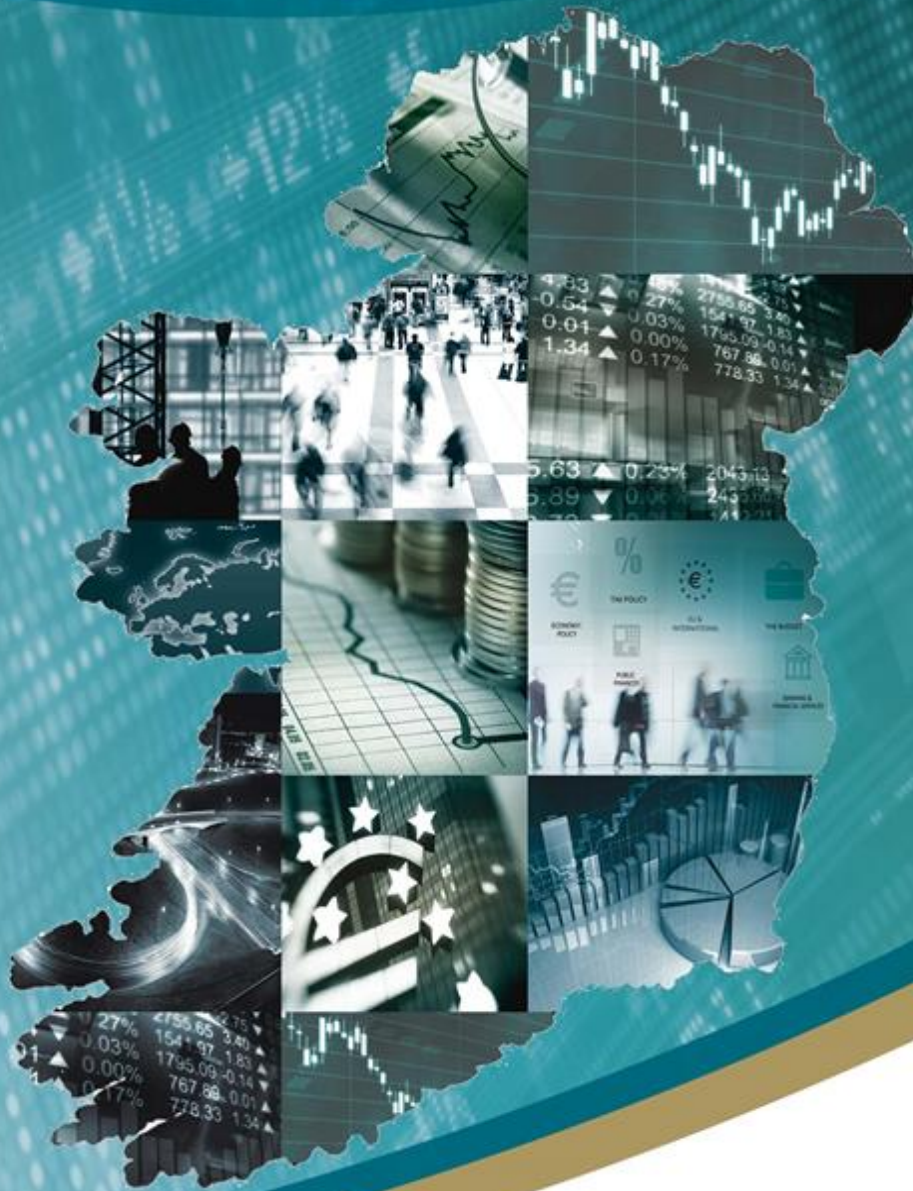


# TRANSPOSITION OF EU DIRECTIVE 2016/97 ON INSURANCE DISTRIBUTION (IDD)

## Feedback Statement

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Department of Finance

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## Introduction

The Department of Finance held a public consultation on the national discretions contained in the Insurance Distribution Directive (IDD) from 29 March until 2 May 2017 (see here). This feedback statement should be read in conjunction with the public consultation document.

Three submissions were received, from industry representative bodies and an insurance company. The Minister would like to thank all those who submitted responses to the consultation for their valuable contribution to the transposition process.

The purpose of this feedback statement is to bring greater transparency and clarity to the transposition process by way of:

- providing a summary of the responses to each question in the public consultation; and
- setting out the decisions which the Minister has taken in relation to the national discretions.

Responses to the public consultation were published on 19 July 2017.

The Minister is no longer inviting comments in relation to the decisions outlined in this feedback statement.

Related to this transposition is the area of the Payment of Commission to Intermediaries which is currently the focus of ongoing work by the Central Bank. The outcome of this work may be used to further inform decisions on relevant discretions as outlined below.

## Transposition and Implementation date

The Insurance Distribution Directive (IDD) was published in the Official Journal of the European Union in February 2016 and was due to be transposed into Irish law by February 2018. However, political agreement was reached on 14 February 2018 to postpone the transposition deadline to 1 July 2018 and the implementation date to 1 October 2018. This proposal is subject to agreement by the European Parliament and the Council which is being progressed by way of an accelerated legislative procedure and is expected to be formally adopted in March 2018.

## Next Steps

Member States are now required to transpose IDD into national legislation by 1 July 2018. The Department is continuing to work with the Office of Parliamentary Council and other stakeholders to finalise the transposing Statutory Instrument in the coming weeks with a view to having it published well in advance of the 1 July deadline.

# Summary of Responses & Minister's Decisions

This section gives a brief summary of the responses to the questions in the Public Consultation and outlines the Ministers decisions. The responses in full are published [here](#).

## REGISTRATION REQUIREMENTS

*Q1. Whether to avail of the discretions as set out in Article 3.1 (subparagraphs 3, 4, 5, 6 and 7) and Article 3.2 (subparagraph 1) which would allow for the continuation and strengthening of the current approach to the registration of insurance intermediaries and ancillary insurance intermediaries?*

This question relates to discretions under Article 3 which enables Member States to:

3.1 (3 and 4) allow undertakings, intermediaries and other bodies, such as Approved Professional Bodies, to cooperate in the registration of intermediaries and application of professional and organisational requirements,

3.1 (5 and 6) stipulate that undertakings and intermediaries responsible for other intermediaries or ancillary intermediaries should ensure that the intermediary or ancillary intermediary meets the conditions for registration; and registers that intermediary or ancillary intermediary,

3.1 (7) not apply the registration requirements to all natural persons who work in an intermediary or ancillary intermediary,

3.2 (1) establish multiple registers for intermediaries and ancillary intermediaries.

Nearly all respondents agreed that each of the discretions should be availed of. However, one respondent expressed an opinion that the discretion in Article 3.1 (subparagraph 3) should not be availed of, on the basis that it enables the continuation of the current regulatory regime, which allows “certified persons” to be regulated by their own professional bodies when carrying out investment business services or providing investment advice; in their view, this undermines the concept of a single regulatory body. Two other respondents, while agreeing that this discretion should be availed of, also suggested that the position in relation to “certified persons” is unclear.

The Minister has decided:

1. To avail of the discretions in Article 3.1 (subparagraphs 3, 4, 5, 6 and 7) which will allow the continuation and strengthening of the existing regime.
2. Not to avail of the discretion in Article 3.2 as the Central Bank may still sub-divide the register into different categories which from an administrative perspective is judged to be a better approach.

## PROFESSIONAL AND ORGANISATIONAL ARRANGEMENTS

*Q2. Whether to avail of the discretions as set out in Article 10.2 (subparagraphs 3, 4 and 5) and Article 10.3 (subparagraphs 2 and 3) which would allow for the continuation of current obligations on undertakings and intermediaries?*

This question relates to discretions under Article 10 which enables Member States to:

10.2 (3) require that successful completion of training and development requirements is proven by obtaining a certificate,

10.2 (4) require undertakings and intermediaries to verify the knowledge and ability of the intermediaries and ancillary intermediaries for whom they are responsible, and also of the employees of undertakings, is in conformity with the obligation to possess appropriate knowledge and ability, and if need be, to provide training or professional development means,

10.2 (5) not apply the requirement to possess appropriate knowledge and ability, or continuous professional development requirements to all natural persons who work in an undertaking, intermediary or ancillary intermediary,

10.3 (2) allow undertakings, intermediaries and ancillary intermediaries check the good repute of their employees; and the good repute of intermediaries or ancillary intermediaries for which the undertaking and intermediary is responsible,

10.3 (3) not apply good repute requirements to all natural persons who work in an undertaking, intermediary or ancillary intermediary.

There was general agreement that there should be no expansion of the scope of the existing obligations under Irish law with respondents being of the view that existing minimum competency requirements were sufficient. Respondents were also of the view that the obligation to verify knowledge and ability requirements of intermediaries and ancillary intermediaries should rest with the Central Bank as competent authority, and that undertakings and intermediaries should not have any formal role in this regard, except as part of ordinary due diligence.

The Minister has decided:

1. Not to avail of the discretions in Article 10.2 (subparagraphs 3 and 4).
2. To avail of the discretions in Article 10.2 (subparagraph 5) and in Article 10.3 (subparagraphs 2 and 3) which will allow the continuation of the existing minimum competency and customer protection requirements.

*Q3. To identify the measures listed in Article 10.6 which should be taken to protect customers from the inability of intermediaries and ancillary intermediaries to transfer the premium to the undertaking or to transfer the claim or returned premium to the insured.*



This question relates to the discretion in Article 10.6 which allows Member States to take one or more measures listed therein ((a) to(d)) The question asked respondents to indicate their preference of Ireland availing of and implementing each listed measure or of implementing only the measures which were already required under the existing regime. In this regard the existing measures provides that monies paid by the customer to the intermediary are treated as having been paid to the insurance undertaking, whereas monies paid by the insurance undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives them (measure 10(6) (a)); and a requirement that customers' monies be transferred via strictly segregated customer accounts and that those accounts should not be used to reimburse other creditors in the event of a bankruptcy (measure 10((6) (c) )

All respondents preferred the latter option, agreeing that the status quo should be maintained. In particular, respondents pointed out that implementing the other listed measures could be onerous and could require further clarification.

The Minister has decided:

1. To implement the measures listed in Article 10.6 (a) and (c) thereby maintaining the existing regulatory requirements.

#### ADVICE AND STANDARDS FOR SALES WHERE NO ADVICE IS GIVEN

*Q4. Whether to avail of the discretion contained in Article 20.7 which would allow for the provision of other information together with the requirement to provide an Insurance Product Information Document (IPID) to customers?*

This question relates to the discretion under Article 20 which allows Member States to stipulate that the IPID is provided together with other information as may be required by national legislation.

Respondents acknowledged that availing of this discretion would allow for the provision of other information required under the Consumer Protection Code (CPC) and under Article 184 of Solvency II along with the IPID. There was a general view expressed by respondents that any existing requirements under the Central Bank's Consumer Protection Code should be rescinded in cases where they are duplicated in the IPID. One respondent asked for a review to be carried out of all information requirements to simplify documentation and remove any duplication.

The Minister has decided:

1. To avail of the discretion in order to allow for existing CPC and Solvency II information disclosure requirements to continue to apply in order to complement the IPID.

#### INFORMATION EXEMPTIONS AND FLEXIBILITY CLAUSE

*Q5(a). Whether to avail of the discretion contained in Article 22.1 which would allow for a derogation in relation to the provision of information requirements to professional clients?*

This question relates to the discretion under Article 22.1 which allows Member States to provide that information requirements referred to in Articles 29 and 30 need not be provided to professional clients as defined in point (10) of Article 4(1) of Directive 2014/65/EU (MiFID II). There is no similar discretion in the case of MiFID II.

Most respondents agreed that Ireland should not avail of this discretion. One respondent stated that insurers do not at the outset collect information sufficient to identify a client as 'professional' and that the introduction of the term could therefore add another layer of complexity.

The Minister has decided:

1. Not to avail of this discretion so as to avoid introducing any further complexity and to maintain a similar regulatory approach as MiFID II.

*Q5(b), (c). Whether to avail of each / either of the discretions contained in Article 22.2 (subparagraphs 1 and 3)?*

This question relates to discretions under Article 22 which allow Member States to:

22.2(1) provide for stricter provisions regarding information to be provided to clients or potential clients,

22.2(3) make the provision of advice mandatory for the sale of insurance products i.e. prohibit execution only sales.

Respondents were of the view that stricter provisions should not be provided for. All respondents noted the effect that the imposition of mandatory advice, additional to the current regime, would have on online sales.

The Minister has decided:

1. To avail of the discretion contained in Article 22.2(1) to maintain and improve upon the higher level of consumer disclosure provided by the requirements of the CPC.
2. Not to avail of the discretion contained in Article 22.2(3) at this time and to review after the Central Bank work on commission payments and consumer protection is completed.

## CROSS SELLING

*Q6. Whether to avail of the discretion set out in Article 24, which allows member states to maintain or adopt stricter measures in relation to cross-selling?*

This question relates to the discretion under Article 24, which allows member states to maintain or adopt stricter provisions in relation to the cross-selling of insurance products with ancillary products or services which is not insurance.

Respondents were unanimously of the view that current CPC requirements are sufficient. The CPC sets out rules on 'bundling' which are broader and more prescriptive than those set out in IDD. These rules apply to both selling of insurance ancillary to other products and to the selling of a 'bundle' of different financial products.

The Minister has decided:

1. To avail of this discretion in order to maintain the existing CPC rules which supplement the IDD requirements and with which industry and consumers are familiar.

#### INFORMATION TO CUSTOMERS

*Q7. Whether to avail of each / any of the discretions set out in Articles 22.3 and 29, which seek to ensure that consumers are aware of all relevant risks before buying investment products, that such information is available in standardised format, and that independent advice can only be described as such if there are no commissions paid.*

This question relates to discretions under Articles 22.3 and 29, which enable Member States to:

22.3 limit or prohibit the acceptance or receipt of fees, commissions or other benefits in relation to the distribution of insurance products,

29.1 (3) allow information to be provided in a standardised format in relation to insurance-based investment products,

29.3 (1) limit or prohibit the acceptance or receipt of fees, commissions or other benefits in relation to the provision of advice for insurance-based investment products,

29.3 (3) make the provision of advice mandatory for the sales of any insurance-based investment products,

29.3 (4) require that where advice is stated to be independent, intermediaries shall assess a large number of products which are sufficiently diversified in regard to their type and product provider.

Respondents in general referred to their previous responses to the MiFID consultation and did not repeat their views. However, they did indicate a broad agreement that the current regime should be continued. Two respondents, whilst not expressing a strong rejection, felt the discretions were superfluous, and already sufficiently covered under other existing regulatory requirements. Both of these respondents were opposed to any restriction on commissions. They expressed concern that it could lead to a reduction in the amount of financial advice available, especially to those falling outside the 'wealth' category, and also



have a negative effect on competition in the market. Regarding the provision of advice, respondents felt that the existing requirements are suitable and that mandatory advice would impact severely on non-face to face consumer transactions such as the online purchase of straight forward insurance products.

The Minister has decided:

1. To avail of the discretion in Article 29.1 (subparagraph 3) to allow information requirements for insurance-based investment products to mirror similar requirements under MiFID; and in Article 29.3 (subparagraph 4) to allow the continuation of existing requirements under the CPC.
2. To avail of part of the discretion in Article 29.3 (subparagraph 1), to prohibit the acceptance and retaining of fees, commissions or other benefits in relation to the provision of independent advice for insurance-based investment products in order to ensure a level playing field for functionally equivalent products sold under MiFID.
3. Not to avail of the discretions in Article 22.3 or 29.3 (subparagraph 3) at this time but to review after the work of the Central Bank on commission payments and consumer protection is completed.

#### ASSESSMENT OF SUITABILITY AND APPROPRIATENESS AND REPORTING TO CUSTOMERS

*Q8. Whether to avail of the derogation in Article 30, to allow execution-only sales in limited circumstances?*

This question relates to a derogation under Article 30 which would allow execution-only sales in relation to insurance-based investment products in limited circumstances, subject to further requirements to be developed by EIOPA (Level 2).

Respondents were of the view that the current CPC framework for execution-only sales should be maintained, without any additional requirements.

The Minister has decided:

1. To avail of this derogation thereby allowing execution-only sales in respect of insurance-based investment products subject to the strict conditions as stated in Article 30.

#### ADMINISTRATIVE SANCTIONS, BREACHES AND OTHER MEASURES

*Q9. Whether to avail of the discretions under Articles 31 and 33, which would allow Member States to provide for additional sanctions or other measures higher than those provided for in the Directive?*

This question relates to discretions under Articles 31 and 33, which enables Member States to:

31.2 not lay down rules on administrative sanctions for infringements which are subject to criminal sanctions under national law,

33.4 provide for additional sanctions or other measures and for levels of administrative pecuniary sanctions which are higher than those provide for in the Directive.

Respondents were of the view that the administrative sanctions and penalties provided for in the current regime are sufficient.

The Minister has decided:

1. To avail of the discretion in Article 33 in order to maintain the current administrative sanctions regime.
2. Not to avail of the discretion in Article 31 in order to maintain the current administrative sanctions regime.

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