



## Insurance Distribution Directive (IDD)

### ■ Why does it matter to intermediaries?

The Insurance Distribution Directive (IDD) regulates how insurance products are designed and distributed in the European Union. It entered into force on 23 February 2016. The IDD is a minimum harmonising Directive, allowing Member States to introduce additional provisions or to bring additional activities into the scope of the regulations. The rules of the IDD apply to the distribution of all insurance products. It has more prescriptive rules for distributors offering insurance-based investment products (IBIPs).

The IDD sets out the information to be given to consumers before they sign an insurance contract. It also imposes conduct of business and transparency rules on distributors, introduces procedures and rules for cross-border business and lays down rules for the supervision and sanctioning of insurance distributors who do not comply with the IDD.

The Directive empowers the European Commission to adopt technical rules (Delegated Acts) in the area of product oversight and governance, conflicts of interests, inducements, and the assessment of suitability and appropriateness and reporting to customers. These Delegated Acts were adopted in 2017.

The Commission also adopted an Implementing Technical Standard (ITS) regarding a standardised format of the IDD Insurance Product Information Document (IPID), and in 2019 a Regulatory Technical Standard (RTS) reviewing the minimum amounts of PII/financial capacity.

### ■ State of play

#### RETAIL INVESTMENT STRATEGY (RIS)

On 24<sup>th</sup> May 2023 the European Commission published its RIS package. The RIS comes as part of its 2020 Capital Market Union (CMU) Action Plan, the stated aims of which are to improve access for retail investors to financial markets and at the same time ensuring their protection. The RIS consists of a legislative package that will amend a large number of existing EU legal texts (*see also articles on MiFID II and PRIIPs*): it comprises a **proposal for an Omnibus Directive** amending the IDD, MiFID II, Solvency II, AIFMD and UCITS and a **proposal for a Regulation amending the PRIIPs Regulation**.

#### Focus on some key amendments proposed by the Commission to the IDD in the proposal for an Omnibus Directive

The proposed Omnibus Directive amends the IDD articles dealing with the distribution of IBIPs. However, many of its amendments also amend the IDD articles that apply to the distribution of non-life and/or life products (for example, digital by default disclosure of information, IPID for life products, strengthened cooperation between home and host Member States in cross-border cases etc.).

**The IDD new Article 29a(1)** introduces a **ban on inducements** paid from manufacturers to distributors in relation to **non-advised sales of IBIPs**.

Where **advice is provided**, the **IDD revised Article 29** requires insurance intermediaries distributing IBIPs to **inform their clients** whether or not the advice is provided on an **independent basis**.

**The IDD revised Article 30.5b** states that **where advice is presented as independent by intermediaries, they cannot accept inducements for such advice**. Intermediaries presenting their advice as independent will also have to assess a sufficiently large number of insurance products available on the market which are sufficiently diversified with regard to their type and product providers and shall not be limited to insurance products issued or provided by entities having close links with the insurance intermediary or insurance undertaking. Before accepting such service, the retail customer shall be duly informed about the possibility and conditions to get access to standard independent advice and the associated benefits and constraints.

**The IDD revised Article 29** maintains the **possibility for intermediaries to provide non-independent advice and receive inducements**. If non-independent, the advice can be based on a broad analysis of different types of IBIPs or the advice can be based on a more restricted analysis of different types of IBIPs. **A new “best interest of the clients”** test replacing the “no detrimental impact” test of the IDD is introduced in new Article 29b and in the revised Article 30 IDD. All intermediaries providing advice to their clients will have to comply with it.

Intermediaries will have to:

- provide advice on the basis of an assessment of an appropriate range of IBIPs and,
- recommend “*the most cost-efficient*” IBIP among products identified as suitable to the customer and,
- recommend, among the range of products identified



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as suitable for the customer, “a product or products without additional features that are not necessary to the achievement of the client’s investment objectives and that give rise to extra costs” and,

- recommend IBIPs which insurance cover is consistent with the customer’s insurance demands and needs.

### Other key issues

- Revised Article 25 on POG rules to ensure undue costs are not charged and that products deliver value for money.
- Revised IDD Article 30: obligation for insurance intermediaries distributing IBIPs to explain the purpose of the assessments to clients and customers in a clear and simple way, and to obtain all relevant information from customers which may be necessary and proportionate for the assessments.
- Revised Article 10 and Annex regarding professional and organisational requirements. A certificate is now required for both basic and for continuous training.
- New powers given to EIOPA in the amended IDD.

### EP’s reading

The EP rapporteur for the proposed Omnibus Directive and revised PRIIPs Regulation is French Liberal MEP (“Renew”) Stéphanie Yon-Courtin. The EP Economic and Monetary Affairs Committee (ECON) is the lead committee for the proposals. On 20 March 2024, ECON adopted its report on the RIS. It also gave a mandate to the rapporteur to enter into trilogue discussions with the Commission and the Council.

### Some key aspects of the ECON Report

- It does not contain any bans on inducements for non-advised sales.
- It does contain a ban on inducements for IBIPs in case the client is informed that advice is given on an independent basis (as proposed by the Commission in the IDD and as already existing in MiFID II). However, it is clarified that this does not prevent intermediaries whose legal status qualifies them as independent to receive inducements if they present themselves as “not contractually tied to specific insurers”.
- According to the amended “best interest of customers test”, when providing investment advice (and to receive inducement), intermediaries would have to inform the customer of the range of IBIPs/products assessed. The range of IBIPs/products must reflect the business model of the intermediary. When intermediaries are tied by exclusive partnerships, they may build the appropriate range among products offered by one insurer. To recommend the most efficient IBIP, its performance, level of risk, costs and charges will have to be taken into account.

- The benchmarks provisions in the IDD have been amended and are now intended as a supervisory tool for national competent authorities to facilitate identification of potential outliers: EIOPA is invited to develop common European benchmarks for IBIPs manufactured and distributed cross border.
- The POG provisions in the IDD (Art 25) have also been amended. They include requirements for distributors, such as peer grouping analysis, peer analysis of service costs and others. Intermediaries are also mentioned in the product approval process.
- On training, the text keeps the 15 hours of continuous professional development for the IDD. We note that regarding the need for a certificate, the final text states that Member States shall require a certificate, or any other document recognised by the Union or a Member State. The text adds that “For small intermediaries which distribute both financial instruments and insurance-based investment products, Member States may provide for specific requirements regarding the number of hours of professional training.”

On 23 April the EP Plenary voted in favour of the mandate given to the Rapporteur by the ECON Committee to open trilogue negotiations.

### Council’s reading

Over the last twelve months, the Council has been discussing the Omnibus proposed Directive under the Spanish and Belgian presidencies. On 21/22 May the members of the Financial Services Attachés Working Party met to discuss the Council’s compromise proposals on the entire RIS package.

### Key aspects of the Belgian Presidency’s compromise proposal

#### Inducement

- The partial ban on inducements for non-advised sales in the Commission’s proposal has been deleted and is replaced by the introduction of overarching principles and an inducements test for all situations where there is no (partial) ban on inducements.
- This test is different from the best interest of customer’s test. The first criteria have been amended as follows: to provide such advice on the basis of an assessment of an appropriate range of IBIPs identified as suitable for the customer pursuant to Article 30(1), from one or more manufacturers which must be sufficiently diversified with regard to their type, characteristics and underlying investment assets to ensure that the customer’s investment objectives can be met. This requirement can also be met by offering a single IBIP with an appropriate range of underlying investment assets.



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- The Presidency suggests including an additional overarching principle stating that the inducements should not directly benefit the recipient firm, and where applicable, its shareholders or employees without tangible benefit to the relevant clients based on Article 11(2)(b) of the Commission Delegated Directive (EU) 2017/593.
- According to the inducements test, “investment firms, insurance intermediaries and insurance undertakings shall be considered not to comply with their duty to act honestly, fairly and professionally in accordance with the best interest of their clients if their inducements or inducement schemes do not meet at least the different criteria, where applicable”. The Presidency explains that this avoids that complying with the specific criteria would mean that firms automatically comply with their duty of best interest. The word “at least” allows some flexibility, while setting a minimum limit. The words “where applicable” is to acknowledge that not all criteria could be relevant in all circumstances. If a criterion is not taken into account, this should be explained.

### Value for money

#### Peer group

- The establishment of a value-for-money assessment through appropriate testing and assessments, taking into account the specificities of the investment product, has been included as a general principle. The testing and assessments should include a peer-group comparison, when data is available.
- In order to increase comparability and objectivity, it is clarified that the peer group comparison should be made on the basis of the data made available by the ESAs and data included in information to be published on the basis of EU law (e.g. key information document).
- The possibility has been included for manufacturers and distributors to opt-in to compare their investment products to the relevant benchmark instead of to a peer group (smaller manufacturers and distributors who may be willing to compare their products to a publicly and freely available benchmark instead of performing a peer-group comparison, can do so).
- With respect to the obligations for distributors of IBIPs, they still have to assess whether the value for money, as evidenced by the manufacturer’s assessment, meets the demands and needs of the target market.

#### Benchmark

More detail in level 1 has been included, notably in relation to product clusters and the purpose of the benchmarks.

### Suitability and appropriateness

The Council’s draft compromise deletes the reference to the capacity to bear full or partial losses and to risk tolerance in

Article 30(2) of the IDD. The Presidency has added a specific requirement for investment firms, insurance undertakings and insurance intermediaries to keep a record of the information collected from the retail client or customer for the purposes of the suitability or appropriateness assessment.

The Presidency also included the following changes to the additional safeguards of the best interest test:

- the best interest test will be applicable for both independent and non-independent advice. A clarification has been added in Recital 6b explaining that investment firms, insurance undertakings and insurance intermediaries providing advice on an independent basis will be considered to automatically comply with the requirement to base their assessment on an appropriate range of products (since they already have an obligation to assess a sufficient range of products).
- The appropriate range consists of suitable products, and in the case of insurance-based investment products also meeting the demands and needs of the customer, within the product offer for advice.
- Financial advisors should recommend the products that offer the best possible result in terms of performance and costs, associated charges and inducements (cost-efficiency) among products identified as suitable and offering similar features.

### Reporting of cross-border activities (IDD)

Insurance distributors will have to report specific information annually to the competent authority of their home Member State where they pursue insurance distribution activities with more than 500 customers on a cross-border basis (and not 50 as proposed by the Commission).

### Knowledge and competence

Home Member States must have mechanisms in place, and publish all relevant information about these mechanisms, to effectively control and assess the knowledge and competence, as set out in Annex I, of insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities, and employees of insurance and reinsurance intermediaries directly involved in (re) insurance distribution activities, by requiring a certificate or comparable form of evidence.

### Omnibus transposition / application deadlines

Member States will have to transpose Omnibus into national law 30 months after its entry into force (Commission’s proposal said 12 months). For the application of the Omnibus, the Council proposes 36 months after its entry into force (Commission’s proposals said 18 months). For Art 29.5 of



the IDD (dealing with particularly risky products and the risk warnings EIOPA and ESMA have to develop), the application shall not happen until 12 months after the Delegated Acts have been published in the Official Journal.

### REVIEW OF THE IDD

According to the IDD, the Commission had to review the Directive by 23 February 2021. In this context, it had to publish a report on the application of IDD Article 1 and a general survey of the practical application of IDD rules taking due account of developments in the retail investment products markets. The reports have been postponed and it is unclear if they will ever be published. The IDD chapter on IBIPs will be amended by the proposed Omnibus Directive that was published as part of the RIS package at the end of May 2023. The review of the IDD is expected to be carried out under the next European Commission (2024- 2029).

### EIOPA'S IDD APPLICATION REPORT

On 15 January 2024, EIOPA published its second IDD application report. According to Article 41(4) of the IDD, EIOPA is required to prepare a report to assess the application of the IDD at least every two years (the first report was published in January 2022). The second report covers the years 2022 and 2023 and highlights relevant changes (number of registered intermediaries, level of professionalism and competence of insurance distributors, digitalisation and growth of new distribution models, the quality of advice and selling methods, the application of the new sustainability rules and the impact of cross-selling practices) in the application of the IDD compared to the previous reporting period. The report also includes a general evaluation of the impact of the Directive as well as a detailed country-by-country analysis with information on the insurance intermediaries' market structure (see links below). BIPAR participated in the consultation on the report.

### EIOPA'S REPORT ON SANCTIONS UNDER THE IDD

On 18 January 2024, EIOPA published its fourth annual report on administrative sanctions and other measures imposed by national competent authorities (NCAs) under the IDD during 2022. This Report is drafted pursuant to Article 36(2), IDD. In total, national supervisors across 21 Member States imposed 2,762 sanctions in 2022. Since the implementation of IDD in 2018, and in particular between 2021 and 2022, there has been a rise in the number of sanctions relating to information and conduct of business requirements, for instance covering selling methods and product design.

### PII AND FINANCIAL CAPACITY OF INTERMEDIARIES

On 20 March 2024, the European Commission's Delegated Regulation amending the IDD with regard to RTS adapting the base euro amounts for professional indemnity insurance (PII) and for financial capacity of intermediaries was published in the OJ of the EU (see link below).

Under Article 10 (7) of the IDD, EIOPA is required to review every five years, via RTS, the minimum amounts for PII and financial capacity in order to take account of changes in the European index of consumer prices as published by Eurostat. This is the second time that EIOPA has carried out this exercise (the first time was in 2019). BIPAR participated in the consultation on the report.

The Regulation entered into force on the twentieth day following that of its publication in the Official Journal, i.e. on 9 April 2024. It will apply 6 months after the date of entry into force, i.e. from 9 October 2024. This Regulation is binding in its entirety and directly applicable in all EU Member States.

The changes are as follows:

- The base PII amount applying to each claim is to increase from €1 300 380 to €1 564 610 [+ €264 230]
- The base aggregate PII amount per year is to increase from €1 924 560 to €2 315 610 [+ €391 050]
- The base financial capacity amount is to increase from €19 510 to €23 480 [+ €3 970]



## ■ BIPAR's position / key messages

### Retail Investment Strategy

#### BIPAR's position

- BIPAR and its members support the CMU that aims to ensure that retail investors can take full advantage of the capital markets and to put capital markets at the service of people, offering them both increased investment opportunities and strong investor protection. Intermediaries, close to consumers, are key in realising these objectives. The 800,000 insurance and investment intermediaries in all corners of the EU that BIPAR represents, are mainly small locally operating entities. They are highly regulated and supervised. Intermediaries "nudge" people and families to think about their risks related to their patrimony, retirement and longevity. These intermediaries are remunerated for their services via either a fee or a commission system. This remuneration is regulated and transparent.
- BIPAR believes that the **changes to the current regulatory framework** should be limited to the minimum. It is too early to evaluate the effects of the IDD. Changing regulation without allowing existing rules to be embedded in reality is not only expensive for the industry but also for the supervisors and creates legal uncertainty for consumers.
- There should continue to be **choice between remuneration systems**. It is unfortunate that commissions are defined as inducements. Commissions are already highly regulated, and the commission system avoids an advice gap and a solicitation gap. Instead of bans on remuneration, it would be preferable to have better disclosures, for example for all product costs that have an influence on the potential return, to be clearly disclosed.
- The RIS proposal includes many changes to **the general chapter of the IDD** and thus impacts the non-life insurance distribution without impact assessment. In addition, the interaction of the RIS proposal with a (near) future revision of the DDA is very unclear.
- **Too many "crucial" definitions are left to level 2 or 3** which makes it impossible to assess the impact of the proposal. We believe it should be left to Member States to decide about options (subsidiarity).
- The proposal is built on the **assumption that there will be benchmarks based on costs of products**. For intermediaries, the principle is that cost efficiency and value for money are embedded in the existing POG process by manufacturers. In any event, it is impossible for intermediaries to assess cost-efficiency of a product, as only manufacturers know these costs. Cheap products

are not always the products that are suitable for consumers.

- It would be regrettable if the RIS were to become an **obstacle to its own objective**: "*to stimulate investment by citizens*".
- The Commission's proposal does not take sufficient account of the **EU subsidiarity and proportionality principles**. In particular, European rules related to remuneration systems and business models are not necessary in the framework of the creation of a Single European market. Rules in this respect should be left to Member States. Professor Karel Van Hulle wrote an article for BIPAR on this (see link below).

## ■ Next steps

The RIS legislative proposals fall under the ordinary legislative procedure. They are being examined and amended by both the Council (Member States) and the European Parliament. The proposals are likely to be adopted under the Hungarian (July-December 2024) or Polish (January-June 2025) EU Presidencies. In general, the procedure takes a minimum of 12 months before a final text is adopted. This is slowed down by the election of the EP and the appointment of a new Commission in June 2024. The Strategy will also require the adoption of a number of level 2 texts for the more technical details.

## ■ Links

- Insurance Distribution Directive
- Commission's Delegated Acts on Product Oversight and Governance (POG) and Conflicts of interest, Inducements, Assessment of suitability and appropriateness and reporting for IBIPs
- EIOPA's 4<sup>th</sup> annual report on administrative sanctions
- EIOPA's 2<sup>nd</sup> report on the IDD application
- Delegated Regulation amending the IDD with regard to RTS adapting the base euro amounts for PII and for financial capacity of intermediaries
- Prof. Karel Van Hulle's article
- Proposal for an Omnibus Directive
- ECON report
- EIOPA's IDD application report: summary of the country-by-country analysis