



Insurance

Quarterly Legal and Regulatory Update

Period covered: 1 July 2021 – 30 September 2021

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1. SOLVENCY II

1.1 EIOPA publishes paper on potential inclusion of climate change in Solvency II natural catastrophe standard formula

On 8 July 2021, the European Insurance and Occupational Pensions Authority (**EIOPA**) published a methodological paper on the potential inclusion of climate change in the natural catastrophe (**Nat Cat**) Solvency Capital Requirement (**SCR**) under Directive 2009/138/EC (**Solvency II Directive**) (**the Methodological Paper**).

The Methodological Paper notes that the frequency and severity of natural catastrophes is expected to increase due to climate change and that this should be reflected in the Nat Cat standard formula to ensure policyholder protection and stability in the insurance market. The Methodological Paper lays out the current methodology used for the Nat Cat SCR calibration and elaborates on climate change in Europe by analysing which perils / countries are impacted by climate change. Finally, the Methodological Paper describes how to include climate change in the Nat Cat SCR calibration in the standard formula.

The Methodological Paper can be accessed [here](#).

1.2 EIOPA publishes supervisory statement on supervisory practices and expectations in case of SCR breach under Solvency II

On 12 July 2021, EIOPA published a supervisory statement (dated 7 June 2021) on supervisory practices and expectations in case of breach of the SCR under Solvency II (**Statement**).

The purpose of the Statement is to foster supervisory convergence in situations where insurance and reinsurance undertakings breach their SCR, in particular addressing the recovery plan required.

The Statement emphasises that the supervisory practices in such situations need to be flexible and should consider the specific situation of each insurance or reinsurance undertaking. However, the Statement notes that it is important that when certain triggers are reached, such as non-compliance with the SCR, convergent approaches are applied to ensure a similar protection of policyholders and beneficiaries across Europe. Given the uncertainty due to the Covid-19 pandemic and the potential increase of non-compliance cases, it is important to ensure consistency in the way the recovery plans are developed, assessed and approved.

The Statement is addressed to national competent authorities (**NCA**s) and is developed to be applicable at any time. However, one specific paragraph is included to address supervisory expectations on recovery plans in the context of the Covid-19 pandemic.

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

1.3 EIOPA publishes opinion on the use of risk mitigation techniques by (re)insurance undertakings

On 12 July 2021, EIOPA published an Opinion (dated 9 July 2021) on the use of risk mitigation techniques by insurance and reinsurance undertakings (**Opinion**).

Since the implementation of Solvency II, new risk mitigation techniques such as new reinsurance structures have appeared in the European market. Risk mitigation techniques are used to mitigate risks and to enhance capital management by diversifying risks. The sound mitigation of risks is recognised in the calculation of the SCR.

The Opinion addresses the use of risk mitigation techniques and emphasises the importance of having a proper balance between the risk effectively transferred and the capital relief in the SCR. This balance is to be assessed following a case-by-case analysis, taking into account the particularities of each reinsurance structure and its specific interaction with the risk profile of the undertaking.

The Opinion also includes a set of recommendations addressed to NCAs to ensure convergent supervision.

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

1.4 EIOPA consults on the revision of Solvency II Guidelines on Contract Boundaries and Valuation of Technical Provisions

On 14 July 2021, EIOPA published two consultation papers on the revision of the following Solvency II Guidelines:

- **Consultation Paper on the revision of Guidelines on Contract Boundaries:** These revised guidelines introduce new guidelines and amend current guidelines on topics that are relevant for the determination of contract boundaries, in particular regarding the assessment whether a cover or financial guarantee has a discernible effect on the economics of the contract and the identification of the contracts which can be unbundled.

EIOPA has invited stakeholders to submit their views on the revised guidelines via a survey. The consultation paper and the survey can be accessed [here](#). The survey remains open until 12 November 2021.

- **Consultation Paper on the revision of Guidelines on the Valuation of Technical Provisions:** These revised guidelines introduce new guidelines and amend current guidelines on topics that are relevant for the valuation of best estimate, including the use of future management actions and expert judgment, the modelling of expenses and the valuation of options and guarantees by economic scenarios generators and modelling of policyholder behaviour. EIOPA also identified the need for clarification in the calculation of expected profits in future premiums.

EIOPA has invited stakeholders to submit their views on the revised guidelines via a survey. The consultation paper and the survey can be accessed [here](#). The survey remains open until 12 November 2021.

Following consideration of the feedback in respect of each set of revised guidelines, EIOPA will publish final reports and submit the revised guidelines for adoption by its Board of Supervisors.

1.5 EIOPA publishes supervisory statement on the ORSA in the context of Covid-19

On 19 July 2021, EIOPA published a supervisory statement (dated 16 June 2021) on the Own Risk and Solvency Assessment (**ORSA**) in the context of the Covid-19 pandemic (**Statement**).

The Statement focuses on the supervision of the internal processes of undertakings that are necessary for having a good quality ORSA in place in order to foster supervisory convergence.

Given that the COVID-19 pandemic has already impacted undertakings, EIOPA expects that most of them will have captured such a scenario in their ORSA by now. The Statement guides undertakings through supervisory expectations under the current situation triggered by the COVID-19 pandemic, while taking into account that the impact on each individual undertaking can differ depending on its specific risk profile.

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

1.6 EIOPA launches consultation on amendments to the Commission Implementing Regulations on Supervisory Reporting and Public Disclosure

On 23 July 2021, EIOPA launched a consultation on the 2021 amendments to the following Commission Implementing Regulations (**Consultation**):

- Commission Implementing Regulation (EU) 2015/2450 with regard to the templates for the submission of information to the supervisory authorities (**ITS on Reporting**); and
- Commission Implementing Regulation (EU) 2015/2452, laying down implementing technical standards with regard to the procedures, formats and templates of the solvency and financial condition report (**ITS on Disclosure**).

In the Consultation, EIOPA proposes amendments and corrections to the ITS on Reporting and the ITS on Disclosure, which are mainly based on the Report on quantitative reporting templates (**QRT**) published together with the 2020 Solvency II Opinion.

In addition to those changes, the proposals include simplification of quarterly reporting for all undertakings, elimination of some reporting templates for all undertakings and new thresholds to promote better risk-based and proportionate reporting requirements. This will lead to a reduction of the number of templates to be reported for the majority of the undertakings.

EIOPA has invited all stakeholders to provide comments and feedback on the amendments by e-mail to CP-21-002@eiopa.europa.eu by 17 October 2021.

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

1.7 EIOPA launches consultation on the supervisory statement on supervision of run-off undertakings

On 23 July 2021, EIOPA published a consultation paper (dated 8 July 2021) on the supervisory statement on the supervision of run-off undertakings (**Consultation Paper**).

The purpose of the supervisory statement is to ensure that high-quality and convergent supervision is applied to run-off undertakings or portfolios that are subject to Solvency II, taking into account their specific nature and risks. EIOPA considers it essential to specify supervisory expectations to better consider and deal with potential risks stemming from run-off business models. The supervisory statement sets out supervisory expectations for the supervision of run-off undertakings in the context of portfolio transfers, acquisitions of qualifying holdings and mergers (ownership changes) as well as in the on-going supervision. It also addresses some issues that are not exclusive to run-off undertakings/portfolios, however, experience has indicated that some issues may lead to stronger and more concerning consequences in that context.

The Consultation Paper can be accessed [here](#). EIOPA has invited stakeholders to submit their views on the supervisory statement via a survey, which can be accessed [here](#). The survey remains open until 17 October 2021.

1.8 European Commission proposes updates on insurance reforms resulting from Solvency II review

On 22 September 2021, the European Commission published a number of updates relating to its package of insurance reforms resulting from its review of the Solvency II Directive.

The European Commission published a communication on the review of the EU prudential framework for insurers and reinsurers in the context of the EU's post-pandemic recovery. The communication is addressed to the European Parliament and the Council and provides an overview of Solvency II in the context of the review and the wider supervisory framework for (re)insurers. The European Commission intends to make a number of amendments to the Solvency II framework to achieve the objectives of the review which will involve amendments to both the Solvency II Directive and the Solvency II Delegated Regulation ((EU) 2015/35). In relation to the ongoing work beyond the Solvency II review, the communication also outlines the European Commission's thinking on its proposal for a recovery and resolution framework for the insurance sector (see below for details) and provides updates on the Insurance Guarantee Schemes and the role of insurance during pandemics and other large-scale disruptive events.

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

The European Commission also adopted two legislative proposals on the back of its Solvency II review as follows:

- a proposal for a Directive amending Solvency II as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks, group and cross-border supervision which can be accessed [here](#); and

- a proposal for a Directive establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012 which can be accessed [here](#).

The Council of the EU and the European Parliament will consider the proposals.

1.9 Updated Questions and Answers on Regulation

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

- SCR - [Question ID 2057](#), [Question ID 2013](#), [Question ID 2315](#), [Question ID 1274](#);
- Reinsurance - [Question ID 1862](#);
- Risk Free Rate - [Question ID 2106](#), [Question ID 2041](#), [Question ID 2037](#), [Question ID 1975](#), [Question ID 1912](#), [Question ID 1879](#);
- Valuation of Assets other than Technical Provisions - [Question ID 2058](#), [Question ID 1785](#), [Question ID 1956](#);
- Scope - [Question ID 2019](#);
- Technical Provisions - [Question ID 1680](#), [Question ID 1679](#), [Question ID 1428](#); and
- Other topics - [Question ID 1083](#), [Question ID 2073](#), [Question ID 2319](#), [Question ID 2044](#), [Question ID 1580](#), [Question ID 1578](#).

2. EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

2.1 EIOPA publishes conduct of business supervision strategy 2021

On 21 July 2021, EIOPA published a paper (dated 1 June 2021) detailing its Conduct of Business Supervision Strategy (**CoB Supervision Strategy**). EIOPA adopted its CoB Supervision Strategy in 2015 and issued a publication on the next steps in 2018.

The 2021 paper is divided into the following sections:

- EIOPA's Strategic approach as regards EIOPA's legal remit, strategic goals and the regulatory environment;
- The governance structure supporting the implementation of the approach, including project management;
- The main tools employed and their purposes; and
- The strategic approach towards advancing supervisory convergence.

The CoB Supervision Strategy has been implemented by EIOPA through incremental development of the tools outlined in the strategy including Thematic Reviews, the Consumer Trends Report, Retail Risk Indicators, and Enhanced Market Monitoring.

At European level, the regulatory environment has become increasingly developed following the implementation of Directive (EU) 2016/97 (**Insurance Distribution Directive (IDD)**) and Regulation (EU) No 1286/2014 (**PRIIPs Regulation**) placing enhanced emphasis on supervisory convergence in respect of these instruments.

EIOPA has developed a clear strategic focus on driving practical supervisory convergence in the insurance sector by shifting EIOPA's focus from regulatory management, in particular in the context of Solvency II towards supervisory convergence. COVID-19 has also had a significant impact on the insurance sector from a conduct and consumer protection perspective.

EIOPA will submit a review of the implementation of the strategy to the Board of Supervisors in the spring of 2023 in order to ensure effective implementation of the CoB Supervision Strategy.

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

2.2 EIOPA publishes revised Single Programming Document 2022-2024

On 30 September 2021, EIOPA published its Single Programming Document 2022-2024 which sets out EIOPA's strategy and work programme for the coming years, including EIOPA's 2022 Annual Work Programme contained in section 3.

EIOPA will continue to have regard to Covid-19 in developing its strategies, seeking to strengthen supervisory convergence and the economy's resilience to severe shocks, such as the pandemic or natural catastrophes. EIOPA's strategic objectives are to ensure strong and consistent protection of consumer interests across the EU and to safeguard the financial stability of the insurance and pensions sectors. EIOPA plans to succeed in these objectives through integrating sustainable finance considerations in its work, supporting digital transformation, enhanced supervision, ensuring a sound prudential and conduct of business policy, identifying and monitoring risks and encouraging preventative/mitigating actions, and ensuring good governance.

EIOPA identified the following strategic activities areas for focus in its Annual Work Programme for 2022:

- Integrating sustainable finance considerations across all areas of work;
- Supporting the market and supervisory community through digital transformation;
- Enhancing the quality and effectiveness of supervision;
- Ensuring technically sound prudential and conduct of business policy;
- Identifying, assessing, monitoring and reporting on risks to the financial stability and conduct of business and promoting preventative policies and mitigating actions; and
- Ensuring good governance, agile organisation, cost-effective resource management and a strong corporate culture.

The Single Programming Document 2022-2024 can be accessed [here](#).

3. INSURANCE DISTRIBUTION DIRECTIVE (IDD)

3.1 Updated Questions and Answers on Regulation

During the third quarter of 2021, EIOPA published updated Questions and Answers (Q&As) relating to the following topics under IDD:

- POG Arrangements for Distributors - [Question ID 1671](#);
- IBIPs - Information to Customers - [Question ID 1778](#);
- Freedom of Services - [Question ID 2053](#);
- Scope - [Question ID 1760](#), [Question ID 1959](#); and
- Other topics - [Question ID 1924](#), [Question ID 1607](#), [Question ID 1906](#).

4. CENTRAL BANK OF IRELAND

4.1 National Claims Information Database Frequently Asked Questions (FAQs)

On 13 July 2021, the Central Bank of Ireland (**Central Bank**) updated its FAQs on the National Claims Information Database (**NCID**). The NCID is a repository that stores information on the cost of non-life insurance claims. The Central Bank is responsible for collecting the information and managing the NCID under the Central Bank (National Claims Information Database) Act 2018.

The FAQs have been updated to reflect that the NCID now contains data on private motor insurance, employers liability, public liability and commercial property insurance. Previously, the NCID held data on private motor Insurance only.

The updated FAQs can be accessed [here](#).

4.2 First Employers' Liability, Public Liability and Commercial Property Insurance Report of NCID

On 14 July 2021, the Central Bank published the first Employers' Liability, Public Liability and Commercial Property Insurance Report of the NCID (**Report**). The Report includes data collected up to 31 December 2019 and provides key statistics on employers' liability (**EL**), public liability (**PL**), and commercial property insurance in Ireland.

The Report is structured as follows:

- Part 1 considers earned premiums for EL, PL and commercial property insurance between 2009 and 2019;
- Part 2 examines claims related to EL, PL and commercial property accidents that occurred between 2009 and 2019 and compares earned premiums and claim costs between 2009 and 2019;
- Part 3 gives a breakdown of insurers' income and expenditure for EL, PL and commercial property insurance in financial years 2018 and 2019;
- Part 4 analyses how EL and PL claims were settled between 2015 and 2019 and the various associated costs (claimant compensation, legal fees and other costs); and
- Part 5 provides notes and information on the key terms and methodology employed in this report.

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

4.3 Central Bank publishes CP143 – Review of Differential Pricing in the Private Car and Home Insurance Markets

On 21 July 2021, the Central Bank published a Final Report on its Review of Differential Pricing in the Private Car and Home Insurance Markets and opened a public consultation on its proposals to address differential pricing (**CP143**).

Differential pricing is where customers with similar risk profiles are charged different premiums for reasons other than risk or cost of service. The practice usually benefits customers who are willing to shop around for better prices and consequently results in unfair outcomes for those customers who are unable or unlikely to switch providers.

The review found that customers who did not switch providers for a period of 9 years or more paid on average 14% more for private car insurance and 32% more on home insurance. The Central Bank is now looking to strengthen the consumer protection framework by proposing the following measures:

- Ban the practice of price walking in private car and home insurance;
- Require where new customers are offered a lower price to attract their business, it should be clearly disclosed to them that this includes a new business discount;

- Require private motor and home insurance providers to review their pricing policies every year to ensure they maintain focus on their pricing practices and the impact of such practices on their customers, while also ensuring adherence to new pricing provisions and the fair treatment of consumers; and
- Introduce new requirements in relation to automatic renewals, which will include consumer consent for the automatic renewal of insurance contracts, to allow personal customers to make more informed decisions.

The Central Bank is seeking the views of interested stakeholders on all the specific questions raised in CP143 by 22 October 2021 and comments may be submitted to consumerprotectionpolicy@centralbank.ie. The Central Bank intends to finalise the measures next year and these are expected to apply to insurance providers from 1 July 2022.

CP143 can be accessed [here](#) and the Central Bank's press release proposing to ban the practice of price walking can be accessed [here](#).

4.4 Senior Executive Accountability Regime

On 27 July 2021, the Department of Finance in Ireland published the General Scheme of the Central Bank (Individual Accountability Framework) Bill 2021 (**General Scheme**). The General Scheme provides for the establishment of the Individual Accountability Framework (**IAF**) which includes the Senior Executive Accountability Regime (**SEAR**) to be modelled on the United Kingdom's Senior Manager and Certification Regime.

The purpose of the IAF is to create a framework to facilitate individual accountability and responsibility, particularly for individuals performing senior executive functions (**SEFs**) within Irish Regulated Financial Service Providers (**RFSPs**).

The General Scheme can be accessed [here](#).

Please see our Dillon Eustace briefing paper entitled "Individual Accountability Framework and SEAR – Key Questions" which can be accessed [here](#) for further details.

4.5 Central Bank publishes CP144 - Guidance on the use of service companies for staffing purposes in the insurance sector

On 6 August 2021, the Central Bank published its Consultation Paper 144 issuing Guidance on the use of service companies for staffing purposes in the insurance sector (**Guidance**) (**CP144**). It follows on from its Discussion Paper 9 (**DP9**) from November 2019 on the use of service companies in the insurance sector, the feedback from which has been considered by the Central Bank and incorporated, where relevant, into CP144.

The Central Bank has observed a practice within the insurance industry whereby insurance and reinsurance undertakings have entered or are seeking to enter arrangements with separate legal entities for the provision of extensive staffing to the (re)insurance undertaking. The Central Bank has focused on this practice due to its potential to threaten the operational resilience of undertakings regulated by the Central Bank. Where a (re)insurance undertaking is involved in such practices, the Central Bank expects that it should not impair the quality of the system of governance of the undertaking, unduly increase operational risk, nor impair the ability of the Central Bank to monitor compliance of the undertaking with its obligations, nor undermine service to policyholders.

Under the Guidance, the Central Bank expects undertakings, when engaging in staffing arrangement practices, to adopt appropriate measures for integrating such practices into their governance and risk management systems. The Guidance outlines the role of the undertaking and the role of the board in ensuring the undertaking meets this expectation. It is the responsibility of the board to monitor and have oversight of all activities of the undertaking, the board must be comfortable with the staffing arrangement and ensure that there is sufficient substance maintained in the undertaking to ensure that it avoids becoming an "empty shell" company.

The Central Bank expects that any such arrangement be in the form of a formal written agreement outlining the basis for the staffing arrangement in terms of structure, roles and responsibilities of the parties respectively including provisions relating to proposed new

activities, prioritisation and commitment in times of stress. The agreement should address actual or potential conflicts of interest, fitness and probity procedures, business continuity arrangements and compliance requirements under relevant legislation. The undertaking is also expected to carry out a risk assessment and due diligence should be carried out before entering into a staffing arrangement.

The Central Bank is seeking stakeholder views on the proposed Guidance. The consultation period closes on 6 November 2021 and responses can be addressed to insurancepolicy@centralbank.ie.

CP144 can be accessed [here](#).

4.6 Central Bank Insurance Newsletter - September 2021

On 15 September 2021, the Central Bank published its quarterly Insurance Newsletter. The newsletter contains sections regarding:

- **Recovery Planning:** Outlining the essential elements of a recovery plan required by the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) (Recovery Plan Requirements for Insurers) Regulations 2021 (S.I. 184 of 2021) and the Central Bank's key expectations;
- **Insurance Insights:** Providing its review of the use of telematics in the private motor insurance sector and of differential pricing in the private car and home insurance markets (see [section 4.3](#) above for details of the review and public consultation); and
- **Sustainable Insurance:** Providing updates on EIOPA's Natural Catastrophe (NAT CAT) Dashboard, EIOPA's Methodological paper on incorporating climate risk in the Solvency II standard formula (see [section 1.1](#) above for details) and EIOPA's Report on non-life underwriting and pricing in light of climate change.

The newsletter also outlines proposed amendments to Directive 2009/103/EC (**Motor Insurance Directive**) and provides an overview of the EIOPA Q&A process.

The Insurance Newsletter can be accessed [here](#).

4.7 Central Bank announces intention to change list of PCF functions

On 22 September 2021, the Central Bank published a Notice of Intention informing industry of its intention to make certain changes to pre-approval controlled functions (**PCFs**) under the Central Bank's Fitness and Probity regime. The proposed amendments to the PCF functions will apply to Irish RFSPs.

The Notice of Intention confirms that the Central Bank intends to introduce the following modifications to its PCF roles:

- PCF-2 (Non-Executive Director) will be divided into two individual positions to reflect the distinction between non-executive directors which are independent and those which are not. Under the new rules, PCF-2A relates to Non-Executive Directors and PCF-2B introduces the new PCF of Independent Non-Executive Director.
- There will no longer be a PCF-15 (Head of Compliance with responsibility for AML). Under the new rules, the PCF-12 (Head of Compliance) remains in place and a PCF-52 will be introduced as the new PCF of Head of Anti-Money Laundering and Counter Terrorist Financing. An individual can perform both PCF-12 and PCF-52.
- PCF-16 will be expanded so that managers of branches of Irish regulated entities established in non-EEA countries (which now includes the UK) will become PCF functions requiring the approval of the Central Bank prior to being appointed to the role.
- PCF-31 (Head of Investment) has been removed in light of the overlap with PCF-30 (Chief Investment Officer).

Such modifications to the PCF roles will be required to be implemented by new regulations amending the Central Bank Reform Act 2010 (as amended) (**Amending Regulations**). The Notice of Intention sets out the required action to be taken by individuals performing the

amended PCF roles once the Amending Regulations come into effect. It notes that RFSPs will have six weeks from the date on which the Amending Regulations enter into force to make the appropriate filings with the Central Bank for PCF redesignation.

The following process will apply in respect of the amended PCFs:

- All PCF-2 will be automatically redesignated as PCF-2A. In the case of any non-executive director who is independent, the relevant RFSP will be required to notify the Central Bank that such individual should be redesignated as a PCF-2B and confirm that the necessary due diligence to assess independence has been undertaken.
- All those designated as PCF-15 will be required to notify the Central Bank of how they should be designated under the new regime (e.g. PCF-12, PCF-52 or both). RFSPs should assess whether anyone within their organisation performs the role of Head of Anti-Money Laundering and Counter Terrorist Financing, and if so, the relevant RFSP will need to confirm to the Central Bank that they have conducted the relevant assessment required under Section 21 of the Central Bank Reform Act 2010 before filing for the PCF.
- All individuals designated as PCF-31 will automatically be redesignated as a PCF-30 (without any action taken by the PCF-31 holders).

Any new appointments to these PCF functions which are made after the Amending Regulations enter into force will need to comply with the full application process.

The Notice of Intention can be accessed [here](#).

4.8 Central Bank Levy

On 24 September 2021, the Central Bank Act 1942 (Section 32D) Regulations 2021 (S.I. No. 487 of 2021) (**Regulations**) came into operation setting out the levy contribution payable by financial service providers in respect of the “levy period” meaning the period 1 January 2020 to 31 December 2020.

Category B of the Schedule to the Regulations addresses the amount of the levy contribution for insurance undertakings.

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

4.9 Remarks by Director General, Financial Conduct Derville Rowland at the Deloitte Global Insurance Webinar

Speaking at the Deloitte 2022 Insurance Industry Trends event on 29 September 2021, Director General, Financial Conduct Derville Rowland discussed the position of the insurance sector in Ireland, the effect of the COVID-19 pandemic and the Central Bank’s regulatory priorities, emphasising customer treatment particularly around business interruption insurance and differential pricing.

Ms. Rowland emphasised the need for firms to foster a customer-focused culture in which practices must be grounded in fairness and acknowledged that where practices are deemed to be unfair to consumers or investors, the Central Bank will intervene.

Some of the topics addressed in the speech include the following:

- **Differential Pricing**

For recent developments in differential pricing, see [section 4.3](#) above on CP143 and the Central Bank’s consultation on differential pricing.

In her speech, Ms. Rowland highlighted the need for insurance firms to have strong governance and oversight of their pricing practices and to understand the impact of their practices on consumers. She also emphasised the need for risk management frameworks to allow fair outcomes for customers.

- **Business Interruption Insurance**

In relation to issues relating to COVID-19 and business interruption insurance policies, the Central Bank conducted an examination of 145,000 policies provided by 140 firms that provided business interruption cover within the Irish domestic market. The Central Bank identified 31,000 policies that were responsive to the circumstances of business interruption related to the outbreak of COVID-19 in Ireland. Mrs. Rowland noted that *'while a policy may be responsive, it does not necessarily result in a claim.'*

The Central Bank engaged with the relevant firms making clear their expectation that the firm identify and contact potentially affected policyholders and assist them in making a claim. The Central Bank will continue their work over the coming months to ensure that these claims are managed, processed and paid efficiently. In addition, it was noted that firms are legally required, under IDD, to have robust governance frameworks in place which are applied when approving any new insurance product or adapting an existing product.

- **Future Developments**

The Central Bank is currently developing proposals to update the [Consumer Protection Code 2012](#) to address the emerging trends and consumer risks across the rapidly changing financial services landscape including proposals which take account of the impact of technology and digitalisation on financial services. The Central Bank expects to consult on this proposal within the first half of 2022.

- **Individual Accountability Framework (IAF)**

In the speech, Ms Rowland referred to the publication of the General Scheme of the Central Bank (Individual Accountability Framework) Bill in July 2021 which includes the conduct standards for individuals in regulated firms, conduct standards for the firms themselves and the SEAR requirements.

The Central Bank has worked closely with the Department of Finance on the development and proposals for the IAF to incentivise positive behaviours, improve culture and governance within firms and strengthen the Central Bank's enforcement toolkit, particularly with respect to individuals.

For further information on the General Scheme and implications for RFSPs, please see [Section 4.4](#) above and the Dillon Eustace [article](#) on this topic.

The full speech is available [here](#).

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

5.1 The EU's new AML framework – overview of the draft legislation

On 20 July 2021, the European Commission published a set of four legislative proposals with the aim of strengthening the EU's AML/CFT rules (**AML Legislative Package**). The proposals also aim to create a more consistent and harmonious AML/CFT framework across the EU.

The AML Legislative Package consists of four legislative proposals:

- A new EU Authority for AML and CFT, which can be accessed [here](#);
- A Single EU Rulebook for AML/CFT, which can be accessed [here](#);
- A sixth Directive on AML/CFT, repealing Directive (EU) 2015/849 (**Fourth Money Laundering Directive** or **MLD4**), which can be accessed [here](#); and

- A revised Regulation on Transfers of Funds to trace transfers of crypto-assets, which can be accessed [here](#).

The European Commission is seeking the views of stakeholders on each of the proposed legislative measures. The consultation period closes on 25 October 2021.

Please see the Dillon Eustace briefing paper entitled “The EU’s new AML framework – overview of the draft legislation” which can be accessed [here](#).

5.2 EBA publishes draft guidelines on role of AML/CFT compliance officers

On 2 August 2021, the European Banking Authority (**EBA**) launched a public consultation on draft guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT compliance officer under Article 8 and Chapter VI AMLD4 (**Draft Guidelines**).

The purpose of the Draft Guidelines is to set clear expectations of the role and responsibilities of the AML/CFT compliance officer and the management body with regards to AML/CFT (or the senior manager where no management body exists).

The Draft Guidelines, when finalised, will apply to all financial services firms regulated by the Central Bank.

The Draft Guidelines can be accessed [here](#). The EBA has invited comments from stakeholders on the Draft Guidelines. Comments may be submitted via a consultation form, which can be accessed [here](#). The closing date for receipt of comments is 2 November 2021.

Please see the Dillon Eustace briefing paper entitled “EBA publishes draft guidelines on role of AML/CFT compliance officers” which can be accessed [here](#).

6. DATA PROTECTION

6.1 EDPB adopts final version of guidelines on the concepts of controller and processor in the GDPR

On 7 July 2021, the European Data Protection Board (**EDPB**) adopted the second and final version of its Guidelines on the concepts of Controller and Processor (**Guidelines**).

The Guidelines seek to provide guidance on the concepts of controller and processor by clarifying the meaning of these concepts and clarifying the different roles and the distribution of responsibilities between these actors.

The Guidelines specifically address the extent to which Regulation (EU) 2016/679 (**General Data Protection Regulation** or **GDPR**) introduced changes to these concepts, including the implications of joint controllership under Article 26 GDPR and the relationship between controller and processor under Article 28 GDPR.

The Guidelines replace the previously issued Article 29 Working Party guidance on these concepts (Opinion 1/2010 (WP169)). The new Guidelines aim to give more developed and specific guidance in order to ensure consistent application of the rules throughout the EU and the EEA.

The Guidelines had been subject to a public consultation in Q3 2020.

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

6.2 Data Protection: International Data Transfers

On 14 September 2021, Dillon Eustace published a briefing paper entitled Data Protection: International Data Transfers (**Briefing**).

Under the GDPR, data controllers and data processors are only permitted to transfer personal data outside the European Economic Area (**EEA**) in accordance with one of the safeguards set down in Chapter V of the GDPR.

Since the Court of Justice of the European Union (**CJEU**) issued its ruling in the Schrems II¹ case in July 2020, there have been a number of significant developments in the area of international data transfers, including the publication of new Standard Contractual Clauses (**New SCCs**), the publication of two new sets of recommendations by the EDPB and the adoption by the European Commission of a time limited adequacy decision in favour of the UK.

The Briefing addresses the New SCCs and the related requirements to carry out an assessment of the laws and practices of the third country of destination and the supplementary measures which may be needed in order to legitimise the transfer of personal data using the New SCCs.

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

6.3 Data Protection Commission launches revised breach notification web-form

On 15 September 2021, the Data Protection Commission (**DPC**) published an overview of its revised breach notification web-forms (**DPC Briefing**). Data controllers currently use a web-form, available on the DPC website, to notify personal data breaches in accordance with Article 33 of the GDPR and Section 86 of the Data Protection Act 2018.

The purpose of the revised breach notification web-form is:

- to improve ease-of-use for data controllers;
- to streamline the method of notifying “cross-border” personal data breaches and “national” personal data breaches into a single channel; and
- to expand the questions that are asked in order to reduce the requirement for the DPC to issue follow-up enquiries to data controllers.

On foot of this review, data controllers will be required in the coming weeks to use a revised web-form.

The DPC briefing can be accessed [here](#).

7. SUSTAINABILITY

7.1 European Commission adopts Delegated Regulation containing disclosure obligations under Taxonomy Regulation

On 6 July 2021, the European Commission adopted a Delegated Regulation supplementing Regulation (EU) 2020/852 (**Taxonomy Regulation**) by specifying disclosure obligations under Article 8 of the Taxonomy Regulation. The aim of the Delegated Regulation is to increase transparency and reduce greenwashing in the market.

The Taxonomy Regulation applies to financial market participants that offer financial products, financial and non-financial undertakings within the scope of Directive 2014/95/EU (**Non-Financial Reporting Directive** or **NFRD**) and applies to market participants engaging in environmentally sustainable economic activities. The European Commission has been developing delegated acts to identify technical screening criteria for environmentally sustainable economic activities.

¹ Case C-311/18 Data Protection Commissioner v Facebook Ireland Ltd and Maximilian Schrems

Article 8 of the Taxonomy Regulation requires certain large undertakings to publish non-financial information under the NFRD informing the public how and to what extent their activities are associated with environmentally sustainable economic activities. The Delegated Regulation specifies the content, methodology and presentation of the information to be disclosed by undertakings. It also clarifies rules related to key performance indicators (**KPIs**).

The Delegated Regulation will enter into force 20 days following publication in the OJ. Certain provisions will apply from 1 January 2022 as specified in Article 10 of the Delegated Regulation with further provisions applying from 1 January 2023 and beyond.

The Delegated Regulation can be accessed [here](#) and accompanying annexes can be accessed [here](#).

7.2 Commission Delegated Regulations introducing stronger sustainability requirements are published in the Official Journal

On 2 August 2021, Commission Delegated Regulation (EU) 2021/1256 (**Solvency II Commission Delegated Regulation**) and Commission Delegated Regulation (EU) 2021/1257 (**IDD Commission Delegated Regulation**) were published in the Official Journal of the EU (**OJ**).

- **Solvency II Commission Delegated Regulation**

Commission Delegated Regulation (EU) 2021/1256 of 21 April 2021 as regards the integration of sustainability risks in the governance of insurance and reinsurance undertakings amends the Solvency II Delegated Regulation (EU) 2015/35 by requiring insurers to reflect sustainability risks in their risk management processes, requiring remuneration policies to be consistent with the integration of sustainability risks and by requiring sustainability risks to be taken into account in the implementation of the prudent person principle.

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

- **IDD Commission Delegated Regulation**

Commission Delegated Regulation (EU) 2021/1257 of 21 April 2021 as regards the integration of sustainability factors, risks 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 amends Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 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 IDD Commission Delegated Regulation can be accessed [here](#).

The new Commission Delegated Regulations entered into force on 22 August 2021 and will apply from 2 August 2022.

8. MISCELLANEOUS

8.1 Department of Finance publishes Action Plan for Insurance Reform - Implementation Report

On 6 July 2021, the Department of Finance and the Department of Enterprise, Trade and Employment published an Implementation Report on the Action Plan for Insurance Reform (**Action Plan**) (**Implementation Report**). The Action Plan was published in December 2020 to reform the Irish insurance market by reducing the costs of insurance for customers and businesses. The Action Plan set out 66 actions for the Government to deliver and the Implementation Plan notes that 34 of the 66 actions have been completed with a further 21 scheduled to be completed this year.

The completed actions include:

- Enacting the Consumer Insurance Contracts Act 2019;
- Replacing the Book of Quantum with the Personal Injuries Guidelines;

- Legislative proposals for enhancing and reforming the role of the Personal Injuries Assessment Board (**PIAB**);
- Legislative proposals to strengthen the powers of the Competition and Consumer Protection Commission (**CCPC**);
- The Criminal Justice (Perjury and Related Offences) Act 2021, which was signed into law in June 2021 to address exaggerated claims and fraud and placing perjury on a statutory footing; and
- Establishing the Office to Promote Competition in the Insurance Market in December 2020.

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

8.2 Public Consultation on the development of a national resolution framework for (re)insurers

On 1 September 2021, the Department of Finance, in collaboration with the Central Bank, launched a public consultation on a proposal to develop a domestic resolution framework for (re)insurers as they believe that there is merit in considering the viability of a national resolution framework for facilitating the orderly resolution of failing or failed insurers where there is a public interest in doing so. The aim of any potential domestic framework would be to ensure that policyholders, public funds, and critical insurance services are protected, and that financial stability is maintained in failure scenarios.

The consultation remains open until 30 November 2021 and interested parties can send their comments on the consultation to insurance@finance.gov.ie.

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

8.3 Non-Life Insurance (Provision of Information) (Amendment) Regulations 2021

On 1 September 2021, the Non-Life Insurance (Provision of Information) (Amendment) Regulations 2021 (S.I. No. 436 of 2021) (the “**Amending Regulations**”) came into operation by amending the Non-Life Insurance (Provision of Information) Regulations 2007 (S.I. No. 74 of 2007) (the “**Principal Regulations**”) to remove the information obligations under Regulation 6(4) of the Principal Regulations relating to premiums of motor insurance policies where such policies are due to be renewed. This amendment coincides with the commencement of Section 12 of the Consumer Insurance Contracts Act 2019 relating to renewal of a contract of insurance.

The Amending Regulations can be accessed [here](#).

8.4 Consumer Insurance Contracts Act 2019 Update

On 1 September 2021, the remaining provisions of the Consumer Insurance Contracts Act 2019 (the “**Act**”), save for section 18(4) of the Act, came into operation.

The newly commenced Sections 8, 9, 12 and 14 (1) – (5) had been regarded as the more onerous sections of the Act and will impact insurance contracts entered into, varied or renewed on or after 1 September 2021.

There is no indication as to when section 18(4) of the Act will commence, and a separate commencement order will be required to bring this into force.

You can access the Act [here](#). For more information on the provisions of the newly commenced sections of the Act and for further commentary on this topic, please see the Dillon Eustace article [here](#).

8.5 Draft RTS amending PRIIPS Level 2 Measures adopted by the European Commission

On 7 September 2021, the European Commission adopted proposed amendments to Commission Delegated Regulation (EU) 2017/653 (**PRIIPS Level 2 Measures**) which are now subject to scrutiny by the European Parliament and the Council and which are scheduled to apply from 1 July 2022.

The proposed amendments to the PRIIPS Level 2 measures include changes to rules on calculating and presenting forward-looking performance scenarios, calculating and presenting of costs-related information as well as introducing specific rules which must be complied with by any PRIIPS KID published by in-scope entities.

The amendments to the PRIIPS Level 2 Measures proposed by the European Commission remain largely unchanged from the draft RTS submitted to it by the ESAs in February 2021, save for clarifying that multi-option products producing a PRIIPS KID can continue to rely on UCITS KIID prepared by underlying UCITS funds until 1 July 2022.

A copy of the proposed amending Commission Delegated Regulation 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

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