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 products that have an investment element (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 lay down rules for the supervision and sanctioning of insurance distributors that 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

- **Review:** 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. Because of the late adoption of the Directive, then the Covid-19 crisis, and the Retail Investment Strategy ("RIS", *see below and article on CMU*), the reports and review have been postponed. The Commission is still expected to publish the above-mentioned report on the application of IDD Article 1, but the date is not known as yet. The review of the IDD will be carried out under the next Commission (2024- 2029). The IDD chapter on insurance-based investment products (IBIPs), will be amended by the proposed Omnibus Directive that was published as part of the RIS package at the end of May 2023.

- **ECJ judgment on group insurance case (C-633/20):** On 29 September 2022, in its Judgement in case C-633/20, the ECJ concludes that "*a legal person whose activity consists in offering its customers membership on a voluntary basis, in return for payment which it receives from them, of a group insurance policy to which it has subscribed previously with an insurance company*" should be deemed an insurance intermediary. The fact that the ECJ has confirmed that the distribution of voluntary group insurance is being captured under the IDD is likely to trigger some changes in the distribution of group insurance in some EU countries. This is also likely to be included/clarified in the revised IDD and it is to be discussed whether mandatory group insurance will also be included in a revised IDD.

- In December 2022, EIOPA published its **third annual report on administrative sanctions** and other measures imposed during 2020 by National Competent Authorities (NCAs) under the IDD. This Report is drafted pursuant to Article 36(2), IDD. In 2020, NCAs imposed 1,942 sanctions in 17 Member States, with the vast majority of sanctions for breaches of the requirements in Article 10 of IDD that covers both basic formalities for accessing and maintaining access to the profession, and ongoing requirements such as continuous professional development.

- **EIOPA's 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. As a reminder, in January 2022, EIOPA published its first report on the application of the IDD. The scope of the report is prescribed by Article 41 (7) and (8) of the IDD. The next report will examine any changes in the insurance intermediaries' market structure, any changes in the patterns of cross-border activity, the improvement of quality of advice and selling methods and the impact of the IDD on insurance intermediaries which are SMEs. EIOPA also intends to report on any additional issues which are considered of particular recent relevance when it comes to the application of the IDD, such as the impact of the new rules integrating sustainability factors, risks and preferences into the IDD.

EIOPA organised a **public event on 9/10 March 2023** aimed at gathering some input from stakeholders to feed into the preparation of that report regarding the application of the IDD that relates to 2022-2023. EIOPA's report will also be based on separate surveys run with NCAs. BIPAR submitted its comments. During the webinar, BIPAR was represented by **Paul Carty**, Chairman of BIPAR EU Affairs Committee, and **Lingyi Lu**, a member of BIPAR's Swedish member association SFM.

- **Review of the IDD RTS on the minimum amounts of PII/financial capacity of intermediaries:** 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. On 9 February 2023, EIOPA launched a consultation on its draft amendments to the RTS. This is the second time that EIOPA has carried out this exercise (first time was in 2019). BIPAR responded to the consultation.

- On 24th May 2023 the European Commission published **its RIS package**. The RIS comes as part of the Commission's 2020 Capital Market Union (CMU) Action Plan - the stated aims of which are to improve access for retail investors to financial markets, at the same time as ensuring investor protection. The RIS comprises the following proposals: **a proposal for an Omnibus Directive** amending the IDD, MiFID II, Solvency II, AIFMD and UCITS and **a proposal for Regulation amending the PRIIPs Regulation** (see below).

BIPAR's position / key messages

Review of the IDD RTS on the minimum amounts of PII/financial capacity of intermediaries - EIOPA proposal

The IDD prescribes that changes to the minimum amounts shall be based on the rate of inflation. As the Harmonised Index of Consumer Prices (HICP) rose by 20.32% between 1 January 2018 and 31 December 2022, EIOPA proposes that the new base amounts be as follows:

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

EIOPA sought feedback regarding the proposed new figures, and also regarding evidence of any potential market failure with regard to PII.

BIPAR's response to EIOPA's consultation

- In many national markets in the EU, it is believed that the proposed draft RTS adapting the base euro amounts for professional indemnity insurance and for financial capacity of insurance intermediaries will not have significant impact, even if it will lead to an increase in premiums for PI cover.
- In many markets most insurance intermediaries hold PI cover with larger limits of indemnity than the minimum proposed by the IDD. However, regular and important increases of the amounts could lead to less capacity in the PII markets.
- In some other markets, insurance intermediaries hold PI cover amounting to the current minimum PII levels of the IDD as amended once by RTS. Those limits are considered quite high and sufficient.
- The proposed increases in the PI/financial capacity amounts will be the direct result of IDD provisions and will not reflect the economic needs of the markets.

EIOPA's second IDD application report

In its response to EIOPA's consultation on its second IDD application report, BIPAR highlighted the following key messages:

- **BIPAR members do not have specific concerns about the current IDD framework at this stage**. The compliance effort back in 2018 was, however, significant. They do not see today any need for more regulation in the field of insurance distribution which is already a highly regulated sector.[1]
- **A lack of real proportionality:** IDD Recital 72, which states that the IDD should not be too burdensome for small and medium-sized distributors of insurance and reinsurance products, should be fully implemented, also at national level. However, there is a lack of proportionality in some national IDD legislation.
- **IPID:** Should there be an obligation to provide an IPID in a business insurance situation? Ideally an IPID should not be required for a corporate client (in the middle market or risk management space) because intermediaries are serving clients with adequate knowledge of insurance products. Also, solutions for some of these risks are tailor made. There is an argument to continuing with the issuance of IPIDs to SME clients.
- **POG:** the value of the POG process for (bespoke) non-life insurance products is questionable.
- **Third countries:** there is a lack of clarity regarding the treatment of third country intermediaries/branch in third countries of EU intermediaries, etc.
- **Cross-border activities:** there is a lack of clarity regarding what constitutes an activity under FOS of an insurance intermediary.
- **Inconsistencies:** The IDD uses both "customer" and "consumer" in the text. This has led to issues with implementing the IPID for example, and differences in interpretation between EU Member States.

[1] Some examples: See IDD 2016/97, delegated regulation 2017/2359, delegated regulation 2017/2358, Commission implementing regulation 2017/1469 on IPID, delegated regulation 2021/1257, SFDR regulation 2019/2088, Delegated Regulation (EU) 2019/1935 (on the base euro amounts for professional indemnity insurance); EIOPA's guidelines under the IDD, EIOPA's guidance on integrating the customer's sustainability preferences in the suitability assessment under the IDD, EIOPA's IDD single rulebook, future DORA regulation except for SMEs, and national legislation and guidelines published by national supervisory authorities...

Retail Investment Strategy

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*). The RIS comprises the following proposals: **a proposal for an Omnibus Directive** amending the IDD, MiFID II, Solvency II, AIFMD and UCITS and **a proposal for Regulation amending the PRIIPs Regulation.** Like all legislative proposals published by the European Commission, the RIS proposals are open for feedback for a period of 8 weeks. All feedback received will be summarised by the European Commission and presented to the European Parliament and Council with the aim of feeding into the legislative debate (EP and Council readings) that is likely to start soon. BIPAR will respond to the consultation.

- ***Focus on key proposed amendments to the IDD***

The proposed Omnibus Directive amends IDD articles dealing with the distribution of IBIPs. However, a few amendments have also been introduced that amend IDD articles also applying 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.).

Despite the fact that the Commission's impact assessment concluded that "*an EU-wide full ban would be the most effective measure to remove or significantly reduce potential conflicts of interest, by reducing an important source of consumer detriment*", the **Commission decided not to opt for a full ban on inducements** as part of the proposed Omnibus Directive. It explains that "*an immediate and full ban on inducements would entail significant and sudden impacts on existing distribution systems, with consequences that are hard to predict. A partial ban would, on the other hand, have less impact on existing distribution systems, while still delivering benefits for retail investors*".

So, "*as part of a staged approach, intended to allow operators to adjust their distribution systems and minimise the costs of such a change*", the Omnibus proposal proposes to address the conflicts of interest that may arise due to the payment of inducements via a number of different measures, **including the introduction of a ban on inducements paid by manufacturers to insurance distributors in relation to non-advised sales of IBIPs, independent advice on IBIPs and by strengthening the "best interest of the client" principle.**

At a second stage, i.e. 3 years after the entry into force of the Omnibus Directive, it is proposed that there will be a review of the effectiveness of the framework, and alternative measures in line with Better Regulation rules, including a potential ban on inducements, will be proposed, if appropriate.

IDD new Article 29a (1) introduces a ban on inducements paid from manufacturers to distributors in relation to non-advised sales of IBIPs
The Commission explains that "*such partial ban would remove incentives for firms to give more prominence to certain products in their product offering and would benefit retail investors that invest via execution-only services, as they would avoid any charges due to the payment of inducements*".

Where advice is provided, IDD revised Article 29, in line with the MiFID II, requires insurance intermediaries distributing IBIPs to inform the client whether or not the advice is provided on an independent basis.

IDD revised Article 30.5b: 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. They may limit the assessment in relation to the type of IBIPs to well-diversified, cost-efficient and non-complex IBIPs. 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.

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 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 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.

It needs to be assessed whether the above new requirements may be difficult to comply with by some intermediaries/ distributors and may *de facto* lead in some cases to a quasi ban of inducement.

- ***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 both for basic and for continuous training;
- New powers given to EIOPA in the amended IDD /MiFID II.

- ***BIPAR's position***

BIPAR and its members support the Capital Market Union (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.

According to a BIPAR spokesperson: "*Together with our national associations we are now studying the proposals in detail and assessing their impact on our sector. The proposals are complex, and it is too early to evaluate what they mean in practice. It would be regrettable if the RIS were to become an obstacle to its own objective: to stimulate investment by European citizens".*

Next steps

- **Review of IDD RTS on the minimum amounts of PII/financial capacity of intermediaries**: EIOPA is considering the responses it received to its Consultation Paper and will finalise its draft RTS for submission to the European Commission by 30 June 2023.

- **EIOPA's report on IDD application**: The report is expected to be published early 2024. It is intended primarily to be backward-looking and to consider how the IDD has been applied in the different Member States.

- **RIS**: The RIS legislative proposals fall under the ordinary legislative procedure. As such, they will be now examined and amended by both the Council (Member States) and the European Parliament. The proposals are likely to be discussed and adopted under the Swedish, Spanish, Belgian and Hungarian EU Presidencies. 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) will be the lead committee for the proposals. For the EPP, the shadow rapporteur in ECON for both proposals is German MEP Ralf Seekatz.

  In general, the procedure takes a minimum of 12 months before a final text is adopted. This may be 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, such as the format to provide cost disclosures to retail clients. Therefore, the full picture of the impact and implications of the EU RIS will take time to materialise.

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
- Commission's ITS on a standardised format of the IDD IPID
- Commission's RTS reviewing the minimum amounts of PII/financial capacity
- ECJ judgment on group insurance case (C-633/20)
- EIOPA's third annual report on administrative sanctions
- EIOPA's first report on the application of the IDD
- Proposal for an Omnibus Directive
- Proposal for Regulation amending PRIIPs
- BIPAR's website: IDD page