



Summary of regulatory developments

Updates for December 2023

This memo identifies and summarises any regulatory updates published during December 2023 which may be of relevance to life insurance companies.

The following table summarises the relevant updates identified in December.

REGULATORY ITEMS IDENTIFIED IN DECEMBER WHICH MAY BE OF RELEVANCE TO LIFE INSURANCE COMPANIES

Date	Description
4-Dec	The European Supervisory Authorities (ESAs) publish final report amending the draft Regulatory Technical Standards (RTS) to the Delegated Regulation supplementing the Sustainable Finance Disclosure Regulation (SFDR)
4-Dec	The Financial Conduct Authority (FCA) publishes consultation on the new Overseas Funds Regime (OFR)
7-Dec	The Prudential Regulatory Authority (PRA) publishes CP 26/23, "Operational resilience: Critical third parties (CTPs) to the UK financial sector"
8-Dec	The ESAs launch public consultation on the second batch of policy mandates under the Digital Operational Resilience Act (DORA)
8-Dec	The PRA publishes CP27/23, "The PRA's approach to policy"
8-Dec	The PRA publishes statement on the review of Solvency II for year-end 2023
11-Dec	The European Insurance and Occupational Pensions Authority (EIOPA) publishes its December 2023 Financial Stability Report
11-Dec	The ESAs publish a report on innovation facilitators across the European Economic Area (EEA)
12-Dec	EIOPA launches consultation on its draft opinion on sustainability claims and greenwashing
13-Dec	EIOPA launches consultation on the prudential treatment of sustainability risks

REGULATORY ITEMS IDENTIFIED IN DECEMBER WHICH MAY BE OF RELEVANCE TO LIFE INSURANCE COMPANIES

Date	Description
14-Dec	EIOPA launches a Catastrophe Data Hub
14-Dec	FCA welcomes the launch of industry code of conduct for Environmental, Social and Governance (ESG) ratings and data products providers
15-Dec	EIOPA launches consultation on proposed methodology for setting value-for-money benchmarks for unit-linked and hybrid insurance products
18-Dec	EIOPA publishes report on the costs and past performance of retail investment products
21-Dec	EIOPA publishes its Supervisory Convergence Plan for 2024
28-Dec	FCA publishes key achievements and milestones from 2023
31-Dec	EIOPA publishes its Q&A on regulation

Updates for December 2023

This section highlights articles of interest to life companies released in December 2023.

ESAs

- **The ESAs [publish final report amending the draft RTS to the Delegated Regulation supplementing the SFDR](#)**

The final report mandated by the European Commission proposes to introduce:

- New social indicators
- Streamlining of the framework for the disclosure of principal adverse impacts of investment decisions on the environment and society
- New product disclosures regarding greenhouse gas emissions reduction targets
- Improvements to the disclosures on how sustainable investments “do no significant harm” to the environment and society
- Simplification of the pre-contractual and periodic disclosure templates for financial products
- Other technical adjustments concerning the treatment of derivatives, calculation of sustainable investments and provisions for financial products with underlying investment options

The European Commission will review the draft RTS and will decide within three months of the publication date on whether to endorse them. These changes would apply independently of the [comprehensive assessment](#) of the SFDR announced by the European Commission in September 2023.

- **The ESAs [launch public consultation on the second batch of policy mandates under DORA](#)**

Through DORA the ESAs are mandated to jointly develop 13 policy instruments delivered in two batches. The second batch of policy mandates aims to ensure a consistent and harmonised legal framework in areas of major information and communication technology (ICT)-related incident reporting, digital operational resilience testing, ICT third-party risk management and oversight over critical ICT third-party providers.

In particular, the second batch comprises of:

- RTS and Implementing Technical Standards (ITS) on content, timelines and templates for incident reporting
- Guidelines (GL) on aggregated costs and losses from major incidents
- RTS on subcontracting of critical or important functions
- RTS on oversight harmonisation
- GL on oversight cooperation between ESAs and competent authorities
- RTS on threat-led penetration testing

The consultation closes 4 March 2024.

- **The ESAs publish a report on innovation facilitators across the EEA**

The report outlines the benefits and challenges relating to the operation and design of innovation hubs and regulatory sandboxes. It includes recommendations to national competent authorities (NCAs), the ESAs themselves and to the European Commission to enhance the role and efficiency of innovation facilitators in the financial sector.

To further improve the operation of innovation facilitators, NCAs are invited to better understand participating firms' concerns, broaden the scope of innovations captured, ensure effective collaboration and continually evaluate the functioning of innovation hubs and sandboxes.

The ESAs, through the European Forum for Innovation Facilitators (EFIF), can provide recommendations for future EU-wide initiatives that focus on experimentation. They can also improve the functioning of the framework.

The ESAs also propose that the European Commission undertake a comprehensive reflection on the EU-wide strategy to support financial innovation and the operation of innovation facilitators.

EIOPA

- **EIOPA publishes its December 2023 Financial Stability Report**

The report explores the challenges the shifting macroeconomic landscape poses for insurers and pension funds. This includes the resurgence of inflation risks, higher interest rates and geopolitical uncertainties which have transformed the economic environment of the past few years.

EIOPA took a closer look at several topics, including:

- Liquidity risks for the insurance sector: The aggregate liquidity position of surveyed solo undertakings deteriorated in 2022 mainly due to the drop in the value of bonds.
- Portfolio rebalancing after monetary normalisation: The low interest rate environment of the past decade led insurers to investment in real estate, private equity funds and loans with insurers showing no signs of returning to traditional investments.
- Impact of past recessions on insurers and lessons for the future: This can provide lessons for the potential effects of the next recession.

- **EIOPA launches consultation on its draft opinion on sustainability claims and greenwashing**

As global awareness of sustainability grows, insurance consumers and pension savers are increasingly interested in allocating their money sustainably. In response to providers meeting this demand, EIOPA has set out four principles providers should observe when making sustainability claims and examples of good and bad practices for each. These principles include:

- Sustainability claims made by a provider should be accurate, precise and consistent with the provider's overall profile and business model, or the profile of its product(s)
- Sustainability claims should be kept up to date, and any changes should be disclosed in a timely manner and with a clear rationale
- Sustainability claims should be substantiated with clear reasoning and facts
- Sustainability claims and their substantiation should be accessible by the targeted stakeholders

EIOPA also proposes that NCAs monitor providers' adherence to the four principles, evaluate their sustainability claims, ensure compliance with the relevant regulatory requirements and closely examine sustainability-related terms in product names.

The consultation closes 12 March 2024.

- **EIOPA launches consultation on the prudential treatment of sustainability risks**

As mandated under the Solvency II Directive, EIOPA is required to assess the prudential treatment of assets or activities associated largely with environmental or social objectives, or harm to such objectives. This consultation paper is the second phase of this mandate and assesses the potential for a dedicated prudential treatment of risks associated with environmental and social factors.

EIOPA invites feedback by 22 March 2024. EIOPA hopes to host an online event regarding the consultation on 7 February 2024.

- **EIOPA launches a Catastrophe Data Hub**

EIOPA launched a Catastrophe Data Hub at its [Sustainable Finance Conference 2023](#). The Catastrophe Data Hub is an open-source collection of European catastrophe risk data for insured losses for the 2017 wildfire in Portugal, the June 2013 floods and the 2020 windstorm Ciara, as well as exposure data for natural catastrophes for windstorm and flood.

EIOPA expects this data to be valuable to supervisors, the insurance sector and policy and decision-makers.

- **EIOPA launches consultation on proposed methodology for setting value-for-money benchmarks for unit-linked and hybrid insurance products**

EIOPA has found that despite the significant benefits of unit-linked and hybrid insurance products, supervisors across Europe have consistently reported issues with some of these markets over the years. Issues often stem from the high complexity and mismatch between expected and actual return on these products.

To deal with these risks, EIOPA has outlined a three-step approach for developing value-for-money benchmarks:

- Categorise unit-linked and hybrid insurance products with similar features into groups based on policyholders' needs. This step intends to bring comparability to a market characterised by highly diverse products.
- EIOPA suggests indicators around which value-for-money benchmarks should be developed.
- Leverage existing data collection processes, such as the one for the annual Cost and Past Performance report to minimise reporting burden.

EIOPA invites feedback by 15 March 2024.

- **EIOPA publishes report on the costs and past performance of retail investment products**

The report is based on over 1,000 investment products from 173 insurers, more than 200 personal pension products and 1,400 occupational pension funds. The report analyses their costs and returns in 2022.

Key findings include:

- Unit-linked and hybrid products yielded negative returns of -11.5% (-18.9% in real terms) and -4.7% (-12.7% in real terms), respectively
- Profit participation products showed positive nominal returns of 1.35%; however, in real terms it was -7.2%
- The differences in performance of insurance-based investment products (IBIPs) were influenced by risk class, the recommended holding period and the frequency of premium payment
- Costs of IBIPs remained stable but comparatively high on average
- Profit participation products retained their cost advantage over unit-linked or hybrid products
- Sustainable products experienced rapid growth in both supply and demand and remain cheaper than their counterparts
- Personal pension products largely followed the trends observed in IBIPs
- Personal pension products like unit-linked policies experienced losses of 14.1%, while personal pension products similar to profit participation products generated a slight positive return of 0.7%

- **EIOPA publishes its Supervisory Convergence Plan for 2024**

EIOPA's priorities fall, similarly to the previous plan, within the following key areas:

- Implementation of the common supervisory culture and the development of supervisory convergence tools, including work on reviewing Solvency II, risk assessment frameworks and its supervisory approach to sustainability risks.
- Identification of risks to the internal market and the level playing field, including promoting benchmark studies on internal models and developing guidance to the NCAs on the supervision of private equity-owned insurance undertakings.
- Supervision of emerging risks, including implementation of the new framework on DORA, monitoring digital transformation and identifying ways to help supervisors deal with new challenges, particularly in overseeing the use of artificial intelligence (AI).

- **EIOPA publishes its Q&A on regulation.**

Updates include the following:

- (EU) 2023/894: ITS with regard to the templates for the submission of information necessary for supervision. Questions [2847](#), [2907](#), [2940](#), [2782](#), [2793](#), [2924](#), [2923](#), [2922](#), [2921](#), [2828](#), [2822](#), [2784](#), [2679](#), [2748](#), [2789](#), [2809](#), [2820](#), [2671](#), [2728](#), [2792](#), [2803](#), [2833](#), [2713](#), [2731](#), [2839](#), [2813](#), [2812](#), [2720](#) and [2811](#).
- (EU) No 2016/97 – Insurance Distribution Directive. Question [2171](#).
- (EU) No 2009/138 – Solvency II Directive (Insurance and Reinsurance). Question [2434](#).
- (EU) No 2015/35, supplementing Dir 2009/138/EC: Taking up and pursuit of the business of insurance and reinsurance (Solvency II [SII]). Question [2908](#).

FCA

- **FCA publishes consultation on the new OFR**

The OFR has been designed by Parliament to provide the process by which non-UK-domiciled funds can market to UK retail customers. The FCA is consulting on changes to its rules that will allow overseas schemes to be recognised under OFR, should the UK government make any determination on equivalence. This is to allow the FCA and firms enough time to prepare for the changes necessary.

In particular, the changes are:

- Recognition by the FCA of the categories of information that overseas schemes will submit under OFR such as the scheme's investment objective and policy, and the main categories of assets that it invests in.
- New measures to ensure investors are aware of the protections they have if they invest in an overseas fund.
- Clarity from overseas funds on when these customer protections are not available.

- **FCA welcomes launch of industry code of conduct for ESG ratings and data products providers**

In 2022, the FCA appointed the International Capital Market Association (ICMA) and the International Regulatory Strategy Group (IRSG) to convene an industry group to develop a globally consistent voluntary code for those providing third-party data and ratings. In the first half of 2023, the UK government consulted on whether and how the FCA's regulatory perimeter should be extended to include ESG ratings providers. The code launched should be a benchmark for any providers that fall outside the scope of potential future regulation.

- **FCA publishes key achievements and milestones from 2023**

Now into the second year of its three-year strategy, the FCA reflects on key achievements from 2023:

- Reducing and preventing serious harm by introducing the Consumer Duty to support consumers
- Tackling of online harms
- Setting higher standards by consulting on a new regulatory framework for diversity and inclusion
- Promoting competition and positive change by introducing the new sustainable disclosure requirements and publishing a discussion paper to help assess the benefits and risks of AI

PRA

▪ **The PRA publishes CP26/23, "Operational resilience: CTPs to the UK financial sector"**

The CP aims to manage the potential risks to the stability of the UK financial system that could arise due to failure in the services that a CTP provides to one or more authorised persons, firms and/or financial market infrastructure entities (FMIs). In particular, the proposals would result in:

- Requirements for CTPs in the Bank of England (Bank) Rulebook, the PRA Rulebook, and the FCA Handbook
- A joint Bank/PRA/FCA supervisory statement setting out the regulators' expectations of how CTPs should comply with and interpret the proposed requirements in their rules
- A joint Bank/PRA supervisory statement and FCA guidance on the regulators' policy expectations on the use of skilled person reviews of CTPs as an oversight tool

The Bank and PRA also intend to consult on a joint statement of policy in relation to the use of their disciplinary powers over CTPs, which will be aligned to their ongoing wider review of enforcement.

While this CP will not at this stage directly impact UK insurers, it will benefit them through direct scrutiny and oversight of these critical service providers. An additional consultation on this topic is expected in 2024 which will impact insurers, a new policy for outsourcing and third-party (OATP) data collection.

For further information on this CP, Milliman has published a [summary](#) document on our LinkedIn page. The consultation period closes 15 March 2024.

▪ **The PRA publishes CP27/23, "The PRA's approach to policy"**

This CP sets out the approach that the PRA proposes to take to policy under the regulatory framework as amended by the Financial Services and Markets Act (FSMA) 2023. The PRA's approach to policy is evolving because it is taking on wider rule-making responsibilities and enhanced accounting requirements. The UK's regulatory framework is adapting for the future, and in particular to reflect the UK's position outside of the EU.

The PRA proposes moving to a more British style of regulation, with most of the technical rules made by independent regulators. The belief is that this will enable them to be more agile and deliver policies which are better suited to the UK's financial sector. Among the new requirements is a secondary objective to facilitate the UK economy's international competitiveness and its growth over the medium to long term.

Firms are welcome to comment on this CP by 8 April 2024.

▪ **The PRA publishes statement on the review of Solvency II for year-end 2023**

This statement relates to HM Treasury (HMT) and the PRA's reforms to Solvency II to be implemented at year-end 2023, in advance of the PRA's final decisions on its recent Solvency II reform proposals. Highlights of the publication include:

- The Regulatory Supervisory Report (RSR) no longer needs to be produced
- Several quantitative reporting templates have been deleted to reduce burden on firms
- Firms have been invited to apply for permission to recalculate their transitional measures on technical provisions (TMTPs) as at year-end 2023 and may not need to calculate the financial resources requirement (FRR) test
- The government's reforms to the risk margin will come into force and include reducing the cost of capital rate from 6% to 4% and amending the formula to introduce a risk tapering factor of 0.9 for life insurance, subject to a floor of 0.25



Milliman is among the world's largest providers of actuarial and related products and services. The firm has consulting practices in life insurance and financial services, property & casualty insurance, healthcare, and employee benefits. Founded in 1947, Milliman is an independent firm with offices in major cities around the globe.

milliman.com

CONTACT

Neil Christy
neil.christy@milliman.com

Isabel Stansfield
isabel.stansfield@milliman.com

Monique Mahabir
monique.mahabir@milliman.com

© 2024 Milliman, Inc. All Rights Reserved. The materials in this document represent the opinion of the authors and are not representative of the views of Milliman, Inc. Milliman does not certify the information, nor does it guarantee the accuracy and completeness of such information. Use of such information is voluntary and should not be relied upon unless an independent review of its accuracy and completeness has been performed. Materials should not be reproduced without the express consent of Milliman.

Milliman LLP is a limited liability partnership registered in England and Wales (number OC376134).
Registered Office 11 Old Jewry, London EC2R 8DU
Offices in Principal Cities Worldwide