Summary of regulatory developments

Updates for July 2022

This memo identifies and summarises any regulatory updates published during July 2022 that may be of relevance to life insurance companies.

The following table summarises the relevant updates identified in July.

REGULATORY ITEMS IDENTIFIED IN JULY THAT MAY BE OF RELEVANCE TO LIFE INSURANCE COMPANIES

Date	Description
6-Jul	The European Insurance and Occupational Pensions Authority (EIOPA) issues a staff paper on the proposal for an Insurance Recovery and Resolution Directive
6-Jul	The Prudential Regulation Authority (PRA) statement on the recalculation of the Transitional Measure on Technical Provisions (TMTP)
7-Jul	PRA publishes PS6/22, “Solvency II: Definition of an insurance holding company”
11-Jul	EIOPA seeks input on supervisory statement on differential pricing practices
12-Jul	The PRA publishes CP10/22, “Insurance special purpose vehicles (ISPVs): Further updates to authorisation and supervision”
14-Jul	Financial Conduct Authority (FCA) chief executive Nikhil Rathi delivers speech: ”How the UK will regulate for the future”
19-Jul	EIOPA publishes peer review on outsourcing
19-Jul	PRA publishes new Prudential and Resolution Policy Index
20-Jul	EIOPA publishes guidance on integrating the customer’s sustainability preferences in the suitability assessment under the Insurance Distribution Directive (IDD)
21-Jul	PRA publishes DP3/22, “Operational resilience: Critical third parties to the UK financial sector”
27-Jul	FCA’s Consumer Duty will lead to a major shift in financial services
28-Jul	The European Supervisory Authorities (ESAs) issue report on the extent of voluntary disclosure of principal adverse impact under the Sustainable Finance Disclosure Regulation (SFDR)
31-Jul	EIOPA publishes its Q&A on regulation

Updates for July 2022

This section highlights articles of interest to life companies released in July 2022.

ESAs

- The ESAs issue report on the extent of voluntary disclosure of principal adverse impact under the SFDR

  The report includes the results from a survey of National Competent Authorities (NCAs). Highlights include:

  - The extent of compliance with voluntary disclosures varies significantly across respondents, but, overall, the first disclosures since the application of the SFDR are not very detailed. This is expected to change for the disclosures made for the 2022 reporting period once the SFDR Delegated Regulation applies.
  - There is an overall low level of disclosure on the degree of alignment with the objective of the Paris Agreement.
  - There is a low level of compliance with the details required for explaining why financial market participants do not take into account the adverse impact of their investment decisions.

  The report also outlines a set of recommendations for NCAs to ensure appropriate supervision of financial market participants' practices, such as running regular surveys in their own markets to determine whether supervisory entities comply with Article 4 SFDR disclosures.

EIOPA

- EIOPA issues a staff paper on the proposal for an Insurance Recovery and Resolution Directive

  The European Commission put forward a proposal for an Insurance Recovery and Resolution Directive (IRRD) in September 2021. In this staff paper, EIOPA provides an overview of the proposal, confirming that it welcomes the directive as it addresses all relevant building blocks of a recovery and resolution framework.

  The main benefits of the proposed IRRD are:

  - One single framework across the EU
  - Focus on preventive planning
  - Appointment of resolution authorities with specialised knowledge
  - Clear conditions for resolution and adequate safeguards in line with international standards
  - A broad range of proposed resolution tools
  - Cooperation and coordination among authorities

- EIOPA seeks input on supervisory statement on differential pricing practices

  EIOPA is launching a public consultation concerning differential pricing practices. This relates to pricing techniques in which consumers with similar risk and cost-of-service characteristics are charged different premiums for the same insurance products.

  EIOPA's objective is to strengthen consumer protection in this area by preventing the unfair treatment of consumers. EIOPA also aims to promote greater convergence in the supervision of differential pricing practices to ensure that detriments to consumers are prevented via adequate product oversight and governance (POG) processes.

  EIOPA reflects upon "price walking" in particular. This refers to the practice of increasing premiums at renewal based on how much premium increase the consumer will tolerate before switching providers. This practice unfairly penalises loyal customers and can affect vulnerable groups such as the elderly.

  Stakeholders are invited to provide feedback by 7 October 2022.

- EIOPA publishes peer review on outsourcing

  The findings show that European (re)insurance undertakings make an increasing use of outsourcing, mainly in the field of technology, and that the level of outsourcing varies greatly across the European Economic Area. These differences in the penetration of outsourcing help explain why Member States' supervisory frameworks are also at different stages of maturity.

  The peer review found that segments of the outsourcing framework and certain supervisory practices need improvement. To address these segments, EIOPA has recommended actions to national supervisory authorities (NSAs) in a number of areas. They include aspects of the outsourcing framework, the structure of the notification process and the supervision of the notification content, as well as supervisory procedures for both off-site and on-site inspections.

  EIOPA has also identified three areas where higher supervisory convergence and/or more clarity of expectations could be achieved:

  - The outsourcing of delegated authority
  - The definition of "material development" and the meaning of "timely notification"
  - The supervision of undertakings that make such an extensive use of outsourcing that it impacts their corporate substance (so-called "empty shells")

  EIOPA will monitor and assess NSAs' compliance with the recommended actions and conduct further analysis into the three domains listed above.

- EIOPA publishes guidance on integrating the customer's sustainability preferences in the suitability assessment under the IDD

  The guidance is based on Commission Delegated Regulation (EU) 2021/1257 and aims at easing the implementation of the Delegated Regulation by NCAs as well as by insurance undertakings providing advice on insurance-based investment products (IBIPs).

  EIOPA provides guidance on:

  - Helping customers better understand "sustainability preferences" and their investment choices
  - The collection of information on sustainability preferences from customers
  - Matching customer preferences with products, based on the SFDR product disclosures
  - Necessary arrangements to ensure the suitability of an insurance-based investment product
  - The sustainable finance-related training and competences expected of insurance undertakings that provide advice on IBIPs.

- EIOPA publishes its Q&A on regulation

  Updates include the following:

  - (EU) No 2015/35 – Taking-up and pursuit of the business of Insurance and Reinsurance (SII). Questions 1911, 2443, 2376, 2371 and 2364.
  - (EU) No 2009/138 – Solvency II Directive (Insurance and Reinsurance). Question 2447.
  - (EU) No 2015/2450 – Templates for the submission of information to the supervisory authorities. Questions 2386, 2377, 2372 and 2341.
  - (EU) No 2017/2358 – Product oversight and governance requirements for insurance/(EU) No 2016/97 – Insurance Distribution Directive. Question 2361.
  - Guidelines on reporting and public disclosure. Question 2318.
  - Guidelines on valuation of technical provisions. Question 2430.

FCA

- The FCA's chief executive Nikhil Rathi delivers speech: "How the UK will regulate for the future"

  Highlights from the speech include:

  - Intensive dialogue between nations is essential to ensure the delivery on consistent outcomes
  - Having departed from the EU, the UK now has an opportunity to adapt its regulatory system to respond to today's challenges and to bolster the global reach of its wholesale markets
  - The FCA has invested heavily in data and technology to improve how it uses analytics and insights to support decision-making
  - The US and UK will deepen ties on crypto-asset regulation and market developments—including in relation to stablecoins and the exploration of central bank digital currencies

- The FCA's Consumer Duty will lead to a major shift in financial services

  The FCA has confirmed its plans to bring in a new Consumer Duty, which will fundamentally improve how firms serve consumers. It will set higher and clearer standards of consumer protection across financial services and require firms to put their customers' needs first.

  The Duty will include requirements for firms to:

  - End unfair and unnecessary charges and fees
  - Make it simpler to switch or cancel products
  - Provide helpful and accessible customer support
  - Provide timely and clear information about products and services so consumers can make informed decisions
  - Provide products and services that are right for their customers
  - Focus on the real and diverse needs of their customers, including those in vulnerable circumstances

  The FCA is giving firms 12 months to implement the new rules for all new and existing products and services that are currently on sale. The rules will be extended to closed book products 12 months later.

PRA

- PRA statement on the recalculation of the Transitional Measure on Technical Provisions (TMTP)

  In line with Supervisory Statement (SS) 6/16 "Maintenance of the transitional measure on technical provisions' under Solvency II," the PRA has been monitoring market conditions since the previous biennial TMTP recalculation in December 2021. The PRA also considers whether changes in market conditions since then can reasonably be considered to have been sustained. In the PRA's view, recent movements in risk-free rates meet the threshold for a material change in risk profile as set out in SS6/16.

  Therefore, the PRA would be willing to accept applications from firms to recalculate TMTP as at Thursday 30 June 2022. As set out in SS6/16, as part of any application, the PRA expects firms to be able to demonstrate that a material change in risk profile has occurred.

  The PRA expects applications to use firms' existing TMTP calculation methodologies. Firms should discuss in advance of an application any proposal for simplifications to methodologies.

- The PRA publishes PS6/22, “Solvency II: Definition of an insurance holding company”

  Consultation Paper (CP) 17/21 set out the PRA’s proposed approach to interpreting and applying the definition of an insurance holding company for the purposes of the Group Supervision Part of the PRA Rulebook. The subsequent Policy Statement (PS) 6/22 contains feedback to the consultation responses as well as the PRA’s final rules and policy on the matter. Changes include:

  - Amendments to the definition of an insurance holding company within the Glossary Part of the PRA Rulebook
  - Updates to Supervisory Statement (SS) 9/15 ”Solvency II: group supervision,” clarifying the PRA’s expectations on the information required from firms in order to distinguish an insurance holding company from a mixed-activity insurance holding company

  These rules will come into effect on 7 July 2023.

- The PRA publishes CP10/22, “Insurance special purpose vehicles (ISPVs): Further updates to authorisation and supervision”

  The proposals in this CP would result in changes to the Supervisory Statement (SS) 8/17, ”Authorisation and supervision of insurance special purpose vehicles” (Appendix 1). The CP is relevant to firms that wish to apply for an ISPV or have obtained authorisation as an ISPV. It is also relevant to (re)insurers seeking to use UK ISPVs as risk mitigation in accordance with the UK’s onshored Solvency II framework.

  The PRA considers that the proposals, such as clarifying the number of Senior Management Function (SMF) holders needed for an ISPV and the requirement for written policies in some cases, would not just promote the safety and soundness of firms, but would also assist parties to better understand the PRA’s approach and expectations in relation to the authorisation and supervision of ISPVs.

  The PRA invites feedback to this CP by 11 October 2022, with a proposed implementation date for the changes of 30 November 2022.

- The PRA publishes new Prudential and Resolution Policy Index

  Jointly the PRA and the Bank of England (BoE) published an Index of Prudential and Resolution Policies. Due to the onshoring process following EU exit, prudential and resolution policies are now hosted across a wide range of sources and websites. This Index brings the policies together in one place, and divides them by sectors and topic areas, so that users can easily find them. The Index is easy to navigate and is intended to help firms identify which policies are relevant for their particular areas of business.

- The PRA publishes DP3/22, “Operational resilience: Critical third parties to the UK financial sector”

  Well managed outsourcing can bring benefits to firms, for example through efficiency gains, reduced costs, and better customer outcomes. However financial stability could be affected by disruption or failure of critical third parties (CTPs) which provide services to regulated firms and financial market infrastructure (FMI) firms.

  Recently, the government included legislative proposals in the Financial Services and Markets Bill, currently before Parliament, to grant powers to the supervisory authorities (collectively the PRA, FCA and BoE) to directly oversee the resilience of services that CTPs provide to the UK financial sector. This discussion paper (DP) sets out potential measures for how the supervisory authorities could use their proposed powers, including:

  - A framework for identifying potential CTPs
  - Minimum resilience standards, which would apply to the services that designated CTPs provide to firms and FMIs
  - A framework for testing the resilience of material services that CTPs provide to firms and FMIs using a range of tools, including but not limited to scenario testing, participation in sector-wide exercises, cyber resilience testing and skilled persons reviews of CTPs

  Comments are open until 23 December 2022. Subject to the outcome of Parliamentary debates on the Financial Services and Market Bill, and having considered responses to this DP, the supervisory authorities plan to consult on their proposed requirements and expectations for CTPs in 2023.

CONTACT

Claire Booth
claire.booth@milliman.com

Neil Christy
neil.christy@milliman.com

Isabel Stansfield
isabel.stansfield@milliman.com