over half of the respondents. The summary report contains feedback received on the following topics:

- long-termism and sustainability of insurers' activities and priorities of the European framework;
- proportionality of the European framework and transparency towards the public;
- improving trust and deepening the single market in insurance services; and
- new emerging risks and opportunities.

The summary report also contained a list of topics which stakeholders provided additional input on such as group supervision issues and market access of third country companies which exclusively conduct reinsurance activities.

The results of the consultation will be considered by the European Commission when shaping the legislative proposal to amend the Solvency II Directive, which is expected in the third quarter of 2021.

The summary report can be accessed [here](#).

1.2 AMICE response to consultation on the supervisory statement relating to SCR breach under Solvency II

By way of background, in November 2020, EIOPA launched a consultation on the statement on supervisory practices and expectations in case of a breach of the Solvency Capital Requirement (**SCR**) (the **Statement**). EIOPA sought feedback on the Statement which aims to promote supervisory convergence in the application of the supervisory ladder, in particular by addressing the recovery plan required in case of a breach of the SCR.

EIOPA considered that the ongoing uncertainty linked with COVID-19 may potentially lead to breaches of the SCR in the future, and therefore supervisory convergence in this area is timely. However, the Statement is intended to be applicable at any time and is not COVID-19 specific.

The consultation closed on 17 February 2021.

On 17 February 2021, the Association of Mutual Insurers and Insurance Cooperatives in Europe (**AMICE**) issued its response to EIOPA's consultation on the Statement. In its response, AMICE noted generally that the Statement lists extensive requirements in order to promote common supervisory approaches, however all will not necessarily apply in every case and as such there should be flexibility to ensure that the supervisory measures taken in the case of a breach of the SCR are tailored to the particular company and their specific situation.

AMICE's full response can be accessed [here](#).

1.3 EIOPA launches European wide comparative study on Non-Life Underwriting Risk in Internal Models

On 1 March 2021, EIOPA launched a European wide comparative study on non-life underwriting risk in internal models under Solvency II. The study aims to evaluate non-life underwriting risk within internal models at a European Union level and their development over a five-year time horizon.

The deadline for insurance undertakings to submit results to their national supervisory authority is 15 September 2021 and the deadline for national supervisory authorities to submit the information to EIOPA is 1 October 2021.

The study can be accessed [here](#).

1.4 Updated Questions and Answers on Regulation

During the first quarter of 2021, EIOPA published updated Questions and Answers (**Q&As**) relating to the following topics under Solvency II:

- [Risk Free Rate - Question ID 1881](#);
- [Risk Concentration - Question ID 2084](#);
- [Reporting Templates – Question ID 2227](#); and
- [Technical Provisions – Question ID 2144](#).

2. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

2.1 EIOPA launches public consultation on open insurance

On 28 January 2021, EIOPA launched a public consultation on open insurance with a focus on access to and sharing of insurance-related data.

In its consultation paper, EIOPA asks whether and how far insurance value chains should be opened up by the sharing of insurance related and specific policyholder data amongst insurance and non-insurance firms, to protect policyholder rights and to allow for innovation in products and services. The areas covered in the consultation paper include:

- open insurance definition and use cases;
- risks and benefits of open insurance;
- regulatory barriers; and
- open insurance framework.

The deadline for responses to the consultation is 28 April 2021.

The consultation can be accessed [here](#).

2.2 EIOPA publishes updated single programming document 2021-23

On 28 January 2021, EIOPA published an updated version of its single programming document 2021-23, which includes its annual work programme 2021. The document has been updated to reflect regulatory developments that have occurred since the single programming document 2021-23 was prepared.

The document covers EIOPA's proposed activities for the years with a focus on COVID-19 crisis management, risk mitigation and support to the recovery of the European economy while also prioritising cross cutting themes such as digitalisation and sustainable finance in order to deliver on its strategic objectives.

The updated single programming document 2021-23 can be accessed [here](#).

2.3 EIOPA publishes staff paper on measures to improve the insurability of business interruption risk in light of pandemics

On 12 February 2021, EIOPA published a staff paper on how to improve the insurability of business interruption in light of pandemics.

The staff paper analyses options for improving on the insurability of non-damage business interruption risk in light of pandemics through:

- prevention measures to reduce losses;
- capital markets risk transfer; and
- multi-peril solutions for systemic risk.

The staff paper also addresses the general challenges related to modelling and triggers for claims in the context of pandemics.

Views on this staff paper were invited until 31 March 2021.

The staff paper can be accessed [here](#).

2.4 EIOPA issues union-wide strategic supervisory priorities

On 19 February 2021, EIOPA published a document identifying business model sustainability and adequate product design as the new strategic supervisory priorities for national competent authorities (NCAs). In the context of the COVID-19 crisis and of the prolonged low-yield environment, EIOPA expects NCAs to focus their supervisory activities on monitoring:

- the impact of the prolonged low-yield environment as well as the COVID-19 crisis on the business model sustainability and development of insurers and institutions for occupational retirement provision (IORPs).
- the impact of the COVID-19 crisis on products and ensuring that the product oversight and governance (POG) requirements and other relevant consumer protection and conduct of business related requirements are adequately implemented to address the deficiencies which emerged in the crisis.

NCAs must take the two priorities into account when drawing up their work programmes and notify EIOPA accordingly. EIOPA will co-ordinate supervisory actions with NCAs on specific topics with the aim of providing a structured and consistent response to the key risks.

The strategic supervisory priorities document can be accessed [here](#).

2.5 EIOPA launches consultation on revised Guidelines on the use of the Legal Entity Identifier

On 26 March 2021, EIOPA launched a consultation on revised guidelines on the use of the Legal Entity Identifier (LEI) (the **Guidelines**). The LEI is used by the financial industry for the identification of legal entities and for data quality purposes, supporting activities in the areas of financial stability, oversight and supervision as well as consumer protection.

EIOPA issued Guidelines on the use of the LEI in October 2014 and identified a need to review the Guidelines due to:

- its strategy on data and digitalisation which aims to increase data standardisation;
- reflection of the principle of proportionality;
- the European Systemic Risk Board's (ESRB) [2020 recommendations on identifying legal entities which are focusing on the LEI as a common identifier](#); and
- the Financial Stability Board's (FSB) [2019 Thematic Review on the Implementation of the LEI](#) which listed some remaining obstacles which prevented wider LEI adoption.

The focus of the consultation is broadening the scope of the Guidelines to include not only IORPs and (re)insurance undertakings, but also branches and intermediaries. The revised Guidelines also consider wider identification of groups and third country branches.

EIOPA is seeking feedback from stakeholders by 30 June 2021. EIOPA will consider the feedback received, publish a Final Report on the consultation and submit the revised Guidelines for adoption by its Board of Supervisors.

The consultation can be accessed [here](#).

3. INSURANCE DISTRIBUTION DIRECTIVE (IDD)

3.1 EIOPA issues Questions & Answers on the Insurance Distribution Directive

On 23 March 2021, EIOPA published a series of Q&As regarding the legal interpretation of provisions of the Insurance Distribution Directive (IDD) and its implementing measures. The Q&As relate to:

- **Appropriateness Assessment (Article 30 of IDD)** ([Question ID 2264](#)): This answer provides information on how to assess a customer's knowledge and experience to determine if a product is appropriate and also provides further clarity on the phrase "experience in the investment field relevant to the specific type of product or service" as set out in Article 30 of IDD;
- **Application of POG requirements (Article 25 of IDD)** ([Question ID 2265](#)): This answer confirms that the POG requirements of the IDD apply to any insurance product including "tailor made" products. However, in the case of "tailor made" insurance products, these POG requirements should be applied in a manner that is proportionate to and appropriate for the specific character of that insurance product;
- **Significant adaptation of an existing product (Article 25 of IDD)** ([Question ID 2266](#)): Further clarity is provided on what constitutes a significant adaptation of an existing product;
- **Product testing and product review for existing products (Article 25 of IDD)** ([Question ID 2267](#)): This answer clarifies that existing insurance products are only covered by the requirements of Article 25 of IDD if they are subject to "significant adaptations";

- **Manufacturer's responsibility for consumer detriment if adequate POG arrangements (Article 25 of IDD) (Question ID 2268):** This answer clarifies that the manufacturer's compliance with the POG requirements will not exclude the possibility that the manufacturer will be held responsible for consumer detriment;
- **Information requirements on registration – retrospective application (Article 3 of IDD) (Question ID 2269):** This answer clarifies that NCAs are not obliged to actively request registration information retrospectively, for example on conflicts of interest, where the intermediary is already registered. However, it is noted that IDD is a minimum harmonisation directive and Member States are free to provide stricter rules which require such information. Further, it points out that intermediaries are required to notify NCAs without undue delay of any change in the information provided under Article 3 of IDD and, therefore, this requirement applies to all intermediaries, including those that were registered prior to the entry into force of the national IDD legislation.
- **Application of Article 30 in case of ongoing advice regarding pre 23 February 2018 contracts (Article 30 of IDD) (Question ID 2270):** This answer clarifies that the Article 30 IDD requirements apply from 23 February 2018, the date on which IDD came into effect. However, if new advice is provided under a pre-23 February 2018 contract, for example where advice is provided on switching of underlying investment assets in an existing contract, the Article 30 IDD requirements will apply even if the contract has been concluded before the entry into application of the IDD.
- **Application of IDD to captive insurance undertakings (Articles 22, 25, 29 of IDD) (Question ID 1760):** This answer clarifies that the provisions of the IDD apply fully to captive insurance and reinsurance undertakings unless certain exemptions from specific requirements can be applied, for example in the case of large risks. IDD makes no reference to the concept of captive insurance nor does it provide specific requirements for captive insurance undertakings. This means that the legislator did not have the intention to make any distinction between insurance undertakings and captive insurance undertakings on the one hand and reinsurance undertakings and captive reinsurance undertakings on the other hand.

The Q&As can be accessed [here](#).

3.2 EIOPA published outcome of analysis of national general good rules under IDD

On 29 March 2021, EIOPA issued a press release announcing it has completed its analysis of all published general good rules on registration and professional and organisational requirements that could potentially be non-compliant with IDD.

EIOPA notes that many NCAs have implemented actions to ensure compliance with the IDD by adjusting webpages and documents relating to general good rules to:

- remove registration and organisational requirements that are under the exclusive competence of a home Member State;
- clarify that registration and organisational requirements are only imposed on domestically registered insurance intermediaries; and
- indicate specific general good provisions rather than referring to a collection of national legislation.

EIOPA also published a table with information on the adjustments made to general good rules in different Member States.

Further information can be accessed [here](#).

4. PRIIPs

4.1 ESAs submit draft RTS on amendments to the PRIIPs KID to the European Commission

On 3 February 2021, the European Supervisory Authorities (**ESAs**) submitted to the European Commission the draft final report on Regulatory Technical Standards (**RTS**) on amendments to the existing rules contained in Commission Delegated Regulation (EU) 2017/653 on key information documents (**KIDs**) for packaged retail and insurance-based investment products (**PRIIPs**) (**Final Report**).

The submission of the RTS follows the adoption of the draft final report by the EIOPA's Board of Supervisors on the same day. The EIOPA's Board of Supervisors had previously failed to adopt the draft final report, however went on to support the proposal following the receipt of further details provided by the European Commission on their approach to the broader review of Regulation (EU) No 1286/2014 (**PRIIPs Regulation**), namely that the review will thoroughly examine the application of the PRIIPs framework including topics such as the creation of a digitalised KIID and the scope of products under the PRIIPs Regulation.

Once adopted by the European Commission, and provided no objections are raised by the Council of the European Union (**EU**) or the European Parliament, the RTS will enter into force.

UCITS funds which are marketed to retail investors are not currently required prepare a PRIIP KID under the PRIIPS Regulation. This exemption is due to expire on 31 December 2021. The Commission is still considering whether to extend the current exemption beyond this date. On 1 February 2021, the European Fund and Asset Management Association (**EFAMA**) published a statement calling for an extension to the UCITS exemption for at least a further 12 months (**Statement**). The Statement outlines the difficulties faced by UCITS managers (and the need to revise the UCITS Directive to remove the obligation to publish a UCITS KIID to avoid a scenario whereby a UCITS must produce both a UCITS KIID and a PRIIPs KID) if it was the case that they were expected to produce a PRIIPs KID from 1 January next year.

The Final Report can be accessed [here](#).

The EFAMA Statement can be accessed [here](#).

5. THE INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS (IAIS)

5.1 IAIS launch public consultation on draft Application Paper on Supervision of Control Functions

On 25 January 2021, the International Association of Insurance Supervisors (**IAIS**) launched a public consultation on the draft application paper on supervision of control functions (**Draft Application Paper**).

The Draft Application Paper describes practices aimed at helping supervisors address issues related to the supervision of control functions as described in the Insurance Core Principles (**ICPs**) and the Common Framework for the Supervision of Internationally Active Insurance Groups (**ComFrame**).

The Draft Application Paper supports adherence to ICP 8 (Risk Management and Control Functions) and is also relevant to ICP 5 (Suitability of Persons) and ICP 7 (Corporate Governance). This Draft Application Paper covers the following aspects of supervising control functions of insurers:

- Role of control functions (Section 2);

- Independence of control functions (Section 3);
- Stature of control functions (Section 4);
- Internal audit function (Section 5);
- Combination of control functions (Section 6);
- Outsourcing of control functions (Section 7); and
- Group-wide control functions (Section 8).

The deadline for responses to the public consultation was 26 March 2021.

The public consultation can be accessed [here](#).

5.2 IAIS publishes roadmap for 2021 – 2022

On 23 February 2021, IAIS published its roadmap for 2021-2022 (the **Roadmap**).

The Roadmap outlines the projects that IAIS will undertake (or continue to undertake) over the next two years. Table 1 of the Roadmap outlines the key projects and activities for 2021, grouped by the High-Level Goals as set out in the IAIS Strategic Plan 2020 -2024. Table 2 sets out list of projects with their objectives.

The Roadmap can be accessed [here](#).

6. CENTRAL BANK OF IRELAND

6.1 Central Bank of Ireland issues statement on COVID-19 and Business Interruption Insurance Supervisory Framework

On 17 February 2021, the Central Bank of Ireland (**Central Bank**) issued a statement highlighting that it is continuing its system wide supervisory examination of business interruption insurance issues in line with the COVID-19 and Business Interruption Insurance Supervisory Framework and it expects firms to ensure the fair treatment of customers, which includes:

- honouring valid claims and paying them promptly;
- where there is any doubt about the meaning of a term, the interpretation most favourable to the customer should prevail;
- where a legal action results in an outcome that has a beneficial impact for similar customers, firms are required to take swift action to ensure those customers benefit from the final outcome; and
- making interim payments to policyholders who make or have made claims pending the final determination of the sums due. The Central Bank is actively monitoring firms' progress in the resolution of such claims.

The statement can be accessed [here](#).

6.1 Central Bank proposes new cross-industry guidance on outsourcing

On 25 February 2021, the Central Bank published Consultation Paper 138 on Cross-Industry Guidance on Outsourcing (**CP138**). The draft Guidance is contained in Schedule 1 to CP138 (**Guidance**). The publication of CP138 follows on from the publication of the Central Bank discussion paper 'Outsourcing – Findings and Issues for Discussion' in November 2018.

The Guidance sets out the Central Bank's minimum supervisory expectations regarding effective governance, risk management and business continuity processes that should be applied by firms when using outsourcing as part of their business model and aims to reduce the occurrence of risks such as financial instability and consumer detriment. The Guidance also seeks to remind boards and senior management of their responsibilities when considering outsourcing as part of their business model.

The Guidance, once finalised, will apply to all financial services providers regulated by the Central Bank. The Central Bank intends to publish the finalised Guidance in 2021.

The Central Bank is inviting stakeholders to submit feedback on the Guidance. The consultation period closes on 26 July 2021, and feedback may be submitted by email to outsourcingfeedback@centralbank.ie.

Please see the Dillon Eustace briefing paper entitled "Central Bank proposes new cross-industry guidance on outsourcing". The Dillon Eustace briefing paper can be accessed [here](#).

CP138 can be accessed [here](#), and the Guidance can be accessed [here](#).

6.2 Central Bank publishes its March Insurance Quarterly Newsletter

On 16 March 2021, the Central Bank published the March Edition of its Insurance Quarterly Newsletter (**Newsletter**). The Newsletter aims to provide relevant news and insights to key stakeholders in the insurance sector and sets out Central Bank's expectations and priorities around existing requirements and its views on future developments.

The Newsletter is published in March, June, September and December each year.

Topics covered in the March edition include an update on business interruption and the impact of Covid-19, sustainable finance developments relevant to the insurance sector, and general updates on insurance related activities underway in the Central Bank.

A copy of the Newsletter can be accessed [here](#).

7. ANTI-MONEY LAUNDERING (AML) AND COUNTERING THE FINANCING OF TERRORISM (CFT)

7.1 EBA publishes revised Guidelines on AML/TF Risk Factors

On 1 March 2021, the European Banking Authority (**EBA**) published its final revised Guidelines on ML/TF risk factors, taking into account changes to the EU AML/CFT legal framework and addressing new Money Laundering (**ML**) /Terrorist Financing (**TF**) risks (**Revised Guidelines**). The Revised Guidelines strengthen the requirements on individual and business wide risk assessments, as well as customer due diligence (**CDD**) measures, adding new guidance on the identification of beneficial owners, the use of innovative solutions to identify and verify customers' identities, and how financial institutions should comply with legal provisions on enhanced CDD related to high-risk third countries. The Revised Guidelines are addressed to both financial institutions and supervisory authorities.

Please see the previous Dillon Eustace briefing paper on this topic which can be accessed [here](#).

The next steps are for the Revised Guidelines to be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the Revised Guidelines will be two months after the publication of the translations. The Revised Guidelines will apply three months after publication in all EU official languages. We expect that the Central Bank will report that they intend to comply in full. Upon the date of application, the Revised Guidelines will repeal and replace the original guidelines (JC/2017/37).

The announcement published by the EBA can be accessed [here](#).

The Revised Guidelines can be accessed [here](#).

7.2 EBA issues opinion on the risks of ML and TF affecting the EU's financial sector

On 3 March 2021, the EBA issued an opinion on the risks of money laundering and terrorist financing affecting the EU's financial sector (**Opinion**).

The Opinion examines cross-sectoral risks such as those associated with virtual currencies, crowdfunding platforms, the provision of financial products and services through FinTech firms, weaknesses in CFT systems and controls, supervisory divergence, de-risking, and divergent approaches to tax-related crimes. The Opinion goes on to examine sector-specific risks.

The Opinion also addresses ML/TF risks that have arisen in the context of the Covid-19 pandemic. The Opinion notes that the pandemic illustrates how new ML/TF risks can emerge unexpectedly, impacting firms' ability to ensure adequate AML/CFT compliance and NCAs' ability to ensure the ongoing supervision of firms in the current context of restrictions on movement. The Opinion recommends that risks associated with Covid-19 require immediate attention and monitoring by NCAs.

The Opinion can be accessed [here](#).

7.3 EBA issues consultation paper on risk-based supervision under AMLD 4

On 17 March 2021, the EBA issued a consultation paper on draft guidelines on the characteristics of a risk-based approach to AML and TF supervision, and the steps to be taken when conducting supervision on a risk-sensitive basis, produced under the Directive on the prevention of the use of the financial system for the purposes of ML or TF ((EU) 2015/849) (**AMLD 4**) (**Guidelines**).

The Guidelines propose to amend the first iteration of the guidelines published in 2016. The proposed amendments address the key challenges for supervisors when implementing the risk-based approach. The Guidelines, amongst other recommendations:

- emphasise the need for NCAs to conduct comprehensive risk assessment at sectoral and sub-sectoral level to support their identification of risk areas that require more attention;
- explain the different supervisory tools available to NCAs and provide guidance on selecting the most effective tools for different purposes; and
- emphasise the importance of a robust follow-up process and set out different aspects that NCAs should consider when determining the most effective follow up action.

The EBA is seeking feedback from stakeholders on the Guidelines, the consultation period is open until 17 June 2021. The EBA intends to finalise the Guidelines following conclusion of the consultation. The Guidelines will become applicable three months after publication in the official EU languages, at which time the existing guidelines will be repealed.

The Guidelines can be accessed [here](#).

7.4 Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021

On 18 March 2021, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020 (**Act**) was signed into law.

The purpose of the Act is to transpose the criminal justice elements of the Directive amending AMLD 4 on the prevention of the use of the financial system for the purposes of ML or TF ((EU) 2018/843) (**Fifth EU Anti-Money Laundering Directive** or **AMLD 5**) by amending the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 in line with AMLD 5.

The final text of the Act can be accessed [here](#).

8. DATA PROTECTION

8.1 EDPB adopts joint opinions on new standard contractual clauses

On 14 January 2021, the European Data Protection Board (**EDPB**), and the European Data Protection Supervisor (**EDPS**) adopted joint opinions on two sets of standard contractual clauses (**SCCs**). The SCCs were first published by the European Commission on 12 November 2020 (**Opinions**). The Opinions relate to SCCs:

- for transferring personal data to non-EU countries (**Third Country SCCs**); and
- between controllers and processors located in the EU (**Controller-Processor SCCs**).

The Third Country SCCs will replace the existing SCCs in place and aim to ensure that the level of protection of personal data ensured by the GDPR, when transferred to a third country, is not undermined. The Controller-Processor SCCs are new and aim to ensure harmonisation and legal certainty in relation to the contract between a controller and processor that a controller is obliged to impose under Article 28 GDPR.

The EDPB and the EDPS welcomed the Controller-Processor SCCs, however requested several amendments, including clarity regarding the “docking clause” and other aspects relating to obligations for processors. The EDPB also suggested that the Annexes to the SCCs clarify as much as possible the roles and responsibilities of each of the parties with regard to each processing activity.

The EDPB and the EDPS also welcomed the Third Country SCCs, however requested amendments regarding the scope of the SCCs, certain third-party beneficiary rights, certain obligations regarding onward transfers, and the notification to the Supervising Authority. The EDPB and the EDPS advised that where ad-hoc supplementary measures are required in order to ensure that data subjects are afforded a level of protection equivalent to the GDPR regime, the Third Country SCCs should be used alongside the EDPB recommendations on supplementary measures (**EDPB Recommendations**). The next step is for the European Commission to formally adopt a decision incorporating the finalized SCCs.

The EDPB joint opinion on Third Country SCCs can be accessed [here](#).

The EDPB joint opinion on Controller-Processor SCCs can be accessed [here](#).

The EDPB Recommendations are available [here](#).

8.2 EDPB adopts Guidelines on examples regarding data breach notification

On 14 January 2021, the EDPB adopted Guidelines 01/2021 on Examples regarding Data Breach Notification (**Guidelines**).

The Guidelines address a range of data breach notification cases such as ransomware, data exfiltration attacks, internal human risk source, lost or stolen devices and documents, postal errors and social engineering. In each case, the Guidelines highlight good and bad practices, offer advice on how risks should be identified and assessed, and offer advice regarding when the controller should notify the Supervising Authority and/or the data subjects.

The purpose of the Guidelines is to help data controllers in deciding how to handle data breaches and what factors to consider during risk assessment.

The Guidelines are intended to compliment the Article 29 Working Party Guidelines on Personal Data Breach Notification under the GDPR, issued in October 2017, by offering more practical advice.

The EDPB sought stakeholder's views on the Guidelines. The consultation period closed on 2 March 2021.

The Guidelines can be accessed [here](#).

8.3 Council agrees its position on new ePrivacy rules

On 10 February 2021, the Council of the EU agreed its negotiating mandate on the Proposal for a Regulation concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (**draft ePrivacy Regulation**) (**Negotiating Mandate**).

The draft ePrivacy Regulation will repeal Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (**ePrivacy Directive**).

The draft ePrivacy Regulation aims to build on the existing ePrivacy Directive which ensures the confidentiality of communications and respect for private life in the electronic communications sector. The draft ePrivacy Regulation reflects the technological developments that have occurred since the last revision of the ePrivacy Directive in 2009, for example the increased reliance on internet-based communication services such as Voice over IP and instant messaging.

The Council of the EU will now commence talks with the European Parliament on the final text.

The text of the Negotiating Mandate can be accessed [here](#).

8.4 European Commission publishes draft adequacy decision for transfers of personal data to the UK

On 19 February 2021, the European Commission published a draft adequacy decision for transfers of personal data to the United Kingdom (**UK**) under the Regulation on the protection of natural persons with regard to the processing of personal data ((EU) 2016/679) (**General Data Protection Regulation** or **GDPR**) (**Decision**).

The Decision concludes, following assessment by the European Commission that the UK ensures an essentially equivalent level of protection to that guaranteed under the GDPR.

The European Commission is now required to obtain an opinion from the EDPB and obtain the green light from a committee composed of representatives of the EU member states. Following this, the European Commission may proceed to adopt the Decision.

Once the Decision is adopted, it will be valid for a first period of four years. After four years, it will be possible to renew the adequacy finding if the level of protection in the UK continues to be adequate.

Until the Decision is adopted, data flows between the EEA and the UK may continue pursuant to the interim regime agreed in the EU-UK Trade and Cooperation Agreement. This interim period expires on 30 June 2021.

The European Commission has followed a similar procedure in respect of the Directive on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences ((EU) 2016/680) (**Law Enforcement Directive**).

The Decision can be accessed [here](#).

9. MISCELLANEOUS

9.1 Insurance (Restriction on Differential Pricing and Profiling) Bill 2021

On 14 January 2021, the Insurance (Restriction on Differential Pricing and Profiling) Bill 2021 (the **Bill**) was initiated in Dáil Éireann. The aim of the Bill is to:

- prohibit the discriminatory pricing of insurance premiums payable by persons to the extent that such pricing is on the basis that any such person is a pre-existing customer of an insurance provider;
- prohibit the use of profiling techniques in the calculation of insurance premiums to determine whether or not a customer or class of customers are likely, or to the extent to which any such customer is likely, to renew the policy concerned;
- to restrict the use of such profiling techniques by insurance providers in respect of new or potential customers; and
- to provide for related matters.

The Bill is currently at the Second Stage in Dáil Éireann.

The Bill and its progress can be accessed [here](#).

If you have any questions in relation to the content of this update, to request copies of our most recent newsletters, briefings or articles, or if you wish to be included on our mailing list going forward, please contact any of the team members below.

Keith Waine

E-mail: keith.waine@dilloneustace.ie

Tel : + 353 1 673 1822

Fax: + 353 1 667 0042

Karen Jennings

E-mail: karen.jennings@dilloneustace.ie

Tel : + 353 1 673 1810

Fax: + 353 1 667 0042

Rose McKillen

E-mail: rose.mckillen@dilloneustace.ie

Tel : + 353 1 673 1754

Fax: + 353 1 667 0042

Laura Twomey

E-mail: laura.twomey@dilloneustace.ie

Tel : + 353 1 673 1848

Fax: + 353 1 667 0042

Seán Mahon

E-mail: sean.mahon@dilloneustace.ie

Tel : + 353 1 673 1707

Fax: + 353 1 667 0042

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.