



## Insurance

# Quarterly Legal and Regulatory Update

Period covered: 1 April 2020 – 30 June 2020

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## 1. SOLVENCY II

### 1.1 Implementing Regulation on technical information for calculation of technical provisions and basic own funds for Q2 2020 published in the Official Journal of the European Union

On 13 May 2020, the Commission Implementing Regulation (EU) 2020/641 which lays down technical information for the calculation of technical provisions and basic own funds for reporting from 31 March 2020 until 29 June 2020 under the Solvency II Directive (2009/138/EC) (**Solvency II Directive**) was published in the Official Journal of the European Union.

The Implementing Regulation sets out the technical information to be used by reinsurers and insurers when calculating technical provisions and basic own funds for reporting with reference dates in Q2 2020.

To ensure uniform conditions for insurers and reinsurers calculating technical provisions and basic own funds, the Solvency II Directive requires that technical information on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments must be laid down for every reference date. In each case, the technical information is based on market data related to the end of the last month preceding the first reporting reference date to which the relevant Implementing Regulation applies.

The European Commission adopted the Implementing Regulation on 12 May 2020. It enters into force on 14 May 2020 and applies from 31 March 2020.

The Commission Implementing Regulation (EU) 2020/641 can be accessed [here](#).

### 1.2 European Court of Justice ruling on insured's right to choose lawyer under Solvency II Directive covers mediation

The Court of Justice of the EU (**ECJ**) has ruled on a reference for a preliminary ruling concerning an insured person's right under the Solvency II Directive to choose their own lawyer in proceedings relating to a contract for legal expenses insurance in the case of *Orde van Vlaamse Balies and Ordre des barreaux francophones et germanophone v Ministerraad* (Case C-667/18).

The ECJ was asked to consider whether Article 201(1)(a) of the Solvency II Directive must be interpreted as meaning that the term "proceedings" referred to in the article includes judicial or extrajudicial mediation proceedings in which a court is involved or is capable of being involved.

The ECJ ruled that "proceedings" did include judicial or extrajudicial mediation and held that "...any stage, even a preliminary stage, which is capable of leading to proceedings before a judicial body must be regarded as falling within the term 'proceedings'". The decision reflects the ECJ's approach of a broad interpretation of the rights of insured persons which seeks to provide adequate protection for the interests of insured persons.

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

## 2. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

### 2.1 EIOPA publishes second report on costs and past performance of insurance based investment products and personal pension products

On 6 April 2020, the European Insurance and Occupational Pensions Authority (EIOPA) published its second report on costs and past performance of insurance-based investment products (IBIPs) and personal pension products (PPPs) in the European Union.

The report was published following a request from the European Commission to the European Supervisory Authorities (ESAs) to periodically report on the costs and past performance of retail investment products. The report provides an analysis of costs for 2018 and past performances for the period 2014-2018.

The study documents the impact of market volatility on returns for different product types. The overall performance in 2018 was the lowest for five years and EIOPA also found that costs continue to have a significant impact on net returns, confirming a trend observed last year.

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

### 2.2 EIOPA publishes discussion paper on insurance value chain and new business models arising from digitalisation

On 10 June 2020, EIOPA published a discussion paper on the insurance and reinsurance value chain and new business models arising from digitalization. The paper will be a first step in examining the challenges arising from the new business models of the insurance value chain, as a result of new technologies in the insurance market. The discussion paper contains 21 questions. EIOPA will assess the feedback to the discussion paper in planning its next steps.

Feedback on the discussion paper can be submitted, via the EU Survey Tool, by September 07, 2020.

The press release can be accessed [here](#), the discussion paper can be accessed [here](#) and the EU Survey Tool can be found [here](#).

### 2.3 EIOPA published the findings of its peer review of the Regular Supervisory Report

On 18 June 2020, EIOPA published the findings of its peer review of the Regular Supervisory Report (RSR). The peer review examined how and to what extent the proportionate approach set out under Delegated Regulation (EU) 2015/35 has been implemented among national competent authorities (NCAs). It also aims to determine if further convergence is needed on the frequency of submission of RSRs.

In the peer review, EIOPA analysed legal and regulatory frameworks and national supervisory practices across 31 NCAs in relation to decisions on the frequency of submission of the RSR, and the communication of those decisions to undertakings. The peer review also issued a number of recommended actions that NCAs should take to bring about greater convergence in their approaches and a more consistent implementation of the principle of proportionality. NCAs are expected to have implemented the recommended actions targeting supervisory shortcomings by 2022.

EIOPA will take a number of actions on foot of the findings of the peer review to further achieve supervisory convergence in this area and will develop further guidance in relation to the minimum requirement for submission of the full RSR and its mandatory assessment by NCAs, as well as the communication of the frequency of the RSR.

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

## 2.4 Second discussion paper on methodological principles of insurance stress testing

On 24 June 2020, EIOPA published its second discussion paper on methodological principles of insurance stress testing. The second discussion paper contains three sections addressing the following topics:

- stress test framework on climate change;
- approach to liquidity stress testing; and
- multi-period framework for bottom-up insurance stress testing.

Stakeholders are invited to submit their feedback and the discussion paper is open for comments until 2 October 2020.

The discussion paper and the template for feedback can be accessed [here](#).

## 2.5 EIOPA response to the European Commission's Digital Finance Strategy consultation

On 29 June 2020, EIOPA responded to the consultation of the European Commission on a new digital finance strategy for Europe. In its response, EIOPA highlights that a sound approach to financial innovation should have a balance between enhancing financial innovation and ensuring consumer protection and financial stability frameworks.

The response considers further improvements can be achieved in the following areas:

- improvements and clarifications in insurance legislation could be introduced (e.g. the definition of insurance and clarification of outsourcing requirements);
- ensuring a fair, ethical and transparent use of data; and
- access to relevant data sets for the insurance sector (e.g. balanced, forward-looking and secure approaches open finance/open insurance).

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

## 3. CENTRAL BANK OF IRELAND

### 3.1 The Central Bank announces updates to the Retail Intermediary Authorisation Process

On 26 May 2020, the Central Bank of Ireland (the **Central Bank**) announced updates to the retail intermediary authorisation process.

An applicant seeking authorisation or registration as a retail intermediary under the Investment Intermediaries Act 1995 (as amended) (the **IIA**), the European Union (Insurance Distribution) Regulations 2018 (the **IDR**), the Consumer Credit Act 1995 (as amended) and/or the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 should submit its application for authorisation or registration in electronic format to the Central Bank via its secure file transfer system. Access to this system can be requested via email to [RIAuthorisations@centralbank.ie](mailto:RIAuthorisations@centralbank.ie).

### 3.2 Central Bank issues guidance for retail intermediaries on the requirement to hold Professional Indemnity Insurance cover

On 11 June 2020, the Central Bank issued guidance for retail intermediaries on the requirement to hold Professional Indemnity Insurance (PPI) cover.

A Commission Delegated Regulation amending the Insurance Distribution Directive ((EU) 2016/97) (IDD) with regard to the base euro amounts for PII applicable to intermediaries registered under the IDR entered into force on 12 December 2019 and applied from 12 June 2020.

The Central Bank has amended the Handbook of Prudential Requirements for Investment Intermediaries to align the PII requirements applicable to intermediaries authorised under the IIA to the requirements applicable to intermediaries registered under the IDR. An applicant seeking authorisation under the IIA or registration under the IDR will be required to demonstrate that it holds PII cover at the new levels required effective from 12 June 2020:

- new PII requirements: €1,300,380 per claim and €1,924,560 in aggregate.

The Central Bank will engage directly with the applicants who have already submitted an application seeking authorisation under the IIA or registration under the IDR in respect of the revised PII requirements.

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

### 3.3 Central Bank issues guidance manual for retail intermediaries on the completion of the retail intermediary annual return

On 26 June 2020, the Central Bank issued a guidance manual for retail intermediaries on the completion of the retail intermediary annual return to provide instructional support and guidance to retail intermediary firms who are required to file a Retail Intermediary Annual Return (RIAR) with the Central Bank using the Online Reporting System (ONR).

The guidance manual focuses on the structure and content of the RIAR and provides clarity and definitions for the relevant fields contained within each form of the RIAR.

The guidance manual can be accessed [here](#).

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

### 4.1 European Commission adopts new Delegated Regulation amending list of high-risk third countries under MLD4

On 7 May 2020, the European Commission adopted a Delegated Regulation, amending the list of high-risk third countries that are deemed to have strategic deficiencies in their anti-money laundering (AML) and countering the financing of terrorism (CFT) regimes.

This Regulation adds the following countries to the list of high-risk countries - Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe. It also removes the following nations from that list in light of improvements – Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia.

Notable omissions from the list include Saudi Arabia, Puerto Rico and the US Virgin Islands. (All were included on the draft list issued by the Commission in February 2019, which was rejected by the Council).

The Delegated Regulation was submitted to the Council of the EU and the Parliament to consider for approval. It shall apply from 1 October 2020. The Commission has provided a later application date for this Article because of the COVID-19 pandemic. This Regulation was published in the Official Journal of the European Union on 19 June.

The Commission explains, in a related press release, that this update is necessary as its list of high-risk third countries has not reflected the latest FATF lists since October 2018.

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

## 4.2 European Commission staff working document on new methodology for identifying high-risk third countries under MLD4

On 7 May 2020, the European Commission published a staff working document setting out a new methodology for identifying high-risk third countries under the Fourth Money Laundering Directive ((EU) 2015/849) (**MLD4**).

The new methodology updates and replaces the Commission's June 2018 staff working document.

The new staff working document can be accessed [here](#).

## 4.3 European Commission publishes an action plan designed to strengthen the EU's framework for preventing money laundering and terrorist financing

On 7 May 2020, the European Commission published an action plan designed to strengthen the EU's framework for preventing money laundering and terrorist financing.

Please see the Dillon Eustace briefing paper entitled "Towards a common AML framework for the EU" which can be accessed [here](#).

# 5. SUSTAINABLE FINANCE

## 5.1 ESAs consult on draft RTS on ESG disclosures under SFDR

On 23 April 2020, the Joint Committee of the ESAs published a consultation paper (**Consultation Paper**) on proposed RTS under Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 (**SFDR**).

In this Consultation Paper, the ESAs set down how they propose "financial market participants" inform investors about the consideration of sustainability factors in the investment decision-making and advisory processes. The proposals, which are set out in Section 4 of the Consultation Paper address the "principal adverse impact reporting" obligation set down under Article 4 of the SFDR which applies from 10 March 2021 and which must be complied with in full by large "financial market participants"<sup>1</sup> and otherwise applies to other financial market participants on a "comply or explain basis".

The ESA proposals include an obligation to use a template principal adverse impacts statement in order to ensure comparability of information published by financial market participants as well as setting down common indicators which the ESA suggest are used by all in-scope financial market participants to report on the principal adverse sustainability impacts of investments during the reference period. A link to the Dillon Eustace client briefing entitled "The New ESG Framework: Principal Adverse Impact Reporting" can be accessed [here](#).

<sup>1</sup> Defined as those financial market participants which on their balance sheet date exceed an average number of 500 employees during the financial year or financial market participants which are parent undertakings of a "large group" as defined under Article 3(7) of Directive 2013/34/EU which, on their balance sheet date, exceed an average number of 500 employees during the financial year on a consolidated basis.

The deadline for comments on the proposals is 1 September 2020. The draft RTS will be submitted to the European Commission as a final report for endorsement before being published in the Official Journal of the EU. Six of the RTS must be delivered to the Commission by 30 December 2020 and one must be delivered by 30 December 2021.

## 5.2 European Commission consults on delegated legislation integrating sustainability into Solvency II Directive and IDD

On 8 June 2020, the European Commission published consultation draft texts of six Commission Delegated Regulations and Directives integrating sustainability into the UCITS Directive, AIFMD, MiFID II, Solvency II and IDD as part of the European Union's action plan on sustainable finance. The draft Commission Delegated Regulations amending the Solvency II Directive and IDD are:

- the Commission Delegated Regulation amending Delegated Regulation (EU) 2015/35 on the integration of sustainability risks in the governance of insurance and reinsurance undertakings. The Delegated Regulation (EU) 2015/35 supplements the Solvency II Directive by specifying requirements on governance, conflicts of interest and risk management for insurance and reinsurance undertakings. The draft Commission Delegated Regulation amends the Solvency II Delegated Regulation by requiring insurers to reflect sustainability risks in their risk management processes, by requiring remuneration policies to be consistent with the integration of sustainability risks, and by requiring that sustainability risks are taken into account in the implementation of the prudent person principle.

The amending Commission Delegated Regulation can be accessed [here](#); and

- the Commission Delegated Regulation amending Delegated Regulation (EU) 2017/2358 and Delegated Regulation (EU) 2017/2359 on 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. The Delegated Regulation (EU) 2017/2358 and Delegated Regulation (EU) 2017/2359 supplement the IDD and contain information requirements and conduct of business rules. They are amended by integrating sustainability factors in suitability assessments and by integrating sustainability risks into the product oversight and governance requirements and into the rules on conflicts of interest.

The amending Commission Delegated Regulation can be accessed [here](#).

Feedback on the draft Delegated Regulation and Directive must be provided to the European Commission by 6 July 2020. The Delegated Regulations and Directives will apply 12 months after they enter into force.

## 5.3 Update: Publication of the Taxonomy Regulation in the Official Journal of the EU

In December 2019, the European Council and the European Parliament reached political agreement on the text of a proposed Regulation on the Establishment of a Framework to Facilitate Sustainable Investment (2018/0178(COD)) (the **Taxonomy Regulation**).

This Regulation forms part of the European Commission's sustainable finance strategy. Its purpose is to provide clarity to businesses as to what degree economic activities are considered to be environmentally sustainable.

On 18 June 2020, the European Parliament officially adopted the Taxonomy Regulation. This was subsequently published in the Official Journal of the EU on 22 June 2020.

The Taxonomy Regulation will come into force on 12 July 2020 however the prospectus and annual report disclosure obligations do not apply until 1 January 2022 (in the case of climate change mitigation or climate change adaptation) or 1 January 2023 (in the case of one of the four other environmental objectives set down in the Taxonomy Regulation).

## 5.4 European Commission FAQs on Taxonomy Regulation and technical expert group on sustainable finance

On 10 June 2020, the European Commission published a set of FAQs about its work regarding EU Taxonomy and the EU Green Bond Standard. This included an update on the work of the technical expert group (TEG) on sustainable finance, established to assist in implementing the Action Plan on Financing Sustainable Growth. The FAQs cover topics such as:

- the legal process and how the taxonomy will be developed;
- details about whether the Commission will extend the taxonomy to cover social objectives and a "brown" taxonomy, covering activities that are environmentally harmful;
- how the platform on sustainable finance will be set up, and that it is likely to be operational by September 2020; and
- how the taxonomy should be used, including its interaction with the Non-Financial Reporting Directive (2014/95/EU).

The Commission's published FAQ's can be accessed [here](#).

## 6. COVID-19

### 6.1 EIOPA urges insurers and intermediaries to continue to take actions to mitigate the impact of COVID-19 on consumers

On 1 April 2020, EIOPA issued a statement to insurers and intermediaries urging them to take steps to mitigate the impact of COVID-19 on consumers. In particular, EIOPA asks insurers and intermediaries to:

- provide clear and timely information to consumers on contractual rights;
- treat consumers fairly and be explicit in all communications;
- inform consumers about contingency measures taken;
- continue applying product oversight and governance requirements; and
- consider the interests of consumers and exercise flexibility in how they are treated, where reasonable and practicable.

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

### 6.2 EIOPA update on other measures impacted by COVID-19

On 2 April 2020, EIOPA issued an update press release on the measures impacted by COVID-19. The activities of EIOPA, NCAs and financial institutions have been impacted, with a need to assess implications for the market and to propose immediate regulatory measures where appropriate.

EIOPA stresses the importance of insurers maintaining services to their clients and taking the necessary measures to ensure business continuity. EIOPA and NCAs will offer operational relief where possible and in this regard EIOPA announced it would limit its requests of information and consultations to industry. EIOPA is also reprioritising and extending deadlines or delaying projects where input from NCAs and/or industry is needed.

The press release can be accessed [here](#).

### 6.3 Insurance and Reinsurance Firms Prudentially Supervised by the Central Bank - COVID-19

The Central Bank website has a webpage for the insurance and reinsurance sector to help ensure it continues to operate and serve the needs of its policyholders throughout the disruption and uncertainty caused by the COVID-19 pandemic.

The website contains letters from the Central Bank on supervisory flexibility on reporting and disclosure deadlines on 24 March 2020 which were issued following a series of recommendations made by EIOPA on 20 March 2020. EIOPA has issued a number of statements and recommendations in relation to COVID-19 and measures to be taken to mitigate the impact.

The Central Bank expects insurance and reinsurance firms which are in a position to meet existing risk mitigation programme submission deadlines to continue to do so. Insurance and reinsurance firms can engage directly with their supervisor where they have difficulties meeting specific risk mitigation programme submission dates including the reasons why. Those supervisors will consider on a case-by-case basis whether the postponement of such measures may be necessary.

The Central Bank will continue to review its approach to regulatory flexibility for the insurance and reinsurance sector throughout the duration of the COVID-19 pandemic and may provide further updates as required.

The webpage containing the insurance and reinsurance supervisory flexibility deadlines for supervisory reporting and public disclosure can be accessed [here](#). The Central Bank COVID-19 Information Hub can be accessed [here](#).

### 6.4 Central Bank Actions to mitigate the impact of COVID-19

On 16 April 2020, the Central Bank introduced a new section of its website entitled “COVID-19 – Prudential Regulatory Flexibility Measures”. The section sets out the regulatory flexibility that will be applied by the CBI in certain areas, in particular in relation to regulatory reporting deadlines and risk mitigation plan programme submission dates.

The website page can be accessed [here](#).

### 6.5 Central Bank Regulated Firms and PCF vacancies due to COVID-19

In the Central Bank’s industry [letter](#) of 30 April 2020, a number of issues are addressed in light of the coronavirus pandemic. One of these relates to the role of Pre-Approved Controlled Functions (PCFs) and the Central Bank acknowledged the possibility that a PCF may become incapacitated due to COVID-19.

To avoid any detriment to firms in such an instance, the Central Bank has permitted that once authorisation is sought, companies may appoint a suitable individual to a PCF role for a limited period of time where a vacancy arises due to illness. The Central Bank details the steps that should be taken when opting for this course of action in its [COVID-19 Regulated Firms – FAQ](#).

Our overview of the Central Bank requirements and the approach that firms should take in relation to temporary PCF appointments can be accessed [here](#).

## 7. MISCELLANEOUS

### 7.1 CCPC public consultation on public liability insurance market

On 12 June 2020, the Competition and Consumer Protection Commission (**CCPC**) launched a public consultation on stakeholders' experiences in the public liability insurance market. The consultation will provide the CCPC with evidence to make an informed examination of the competitive conditions in the market for public liability insurance. The consultation is seeking feedback on the following areas:

- influence of the 'insurance cycle' on price and availability of public liability insurance;
- the role of switching in the market;
- cost inflation observed in the market; and
- delivery of insurance services through digitalisation.

The CCPC would also like to receive feedback on any measures that could improve the functioning of the public liability insurance market.

A copy of the CCPC's consultation paper can be accessed [here](#) and the consultation closed for submissions on 3 July 2020.

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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