EIOPA publishes second report on the application of the Insurance Distribution Directive.

On 15 January 2024, the European Insurance and Occupational Pensions Authority (**"EIOPA"**) published its second report on the application of the Insurance Distribution Directive (**"IDD"**) (**"Report"**). The Report covers the period 2022 and 2023, highlighting relevant changes in the application of the IDD compared to the last reporting period, and examines how the IDD has been applied in European Union (**"EU"**) Member States by the insurance industry and national competent authorities (**"NCAs"**). It considers the impact of the IDD on consumers, insurance distributors and supervisory activities with respect to the structure of the EU insurance distribution market and the regulatory and supervisory framework.

The Report presents its findings under 3 categories:

- **Changes in the structure of the EU insurance distribution market;**
- **Impact on the new regulatory framework; and**
- **Impact on the supervisory framework.**

In this update we note the key observations made in the Report and outline, where relevant, where Ireland stands vis a vis their observations.

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Changes in the structure of the EU insurance distribution market

- there was a further decrease in the number of registered intermediaries which reflected the substantial decrease in the number of intermediaries registered as natural persons over the past 2 years. However Ireland was one of 5 countries which saw an increase;
- some of the reasons for the decrease in registrations is said to relate to the consolidation in the sector, increasing age of intermediaries and stricter national professional requirements;
- the average European insurance intermediary remains a natural person acting on behalf of one or more insurance undertakings, Ireland being a case in point;
- commission continues to be the predominant remuneration model in the market. Ireland, however, was the only Member State where insurance intermediaries operated only on the basis of a combination of fees and commission;
- most insurance intermediaries continue to sell only insurance. However, Ireland was one of 5 Member States where a relatively high number of insurance intermediaries sell other financial products or services compared to other markets;
- online sales remain low, but are increasing on a yearly basis;
- bancassurers play an important role in the distribution of life insurance, while agents are prevalent in the non-life sector;
- the total number of passporting intermediaries has decreased slightly over the last year, with Ireland being one of 4 Member States which saw a decrease;
- inflation has had a *'significant impact'* on both consumers and the market alike including, reduced purchasing powers of consumers and higher costs of claims for insurers.

  Additionally the Report noted that while some Member States had suggested that insurance distributors and manufacturers sufficiently consider inflation and associated risks during the POG process, others suggest otherwise. The Central Bank of Ireland noted that the *'levels of indexation currently applied to home insurance policies to mitigate the effects of inflation, vary significantly between different firms'*. Ireland has however, taken measures to mitigate inflation risks, such as Dear CEO letters asking firms to take action and consider the risks to consumers arising from the challenging economic outlook; and
- trade associations continue to raise concerns about the disproportionate application of the IDD to commercial customers, reinsurance and occupational insurance.

Impact of the new regulatory framework

- the level of professionalism and competence of insurance distributors has improved in some Member States through continuous professional development (**"CPD"**) by insurance distributors;
- some Member States have identified shortcomings in relation to CPD on Product Oversight and Governance (**"POG"**) and sustainability aspects;
- insurance distributors are facing challenges in applying and NCAs in supervising the IDD rules on the form and timing of disclosures in relation to new technologies;
- the definition of *'insurance distribution'* in an online environment is stated to merit further guidance, potentially through Level 3 measures or a change in regulatory framework;
- the impact of digital platforms, AI, robo advice and price optimisation practices continue to be difficult when it comes to the application of IDD. Amongst the points noted were

  (i) the lack of guidance on how conduct *'demands-and-needs'* tests using AI;

  (ii) the need to continue to tackle unfair price walking practices;

  (iii) the fact that robo and comparison tools can lead to a lack of transparency;

  (iv) understanding the application and concerns presented by embedded insurance; and

  (v) the need to monitor marketing communications by *'Finfluencers'*;
- in some Member States the quality of advice and selling methods has improved, while shortcomings have been identified in others;
- new sustainability rules have raised various challenges:

  (i) for consumers - understanding disclosures and complex concepts;

  (ii) for insurance distributors – finding appropriate training courses to acquire the requisite knowledge;

  (iii) the unsynchronised entry into force of different pieces of sustainable finance regulations has led to difficulties; and

  (iv) for supervisors - finding an assessment in actual ESG classification;
- NCAs and stakeholders have experienced challenges in applying some aspects of the IDD due to a lack of guidance; and
- there is a need to provide further clarifications under which conditions a policyholder of a group insurance contract acts as an insurance intermediary as well as on the split of responsibilities between home/host NCAs for ensuring compliance with the obligation concerning group insurance. The European Commission is currently working on a set of Q&As relating to group insurance.

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Impact on the supervisory framework

- most NCAs expressed the view that there were sufficiently empowered to ensure the implementation of the minimum standards set down in the IDD, but some have noticed that additional statutory powers would improve the conduct of business supervision;
- shortcomings in the application of the rules on remuneration and conflicts of interest were identified;
- several NCAs have adopted further national measures to restrict commissions;
- cross-selling products can potentially cause detriment to consumers;
- there is a need for further guidance on the application of POG requirements and adequate resources of NCAs to ensure effective supervision of the POG framework. However, there is also a need for manufacturers and distributors to improve their compliance with POG rules;
- concerns were raised regarding supervisory fees imposed by host NCAs on insurance distributors on a freedom of service/freedom of establishment basis, and passporting insurance distributors relied disproportionately on the operations of third country branches; and
- most NCAs did not receive new statutory powers, but some NCAs incorporated mystery shopping into their statutory powers to improve conduct of business supervision.

For more information on the impact of this report, or on the IDD in general, please contact Darren Maher, Grainne Callanan, Elaine Long or your usual Matheson contact.

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