



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

Addendum to the Consumer  
Protection Code 2012  
September 2019

## CONSUMER PROTECTION CODE 2012

### Contents of the Addendum to the Consumer Protection Code 2012:

- Part 1: Addendum for Intermediary Inducements – Enhanced Consumer Protection Measures
- Part 2: Addendum for Consequential Amendments to the Consumer Protection Code 2012 arising from the European Union (Insurance Distribution) Regulations 2018.

## PART 1: ADDENDUM FOR INTERMEDIARY INDUCEMENTS – ENHANCED CONSUMER PROTECTION MEASURES

### Introduction

In November 2017, the Central Bank published a consultation paper on *Intermediary Inducements – Enhanced Consumer Protection Measures (CP116)*. CP116 sought views from stakeholders on a series of proposed consumer protection measures in the area of commission payments.

Having considered the responses received to CP116, the Central Bank is now introducing new provisions and amending certain existing provisions of the Consumer Protection Code 2012 (the 2012 Code). The purpose of this Addendum is to give effect to these enhanced protections.

This Addendum is effective 31 March 2020.

For the purposes of giving effect to the enhanced protections, the following parts of the 2012 Code are now amended:

- Chapter 3 – Conflicts of Interest
- Chapter 4 – Provision of Information
- Chapter 12 - Definitions

### LEGAL BASIS

Pursuant to Section 117 of the Central Bank Act 1989, the 2012 Code is hereby amended as set out below.

## CHAPTER 3 – CONFLICTS OF INTEREST

### New Provision 3.25A

The following new provision is inserted after Provision 3.25:

- “3.25A A **regulated entity** must ensure that, in providing a **regulated activity to a consumer**, if it pays or provides, or is paid or provided with, any fee, commission, other reward or remuneration in connection with the provision of that **regulated activity** to or by any person other than the **consumer** or a person acting on behalf of the **consumer**, the fee, commission, other reward or remuneration:
- a) does not impair compliance with the **regulated entity’s** duty to act honestly, fairly and professionally in the best interests of the **consumer**;
  - b) does not impair compliance with the **regulated entity’s** obligation to satisfy the conflicts of interest requirements set out in Chapter 3 of this Code and, as applicable, the European Union (Insurance Distribution) Regulations 2018 (S.I. No. 229 of 2018);
  - c) does not impair compliance with the **regulated entity’s** obligation to satisfy the suitability requirements set out in Chapter 5 of this Code and, as applicable, the European Union (Insurance Distribution) Regulations 2018 (S.I. No. 229 of 2018); and
  - d) in the case of a non-monetary benefit, is designed to enhance the quality of the service to the **consumer**.”

### Amendment of Provision 3.28

Insert after sub-paragraph b):

“Sub-paragraph a) includes conflicts of interest that must be avoided pursuant to Provision 3.28A.

Sub-paragraph b) does not include conflicts that must be avoided pursuant to Provision 3.28A.”

### New Provision 3.28A

The following new provision is inserted after Provision 3.28:

- “3.28A A **regulated entity** must avoid conflicts of interest relating to the following:
- a) fees, commission, other rewards or remuneration linked to the achievement of targets that do not consider the **consumer’s** best interests e.g. targets relating to volume (including override commission) and bonus payments linked to business retention; and
  - b) agreements under which the **regulated entity** receives a fee, commission, other reward or remuneration in the form of goods or services, in return for which it agrees to direct business through or in the way of another person.”

#### Amendment of Provision 3.29

Insert after subparagraph b):

“This Provision does not apply to conflicts of interest that must be avoided pursuant to Provision 3.28A.”

#### Deletion of Provision 3.36

Provision 3.36 is deleted.

### CHAPTER 4 – PROVISION OF INFORMATION

#### Amendment of Provision 4.16

The following is substituted for Provision 4.16:

“4.16 An intermediary may use the description “independent” or use any other word or expression that is a derivative of, or similar to this term -

- a) in its legal name, trading name or any other description of the intermediary, only where **regulated activities** provided by the intermediary are all provided on the basis of a **fair analysis of the market**; or
- b) in any description of a **regulated activity** provided by the intermediary, only where that **regulated activity** is provided on the basis of a **fair analysis of the market**,

and, in either of these circumstances, only where the intermediary does not accept and retain any fee, commission, other reward or remuneration where advice is provided in respect of **regulated activities** provided by the intermediary, other than -

- i) a **minor non-monetary benefit** that includes, for example, attendance at a conference within the State, IT software or platforms, or hospitality of a reasonable de minimis value such as food and drink during a business meeting or conference; and
- ii) a fee paid by a **consumer**, or a person acting on behalf of a **consumer** to whom the advice is provided.”

This Provision does not apply to a **regulated entity** within the scope of Provision 4.16A or Regulation 23(5) of the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (S.I. No. 142 of 2016).

#### Amendment of Provision 4.16A

The following is substituted for Provision 4.16A:

“4.16A A **regulated entity** providing **MiFID Article 3** services may use the term “independent” or use any other word or expression that is a derivative of, or similar to this term –

- a) in its legal name, trading name or any other description of the regulated entity, only where *regulated activities* provided by the *regulated entity* are all provided on the basis of a *fair analysis of the market*;  
or
- b) in any description of a *regulated activity* provided by the *regulated entity*, only where that *regulated activity* is provided on the basis of a *fair analysis of the market*,

and, in either of these circumstances, only where –

- i) the factors to be taken into consideration by the *regulated entity* in conducting its *fair analysis of the market* include the criteria set out in Article 53(1)(d) of Commission Delegated Regulation (EU) 2017/565; and
- ii) the *regulated entity* complies with Provision 14.5 of this Code.”

#### **Deletion of Provision 4.17**

Provision 4.17 is deleted.

#### **Deletion of Provision 4.17A**

Provision 4.17A is deleted.

#### **New Provision 4.58A**

The following new provision is inserted after Provision 4.58:

“4.58A An intermediary must make available in its public offices or on its website, in a manner that is easily accessible to *consumers*, a summary of the details of all arrangements for any fee, commission, other reward or remuneration paid or provided to the intermediary which it has agreed with *product producers*. Where an intermediary operates a website, it must publish the summary on its website. The summary must include a minimum of the following:

- a) an indication of the agreed amount or percentage of any fee, commission, other reward or remuneration where the payment is made to the intermediary on this basis;
- b) an explanation of the arrangement including details on the type of fee, commission, other reward or remuneration paid or provided to the intermediary, for example, sales commission or trail commission, and details affecting the fee, commission, other reward or remuneration paid or provided to the intermediary, for example, clawback provisions;
- c) details of any other agreed fees, administrative costs, or non-monetary benefits under such arrangements, including any benefits, which are not related to the intermediary’s individual sales.

An intermediary must bring this information to the attention of the *consumer*, and provide any clarification of the information if requested by the consumer, before concluding a contract for a financial product or service. An intermediary must retain records demonstrating that it has complied with this requirement.”

**Deletion of Provision 4.59**

Provision 4.59 is deleted.

**Deletion of Provision 4.60**

Provision 4.60 is deleted.

**CHAPTER 12 – DEFINITIONS**

**Amendment of Chapter 12**

The following definition is added to Chapter 12 after the definition of "*MiFID service*" and before the definition of "*mortgage credit intermediary*":

*"minor non-monetary benefit"* means such minor non-monetary benefit that is capable of enhancing the quality of the service provided to a *consumer* and is of a scale and nature such that it could not be judged to impair compliance with a *regulated entity's* duty to act in the best interest of the *consumer*.

The definition of "*soft commission agreement*" in Chapter 12 is deleted.

**PART 2: ADDENDUM FOR CONSEQUENTIAL AMENDMENTS TO THE CONSUMER PROTECTION CODE 2012 ARISING FROM THE INSURANCE DISTRIBUTION REGULATIONS 2018**

**Introduction**

Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (Insurance Distribution Directive) was transposed into Irish law by the European Union (Insurance Distribution) Regulations 2018 (S.I. No. 229 of 2018).

Arising from transposition of the Insurance Distribution Directive into Irish law, a number of consequential amendments to the Consumer Protection Code 2012 (the 2012 Code) are required.

This Addendum is effective from 25 September 2019.

For the purpose of giving effect to the consequential amendments, the following parts of the 2012 Code are now amended:

- Chapter 3 – General Requirements
- Chapter 4 – Provision of Information
- Chapter 5 – Knowing the Consumer and Suitability
- Chapter 12 – Definitions

**LEGAL BASIS**

Pursuant to Section 117 of the Central Bank Act 1989, the 2012 Code is hereby amended as set out below.

### CHAPTER 3 – GENERAL REQUIREMENTS

The ‘Clarification of Scope’ Section of Chapter 3 is amended to insert the following additional text:

#### “Insurance-based investment products

- a) Provisions 3.28, 3.29, 3.31, 3.33, 3.34 and 3.35 do not apply to the distribution of insurance-based investment products.

#### All insurance products

- a) Provisions 3.17, 3.19, 3.32, 3.52, 3.53, 3.54 and 3.55 do not apply to insurance distributors.
- b) The Premium Handling provisions of this Chapter apply to the distribution of all insurance products, except where this responsibility is reserved to the insurance intermediary’s home Member State’s competent authority.

### CHAPTER 4 – PROVISION OF INFORMATION

The ‘Clarification of Scope’ Section of Chapter 4 is amended to insert the following additional text:

#### “Insurance-based investment products

- a) Provision 4.54 does not apply to the distribution of insurance-based investment products.

#### All insurance products

- a) Provision 4.21 does not apply to insurance distributors.”



## CHAPTER 5 – KNOWING THE CONSUMER AND SUITABILITY

The ‘Clarification of Scope’ Section of Chapter 5 is amended to insert the following additional text:

### “Insurance-based investment products

- a. The obligations set out in Chapter 5 of the Code do not apply to the provision of advice on insurance-based investment products.
- b. Provision 5.4 does not apply to insurance intermediaries or insurance undertakings carrying out insurance distribution activities in relation to sales of insurance-based investment products where no advice is provided.

### **Amendment to Provision 5.24**

At the end of sub paragraph (b) replace ‘account.’ with ‘account, or’.

The following is inserted after 5.24 (b):

“(c) an insurance intermediary or insurance undertaking is carrying out insurance distribution in relation to sales of insurance-based investment products and all of the requirements in Regulation 42(4) of the European Union (Insurance Distribution) Regulations 2018 (S.I. No. 229/2018) are satisfied.”

## CHAPTER 12 – DEFINITIONS

The definition of “investment product” in Chapter 12 is deleted and replaced with the following:

**“investment product”** means:

- a) an “investment instrument” within the meaning of Section 2 of the Investment Intermediaries Act 1995; and
- b) an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations but does not include:
  - i. non-life insurance products as listed in Annex I to Directive 2009/138/EC; and
  - ii. life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity.”

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The following definitions are hereby inserted into Chapter 12 of the 2012 Code:

***“insurance-based investment product”*** has the meaning given to it by Regulation 2 of the European Union (Insurance Distribution) Regulations 2018 (S.I. No. 229/2018).

***“insurance distributor”*** has the meaning given to it by Regulation 2 of the European Union (Insurance Distribution) Regulations 2018 (S.I. No. 229/2018).

The definition of ***“insurance intermediary”*** in Chapter 12 is deleted and replaced with the following:

***“insurance intermediary”*** includes insurance intermediaries and ancillary insurance intermediaries that are subject to the European Union (Insurance Distribution) Regulations 2018 (S.I. No. 229/2018).

The definition of ***“insurance undertaking”*** in Chapter 12 is deleted and replaced with the following:

***“insurance undertaking”*** has the meaning given to it by Regulation 3 of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485/2015), Regulation 2 of the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. 359/1994), and Regulation 2 of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360/1994).

T: +353 (0)1 224 6000  
E: [code@centralbank.ie](mailto:code@centralbank.ie)  
[www.centralbank.ie](http://www.centralbank.ie)



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