Insurance Ireland response to the Public Consultation on national discretions in the Markets in Financial Instruments Directive (MiFID 2) incorporating elements of the Insurance Distribution Directive (IDD)

Insurance Ireland's domestic life assurance members are providers of insurance based investment products which come within the scope of the questions asked in this consultation.

<u>Question 3 a & b</u>

A. *In light of: - the new MiFID and IDD rules,*

- *their divergence in key respects (as outlined above),*
- *the national discretions provided therein (as outlined above), and*
- *the need for appropriate levels of protection for consumers of investment products, whoever they may deal with,*

do you consider that there should be level playing field rules in relation to the distribution of, and advice on, functionally equivalent retail investment products?

B. *If not, can you please explain why level playing field rules should not be followed?*

Insurance Ireland is of the view that there are key differences between MiFID and insurance based investment products which justify a different approach and that, specifically, the MiFID ban on independent advisors accepting and retaining remuneration from third parties should not apply to insurance based investment products.

Our reasoning is as follows:

a) Firstly, because the EU legislative framework for both is different. EU legislators could have opted to apply the MiFID rules to investment based insurance products but decided not to. In this context the IDD Level 2 measures which are still being finalised will also be relevant.

b) Unlike MiFID investment products, insurance-based investment products have two components – investment and protection against biometric risks. For example, the life insurance part of an insurance-based investment product may offer a number of benefits including protection of surviving dependants, income protection and critical illness cover. Therefore, investment products that are subject to MiFID II and insurance based investment products that are subject to IDD are not always "functionally equivalent".

c) Life assurance products have been subject to extensive disclosure of commission requirements since 2001.

d) The markets for the products are different. Life assurance investments are generally the vehicle through which middle-income individuals in Ireland access investments in asset classes and areas which they may otherwise not be able to access. MiFID investments are aimed more at higher net worth individuals who are more likely to avail of specialist investment, legal and tax advice in relation to their investments which enables them to benefit from the preferable tax regime available to such investments (33% CGT rate versus life assurance exit tax at 41% plus life assurance levy). In addition, the cost of advice, transaction costs and the self-assessment obligations for tax can be barriers to investment for those on average incomes. Life assurance investments level the playing field somewhat by offering a route for ordinary people to invest.

e) International experience (e.g. the Retail Distribution Review in the UK) has shown that whilst there are certain consumer advantages to limiting commission, it can lead to a reduction in financial advice being provided to certain groups, particularly those who fall outside the "wealth" category. Given the market that more generally access investment via insurance products, this reduction in advice provided would have a more significant impact in this area.

f) A consistent approach should apply across the full range of life assurance products – i.e. investment, pensions and protection. Given the point above in relation to limits in commission leading to "advice gaps" and the government's stated intention to encourage individual private pension provision, a differentiation between MiFID and insurance based investment products would appear to be appropriate.

<u>Question 3c:</u>

Which option, if any, do you think best addresses the interests of retail investors and why? If your preference is for option 2 can you please specify whether you agree with the suggested criteria ((a) to (h) as outlined above).

Our preference is Option 2. A detailed assessment will best address the interests of the retail investor and the current Central Bank discussion paper on the Payment of Commission highlights the consumer protection issues and outlines both the benefits and the risks of such payments. We are of the view that the discussion about the future of commissions in the Irish market is best addressed within the scope of these CBI discussions.

We agree with the suggested criteria.