

TRANSPOSITION OF EU DIRECTIVE 2016/97 ON INSURANCE DISTRIBUTION (IDD)

Public Consultation

March 2017



BANKING &
FINANCIAL
SERVICES



An Roinn Airgeadais
Department of Finance

Transposition of EU Directive 2016/97 on Insurance Distribution (IDD)

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1. Introduction

The Insurance Distribution Directive was published in the Official Journal of the European Union in February 2016 and must be transposed into Irish law by February 2018. It will replace the Insurance Mediation Regulations (IMR) which have been in place since 2005 and which currently regulate point of sale insurance products and create a single market for the sale of insurance products. The Insurance Distribution Directive aims to further enhance consumer protection and ensure a level playing field by extending the scope of the directive to include all sales of insurance products. It will also seek to identify and mitigate conflicts of interest in particular in the area of commissions, and strengthen administrative sanctions. The full text of the Directive is available at the following link: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0097> .

2. Background

Interaction between the IDD and MiFID 2 (Markets in Financial Instruments Directive II)

MiFID 2, which is accompanied by a Regulation (“MiFIR”), was adopted as a legislative proposal in October 2011, came into force in July 2014, and was subsequently amended in 2016. It is scheduled to be transposed by July 2017 and to enter into application in January 2018. The main objectives of MiFID 2 include the establishment of safer and more transparent capital markets; the strengthening of investor protections; supporting the establishment of a single rulebook for EU financial markets and strengthening supervision and enforcement.

A public consultation was held last year by this Department in relation to MiFID 2 and ran from July to September 2016. As set out in that Consultation Paper, persons regulated under MiFID 2 and IDD can sell functionally equivalent or substitutable investment products to the same client base. As a result, there are similar national discretions within both MiFID and IDD which enable Member States, should they so choose, to establish stricter investor protection rules pertaining to the distribution of or advice provided on *investment* products. The relevant MiFID national discretion is contained in article 24(12) – and this provision was included in last year’s public consultation on the transposition of MiFID alongside IDD Articles 22(3) and 29(3) as they concern the sale of insurance based investment products. These IDD Articles have been included again as

part of the current consultation process to provide interested parties with an opportunity to address any relevant developments in the interim (within the broader level playing field context set out in the MiFID consultation) or to address the potential application of the Article 22(3) national discretion to the sale of general insurance products.

The Department will further address the national discretions applicable to investment products (MiFID or insurance based) in the coming weeks.

3. The Consultation Questions

This public consultation process relates to Member State discretions contained within the Insurance Distribution Directive, on which we are inviting your views. These discretions are found in nine separate Articles as follows: Article 3, 10, 20, 22, 24, 29, 30, 31 and 33. They deal with the issues of:

- Registration Requirements;
- Professional and Organisation Arrangements;
- Advice and standards for sales;
- Information Exemptions;
- Cross-selling;
- Information to customers;
- Assessment of suitability and appropriateness and reporting to customers;
- Administrative sanctions;
- Breaches, sanctions and other measures.

In responding to this consultation you are invited to:

- Give your views on the specific questions set out below. You do not have to answer every question – you may choose to answer any or all of the questions.
- Provide details of any particular issues or concerns you feel should be considered in dealing with the matters raised in these questions.
- Provide views on any issues that you consider relevant to the transposition which are not covered in this paper.
- Where appropriate, provide some analysis of the regulatory and/or financial impact on the sector of the application or non-application of a particular discretion.

Your views are important as they may help to confirm what works with the proposed legislation and will also hopefully help to identify further considerations in relation to the transposition of the Insurance Distribution Directive.

REGISTRATION REQUIREMENTS

Question 1 – Article 3

- (a) Article 3.1 (subparagraphs 3 and 4) allows Member States “to stipulate that insurance and reinsurance undertakings and intermediaries and other bodies may cooperate with the competent authorities in registering insurance and reinsurance and ancillary insurance intermediaries”.

Currently, as part of the Investment Intermediary Act 1995 (IIA), ‘approved professional bodies’ (APB’s) are responsible for the regulation of their members as ‘certified persons’. Regulation 26 of IMR provides for insurance undertaking or reinsurance undertakings to...“take all appropriate steps to facilitate the registration of all insurance intermediaries and reinsurance intermediaries with which the undertaking has an association”.

Availing of this discretion would maintain the current registration regime with respect to tied agents and APBs.

- (b) Article 3.1 (subparagraph 5) – provides that “an insurance or reinsurance intermediary or an ancillary insurance intermediary may act under the responsibility of an insurance or reinsurance undertaking or another intermediary. In such a case, Member States may stipulate that the insurance or reinsurance undertaking or other intermediary shall be responsible for ensuring that the insurance or reinsurance intermediary or ancillary insurance intermediary meets the conditions for registration”.
- (c) Article 3.1 (subparagraph 6) provides that “Member States may also stipulate that the insurance or reinsurance undertaking or other intermediary which takes responsibility for the insurance or reinsurance intermediary or ancillary insurance intermediary registers that intermediary or ancillary intermediary”.

The stipulation that insurance and reinsurance undertakings and intermediaries may take responsibility for ensuring tied agents meet registration conditions, is a new discretion under IDD, which would place an obligation on insurance intermediaries to ensure that tied agents meet the conditions of their registration and/or register those agents.

- (d) Article 3.1 (subparagraph 7) provides that “Member States need not apply the requirement referred to in the first subparagraph to all the natural persons who work in an insurance or reinsurance intermediary or ancillary insurance intermediary and who pursue the activity of insurance or reinsurance distribution”.

While this provision does not exist explicitly in current national law, in practice natural persons are not required by the Central Bank to register under the IMR.

- (e) Article 3.2 (subparagraph 1) provides that “Member States may establish more than one register for insurance, reinsurance, and ancillary insurance intermediaries”.

Similar provisions in relation to registration as set out above in Article 3 are provided for under IMR ([Regulation 26](#)).

Q1. Should Ireland continue to avail of **each** of these Member State discretions as set out in (a), (b), (c), (d) and (e) - thereby continuing the current approach to registration?

Please give reasons for your response, identifying potential positive and negative impacts of your preferred approach.

PROFESSIONAL AND ORGANISATIONAL ARRANGEMENTS

Question 2 – Article 10.2 and 10.3

- (a) Article 10.2 (subparagraph 3) provides that *“Member States may require that the successful completion of the training and development requirements is proven by obtaining a certificate”*.

Article 10.2 refers to the obligation on employees of insurance and reinsurance undertakings and intermediaries to undertake 15 hours of professional training or development per year. (The Central Bank’s Minimum Competency Code also sets out this requirement to complete at least 15 hours of continued professional development.) This is a new discretion which would introduce a requirement to obtain a certificate as proof of successful completion of training and development requirements

- (b) Article 10.2 (subparagraph 4) provides that *“Member States may require that in the cases referred to in the third subparagraph of Article 3(1), and with regard to the employees of insurance or reinsurance undertakings who are engaged in insurance or reinsurance distribution, the insurance or reinsurance undertaking or intermediary is to verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in paragraph 1 and, if need be, is to provide such intermediaries with training or professional development means which correspond to the requirements concerning the products sold by the intermediaries”*.
- (c) Article 10.2 (subparagraph 5) provides that *“Member States need not apply the requirements referred to in paragraph 1 and in the first subparagraph of this paragraph to all the natural persons working in an insurance or reinsurance undertaking, or insurance or reinsurance intermediary, who pursue the activity of insurance or reinsurance distribution”*.

While not currently explicitly required under IMR, the discretion set out above at 2(c) would reflect the current regulatory practice in this regard.

- (d) Article 10.3 (subparagraph 2) provides that *“Member States may, in accordance with the third subparagraph of Article 3(1), allow the insurance or reinsurance distributor to check the good repute of its employees and, where appropriate, of its intermediaries”*.

The requirements set out in 2(b) and (d) are provided for under IMR (Regulation 15 and Regulation 21(2)) and other national provisions. For example, the Central Bank’s Minimum Competency Code 2011 imposes certain requirements on individuals who carry out functions on a professional basis,

such as the provision of advice, arranging retail financial products for consumers etc. In addition, the Central Bank's Fitness and Probity Regime requires most senior managers to have qualifications, experience, competence and capacity to perform their roles.

- (e) Article 10.3 (subparagraph 3) provides that "*Member States need not apply the requirement referred to in the first subparagraph of this paragraph to all natural persons who work in an insurance or reinsurance undertaking, or insurance or reinsurance intermediary provided that those natural persons are not directly involved in insurance or reinsurance distribution*".

While a similar discretion was not implemented under IMR, current practice is that the Central Bank's Fitness and Probity regime, applies to persons who carry out Pre-Approved and Controlled Functions. The completion of a Garda Vetting form is also a requirement for anyone wishing to register under IMD. Availing of the discretion at Question 2(e) would allow the status quo to be maintained, by providing that the requirement to be of 'good repute' need not be applied to all 'natural persons' working in an insurance or reinsurance undertaking or intermediary.

Q2. Should Ireland avail of the discretions set out at Question 2(a), (b), (c), (d) and (e) – which will mean a continuation of current obligations on insurance undertakings and intermediaries as set out above?

Please give reasons for your response, identifying potential positive and negative impacts of your preferred approach.

Question 3 – Article 10.6 (a)

- (a) Article 10.6 provides that "*Member States shall take all necessary measure to protect customers against the inability of the insurance, reinsurance or ancillary insurance intermediary to transfer the premium to the insurance undertaking or to transfer the amount of claim or return premium to the insured.*
Such measures shall take any one or more of the following forms:
- (a) *provisions laid down by law or contract whereby monies paid by the customer to the intermediary are treated as having been paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives them;*
 - (b) *a requirement for the intermediary to have financial capacity amounting, on a permanent basis, to 4% of the sum of annual premiums received, subject to a minimum of EUR 18 750;*
 - (c) *a requirement that customer's monies be transferred via strictly segregated customer accounts and that those accounts are not be used to reimburse other creditors in the event of bankruptcy;*
 - (d) *a requirement that a guarantee fund be set up*".

This is very similar to the corresponding requirement under the Insurance Mediation Directive, however only two elements of that discretion were implemented under IMR [10.6(a) and 10.6(c)].

Q3.

(i) Should Ireland avail of this discretion and implement each consumer protection measure as set out in 10.6a-d? If the Minister opts to implement the entirety of this discretion, it will raise requirements for intermediaries in terms of their minimum financial capacity requirements and make it compulsory to set up a guarantee fund.

or

(ii) Should Ireland avail of 10(a) and (c) only, thereby maintaining the status quo? Please give reasons for your response, identifying potential positive and negative impacts of your preferred approach.

ADVICE AND STANDARDS FOR SALES WHERE NO ADVICE IS GIVEN

Question 4 – Article 20

- (a) Article 20.7 provides that *“Member States may stipulate that the insurance product information document is to be provided together with information required pursuant to other relevant Union legislative acts or national law on the condition that all the requirements set out in the first subparagraph are met”*.

The insurance product information document (IPID) is a new requirement under IDD, however there are information disclosure requirements applicable to non-life products in the Central Bank’s Consumer Protection Code and under Article 184 of Solvency II.

Q4. Should Ireland exercise this discretion to allow for the provision of other information along with the IPID?

Please give reasons for your response, identifying potential positive and negative impacts of your preferred approach.

INFORMATION EXEMPTIONS AND FLEXIBILITY CLAUSE

Question 5 – Article 22

- (a) Article 22.1 provides that *“Member States may provide that the information referred to in Articles 29 and 30 of this Directive need not be provided to a professional client as defined in point (10) of Article 4(1) of Directive 2014/65/EU”*.

This is a new discretion under IDD. Although similar requirements to those in Articles 29 and 30 of IDD are set out in Articles 24 and 25 of MiFID II, no derogation applies in the case of MiFID II.

Q5(a). Should Ireland avail of this discretion to allow for derogation in relation to the provision of information to a professional client?

Please give reasons for your response, identifying potential positive and negative impacts of your preferred approach.

(b) Article 22.2 (subparagraph 1) provides that “*Member States may maintain or adopt stricter provisions regarding the information requirements referred to in this Chapter*”.

A similar discretion was not exercised under IMR, however it is important to note that a more onerous disclosure of information regime exists under IDD, than under IMD and that there are further information requirements in the Consumer Protection Code.

(c) Article 22.2 (subparagraph 3) provides that “*Member States may make the provision of advice referred to in the third subparagraph of Article 20(1) mandatory for the sales of any insurance product, or for certain types of insurance products*”.

This is a new discretion under IMD as the provision of advice is not currently mandatory.

Q5(b), (c). Should Ireland avail of each / either of the discretions at (b) and (c)?

Please give reasons for your response, identifying potential positive and negative impacts of your preferred approach. .

CROSS SELLING

Question 6 – Article 24

(a) Article 24.7 provides that “*Member States may maintain or adopt additional stricter measures or intervene on a case-by-case basis to prohibit the sale of insurance together with an ancillary service or product which is not insurance, as part of a package or the same agreement, when they can demonstrate that such practices are detrimental to consumers*”.

This is a new discretion under IDD. Nationally, rules on ‘bundling’ are provided for in the Consumer Protection Code, however these differ in some respects to those in the IDD.

Q6. Should Ireland avail of **the discretion at 6(a)**?

Please give reasons for your response, identifying potential positive and negative impacts of your preferred approach.

INFORMATION TO CUSTOMERS

Question 7 – Article 22(3) and Article 29

- (a) Article 29.1 provides that *“information referred to in this paragraph shall be provided in a comprehensible form in such a manner that customers or potential customers are reasonably able to understand the nature and risks concerning the insurance-based investment product offered and, consequently, to take investment decisions on an informed basis. Member States may allow that information to be provided in a standardised format”*.

This is a new requirement under IDD, specific to insurance-based investment products. Information requirements are set out in national legislation - the Life Assurance (Provision of information) Regulations 2001. The PRIIPs Regulation will be applicable from 1 January 2018 and will require a generic key information document (KID) to be provided to the customer.

- (b) Article 29.3 (subparagraph 4) provides that *“Member States may require that, where an insurance intermediary informs the client that advice is given independently, the intermediary shall assess a large number of insurance products available on the market which are sufficiently diversified with regard to their type and product providers to ensure that the client’s objectives can be suitably met and shall not be limited to insurance products issued or provided by entities having close links with the intermediary”*.
- (c) Article 22.3 provides that *“Member States may limit or prohibit the acceptance or receipt of fees, commissions or other monetary or non-monetary benefits paid or provided to insurance distributors by any third party, or a person acting on behalf of a third party, in relation to the distribution of insurance products”*.
- (d) Article 29.3 (subparagraph 1) provides that *“Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may additionally prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice”*.
- (e) Article 29.3 (subparagraph 3) provides that *“Member States may make the provision of advice referred to in Art 30 mandatory for the sales of any insurance-based investment products, or certain types of them”*.

These are new discretions under IDD. The Department has previously consulted on these provisions under the ‘Public Consultation on national discretions in the Markets in Financial Instruments Directive (MiFID 2) incorporating elements of the Insurance Distribution Directive’ in July 2016. If you have already responded under that consultation, you do not need to repeat your response, however any further information you wish to provide can be included as part of this current consultation. Given that the national discretion in Article 22(3) of IDD also covers the sale of general insurance products, and the MiFID public consultation only addressed MiFID and insurance based investment products, we would particularly welcome feedback on the potential application of the Article 22(3) national discretion to the sale of general insurance products.

Q7. Should Ireland avail of each / any of the discretions at 7(a), (b), (c), (d) and (e)?

Please give reasons for your response, identifying potential positive and negative impacts of your preferred approach.

ASSESSMENT OF SUITABILITY AND APPROPRIATENESS AND REPORTING TO CUSTOMERS

Question 8 – Article 30

- (a) Article 30.3 provides that “ *Without prejudice to Article 20(1), where no advice is given in relation to insurance-based investment products, Member States may derogate from obligations referred to in paragraph 2 of this Article, allowing insurance intermediaries or insurance undertakings to carry out insurance distribution activities within their territories without the need to obtain the information or make the determination provided for in paragraph 2 of this Article where all the following conditions are met:*
- (a) *activities refer to either of the following insurance-based investment products:*
- (i) *contracts which only provide investment exposure to the financial instruments deemed non-complex under DIR 2014/65/EU and do not incorporate a structure which makes it difficult for the customer to understand the risks involved; or*
- (ii) *other non-complex insurance-based investments for the purpose of this para;*
- (b) *the insurance distribution activity is carried out at the initiative of the customer or potential customer;*
- (c) *the customer or potential customer has been clearly informed that, in the provision of the insurance distribution activity, the insurance intermediary or the insurance undertaking is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered and that the customer or potential customer does not benefit from the corresponding protection of the relevant conduct of business rules. Such a warning may be provided in a standardised format;*
- (d) *the insurance intermediary or insurance undertaking complies with its obligations under Articles 27 and 28”.*

This is a new discretion for insurance-based-investment products under IDD. Nationally the Consumer Protection Code allows execution only sales in very limited circumstances. IDD provides for a derogation which would allow execution-only sales in limited circumstances, subject to further requirements to be developed by EIOPA (Level 2).

Q8. Should Ireland avail of this derogation at Article 30(3)?

Please give reasons for your response, identifying potential positive and negative impacts of your preferred approach.

ADMINISTRATIVE SANCTIONS, BREACHES AND OTHER MEASURES

Question 9 - Articles 31 and 33

- (a) Article 31.2 provides that *“Member States may decide not to lay down rules on administrative sanctions under this Directive for infringements that are subject to criminal sanctions under national law”*.
- (b) Article 33.4 provides that *“Member States may empower competent authorities to provide for additional sanctions or other measures and for levels of administrative pecuniary sanctions which are higher than those provided for in this Article”*.

These are new discretions under IDD. Criminal offences in relation to certain breaches under IMR are set out in those Regulations and IMR is a designated enactment under the Central Bank Act 1942 which brings it under the Central Bank administrative sanctions regime.

Q9. Should Ireland provide for criminal/administrative sanctions in respect of IDD for both 9(a) and (b)? If so, what provisions should be covered?

Please give reasons for your response, identifying potential positive and negative impacts of your preferred approach.

4. The Consultation Process

The Minister for Finance, Michael Noonan TD, invites interested parties to make submissions in relation to the potential impact for Ireland arising from the Insurance Distribution Directive, in particular in relation to the discretions provided for in the Directive.

§ Consultation Period

The consultation period **will run to 5pm on 2 May 2017**. Any submissions received after this date will not be considered.

§ How to Respond

The preferred means of response is by e-mail to: IDDConsultation@finance.gov.ie

Alternatively, you may respond by post to:

Public Consultation on Insurance Distribution Directive,
Department of Finance,
Government Buildings,
Upper Merrion Street,
Dublin 2, D02 R583

Please include contact details if you are responding by post.

When responding, please indicate whether you are contributing to the consultation process as a professional adviser, representative body, corporate body or member of the public.

§ Freedom of Information

Responses to this consultation are subject to the provisions of the Freedom of Information Acts. Parties should also note that responses to the consultation may be published on the website of the Department of Finance.

§ After the Consultation

Any submissions received will be considered by the Minister and his officials in the context of the implementation of the Insurance Distribution Directive in Ireland.

§ Queries

Please email IDDConsultation@finance.gov.ie should you have any queries.