

Insurance Distribution Directive (IDD)

The [Insurance Distribution Directive](#) regulates how insurance products are designed and distributed in the European Union.

■ IDD key features

Wide scope: The IDD covers the distribution of non-life and life products, reinsurance products, and also insurance-based investment products (IBIPs). It applies to insurance distributors, i.e. insurance intermediaries, insurance undertakings and ancillary intermediaries (with exemptions). The IDD expressly applies to certain activities conducted through price comparison websites.

Product Oversight and Governance (POG): The IDD foresees in POG requirements for insurance undertakings and intermediaries which manufacture insurance products. It also includes requirements for insurance distributors who propose products that they do not manufacture. POG requirements do not apply to insurance products which consist of insurance of large risks.

Information requirements: Insurance distributors will have to act honestly, fairly and professionally in accordance with the best interests of their customers. In particular, they cannot make any arrangements by way of remuneration or sales targets that could provide an incentive to recommend a particular product to a customer when they could offer a different product that would meet the customer's needs better.

Before the conclusion of the contract, consumers will be provided with clear information on the professional status of the person selling the insurance product and on the nature of remuneration which he/she will receive. This does not apply for large risks and for reinsurance distribution activities.

The IDD requires a detailed standardised Insurance Product Information Document (IPID) for all non-life insurance products that must be provided to the customer prior to the conclusion of a contract by the insurance distributor. The manufacturer of the non-life insurance product is required to draw up the IPID.

Cross-selling rules: The IDD has rules regarding cross-selling: where the insurance product is the ancillary product to a good or service, the good or service should be allowed to be purchased separately from the insurance (i.e. ban on tying). The IDD requires that where the insurance product is the main product and is sold with an ancillary product or service that is not insurance, the customer is informed as to whether the components can be bought separately.

Cross-border activities: Clarification is given on the division of competence between the home and host Member States. Broadly speaking, when the intermediary is passporting on a FOS basis, its home Member State is responsible for ensuring compliance with all IDD requirements. When the intermediary is operating on a FOE basis, the host State concerned is responsible for ensuring compliance with IDD information and conduct of business requirements. Its home Member State is responsible for everything else.

Continuous Professional Development (CPD): The IDD requires Member States to have mechanisms to assess knowledge and competence of intermediaries, employees of intermediaries and of undertakings based on at least 15 hours of CPD per year (courses, e-learning, mentoring, etc.).

IBIPs regime: The IDD contains a specific chapter with additional requirements for IBIPs distributed by insurance undertakings and intermediaries.

■ The IDD Delegated Regulation

The IDD empowered the European Commission to adopt two Delegated Acts to further specify IDD provisions on [Product Oversight and Governance \(POG\)](#) and [Conflicts of interest, Inducements, Assessment of suitability and appropriateness and reporting for IBIPs](#). These Delegated Regulations were adopted in 2017. The Commission also adopted [an implementing technical standard \(ITS\)](#) regarding a standardised format of the IDD Product Information Document (IPID), and in 2019 a [regulatory technical standard \(RTS\)](#) reviewing the minimum amounts of PII/financial capacity¹.

In May 2022, EIOPA informed BIPAR that it has initiated some work on revising these base minimum amounts of PII cover that insurance and reinsurance intermediaries are expected to hold under Article 10(4) of the IDD. Under Article 10(7), IDD, EIOPA has to review the amounts every 5 years. The next review is coming up by the end of this year, followed by draft EIOPA Regulatory Technical Standards to be proposed to the Commission in June next year.

■ Application and revision of the IDD

According to the IDD, the European 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. Because of the late adoption of the Directive and then the Covid-19 crisis, these reports have been postponed.

According to the IDD, EIOPA was also required to prepare a report to assess the application of the IDD by the end of 2020. EIOPA postponed the delivery of this report to Q1 2022, mainly because of the delayed transposition and application date of the IDD and the impact of the COVID-19 pandemic.

■ What has changed because of the CMU and the retail investor protection project?

In the summer of 2021, the Commission launched its public consultation to feed into a large project on retail investor protection as announced through the CMU Action. This initiative will involve elements which are already tackled by the IDD chapter on IBIPs, in particular in terms of disclosure, advice and inducement. In this context, the Commission asked the ESAs to provide technical advice by 30 April 2022 on certain aspects relating to retail investor protection (for example, digital disclosure, opening up of value chains, conflicts of interest in the sales process, impact of complexity in the retail investment product market).

Because the current Commission (von der Leyen, mandate 2019-2024) intends to focus on the Retail Investment Strategy and retail investment products, for the IDD review, it means that, in principle, this Commission has the intention to focus (only) on IBIPs (Chapter VI of the IDD). Consequently, the IDD review (as a whole) is probably delayed to an undefined date (possibly under the next Commission with the 2024-2029 mandate) as the Commission explained that it is not possible for them to run parallel processes of making sectorial changes at the same time as taking a holistic approach.

The European Commission is still expected to publish its report on the application of IDD Article 1 and a general survey of the practical application of IDD rules. The date is not known yet.

¹ The current figures are as follows:

- the minimum amount of EUR 1 300 380 per claim;
- the minimum amount of EUR 1 924 560 for all claims/year; and
- the minimum amount of EUR 19 510 of financial capacity

This Regulation is binding in its entirety and directly applicable in all EU Member States.

■ EIOPA Report on the IDD application

In early 2022, EIOPA published its [report on the application of the IDD](#). It will provide an evidence basis for a future IDD review. Country by country analysis complements the report. Amongst others, this report examines changes in the insurance intermediaries' market structure, the impact of the new regulatory framework (with an important focus on the quality of selling methods and advice, and on digitalisation) and its impact of the supervisory framework.

Here are some interesting findings in the EIOPA report:

- Notwithstanding limitations in terms of evidence and experience on the impact of the IDD on the quality of advice and selling methods, the IDD generally had a positive impact on how insurance is distributed to consumers. Nevertheless, EIOPA has identified some difficulties in applying the demands-and-needs test and continues to raise concerns related to the sale of unit-linked life insurance products and mortgage and consumer credit protection policies.
- In EIOPA's view, not all NCAs have sufficient powers to carry out effective conduct of business supervision. Some NCAs lack intermediate powers between adequate remedial measures and product intervention powers. Several NCAs would like to perform mystery shopping activities but are not empowered to carry out such activities.
- According to EIOPA, there is a need to provide additional guidance, such as on the timing of disclosures of (digital) contractual information to consumers and on how the obligation to inform customers on the costs and charges related to the distribution of IBIPs, should be implemented by insurance undertakings and insurance intermediaries.

EIOPA plans to publish a **further report on the application of the IDD at the end of 2023**, to help prepare the Commission in their future review of the Directive.

■ EIOPA advice on retail investor protection

In preparation of the Retail Investment Strategy and legislative proposals implementing aspects of it, the Commission asked EIOPA for a technical advice on certain aspects relating to retail investor protection (sales of IDD IBIPs). At the end of April 2022, EIOPA published its [technical advice](#) to the Commission.

EIOPA's main findings in the areas that it was asked to address by the Commission in its [call for advice](#) are as follows:

- 1) **Enhancing consumer engagement with disclosures, including digital disclosures** - EIOPA sees scope for significantly reducing duplicative disclosures in the existing regulatory framework. To enhance existing periodic disclosures at EU level with regard to IBIPs, EIOPA recommends the idea of developing an "annual statement" to be disclosed to policyholders. Overall, EIOPA sees the need for a shift towards truly consumer-focused disclosures, built upon an enhanced supervisory framework, that fits the digital age. The starting point when designing consumer disclosures should be behavioural research and consumer testing.
- 2) **Assessing the risks and opportunities presented by new digital tools and channels** - At present, the market for digital tools and platforms selling IBIPs is limited to specific national markets, but EIOPA sees scope for a market for digital platforms selling IBIPs and for open insurance to develop further in the future under the appropriate regulatory framework and conditions.
- 3) **Tackling damaging conflicts of interest in the sales process** - EIOPA is of the view that more needs to be done to tackle damaging conflicts of interest arising throughout the product lifecycle. EIOPA has set out the pros and cons of a number of different policy options to regulate the payment/receipt of inducements. EIOPA considers improvements to the existing rules on inducements as being necessary, and believes a combination of different options could also bring specific benefits.
- 4) **Promotion of an affordable and efficient sales process** - EIOPA is of the view that more clarity is needed on the scope of the "demands and needs" test and suitability assessment. Simplifying the process for providing advice, particularly taking into account the ongoing digital transformation in the

sale of financial products and further automation of the sales process, can bring benefits, but carries particular challenges. Further supervisory convergence work can help to ensure that the same rules for the advice process are applied proportionally across national markets.

- 5) **Assessing the impact of complexity in the retail investment product market** - EIOPA sees the need for more coherence in the current regulatory requirements to identify which products are complex.

In February 2022, in its response to EIOPA consultation on its draft technical advice, BIPAR outlines some key messages for our sector, such as:

- **Stable regulatory framework is key:** BIPAR is in favour of a stable regulatory framework. Changes should only be made where necessary. When changes are made, impact assessment should illustrate that changes are made taking in account level playing field and proportionality principles. Changes are costly. Regulatory change is disproportionately costly for SME operators. In this respect it should be considered that the overall review of the IDD is scheduled to start in 2023-2024.
- **Transparency of IBIPs costs is key:** BIPAR supports transparency of meaningful and relevant information with regard to costs. For investment products it is important for the client to understand the impact that costs may have on the return of the investment. In this respect, BIPAR insists on the need for a level playing field and comparability of products and solutions that are comparable. Too much detail about the costs can be counterproductive or misleading.
- **Choice between different business /remuneration models is key:** The current regulatory framework and supervision ensures that inducement arrangements are properly designed. The current regulatory framework allows for choice for consumers between business models on a transparent basis. The commission-based system generally leads to a broad access and affordability of advice/ recommendation. It gives broad access to advice thereby avoiding an advice gap. The fee system may be opted for by some consumers.

Just as the insurance premium makes it possible to pool risks, commission-based remuneration

makes it possible to pool services to the customer, guaranteeing assistance and advice to anyone who is unable to pay a fee for it. The pooling of services guarantees personalised support for the customer/ consumer over the duration of the contractual relationship and that it provides a social dimension for all policyholders. The freedom of retail investors to choose according to their preferences and needs should not be restricted. Consumers wanting to invest in IBIPs should not be left with no other choice than self-investing or relying on robo-advisors.

- **The importance of the “human” advice:** without denying the important contributions of digital tools to the distribution of IBIPs products, and while underlining once again that insurance and financial intermediaries are using these tools daily in their relations with their clients (in particular during the Covid 19 crisis), BIPAR regrets that EIOPA’s consultation paper does not dwell enough on the importance of the “human aspect”, on the protection that an intermediary (and not a robo), close to his/her clients, can offer to them when buying products that involve their savings.