



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Intermediary Times

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November Issue

Message from the Editorial Team



Welcome to the second edition of the Intermediary Times for 2021. The purpose of this newsletter is to highlight specific areas of interest, including potential risks to your business, and to outline how you can further develop your business in a manner that puts consumers first. This edition contains information on many important and interesting topics, including:

- New Central Bank of Ireland (Central Bank) Strategy;
- Information on the upcoming 2021 Annual Roadshow;
- The Importance of a Consumer-Focused Culture;
- Errors & Complaints – Minimum requirements for firms;
- Differential Pricing & Business Interruption;
- Telematics in the Private Motor Insurance Sector;
- Retail Investor Protections in the EU Bank Recovery and Resolution Framework;
- Crowdfunding;
- Funding Levies 2020;
- Anti-Money Laundering; and
- Ransomware Attacks.

For queries on any of the topics outlined in this newsletter, or any other queries you may have, please see the main contact points on page 20. We hope that you find this newsletter useful and as always, we welcome your [feedback](#) on this newsletter, as well as any suggested topics that could be covered in future editions.

Contents

| | |
|--|----|
| What's New? | 2 |
| Recent Speeches | 3 |
| 2021 Annual Roadshow | 4 |
| Central Bank Portal | 5 |
| Funding | 6 |
| PCF Start Dates | 6 |
| Consumer-Focused Culture | 7 |
| Errors & Complaints | 9 |
| Differential Pricing & Business Interruption | 10 |
| Telematics | 11 |
| BRRD | 13 |
| Crowdfunding | 15 |
| Anti-Money Laundering | 17 |
| Ransomware | 18 |
| Reminders | 19 |
| Contact Us | 20 |

What's New?

Central Bank publishes new five year Strategy

In the last week we have published our new organisation [Strategy](#), which sets out our strategic direction over the next five years. Our Strategy is built around four connecting themes - Future Focused, Safeguarding, Open and Engaged; and Transforming.

Our Strategy has been developed to ensure that our direction and ambitions over the next five years are responsive and forward looking. We have set out what we are aiming to achieve under each individual theme, which we aim to deliver in cooperation with our key stakeholders both nationally and internationally.

Our focus now is on the future, and how to respond to emerging challenges. As the saying goes, the only thing certain is change and we believe the next decade will continue to be characterised by rapid change in our economies and in the financial system, driven by technology, by an ageing society, by the need to respond to climate change, by innovation in financial products and the way consumers interact with financial services (as well as changes in how we all work). It is a future of complexity and uncertainty but also of opportunity. Our Strategy recognises this emerging context, and the need to change the way we work and what we work on. It also recognises that we are building from strong foundations.

However, what remains core to our strategy is safeguarding the stability of financial services and how they serve the interests of consumers and investors. We will continue to evolve our key policy frameworks and approaches, strengthening our ability to maintain price stability and the resilience of the financial system, while ensuring the best interests of consumers and investors are protected. This will include accelerating the evolution of our risk-based supervisory approach, such that it becomes more data-driven, agile and scalable. It will also include enhancing the regulatory framework and our supervisory execution, prioritising: (a) the interests of consumers, (b) governance, accountability, behaviours and conduct in firms, (c) financial and operational resilience in firms, and (d) anti-money laundering / countering the financing of terrorism compliance. Through all of this work we will aim to be future-focused and open & engaged (including with our stakeholders in industry).

I encourage you to take a look at the Strategy and perhaps consider how some of the issues identified may impact on your business models into the future and what actions you can take to address them. It will be the platform on which we will be engaging with your firm and your industry sector.

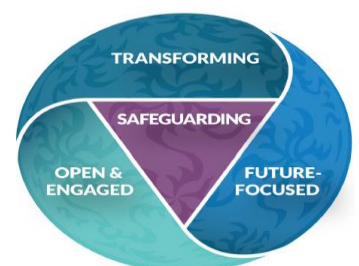
Colm Kincaid, Director of Consumer Protection



*Introduction to Colm Kincaid,
Director of Consumer
Protection.*

Colm Kincaid, is the newly appointed Director of Consumer Protection and was appointed on 1 October 2021. Colm oversees retail conduct supervision, which includes retail intermediaries. Prior to this role, Colm was Director of Securities and Markets Supervision overseeing the supervision of investment funds, trading venues and various securities market facing mandates. He also served previously as Head of Consumer Protection: Policy & Authorisations at the Central Bank and practised as a solicitor, both as legal advisor to the Central Bank and in commercial practice in London and Dublin.

*Central Bank's Strategic
Themes*



Recent Speeches

- On 3 November, Gerry Cross, Director, Financial Regulation – Policy and Risk, gave a speech at the Joint Oireachtas Committee on [Finance, Public Expenditure and Reform, and Taoiseach](#)
- On 13 October, Derville Rowland, Director General, Financial Conduct, gave a speech at the A & L Goodbody Corporate Crime & Regulation Summit in relation to [The Central Bank’s evolution of enforcement](#)
- On 29 September, Derville Rowland, Director General Financial Conduct, gave a speech at the Deloitte Global Insurance Webinar in relation to [Global Insurance](#)
- On 21 September, Sharon Donnery, Deputy Governor of the Central Bank, gave a speech at the FT future of Europe event on [Capitalising on opportunities in Europe’s financial market](#)
- On 17 September, Governor Gabriel Makhlouf, gave a speech at the Dublin Economics Workshop in relation to [“Slack, bottlenecks, and post-pandemic inflation”](#)
- On 23 June, Domhnall Cullinan, Director of Insurance Supervision, gave a speech at the Central Bank Insurance event on [Supervisory Priorities in Uncertain Times](#)



Gerry Cross, Director, Financial Regulation Policy & Risk



Derville Rowland, Director General, Financial Conduct



Sharon Donnery, Deputy Governor, Central Bank of Ireland



Governor Gabriel Makhlouf



2021 Retail Intermediary Roadshow

The Central Bank invites you to attend our 2021 Virtual Retail Intermediary Roadshow on Wednesday, 24 November - 9:45am to 1:00pm.

- **Registration takes less than a minute** - To register for this event, simply enter your details in the online form [here](#);
- **Continuous Professional Development (CPD) hours** - will be awarded for full attendance of the event, in line with the awarding bodies' requirements¹; and
- **Topics of interest for your firm** - There will be presentations followed by questions and answers sections on a range of topics, including: the Central Bank's Strategy, Climate Change / Sustainable Finance and your business, how we supervise the sector and what that means for your firm (from authorisation through supervision and where necessary, enforcement), the Central Bank's expectations on key areas such as the importance of a Consumer-Focused Culture, and advice on areas such as anti-money laundering rules, cyber security and protected disclosures, amongst other topics.

Additional Information

1. **Advanced registration is necessary** - We ask that all registrations be completed no later than 17 November. Once registration is complete and accepted by the system, you will receive an email confirming your registration and providing you with the login details. If you do not receive this confirmation email including the login details prior to the 20 November 2021, please contact riroadshows@centralbank.ie for assistance;
2. **Joining the event on the day** - Your confirmation email will contain a link to allow you to access the event. We ask that all attendees who wish to join the event do so through a computer or via the WebEx mobile phone app in order to avail of full functionality of the platform. Further details on the platform can be found on WebEx's website www.webex.com; and
3. **Participant interaction on the day** - In addition to questions and answers sections after each presentation, we will run a number of interactive polls on topical items via the [Sli.do](#) platform. The code to access Sli.do will be shared at the start of the event.

We look forward to welcoming you to the 2021 Roadshow.

Did you know?

The Virtual Roadshow will take place on Wednesday 24 November at 9:45am.

In order to attend this virtual event, firms must register their interest no later than the 17 November.

Any queries in relation to the upcoming Roadshow should be directed to riroadshows@centralbank.ie

¹ The Insurance Institute of Ireland (III) and The Institute of Bankers in Ireland (IOB)

The Central Bank Portal

Following our [previous correspondence](#) and subsequent successful launch of the Central Bank's Portal (Portal) and rollout to Retail Intermediaries on 24 May 2021, the majority of firms have now successfully on-boarded. However, we have extended the deadline to **10 December 2021** to facilitate the small number of firms who have yet to register. The current Portal allows users to view information relating to your institution, notify the Central Bank of required changes and also communicate with the Central Bank regarding those changes. Over time, the Portal's offering will expand to include additional regulatory and statistical services, including Industry Levy Management, Online Returns, and Fitness & Probity applications, amongst other services. Where firms have not registered for the Portal they will be unable to avail of these additional regulatory and statistical services.

During this final registration window, we are requesting your nominated [Portal Administrator](#) to:

1. [Register](#) for the Portal to obtain a person code and create their password; and
2. Provide the person code they obtained during registration and their full name to the individual responsible for Online Reporting (ONR) System submissions so that your institution files the [Portal Administrator On-Boarding Return](#) (Return) **no later than Friday, 10 December 2021**.

Only one Portal Administrator per firm can be nominated via the Return. The Portal Administrator will receive a confirmation email from the Central Bank once the Return has been processed. At this point, your firm has been fully set up on the Portal. We recommend following the Portal Administrator Day One Actions on the [Portal Help pages](#). All Portal users will be required to set up a second factor method of authentication on first login – see [our instructional videos](#) for more information.

The [Portal Administrator role](#) is a separate role from the ONR Administrator, though these roles may be fulfilled by the same person. Where appropriate, the Portal Administrator may be the only Portal user for your firm. However, should you require additional Portal users, please request that they follow step 1 above to register **and then contact their Portal Administrator**. The Portal Administrator will add these users and [grant them the appropriate permissions](#) to use the Portal.

Please visit the [Help pages](#) for more information and [all Portal related communications](#) on our website. If you have any questions in relation to this communication, please contact us on portalsupport@centralbank.ie.

Firms who have not yet on-boarded for the Central Bank's Portal are required to do so by 10 December 2021.

Firms must appoint a Portal Administrator who will be the main point of contact for any Central Bank communications.


Any Portal related queries can be directed to portalsupport@centralbank.ie

Industry Funding Levy 2020

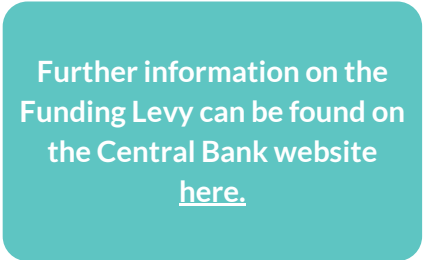
Industry funding levy invoices for the 2020 levy period have been issued recently. The levy structure and variable fee rates from 2019 are carried over with no change, notwithstanding an increase in overall sectoral recovery rates from 70% in 2019 to 75% in 2020. Individual levies for firms will reflect 2019 Online Returns – so while the structure and rates remain the same, invoice amounts may change.

As in 2019, a minimum levy of €1,025 will apply and, where Fees and Commissions exceed €200k, a variable fee of 0.33% on the excess will apply.

We very much appreciate the effort of many firms to pay the levies promptly. We wish to acknowledge the input and support from Brokers Ireland in levy discussions during 2021.



Industry funding levies for the 2020 levy period have now been issued to all firms.





Further information on the Funding Levy can be found on the Central Bank website [here](#).

PCF Effective Start Dates

Firms are reminded that they are required to confirm the *effective start date* for all Pre-approval Controlled Function (PCF) role holders approved by the Central Bank via our Online Reporting System (ONR), or to confirm if the *role is not being taken up*.

Failure to provide this confirmation results in incorrect records being held on the Central Bank's systems. This may impact the Central Bank's ability to carry out our supervisory functions and may cause issues for firms when submitting their Annual PCF Confirmation Returns.



Firms must confirm the effective start date for all PCF holders. The date must be on or after the date the Central Bank approved the appointment of the PCF.

The Importance of a Consumer-Focused Culture

The mission of the Central Bank is to serve the public interest by maintaining monetary and financial stability while ensuring that the financial system operates in the best interests of consumers and the wider economy.

Consumer-Focused Culture

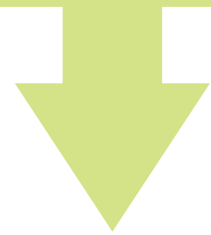
In March of this year, the Central Bank published the [Consumer Protection Outlook Report 2021](#) (CPOR), which set out the Central Bank's consumer and investor protection priorities for 2021, and the risks that pose the greatest potential for consumer and investor harm. It also sets out the Central Bank's expectations of what firms should do to minimise these risks.

One of the key risks facing consumers, highlighted in the CPOR, is the absence of a consumer-focused culture and subsequently one of our key priorities is to drive firms to take responsibility for embedding consumer-focused cultures based on the highest standards of professionalism, honesty, integrity and accountability to deliver fair outcomes that have the interest of consumers and investors at heart.

In the Central Bank, we set out our expectations regarding behaviour and culture regularly through our supervisory engagement with firms, through speeches and publications such as the Intermediary Times newsletters, and through stakeholder engagement events such as the Roadshows.

Effective culture in financial services is essential because of the central role that the financial sector plays in the modern economy, supporting growth, employment and future prosperity. It is also essential to the sustainability of your firm, with growing evidence that the lack of a consumer-focused culture erodes competitiveness and damages long-term prospects. The culture within a firm sets out the expectations of how employees and consumers interact with each other. Culture drives the values and beliefs that govern how individuals treat others, perform their tasks, take decisions, assess risk, and perhaps most importantly, do the right thing to ensure they operate in a safe and sound manner.

Effective culture in financial services is essential because of the central role that the financial sector plays in the modern economy, supporting growth, employment and future prosperity.



Consumer Protection Code 2012

The Consumer Protection Code 2012 (the ‘Code’) sets out a number of principles that firms must uphold as part of their business interactions:

- Act honestly, fairly and professionally in the best interests of its customers and the integrity of the market;
- Know Your Customer (KYC) – ensuring the most suitable product is made available to the customer; and
- Ensure full disclosure of all relevant material in order to inform the customer.

In tandem with regulators globally, the Central Bank’s immediate focus in the wake of the financial crisis was on strengthening the solvency and stability of the financial sector and enhancing protections for consumers. The focus then widened to consider cultural issues, in recognition of the extent to which culture within firms contributed to the crisis.

While effective culture in the first instance is a matter for each individual organisation to define and embed, the Central Bank as a regulator works to monitor, assess and influence culture within firms to guard against risk and drive better outcomes for consumers.

In recent years, the Central Bank has strengthened protections for consumers generally by enhancing the Code, by introducing the Code of Conduct on Mortgage Arrears, and with the Minimum Competency Requirements, which established minimum professional standards for regulated financial services providers - with particular emphasis on areas dealing with consumers. Additionally, the Central Bank published Guidelines on Variable Remuneration Arrangements for Sales Staff, seeking to ensure firms’ arrangements focus on encouraging the right culture and behaviour in sales staff, while actively discouraging poor practices. These changes recognise that the absence of a consumer-focused culture presents the greatest risk to achieving long-term, sustainable and positive outcomes for consumers.

Summary

The Central Bank expects to see a consumer-focused culture in all firms we regulate. Retail intermediaries’ management and staff have an important role to play in embedding this culture, and as the sellers of financial products and services, have a clear responsibility to put your customers first. This places an onus on firms to be future-focused and get to know and understand the innovations taking place in the market, their benefits and risks, and to take the time to learn and understand new key areas such as climate change and sustainable finance – and what that means for your firm.



Firms are required to act honestly, fairly and professionally in the best interest of its customers and the integrity of the market.



The Central Bank has, in recent years enhanced the Code in order to strengthen the protections for consumers.

Errors and Complaints

Chapter 10 of the Code focuses on Errors and Complaints Resolution, and sets out the minimum requirements that a firm must follow in relation to the resolution of errors and the handling of complaints. Owing to the limited number of errors being reported by the Retail Intermediaries sector to the Bank in recent years, we are planning to undertake supervisory work in this area in 2022, to ensure firms are handling and reporting on errors in line with the Code requirements.

Error Reporting

A firm must have written procedures in place for the effective handling of errors which affect consumers. All errors should be resolved speedily and no later than six months after the date the error was first discovered. Where an error which affects consumers has not been fully resolved within 40 business days of the date the error was first discovered, a firm must inform the Central Bank within five business days of that deadline. Where a firm fails to comply with any provisions set out in chapter 10 of the Code, for example, if the Central Bank identifies that a firm has failed to inform it of an eligible error² within the deadline of five business days, this would be a breach of the Code and the firm would be subject to supervisory and / or enforcement action as a result. An Error Notification Template is available on the Central Bank's [website](#), and all related correspondence should be sent to brokers@centralbank.ie. All noted errors that have affected consumers must be logged, and a record of all steps taken to resolve the error must be kept.

Complaints Resolution

A firm must have in place a written procedure for the proper handling of complaints, and must seek to resolve all consumer complaints received. Where a complaint has been received and has been resolved to the complainant's satisfaction within five business days, the written complaints procedure need not apply. However, a record of this complaint must be kept. Where a complaint has not been resolved to the complainant's satisfaction within that timeframe, further requirements apply, including providing the complainant with a regular update on the progress of the investigation at intervals of not greater than 20 business days, and providing an estimated timeframe for resolution where 40 business days have lapsed and the complaint is not resolved. Further information in relation to the role of the Ombudsman can be found [here](#). A regulated entity must maintain up to date and comprehensive records for each complaint received from a consumer.

Further details can be found in Chapter 10 of [the Code](#).

Did you know?

A firm must inform the Central Bank if an eligible error which affects consumers has not been resolved within 40 business days.

Non-reporting of eligible errors to the Central Bank within five business days is a breach of Code.

A complainant must be informed of the right to refer their complaint to the Ombudsman.

² An error which affects consumers that has not been fully resolved within 40 business days of the date the error was first discovered.

Differential Pricing and Business Interruption

Insurance issues, particularly those related to Differential Pricing and Business Interruption, have been a key priority for the Central Bank in recent years. Both issues are similar as they relate directly to the importance of fairness for consumers. Firms are responsible for selling their customers products that meet their needs and to do so fairly. This should avoid behaviours and practices that unfairly take advantage of consumers' behavioural biases. Our work on these issues shows that the Central Bank will intervene on practices which we think are, or have the potential to be, unfair on consumers and investors. We expect firms to take a consumer-focused approach in pricing decisions and practices, and to ensure that consumers and investors are at the heart of all decisions.

Differential Pricing Review

Our recently published Review of **Differential Pricing Practices** found that some pricing practices can lead to unfair outcomes for car and home insurance consumers. We are proposing a series of measures to strengthen the consumer protection framework including a ban on price walking practices. We have also proposed a requirement on providers of motor and home insurance to personal consumers to review their pricing policies and processes annually, and the introduction of new consumer consent and disclosure requirements to ensure the automatic renewal process is more transparent. The consultation period closed in late October, and we expect to introduce new measures in 2022.

Business Interruption Insurance

We are continuing our engagement with the insurance sector in relation to our **Business Interruption Insurance** examination. The examination identified 31,000 policies that were responsive to the circumstances of business interruption or interference related to COVID-19. By the end of August, more than €130 million has been paid to 4,371 policyholders through settled claims and interim payments. This figure includes 3,485 claims which have been fully settled, and 886 who have received interim payments.

While many policyholders will not make a claim as their business may not have been interrupted, we want to see all valid claims are submitted, handled and settled promptly. We expect insurers to engage with all policyholders on claims, assisting them in understanding the information requirements to ensure full and successful settlement of valid claims – and where appropriate, we expect retail intermediaries to assist their customers in this regard.

Our work is now focused on monitoring compliance by the relevant insurers with our expectation that all valid claims are paid promptly, and handled by the firms in accordance with their claims handling processes, in compliance with their legal and regulatory obligations.

Firms are expected to take a consumer-focused approach in pricing decisions and practices, and to ensure that consumers and investors are at the heart of all decisions.

The Review of Differential Pricing in the Private Car and Home Insurance Markets is available [here](#).

The COVID-19 and Business Interruption Insurance Supervisory Framework sets out our expectations for insurance firms handling of COVID-19 related business interruption insurance claims.

Telematics in the Private Motor Insurance Sector

Background

In the first half of 2021, the Central Bank undertook a review of the use of telematics in the private motor insurance sector. The purpose of this review was to assess the prevalence of telematics-based products in the Irish market, to understand how data gathered by telematics devices is being used, and to assess the effect of this on consumers.

Telematics Landscape:

- The Irish telematics market is small - active telematics policies are estimated to account for roughly 1.5% of all private motor insurance policies;
- The target market for telematics products is generally drivers aged between 17 and 24 years old;
- Telematics products are distributed through a combination of direct and intermediary channels;
- Insurers have different approaches to how they accommodate drivers opting to have a telematics device tracking their driving behaviour, i.e. by widening their standard acceptance criteria to allow young / inexperienced drivers access to their product, or by providing a premium discount;
- The services of Third Party Telematics Providers (TTPs) are generally used for the purposes of gathering and processing the telematics data;
- There was significant variation in all aspects of the telematics products reviewed, from the type of telematics device used to how the data gathered is utilised. Our review observed three types of telematics devices currently or previously used:
 - professionally fitted black box devices;
 - self-installed black box devices; or
 - smartphone apps.
- The data gathered by telematics devices is used, or could potentially be used, for driver monitoring, fraud detection/prevention, accident detection, vehicle tracking and actuarial modelling;
- There are a few key product features generally associated with telematics products, including driver scoring/rating, excessive speed monitoring, kilometre usage and customer incentives. However, insurers have varying approaches to the application of these features. Examples include:
 - Some insurers use telematics primarily to monitor speeding and do not use the driver scoring/rating as a factor when calculating the gross premium at renewal;
 - Where driver scoring/rating is not used as a factor when calculating the gross premium at renewal, a discount (usually a set percentage of the premium) is applied for the retention of the telematics product; and



TTPs are generally used for the purposes of gathering and processing the telematics data.



Data gathered by telematics devices could be used for driver monitoring, fraud detection/prevention, accident detection, vehicle tracking and actuarial modelling.

- Some products include set kilometre-based usage limits, with the premium calculated on this basis. Where necessary, the policyholder can purchase additional kilometres during the term of the policy.

Key Observations

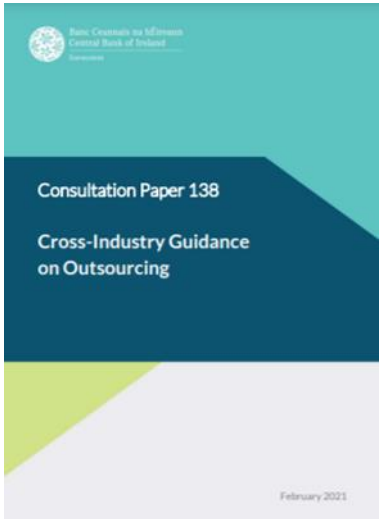
The review identified that while telematics can bring benefits to some consumers, for example, in relation to access to insurance for inexperienced drivers and the potential to earn a discount in premium, improvements can be made in respect of how information on telematics products is communicated to customers. Such improvements can be achieved by more effective disclosure, rather than additional disclosure. There are a number of key observations outlined below. Retail Intermediaries involved in the distribution and/or manufacturing of a telematics product should ensure that these are incorporated into any existing, or future, telematics products they distribute and/or manufacture.

1. Consumers may not be fully aware of what their data is being used for, in particular where data is being used for reasons other than monitoring driver behaviour (e.g. claims and fraud). All data uses should be clearly disclosed and accurately explained in the policy documentation, and the uses of data should be neither overstated, nor understated;
2. Consumers may not fully understand how a telematics policy works. The Central Bank is of the view that the most consumer-centric approach taken is where the terms and conditions related to the telematics element of the policy are laid out within a clearly identifiable, and separate, section of the policy documents, rather than being integrated into the standard insurance policy wording. This separate section provides the relevant information that a consumer would need in order to understand the telematics element of the policy; and
3. Consumers may not be fully aware that enforced cancellation of a telematics policy (e.g. for multiple speeding events) could make it difficult to obtain insurance in the future. This should be explicitly stated in policy documentation.

In respect of the use of TPTPs, firms should refer to the discussion paper on outsourcing published by the Central Bank in 2018, where the same governance and risk management requirements are expected to be applied to ‘partnerships’ with Fintechs, Regtechs and Cloud Service Providers, as are applied to traditional outsourcing arrangements, to ensure all regulatory obligations are being met.

All data uses in relation to telematics should be clearly disclosed and accurately explained in the policy documentation.

The Central Bank is of the view that the terms and conditions of the telematics should be laid out in the policy documentation.



Bank Recovery and Resolution Directive

Recent amendments to the [EU Bank Recovery and Resolution Directive](#) (BRRD) introduced new regulatory requirements applicable to some retail intermediaries. This article provides an overview of the relevant provisions and the context for their introduction.

The BRRD established a comprehensive recovery and resolution regime for banks and in-scope investment firms and, amongst other things, provided resolution authorities with a set of resolution tools and powers. This includes the power to write-down and convert capital and debt instruments issued by banks and in-scope investment firms. These so-called 'bail-in' powers have implications for investors since investors holding such instruments could face full write-down or partial loss of their investments should the issuer get into financial difficulty.

The amendments to the BRRD introduced new requirements relating to investor protections applicable to the institution issuing such instruments and to the sellers of these instruments.

Investor Protections for Retail Clients

The amendments to the BRRD were transposed into Irish law via S.I. No. 713/2020 – European Union (Bank Recovery and Resolution) (Amendment) Regulations 2020 ('the Regulations').

In transposing the amendments, the Minister for Finance (the 'Minister') exercised a national Member State discretion in relation to setting a minimum denomination amount for 'bail-inable' instruments. This provision is intended to prevent retail investors from investing heavily in risky instruments, and to ensure the sellers of such instruments only sell such instruments to a retail investor once relevant criteria are met. The minimum denomination amount is now set at €100,000. It was noted in the *Department of Finance Public Consultation on the National Discretions contained in the Risk Reduction Measures Package 2019- Feedback Statement* of 26 November 2020, that the European Central Bank indicated that increasing the minimum denomination to €100,000 would be a suitable measure, as this aligns with the BRRD objective of preventing heavy investment in these instruments by retail clients. It should be noted that existing consumer protections, such as the suitability and appropriateness requirements in MiFID II and the Consumer Protection Code 2012, continue to apply in any case.

Requirement for retail intermediaries and investment firms operating in Ireland: Regulation 80A(3) of the Regulations stipulates that **a relevant instrument with a denomination of less than €100,000 shall not be sold to a retail client in the State.**

The BRRD introduced new requirements relating to investor protections.

The amendments to the BRRD were transposed into Irish law via European Union (Bank Recovery and Resolution) (Amendment) Regulations 2020.

Relevant instruments with a denomination of less than €100,000 shall not be sold to retail clients.

Instruments in scope: The minimum denomination amount of €100,000 applies to a **relevant instrument**, as defined in the Bank Recovery and Resolution Regulations 2015 (S.I. 289/2015) at Regulation 80A (as amended by the Regulations), which includes eligible liabilities which meets all of the conditions referred to in the Capital Requirements Regulation (CRR), Additional Tier 1 instruments or Tier 2 instruments and does not include ordinary shares regardless of whether such shares are recognised in Common Equity Tier 1, Additional Tier 1 or Tier 2 capital. This means that that subordinated instruments and non-preferred senior unsecured debt instruments, including instruments such as contingent convertible bonds, are in scope.

Application Date: The Regulations, as cited above, came into operation on 28 December 2020.



Crowdfunding Regulation

Introduction to the Crowdfunding Regulation

Regulation (EU) 2020/1503³ (the 'Regulation') is applicable from 10 November 2021 and creates a new type of regulated financial service provider, Crowdfunding Service Providers (CSPs), in law. The aim of the Regulation is to ensure that CSPs are subject to consistent rules across the EU in order to foster cross-border crowdfunding services. CSPs are required to act as a neutral intermediary between investors and project owners. CSPs must comply with a number of organisational requirements, such as conflicts of interest, business continuity planning and complaints handling. Disclosure requirements apply under the Regulation, with differing levels of protections for sophisticated and non-sophisticated investors. Authorised CSPs will be able to provide in-scope crowdfunding services on a passported basis throughout the EU.

Key Requirements of the Regulation

Crowdfunding is a form of alternative finance for start-ups and SMEs, typically relying on small investments.

The Regulation applies to providers of two key types of crowdfunding:

- Investment-based crowdfunding; and
- Peer-to-peer lending based crowdfunding.

The CSP, without taking on own risk, operates an online platform open to the public, that facilitates the matching of prospective investors or lenders with businesses that seek such funding. Such funding could take the form of loans or the acquisition of transferable securities or of other admitted instruments for crowdfunding purposes.

The new framework consists of the Regulation together with [related technical amendments to MiFID II](#). The Regulation applies directly in EU Member States.

Main activities of CSPs:

- The core activities of CSPs will be; (i) facilitation of granting of loans, or (ii) placing of transferable securities and admitted instruments and receipt and transmission of orders;
- CSPs can operate bulletin boards on which their clients can advertise their interest in buying and selling loans and transferable securities;
- CSPs may engage in 'individual portfolio management of loans'. An investor can give the CSP a mandate to allocate a predetermined amount of funds between one or more projects on the CSP's platform. The investor will give the mandate specifying the

Did you know?

A Crowdfunding Service Provider is a new type of regulated financial service provider since 10 November 2021.



Crowdfunding is a form of alternative finance for start-ups and SMEs, typically relying on small investments.



The core activities of CSPs will be facilitation of granting of loans, or placing of transferable securities and admitted instruments and receipt and transmission of orders.

³ Regulation (EU) 2020/1503 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937

parameters, which may include criteria such as interest rate payable, maturity date of loans, risk categories etc.;

- The CSP must disclose its decision-making process in respect of the investor’s mandate to that investor and must provide specific information on that investor’s portfolio on a continuous basis and on request;
- CSPs offering individual portfolio management of loans can operate contingency funds, and specific requirements apply if the CSP decides to do so;
- CSPs may apply credit scores to crowdfunding projects, and may suggest the price or interest rate of offers on its platform; and
- Special purpose vehicles may be used by CSPs in limited circumstances.

ESMA/EBA Regulatory Technical Standards

The Regulation requires the ESMA and the EBA to develop eight regulatory technical standards (RTS) and four implementing technical standards (ITS) on a variety of topics.

The majority of these technical standards were submitted to the European Commission for adoption before 10 November 2021. The remaining technical standards are to be delivered by 10 May 2022.

Central Bank Crowdfunding Marketing Proposals

In addition to the marketing requirements in the Regulation, the Regulation allows the competent authority of the Member State in which marketing communications are disseminated to publish domestic marketing requirements that will apply to crowdfunding marketing communications in that Member State.

The Central Bank consulted⁴ on additional crowdfunding marketing requirements in April 2021 and is proposing that certain advertising requirements be applied to CSPs operating in Ireland. The Central Bank proposes to add the domestic advertising requirements to be applied to CSPs by way of an Addendum to the Code. Firms will need to assess and ensure that they comply with the Code requirements for each advertisement. These additional requirements include that advertising by CSPs is fair, clear, accurate and not misleading, that key information is prominent and not disguised, that warning statements meet certain criteria and that all advertisements to prospective investors carry a specified risk warning.

Did you know?

The regulation requires the ESMA and EBA to develop eight RTS and four ITS on a variety of topics.



The Regulation allows the competent authority of each Member State to publish domestic marketing requirements.



The Central Bank consulted on additional requirements in April 2021, and is proposing that these requirements be applied to CSPs operating in Ireland.

⁴ CP141 Crowdfunding marketing requirements

Anti-Money Laundering (AML)

It is more important than ever that firms ensure their systems and controls for preventing money laundering and terrorist financing continue to protect the financial system and consumers at large. The Central Bank expects firms to continue to meet their AML/ Countering the Financing of Terrorism (CFT) compliance obligations and expect senior leadership to take an active role in instilling the right culture as their firm deals with the ongoing challenges facing them today.

The Central Bank published an update to its AML/CFT Guidelines on 23 June 2021, which can be accessed [here](#). The Guidelines were amended to reflect changes made to Irish law by the EU's Fifth Anti-Money Laundering Directive (5AMLD).

Key amendments resulting from the transposition of 5AMLD into Irish Law

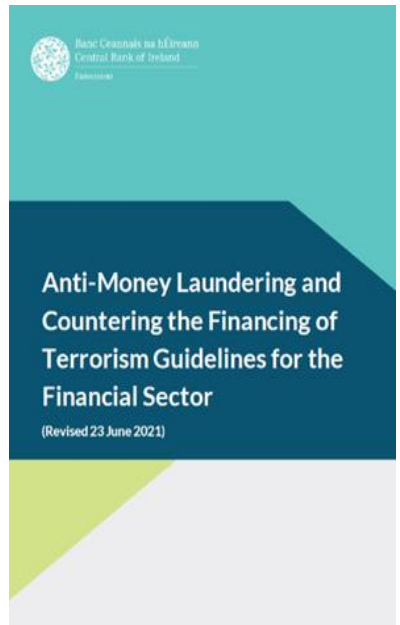
- The requirement for firms to apply specific enhanced due diligence (EDD) measures when dealing with a customer established or residing in a high-risk third country. The broadening of the sources of information, which can be used by a firm to identify and verify a customer's and their beneficial owner's (where applicable) identity;
- Where applicable, the requirement for firms to confirm that relevant information concerning the beneficial owner(s) of a customer has been entered onto the applicable beneficial ownership register before allowing transactions to be conducted on behalf of the customer or its beneficial owner;
- The requirement to continue to apply EDD measures to a customer who is a Politically Exposed Person (PEP) for as long as is reasonably required until the customer is deemed to no longer pose a risk, arising from their previous PEP status; and
- Further guidance on the internal governance requirements set out in sections 54(7) and 54(8) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended.

Additional Miscellaneous Amendments

Other amendments to the Guidelines take account of recent updates to the [EBA's Risk Factor Guidelines](#), an [AML Bulletin on Transaction Monitoring](#) published by the Central Bank in October 2020, as well as the Central Bank's expectations on certain issues such as "De-Risking" and "Data Protection".

Firms should ensure that they familiarise themselves with the revised Guidelines and ensure they are fully considered and implemented where appropriate.

The Central Bank published an update to its AML/CFT Guidelines on 23 June 2021.



Firms should ensure they familiarise themselves with the revised Guidelines.

Ransomware

Ransomware is an important topical cybersecurity issue both nationally and internationally at present.

What is Ransomware?

Ransomware is an ever-evolving form of malicious software (malware) designed to encrypt files on a device, rendering any information and the systems that rely on them unusable. Holding businesses to ransom, criminals threaten to sell or leak exfiltrated data and withhold decryption keys unless payment, via cryptocurrency, is made.

Criminals seek to gain access to system networks usually either through phishing emails containing links to malicious websites, corrupt attachments or stolen, compromised login details (username and passwords). All firms must understand that people, processes and technology play a part in the defence, detection and recovery from these attacks.

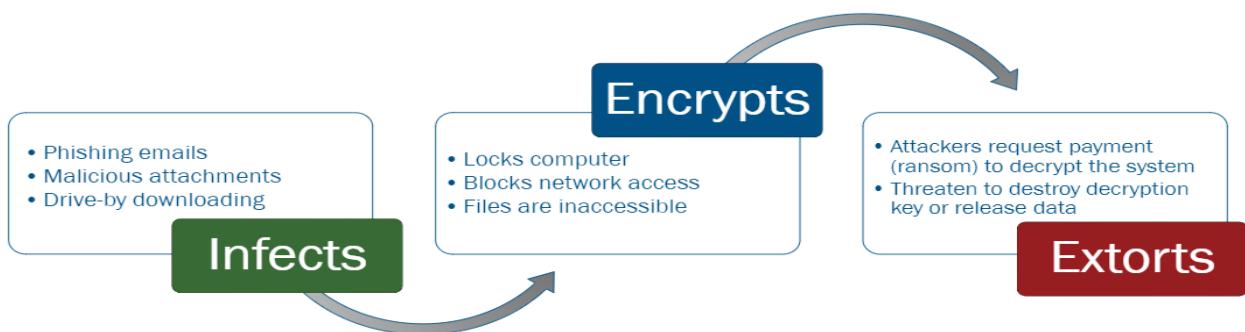
How to Protect against Ransomware – Tips and Guidance

- Maintain and regularly test your offline, encrypted backups of data;
- Implement a (basic) cyber incident response plan which includes a ransomware section;
- Ensure your IT architecture includes network segmentation, robust patching practices, virtual private networks (VPNs), multiple threat prevention, email scanning and anti-virus tools;
- Stay informed on the latest cyber challenges, threats and solutions;
- Conduct regular staff training and awareness on topics including phishing email detection and reporting, secure password and 2FA implementation and the importance of maintaining up-to-date software; and
- Useful websites: [Ireland's Cyber Security Centre](#) & the [Garda National Cyber Crime Bureau \(GNCCB\)](#).

Did you know?
Ransomware is an ever evolving form of malicious software designed to encrypt files on a device making them unusable.



In all firms, people, processes and technology all play a part in the defence, detection and recovery from Ransomware attacks.



Reminders

We hope that you have found this newsletter useful. To sum up, remember to:

- Sign up for the 2021 Roadshow in November;
- Settle your Funding Levy promptly;
- Ensure you inform the Central Bank of any start and end date of PCF holders;
- Continue to embed a consumer focused culture in your firm;
- Ensure continued compliance with Chapter 10 of the Code and report relevant errors to the Central Bank;
- Consider our findings of the Differential Pricing Review and Business Interruption Examination and whether you have a role to play;
- Review the key observations of the review of the use of telematics in the private motor insurance sector;
- Familiarise yourself with the Crowd Funding Regulation and the BRRD Requirements;
- Familiarise yourself with the revised AMLD Guidelines; and
- Be aware of Ransomware attacks.

As always, we welcome your [feedback](#) on the content and frequency of this newsletter as well as any suggested topics that you would like to see covered in future editions.

We all have a role to play



One of our key priorities in consumer protection over the past number of years has been to influence a positive cultural change in regulated firms, while also continuing to monitor compliance with rules and standards and then intervening to enforce those rules and standards where necessary. Retail intermediaries also have an important role to play. As the sellers of financial products and services – it is you who is responsible, first and foremost, for protecting the consumers you deal with.



We welcome your feedback on the content and frequency of this newsletter, as well as any suggested topics that could be covered in future editions.

Contact Us

| Central Bank Query | Central Bank Contact |
|---|--|
| <p>Consumer Protection: Retail Intermediaries:</p> <p>Authorisation queries</p> <p>Supervision queries</p> <p>Revocation queries</p> <p>Post Authorisation queries</p> <p>Brexit related queries</p> <p>Statutory Duty Confirmation Reports</p> <p>Portal Support</p> <p>Retail Intermediary Roadshows</p> | <p>RIAuthorisations@centralbank.ie</p> <p>brokers@centralbank.ie</p> <p>revoke@centralbank.ie</p> <p>postauthorisations@centralbank.ie</p> <p>ribrexitcontingency@centralbank.ie</p> <p>statutoryduty@centralbank.ie</p> <p>portalsupport@centralbank.ie</p> <p>riroadshows@centralbank.ie</p> <p>Postal Address: Retail Intermediaries Supervision Consumer Protection Directorate Central Bank of Ireland PO Box 559 New Wapping Street North Wall Quay Dublin 1 D01 F7X3</p> <p>(Please correspond via email where possible, access to our offices is restricted at this time)</p> |
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