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Insurance

Quarterly Legal and Regulatory Update

Period covered: 1 January 2023 – 31 March 2023

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1. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

1.1 EIOPA publishes Consumer Trends Report 2022

On 11 January 2023, the European Insurance and Occupational Pensions Authority (**EIOPA**) published its Consumer Trends Report 2022 (**Report**). The Report examines the financial health of consumers and small businesses through their use of insurance and pension savings products.

The Report's key conclusions include:

- As of June 2022, access to insurance and pensions products remained low.
- Current disruptions are having a direct impact on consumers' and SMEs' financial health with the macro-economic environment affecting both negatively, while some opportunities are offered by digitalisation.
- Adequate and consumer-centric product design and distribution processes can significantly contribute to consumers' financial health.
- Ensuring sustainability claims are substantiated to avoid loss of trust and broader societal impact is important to contribute to consumers' and society's financial health.
- The increase in systemic events has led to an increase in un-insurable risks and/or risks which can only be insured at high prices impacting consumers' and SMEs' financial health. Lack of clarity in terms and conditions leads to further consumer detriment when systemic events materialise.

The Report can be accessed here.

1.2 EIOPA publishes Supervisory Convergence Plan for 2023

On 1 February 2023, EIOPA published its Supervisory Convergence Plan for 2023, in line with its mandate to foster a common supervisory culture and build consistent supervisory practices within the EU (**Plan**).

In its Plan, EIOPA identifies the following three priorities to enhance supervisory convergence:

- The implementation of the common supervisory culture and the development of supervisory convergence tools by working on the risk assessment framework and its supervisory approach to sustainability risks, amongst other actions.
- Alleviating risks to the internal market by continuing to focus on supervisory convergence, for example by promoting benchmark studies on internal models and addressing lack of convergence in the way national competent authorities (**NCAs**) treat reinsurance undertakings with the head office in third countries.
- The supervision of emerging risks, including IT security, cyber and governance-related risks, cyber underwriting, digital transformation, and digital business model analysis.

The Plan can be accessed here.

1.3 EIOPA publishes Supervisory Statement on the use of governance arrangements in third countries

On 2 February 2023, EIOPA published a Supervisory Statement on the use of governance arrangements in third countries (**Supervisory Statement**).

The aim of the Supervisory Statement is to ensure appropriate supervision and monitoring of the compliance of insurance undertakings and intermediaries with the requirements of the relevant EU legislation in relation to their governance arrangements in third countries.

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EIOPA has reiterated that EU-based undertakings or intermediaries should not resemble empty-shell companies that do not have an appropriate level of corporate substance within the EU. EIOPA notes that such governance arrangements may lead to poor risk management, ineffective decision-making and pose operational, reputational, and financial risks which ultimately impair policyholder protection.

EIOPA is of the opinion that the purpose of an undertaking or an intermediary should be primarily to serve the market in which it is established and any operation of third country branches should not materially impair the system of governance, increase operational risk or undermine policyholder protection. Furthermore, regulated functions or activities should not be structured or conducted in such a way so as to impair the ability of supervisory authorities to monitor the compliance of the undertaking or intermediary with its legal and regulatory obligations.

EIOPA and the Central Bank of Ireland (**Central Bank**) will closely monitor market developments regarding the use of third country governance arrangements following the publication of the Supervisory Statement.

The Supervisory Statement can be accessed here.

1.4 EIOPA publishes report on the implementation of climate-related adaptation measures in non-life underwriting practices

On 6 February 2023, EIOPA published a report on the implementation of climate-related adaptation measures in non-life underwriting practices (**Report**).

The Report follows completion of a pilot exercise on impact underwriting conducted by EIOPA in 2022. The Report provides an overview of the main findings of the pilot exercise regarding current underwriting practices and challenges mentioned by the participating insurance undertakings.

The pilot exercise particularly aims to better understand the industry's current underwriting practices regarding climate change adaptation and to assess their prudential treatment under Solvency II, against the backdrop of expected rises in climate related insurance claims. The Report considered whether the prudential framework introduces any obstacles potentially hindering the incorporation of adaptation measures in insurance products.

The Report concludes that the EU insurance market is at an "early stage" regarding non-life insurance products implementing climate-related adaptation measures, particularly in the context of the retail insurance business. This is due to a variety of challenges the industry faces regarding the implementation of adaptation measures. For example, the lack of awareness of climate change and related adaptation measures by policyholders is naturally limiting the market demand for corresponding insurance products.

EIOPA notes that it will continue its work on impact underwriting to foster climate change adaptation in non-life insurance in the EU, and will contribute with its work programme for 2023 to help overcoming some of the challenges arising from the pilot exercise.

The Report can be accessed here.

1.5 EIOPA publishes Supervisory Statement on differential pricing practices in non-life insurance lines of business

On 16 March 2023, EIOPA published a supervisory statement, addressed to NCAs, setting out its expectations regarding differential pricing practices in non-life insurance lines of business (**Supervisory Statement**).

Differential pricing practices occur when customers with a similar underwriting risk and cost of service are charged different premiums for the same insurance product.

EIOPA, in publishing the Supervisory Statement, aims to clarify supervisory expectations with regards to the existing requirements in the Insurance Distribution Directive ((EU) 2016/97) (**IDD**) legislative framework and promote a convergent approach amongst NCAs in the supervision of Product Oversight and Governance (**POG**) and fair treatment of customers and disclosure requirements, with a view to preventing unfair differential pricing practices that lead to customer detriment.

The Supervisory Statement can be accessed here.

1.6 EIOPA publishes Staff Paper on nature-related risks and impacts for insurance

On 29 March 2023, EIOPA published a Staff Paper on nature-related risks and impacts for insurance (**Staff Paper**).

The Staff Paper explores how nature-related risks can affect (re)insurers and examines ways in which the insurance sector can meaningfully contribute to the conservation and restoration of nature through investments and underwriting activity.

The Staff Paper forms part of EIOPA's sustainable finance strategy, which aims to establish supervisory expectations for the management of nature-related risks and their potential impacts on the insurance sector.

The Staff Paper can be accessed here.

2. INSURANCE DISTRIBUTION DIRECTIVE (IDD)

2.1 EIOPA launches consultation on changes to the RTS regarding the minimum amount of PII cover and financial capacity intermediaries need under IDD

On 9 February 2023, EIOPA published a consultation paper on its draft amendments to the Regulatory Technical Standards (**RTS**) adapting the base euro amounts for the professional indemnity insurance (**PII**) cover and financial capacity of insurance intermediaries under the IDD (**Consultation Paper**).

The IDD prescribes that changes to the minimum amounts shall be based on the rate of inflation. As the Harmonised Index of Consumer Prices (**HICP**) rose by 20.32% between 1 January 2018 and 31 December 2022, the new base amounts would be as follows:

- The base PII amount applying to each claim is to increase from EUR 1 300 380 to EUR 1 564 610 [+ EUR 264 230].
- The base aggregate PII amount per year is to increase from EUR 1 924 560 to EUR 2 315 610 [+ EUR 391 050].
- The base financial capacity amount is to increase from EUR 19 510 to EUR 23 480 [+ EUR 3 970].

Stakeholders are invited to provide feedback to this consultation by responding to the questions via the online survey by 6 May 2023.

The Consultation Paper and online survey can be accessed here.

3. PRIIPS

3.1 Corrigendum to PRIIPS Level 2 Measures published in the OJ

On 16 March 2023, a Corrigendum to the PRIIPs Level 2 Measures[1] was published in the Official Journal of the European Union (**OJ**) which corrects one of the rules applicable to the calculation of the summary risk indicator detailed in Annex II thereto.

A copy of the Corrigendum is available here.

[1] Commission Delegated Regulation (EU) 2017/653 as amended by Commission Delegated Regulation (EU) 2021/2268

4. CENTRAL BANK OF IRELAND

4.1 Central Bank publishes Guidance for (Re)Insurance Undertakings on Intragroup Transactions & Exposures

On 30 January 2023, the Central Bank published its finalised Guidance on (Re)insurance Undertakings on Intra-Group Transactions and Exposures (**Guidance**) and accompanying Feedback Statement following the publication of Consultation Paper 150 (**CP150**).

The aim of the Guidance is to provide clarity on the Central Bank's expectations with regard to intragroup transactions and exposures of (re)insurance undertakings supervised by the Central Bank and in doing so, to promote a level playing field. The Guidance does not introduce any new requirements on (re)insurers in relation to intragroup transactions, however it clarifies the Central Bank's expectations on what compliance with the existing Solvency II requirements might look like for (re)insurers.

Section 1 sets out the expectations of the Central Bank in relation to the governance and risk management of material intragroup transactions in general. Section 2 focuses on three key exposures namely: (i) intragroup assets; (ii) intragroup reinsurance; and (iii) cash pooling/treasury function arrangements, as these are the most significant intragroup exposures observed by the Central Bank.

The Guidance is applicable from 30 January 2023 and can be accessed here.

The Feedback Statement can be accessed here.

4.2 Central Bank publishes Dear CEO Letter on its regulatory and supervisory priorities for 2023

On 16 February 2023, the Central Bank published a Dear CEO letter which was sent to all regulated firms on key regulatory and supervisory priorities for the coming year, against what they deem to be a persisting challenging financial backdrop. The Central Bank has reiterated its outcomes focused approach to regulation and supervision, which remains fundamentally a risk-based approach.

Key regulatory and supervisory priorities for the Central Bank include:

- The provision of a clear, open and transparent authorisation process.
- The assessment and management of risks to the financial and operational resilience of firms.
- Consulting and engaging on regulatory developments under the Consumer Protection Framework and Individual Accountability Framework.
- Consultation on the Central Bank's approach to innovation that will include an exploration of new ways of engagement with innovators and their products.
- Ongoing focus on integrity within the financial system including the prevention of market abuse, and supervision of compliance with anti-money laundering and countering the financing of terrorism (**AML/CFT**) obligations and enforcing financial sanctions.
- Ensuring implementation of the EU's AML Action Plan including the establishment of a single supervisory authority.
- Implementation of new EU regulations on digital operational resilience (**DORA**) and markets in crypto assets (**MiCA**).

The Dear CEO letter can be accessed here.

4.3 Central Bank removes COVID-19 related flexibility for regulated firms

During COVID-19, the Central Bank allowed for certain flexibility in how regulated firms complied with their regulatory obligations.

On 28 February 2023, the Central Bank confirmed that it no longer considers such flexibility to be required and, as a result, all regulated firms should resume to comply with their regulatory requirements in the normal manner.

Further information can be accessed here.

4.4 Central Bank (Individual Accountability Framework) Act 2023 and Central Bank Consultation Paper on the Individual Accountability Framework (CP 153)

On 9 March 2023, the Central Bank (Individual Accountability Framework) Act 2022 (**Act**) was signed into law.

The Act was introduced to promote accountability within the financial services sector and is intended to make individuals in key positions individually responsible for their actions within the scope of their roles. This includes senior management, directors and other decision makers with an impact on the firm's overall performance, with the ultimate goal being an improvement in integrity and stability.

The Act comprises four pillars:

- Introduction of New Business and Individual Conduct Standards: The Act introduces new conduct standards for both firms and individuals working for such firms. All firms regulated by the Central Bank will be required to comply with business conduct rules, including obligations such as acting honestly and with due skill, care and diligence. All individuals performing controlled functions (**CFs**) in a regulated firm will be required to comply with common conduct standards. Senior executives will also have to comply with additional conduct standards related to running the part of the business for which they are responsible;
- Senior Executive Accountability Regime (**SEAR**): This will require in-scope firms to set out clearly and fully where responsibility and decision-making lie within the firm's senior management;
- Enhancements to the current Fitness & Probity (**F&P**) Regime: This will include clarifying firms' obligations to proactively certify that individuals carrying out CF functions are fit and proper; and
- Amendments to the Administrative Sanctions Procedure (**ASP**): A key change will be the Central Bank's ability to take enforcement action under the ASP directly against individuals for breaches of their obligations rather than only for their participation in breaches committed by a firm.

On 13 March 2023, the Central Bank published its Consultation Paper 153 (**CP153**) containing draft regulations and guidance which set out how it proposes to implement the new Individual Accountability Framework (**IAF**) following the signing into law of the Act on 9 March 2023.

CP153 contains draft implementing regulations including (i) SEAR Regulations, (ii) Fitness and Probity Certification Regulations and (iii) Holding Companies Regulations.

CP153 also includes draft Guidance proposed by the Central Bank which seeks to provide further clarity in terms of its expectations for the implementation of SEAR, the conduct standards applicable to CF functions, PCFs and those who may exercise significant influence on the conduct of the firm's affairs and certain aspects of the enhancements to the F&P regime.

The Central Bank has proposed the following implementation timeline:

- Conduct standards applicable to individuals: 31 December 2023.
- F&P Regime - certification (and inclusion of Holding Companies requirements): 31 December 2023.
- SEAR Regulations – obligations on prescribing responsibilities of different roles and requirements on firms to clearly set out allocation of those responsibilities and decision-making are set to apply to in-scope firms: 1 July 2024.

The Central Bank has also confirmed that the business standards which will apply to all regulated firms under the Act are being reviewed as part of the current review of the Central Bank's Consumer Protection Code and accordingly has not yet provided a proposed timeline for implementation of those business standards in CP153.

Interested stakeholders are invited to submit their feedback on CP153 to the Central Bank by the deadline of 13 June 2023 via email to IAFconsultation@centralbank.ie.

A copy of the Act can be accessed here.

CP153 can be accessed here.

A Dillon Eustace briefing on the content of CP153 is available here.

You can also view a webinar hosted by Dillon Eustace on CP153 here.

4.5 Central Bank publishes Guidance for (Re)Insurance Undertakings on Climate Change Risk

On 27 March 2023, the Central Bank published its Guidance for (Re)Insurance Undertakings on Climate Change Risk (**Guidance**).

The Guidance aims to clarify the Central Bank's expectations on how (re)insurers address climate change risks in their business and to assist them in developing their governance and risk management frameworks. The Guidance does not introduce new requirements on (re)insurers in relation to climate change risk, rather the Central Bank is seeking to clarify its expectations on compliance with the existing Solvency II prudential requirements relevant to climate change risk.

The Central Bank's consultation on the Guidance (**CP151**) closed in October 2022. The Feedback Statement to the consultation was published on 27 March 2023 (**Feedback Statement**).

When assessing and managing climate change risks, the Central Bank expects that (re)insurers consider the following overarching principles:

- Iterative approach – capacity, experience and sophistication of methodologies to be built over time;
- Climate change risk moves from emerging risk to key risk;
- Double materiality;
- Role of the ORSA – central to developing an integrated approach to climate change risk;
- Time horizons to be used for assessment of exposure to climate change risk; and
- Group Engagement.

The Guidance can be accessed here.

The Feedback Statement can be accessed here.

An accompanying Climate Change Guidance Infographic can be accessed here.

4.6 Updated Fitness & Probity process for IQs

In March 2023, the Central Bank updated its F&P Individual Questionnaire (**IQ**) which must be submitted by any person wishing to be approved by the Central Bank to perform a pre-approved controlled function. It also published draft guidance on a new process for the submission of IQs via the Central Bank Portal.

A Dillon Eustace briefing on the changes to the IQ application process is available here.

A PDF version of the updated IQ can be accessed here.

The Central Bank's draft guidance on the submission of the IQ can be accessed here, and a presentation on the new F&P application process can be accessed here.

4.7 Central Bank publishes Insurance Quarterly Newsletter for March 2023

In March 2023, the Central Bank published its Insurance Quarterly Newsletter (**Newsletter**).

The Newsletter addresses the following topics:

- Pricing Discipline in General Insurance;
- Supervisory Priorities across 2023;
- Individual Accountability Framework;
- Stakeholder Engagement;
- Sustainable Insurance;
- Consumer Protection Outlook Report;
- Revised F&P Application process.

The Newsletter can be accessed here.

4.8 Outsourcing Register updates

In March 2023 the Central Bank confirmed, in its Quarterly Insurance Newsletter, that the submission date for the Outsourcing Register Templates has been deferred to Q4 2023.

All firms whose PRISM Impact Rating is Medium Low or above (or its equivalent) are required to submit their completed reporting template to the Central Bank via the Online Reporting System (**ONR**).

The Central Bank will advise a specific submission date in due course.

The Outsourcing Register Template Guidance Note for (Re)Insurance Undertakings can be accessed here.

4.9 Central Bank announces changes to the Central Bank Portal

In March 2023, in a message sent to all Portal administrators, the Central Bank confirmed that in H2 2023, the existing ONR login will be permanently disabled and that all users should link their Portal and ONR accounts by the end of June 2023 to ensure that they retain the same permissions and access for the Portal that they currently hold for the ONR system.

Further guidance on how to link both accounts is available here.

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

5.1 EBA updates Single Rulebook Q&A - Directive 2015/849/EU (AMLD)

During the period 1 January 2023 to 31 March 2023, the European Banking Authority (**EBA**) updated its Single Rulebook Q&A for Directive 2015/849/EU (**Fourth Anti-Money Laundering Directive**). Q&As in respect of the following articles have been updated:

- Article 11 – Payment Information Service Providers (PISP) obligations to conduct customer due diligence;
- Article 29 - Clarification of the relationship between EBA's Guidelines on outsourcing arrangements and Section 4 of the Directive (EU) 2015/849; and
- Article 45 - Establishment and appointment of a Central Counterparty Clearing House (**CCP**).

The Single Rulebook Q&A can be accessed here.

5.2 Guidelines on the Definition of 'prominent public functions': Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

On 27 January 2023, the Department of Justice issued guidelines under Section 37(12) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) (**Guidelines**). The Guidelines provide clarification on those functions in Ireland that shall be considered to be "prominent public functions" for the purposes of identifying domestic "Politically Exposed Persons".

For the purpose of the Guidelines, a "prominent public function" within the State is considered an office or other employment in a public body (not including courts) in respect of which the remuneration is not less than the lowest remuneration in relation to the position of Deputy Secretary General in the Civil Service. The Guidelines set out specific examples of those falling within the scope of "prominent public function".

The Guidelines can be accessed here.

6. DATA PROTECTION

6.1 Guidelines 05/2021 on the Interplay between the application of Article 3 and the provisions on international transfers under Chapter V of the GDPR

On 14 February 2023, the European Data Protection Board (**EDPB**) adopted revised guidelines on the interplay between Article 3 and Chapter V of the GDPR. The original guidelines were published on 18 November 2021.

The revised guidelines were issued in February 2023 following a public consultation. The original guidelines include various examples of data flows to third countries. The updated guidelines include additional examples to provide a better understanding, including providing further guidance on when personal data could be deemed to be "made available" to a third country controller, joint controller or processor. In the new guidelines, the EDPB states that:

"Some examples of how personal data could be "made available" are by creating an account, granting access rights to an existing account, "confirming"/"accepting" an effective request for remote access, embedding a hard drive or submitting a password to a file. It should be kept in mind that remote access from a third country (even if it takes place only by means of displaying personal data on a screen, for example in support situations, troubleshooting or for administration purposes) and/or storage in a cloud situated outside the EEA offered by a service provider, is also considered to be a transfer provided that the three criteria outlined [above] are met".

In addition, the revised guidelines provide further guidance relating to (i) the transfers of data by a processor in the EEA (as exporter) back to its controller in a third country and (ii) the transfers of data by a processor in the EEA (as exporter to a sub-processor in a third country).

A copy of the original guidelines can be accessed here.

A copy of the revised guidelines can be accessed here.

6.2 EDPB adopts opinion on EU-US Data Privacy Framework

On 28 February 2023, the EDPB adopted its opinion (**Opinion**) on the proposed EU-US Data Privacy Framework having regard to the level of protection afforded in the United States of America on the basis of the examination of the draft decision prepared by the European Commission.

On 13 December 2022, the European Commission published its draft adequacy decision under which it provided a detailed assessment of the US legal framework for state surveillance, intended to replace the previous US Privacy Shield previously invalidated by the CJEU in the Schrems II case. The European Commission's draft decision concludes that the framework ensures an adequate level of protection for personal data transferred from the EU to US companies.

In the Opinion, the EDPB expresses the opinion that the U.S. Executive Order 14086 has led to significant improvements in the level of protection for personal data compared to the US Privacy Shield. However, despite noting "substantial improvements" in contrast to the previous legal framework, the EDPB raises a number of concerns relating to "certain rights of data subjects, onward transfers, the scope of exemptions, temporary bulk collection of data and the practical functioning of the redress mechanism" which it suggests should be addressed and clarified by the European Commission "in order to solidify the grounds for the draft adequacy decision".

On 14 February 2023, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs published a draft motion for a resolution rejecting the proposed framework in which it urges the European Commission not to adopt the draft adequacy decision in relation to the US and calls for the introduction of meaningful reforms.

Before the European Commission can proceed with adopting the finalised adequacy decision, it is still subject to approval from a committee composed of representatives of the EU Member States, along with the European Parliament who have a right of scrutiny over such adequacy decisions.

For further information please see here.

7. CONFLICT IN UKRAINE

7.1 Adoption of tenth package of sanctions against Russia by the EU on 25 February 2023

In reaction to Russia's continued military aggression against Ukraine, the European Union adopted additional economic sanctions against Russia which have been introduced through a suite of additional packages adopted by the Council of the European Union, announced on 25 February 2023. This package included, amongst others, the following measures:

- a new reporting obligation for individuals and legal entities to provide their competent authority and the European Commission with information on the assets and reserves of the Central Bank of Russia which they hold or control or are a counterparty to. The Central Bank subsequently confirmed that in-scope entities must make the relevant filings within two weeks of 27 April 2023 (i.e. by 11 May 2023) and must be updated every three months thereafter;
- additional reporting obligations on frozen assets (including for dealings before listing) and assets which should be frozen, with in-scope individuals and legal entities being required to report this information to their NCA and the European Commission within two weeks of acquiring this information; and
- an extension to the list of those individuals and entities subject to restrictive measures;

For a complete overview of the additional measures introduced on 25 February 2023, please see the related press release which is available here.

The Central Bank's webpage on sanctions reporting is available here.

A consolidated version of the European Commission's frequently asked questions on the range of measures introduced in response to Russia's continued military aggression against Ukraine is available here.

7.2 Central Bank reminds regulated firms of obligations to ensure compliance with financial sanctions

In its Securities Markets Risk Outlook Report for 2023 (**Report**) published on 2 March 2023, the Central Bank reminded firms that they must remain in compliance with financial sanctions at all times with respect to any impacted asset or investor.

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It expects all financial service providers to have appropriate systems and controls in place to identify relevant sanctioned instruments and individuals to ensure that they are compliant with their obligations in relation to financial sanctions.

The Report is available here.

8. SUSTAINABILITY

8.1 Publication of revised SFDR Level 2 Measures

On 17 February 2023, Commission Delegated Regulation (EU) 2023/363 (**Revised SFDR Level 2 Measures**), amending Commission Delegated Regulation (EU) 2022/1288 (**SFDR Level 2 Regulations**) supplementing Regulation (EU) 2019/2088 (**Sustainable Finance Disclosure Regulation** or **SFDR**), was published in the OJ. The Revised SFDR Level 2 Measures enter into force on 20 February 2023.

The Revised SFDR Level 2 Measures incorporate updated pre-contractual annexes and periodic report annexes which must be used by financial products falling within the scope of Article 8 or Article 9 of the SFDR which incorporate additional questions regarding exposure of the relevant product to EU taxonomy-aligned fossil gas and nuclear energy economic activities. They also make some other additional changes to the existing SFDR Level 2 Measures.

The Revised Level 2 SFDR Measures are available here.

On 23 March 2023, EIOPA published a word version of the annexes to the Revised SFDR Level 2 Measures, which can be accessed here.

9. MISCELLANEOUS

9.1 Insurance Europe publishes letter and position paper regarding potential EU-wide ban on inducements

On 11 January 2023, Insurance Europe published a Position Paper and Letter addressed to the EU Commissioner for financial services, financial stability and the Capital Markets Union, Mairead McGuinness, regarding a potential EU-wide ban on inducements. Insurance Europe understands that the European Commission is currently considering different policy options to increase consumers' participation and confidence in financial markets as part of the Retail Investment Strategy (**RIS**) that may include regulatory interventions on the remuneration of advisors.

In the documents, Insurance Europe explain why, in its view, an outright EU-wide ban on inducements would limit consumer's access to financial advice, and so undermine the goals of the RIS. Instead, Insurance Europe argues that a combination of measures promoting transparency, value for money principles in product design and financial education would deliver more tangible benefits to consumers.

The Position Paper can be accessed here.

The Letter to Commissioner McGuinness can be accessed here, and the press release can be accessed here.

9.2 Update on the Road Traffic and Roads Bill 2021

The Road Traffic and Roads Bill 2021 (**Bill**) is currently being considered by the Oireachtas. As of 1 February 2023, the Bill is before Seanad Éireann, Fourth Stage.

The Bill confers functions on the Minister for Transport in relation to zero to low emission vehicles and recharging and refuelling infrastructure relating to such vehicles and makes certain amendments to existing legislation to provide for related matters.

The Bill legislates, for the first time, the use of E-scooters and E-bikes on Irish roads.

The use of E-scooters on public roads is currently unlawful in Ireland. Under the Road Traffic Act 1961, E-scooters are classified as 'powered transporters'. Therefore, they require registration, motor tax, a driving licence and insurance when used on a public road. However, as powered transporters fail to meet the criteria for vehicle registration, such as minimum required safety standards, they are not permitted for use on public roads in Ireland. As a result, third party liability insurance cannot be sold in respect of E-scooters.

Under the Bill, E-scooters and E-bikes will be considered a "powered personal transporter" (**PPT**). Under the Bill, a PPT equipped with an electric motor, with a maximum speed of 25 km/hr, will be exempt from tax, insurance, registration and licence requirements. Insurance will therefore be mandatory for "higher-powered e-scooters and e-bikes" which are capable of speeds in excess of 25km/h.

The progress of the Bill can be tracked here.

9.3 Council of EU agrees negotiating mandate on distance financial services contracts

On 2 March 2023, the Council of the European Union (**Council**) announced via press release that it has agreed on a general approach (or negotiating mandate) regarding a proposed Directive on financial services contracts concluded at a distance (**Proposed Directive**). The Proposed Directive will amend the rules concerning financial services contracts concluded at a distance, repealing the existing Distance Marketing Directive and inserting its provisions into the Consumer Rights Directive.

The European Commission first adopted its legislative proposal for the Proposed Directive in May 2022. The general approach adopted by the Council provides the Council Presidency with a mandate for negotiations with the European Parliament.

The Council have published an accompanying note from the Permanent Representatives Committee enumerating the general purpose and aim of the Proposed Directive, namely:

- to ensure a streamlined and future-proof framework for financial services concluded at a distance;
- to provide better protection for consumers in the digital environment;
- to reduce unnecessary burden and provide a level playing field for financial service providers; and
- to encourage the cross-border provision of such services.

A copy of the Council's press release can be accessed here.

The Council's note can be accessed here.

The Commission's proposal for the Directive can be accessed here.

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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.

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