The European Federation of Insurance Intermediaries

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BIPAR Response to EIOPA consultation

Advice to the European Commission regarding certain aspects relating to retail investor protection

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I. INTRODUCTION

BIPAR is the European Federation of Insurance Intermediaries. It groups 47 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance intermediaries (agents and brokers) and financial intermediaries in Europe.

Most intermediaries are small or micro enterprises, established near to the consumer in the high street of each and every city and village. They render personalised services to mostly local private clients and smaller businesses. They are at the cutting edge of the insurance distribution with different types of distributors such as insurtech. Many intermediaries are SME-type enterprises servicing SMEs in all sectors of the economy at local, regional or national level. These intermediaries increasingly follow their clients abroad when they export or import or set up branches or subsidiaries outside their national borders.

Some of these intermediaries are also large enterprises. They work Europe-wide or even globally, serving a wide range of mainly business clients. Some intermediaries also handle reinsurance business.

Intermediaries usually work for both parties in the insurance contract; insurer and client. Intermediaries are paid by the insurer and/or the client, via a premium or a fee.

Intermediaries play an important role in the insurance process.
For clients, intermediaries:

- identify the risks clients face;
- ensure that clients take informed decisions about the risks they wish to insure;
- design new and innovative solutions;
- reduce their clients' search costs;
- put their knowledge at the service of their clients;
- assist their clients with claims-related services and policy administration services.

For insurers, intermediaries:

- facilitate entry into the market by new insurance companies, providing them with a wide client base, without having to incur the costs of building a distribution network, which is important in terms of the development of a European Single Market;
- assist insurers with claims-related services and policy administration services;
- are key providers of risk data and advice to underwriters.

BIPAR key messages to EIOPA

- **Position on the distribution of IBIPs only**
  BIPAR's response only covers the distribution of IBIPs. Non-life and pure life products have different features and some of the answers below are not, per definition, applicable to non-life/ pure life insurances.

- **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 assessments should illustrate that changes are made, taking into account the level playing field and proportionality principles. Changes are costly – even if they are intended to "rationalise". Regulatory change is disproportionally 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.

- **BIPAR supports the CMU objectives**
  BIPAR supports 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.

- **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 (all) costs have on the return of the investment. In this respect, BIPAR always insists on the need for a level playing field and comparability of products and solutions that are comparable. Too much detail about costs can be counterproductive or misleading.

  Comparison of products only based on price should be avoided. Real comparison of products focused on the real needs of consumers (right cover etc…) should be ensured. In this respect the specificities of IBIPs (protection element) compared to pure investments should be considered.

- **Choices of consumers between different business /remuneration models is key**
  The current regulatory framework at EU and at national level ensure that inducement arrangements are properly designed and that conflicts of interest are managed. The current regulatory framework allows for choice of consumers between business models on a transparent basis. The commission-based system generally leads to a broad access and affordability of advice/ recommendation and ensures a mutualisation of costs on a "no cure no pay" basis. It gives ALL consumers a broad access to advice or guidance 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. The pooling of services guarantees personalised assistance and support for the consumer over the duration of the contractual relationship, and 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 any other choice than self-investing or relying on robo-advisors. It is recognised that the hybrid model (human combined with digital tools) works best in financial services.

- **Streamlined advice**
  More attention should be given in EIOPA technical advice, to which extent the distribution of IBIPs in a simplified, or even automated manner, does not, de facto, lead to increased risk for the policyholder. The current IDD already provides for the possibility of a proportional approach.

- T**he importance of "human" advice**
  Without denying the important contributions of digital tools to the distribution of IBIP products, and while underlining once again that insurance and financial intermediaries are using these tools daily in their relations with their clients, we regret that EIOPA's consultation paper does not place sufficient emphasis on the importance of the "human aspect", on the protection and value that an intermediary (and not a robot), close to his/her clients, can offer to them when buying products that relate to their savings.

- **Digital disclosures by default, paper disclosure always possible**
  BIPAR agrees with EIOPA to invert the current IDD approach and to have a "digital by default" approach, always with the option for consumers to ask for information, both pre-contractually or periodically, on paper or in a printable format if they wish. The COVID period has illustrated that simple solutions are possible in this respect (PDFs, …hybrid way).

General comments on the EIOPA consultation paper

BIPAR welcomes the opportunity provided by EIOPA to respond to its consultation paper on its draft advice on retail investor protection (IDD IBIPs).

BIPAR supports CMU objectives, that is to say, to ensure that retail investors can take full advantage of the capital markets, to put them at the service of people, offering them both increased investment opportunities, and strong investor protection.

In the insurance-based investment and pure investment area, BIPAR groups associations of thousands of micro or small and SME-size intermediaries, and financial advisers who are daily and locally dealing with investors, many of them being the small, private "consumers" that the Retail Investment Strategy will focus on.

We regret the limited time to respond to this consultation that seems to propose small changes/ "no revolution but evolution", but that, in fact, includes proposals that could potentially drastically undermine the level playing field agreed upon after years of discussion on the IDD and could have a much more important impact in terms of costs and burden for SMEs in the insurance market than for large integrated distribution systems.
More analysis and impact assessments are necessary to assess the "combined" impact that some of the proposals could have on the sector. Some of the changes will also affect the non-life part of IDD and an impact study is also necessary in this respect.

We agree that regulations need to follow evolutions in a quickly changing world but apart from the issues related to the development of AI and the sustainability aspects, today we do not identify issues which hadn't existed/didn't exist at the time the IDD was adopted.

Constantly changing regulation is burdensome, costly for SMEs and keeps intermediaries away from their clients who need service.

IDD or IBIPs' rules are not the only (recent) EU rules intermediaries have to comply with (GDPR, AML etc…) and very often these rules come in addition to specific national rules. For a sector with mainly small and medium-sized operators, this is burdensome.

The principles laid down in the IDD are genuinely protective of the customer. We, therefore, call upon regulators to first use the powers they have under the IDD to correct or adjust issues rather than creating new rules. Even for the digital transformation, the IDD provides for activity-based rules which can apply via other means than changing regulation.

Regarding digital tools, without denying the important contributions of these tools to the distribution of IBIP products, and while underlining once again that insurance and financial intermediaries are using these tools daily in their relations with their clients, we regret that EIOPA's consultation paper does not place sufficient emphasis on the importance of the "human aspect", on the protection that an intermediary (not a robo-adviser), close to his/her clients, can offer to them when buying products that relate to their savings.

EIOPA QUESTIONS – BIPAR RESPONSE

1) EIOPA draft advice to the Commission - Addressing and enhancing investor engagement with disclosures and drawing out the benefits of digital disclosures

EIOPA question

Q1. What do you consider currently to be the most burdensome duplicative requirements between the different legislative frameworks? Do you consider there to be any duplicative disclosures which EIOPA have identified above between different legislative regimes to be not particularly burdensome for insurance undertakings or insurance intermediaries to comply?

BIPAR response

BIPAR supports EIOPA's commitment to address current information overload. All real duplicative requirements are burdensome and confusing.

All redundant requirements should ideally be removed. Indeed, these redundancies generally represent implementation difficulties for professionals and are detrimental to the clarity of the information provided to the client, with the exception of information of a strictly administrative nature which is necessary for the understanding of a document on its own (e.g. mention of the name of the insurer).

When it comes to customer protection, easier implementation upstream for the professional is the guarantee of a better-informed customer downstream.

In this context and in a purely digital context, BIPAR believes that EIOPA's proposal layered approach could help put consumers in control of the level of details they wish to receive. The layered approach should, however, require consumer testing by EIOPA.

Dashboards or labels can be useful BUT cannot replace the added value of guidance or advice of an insurance intermediary. Dashboards or labels can have importance **in the information-gathering process of the retail investor** (some key elements), but IBIPs have also specific insurance characteristics and protection characteristics and cannot be compared with pure investment products.

It should be noted here that even if duplication of requirements exists in EU texts, because some of these texts were adopted a long time ago (DMFSD), some of these duplications have been progressively "fixed" at national level in implementing texts. This should be further assessed by EIOPA and the Commission before changing rules.

Some duplications are logical (and/or necessary) because the information/ disclosure is provided at different phases in the product life cycle or decision-making process. Furthermore, a consumer decision process is not a linear process. De-duplication of information requirements should be studied carefully.

EIOPA question

Q2. EIOPA can see some specific benefits in disapplying a number of disclosure requirements in the Solvency II Directive and the DMFSD and rationalising any remaining requirements in the IDD. Do you agree with this approach?

BIPAR response

BIPAR is in favour of a stable regulatory framework. Changes should only be made where necessary. It is essential to use by priority all the tools provided by the existing EU texts, as well as the leeway given to the national control authorities to make any adjustments that may be necessary.

For example in France, the ACPR can issue recommendations to clarify and/or strengthen existing legal and regulatory requirements in order to increase the protection of retail investors (e.g. Recommendation 2016-R-04 of 13 December 2016 on the marketing of unit-linked life insurance policies consisting of complex financial instruments, amended on 6 December 2019).

Also there are national bodies in Member States (such as the CCSF - Comité Consultatif du Secteur Financier- in France) which also make it possible to make these adjustments and reach market agreements without the need for regulatory texts.

The IDD has applied across the EU since 1 October 2018, but it is only as of April 2021 that ALL Member States have implemented it. Because of this late implementation in some Member States and because of the Covid-19 crisis – during which, as acknowledged by EIOPA, insurance intermediaries continued in very difficult circumstances to support and assist consumers, in particular, those who are particularly vulnerable- **BIPAR believes that it is too early to have a clear view and understanding of the impact of the IDD on the activities of insurance intermediaries and on consumer protection.**

The new requirements are still being grasped and implemented by all market parties (intermediaries, supervisors, insurers, and clients). **The introduction of new requirements by the IDD is still too recent to allow for any meaningful conclusions about their application in practice.**

When changes are made, impact assessments should in any case illustrate that changes are made taking into consideration the level playing field and proportionality principles. Changes are costly – even if they intend to "rationalise" existing information requirements. Regulatory change is disproportionally 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 (which is expected to result, again, in another set of changes).**

Regarding EIOPA proposals to disapply requirements in Solvency II and DMFSD, generally speaking, any process of rationalisation and increased readability of texts is positive, particularly in order to facilitate informed and effective implementation by professionals of provisions protecting consumers. Consequently, **there is no reason to oppose these transfers if they are carried out in accordance with the same law and do not entail any additional compliance costs.**
As regards online sales, this should not be a justification for simplifying or reducing the information received by the customer.

BIPAR, therefore, agrees in principle that disapplying some disclosure requirements in the Solvency II Directive and in the DMFSD and rationalising the remaining ones could help to solve duplication issues in existing regulatory requirements. In that case, it is, however, **important** that the requirements that were to be provided by insurers under Solvency II, remain to be provided by insurers under the IDD, and not by intermediaries as well (ex: Tax arrangement – This information could, however, be handed over by the intermediary to clients).
On the other hand, why move these remaining requirements to the IDD? Are all other possibilities taken into consideration?

On page 13, EIOPA suggests transferring the "cooling off" period to the IDD (from the DFMSD). First of all, it is to be reminded that DG Justice is currently reviewing the DMFSD and care should be taken that no additional discrepancies or gaps arise due to various instruments being revised in parallel by various Commission services. Secondly, the DMFSD takes into account the specificity of certain insurance when it comes to the right of withdrawal, and this should be kept in mind.

Also on page 13, EIOPA suggests in table 2 to **further specify the disclosure of distribution costs** in the IDD and/or the KID. In point 33, EIOPA adds re distribution costs that this is duplicated but not disclosed in the same way under IDD and PRIIPS and it is not disclosed separately under PRIIPS, also without a breakdown to specify inducements. As mentioned below, the KID is a **precontractual** standardised document that is supposed to be available from a product information perspective, independently from the intermediary/ distributor or the consumer.

The information in a KID must ensure product comparability and transparency about the features of a product (including costs). From a "distribution" perspective the KID is a stand-alone and completely separate source of information. When the product upon which a KID is based is offered as the solution or as one of the solutions for a specific client, then the IDD information requirements are triggered. IDD information /disclosure/ transparency requirements deal with the transparency between a distributor/ intermediary and a client. The KID information related to costs is thus not in contradiction of the IDD information requirements. The IDD information requirements are a logical and complementary next step to the KID/ PRIIPS cost information requirements.

In the KID it is furthermore impossible to define distribution costs or inducements because the KID can be distributed via various channels.

The PRIIPs regulation, therefore, rightly refers to the need for the retail investor to understand the **cumulative effect** that these **aggregate costs** have on the return of the investment (art 8,3.f (PRIIPs regulation level 1) and the PRIIPS Regulation (in the same article) stipulates that the KID should contain a clear indication that advisors, distributors or any other person advising on, or selling, the PRIIP will provide information detailing any cost of distribution that is not already included.

We agree that all costs which have an impact on the potential return of an IBIP must be transparent. As explained above, both IDD and PRIIPS in combination regulate this transparency in a clear way and on the basis of a level playing field between direct and intermediated products.

EIOPA question

Q.3 Notwithstanding the proposed approach set out in Q2, do you consider that there is an element of personalization under the provisions in Solvency II Directive that would justify delivery of personalized information separately and in addition to the generalized information in the PRIIPs KID?

BIPAR response

BIPAR does not believe that - as proposed by EIOPA in point 35, p 14 – it is advisable to create another, personalised precontractual document alongside the existing (generic) KID in order not to add to the information overload and confusion.

In a purely digital context it can be interesting to ensure that the personalised "offer" (the specific contract conditions) cannot be signed (unintentionally) by a "tick the box" approach and that the consumer has the opportunity to see clearly what is on offer.
The Solvency II information (potentially transferred to IDD) to be delivered to customers could be delivered to them in the same way as insurers already do.

EIOPA question

Q4. Do you agree that to address the current gap on periodic disclosures, it makes sense to require the disclosure of an "annual statement" which could include information on paid premiums, past performance, current value of the savings, as well as adjusted projections?

BIPAR response

BIPAR sees merit in studying a periodic product disclosure requirement. As far as it is not yet in place (national situations need to be studied), a "simple" annual / or periodical – every 5 years or upon request once per year) statement to be produced by the manufacturer or provider, with the main features and state of affairs of the IBIPs, could be useful. We do not think it is necessary to "over" standardise such a document.

This may be useful for certain products, in particular in a purely digital environment. However, consumer testing and further study would be necessary to define the exact contents of such a statement to avoid duplication or unnecessary costs.

BIPAR believes that such an "annual/ periodical statement" should be issued by the insurer or product manufacturer and could be handed over to the client either by the product manufacturer or the intermediary. The intermediary should, in any event, receive a copy of such an annual/ periodical statement before it is sent to the client.

It does not seem appropriate to include performance projections in an annual statement which could be misinterpreted by the insured. This document should be designed more as a status report for the policyholder as it exists, for example, in France.

In French law (Law No. 2019-486 of 22 May 2019 on the growth and transformation of businesses (PACTE), insurers (producers) for unit-linked products have to produce annual information (Insurance Code, Article L. 132-22) on the status of the contract. In particular, for unit-linked policies: *"the values of these units of account, their annual evolution as from the subscription of the contract, the charges levied by the insurance company in respect of each unit of account, the charges borne by the assets in representation of the commitment in units of account during the last known financial year and, where applicable retrocessions of commission received in respect of the financial management of the assets representing the unit-linked commitments by the insurance undertaking, by its delegated managers, including in the form of a collective investment undertaking, or by the custodian of the assets of the contract, as well as significant changes affecting each unit of account. ".*

This text has helped to improve policyholder information.

EIOPA question

Q5. Do you agree with the proposed list of "most vital" product and intermediary information? If not, what elements do you identify as being "most vital", that is essential information that is most critical for consumers to read

BIPAR response

Regarding the elements representing the "most vital" information that should be communicated[1] by the intermediary to the customer prior to the conclusion of the contract (IBIPs), EIOPA identifies the following:

- *the identity and address of the intermediary and whether they are a registered insurance intermediary;*
- *information on whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking;*
- *Information on whether the intermediary has a holding in a given insurance undertaking or whether an insurance undertaking has a holding in the insurance intermediary; and*
- ***the nature, and (subject to the outcome of the Commission's legislative proposals) the amount, of the remuneration received in relation to the contract e.g. amount of the commission/fee received from the product manufacturer[2].***

First of all, BIPAR would like to underline that, except for the very last piece of information in the above list, **the IDD** (in its Article 18 and 19 – and the IMD even before in its article 12 – except for the nature of remuneration) **already requires that the above and crucial elements of information are provided to the customer before the conclusion of the contract.**

BIPAR does not believe that the amount of the remuneration received in relation to the contract can be considered as the most vital information that should be communicated to a retail investor buying an IBIP, **in particular, if no level playing field is really ensured on this aspect with direct writer/ staff of insurers selling direct. It would in that case lead to an unacceptable distortion of competition and it could mislead consumers. Furthermore, an IBIP also includes a protection aspect and can, therefore, not be fully compared with other investment products or objectives.**

We believe that relevant and useful transparency of all costs which have an impact on the possible return (part of the premium that is not invested – as one amount) is important in this respect.

The rules under MiFID II and IDD (IBIPs) require transparency of costs of the service of an adviser or intermediary. Clients who want more details are informed that they have the right to ask for details. There are very few complaints about this system from the clients. Further impact assessment and consumer testing results would be useful in order to fully evaluate the need for more disclosures.

[1] Subject, where appropriate, to the information conditions set down in Article 23, IDD.

[2] Information on product costs & charges would be provided via the product manufacturer's product disclosures, which the intermediary might pass on to the customer

BIPAR supports relevant transparency of meaningful information with regard to costs. For investment products it is important for the client to understand the impact that costs have on the return of the investment. In this respect, BIPAR always 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.

It is interesting to mention here a very recent initiative in France on transparency of costs: On 2nd February, **an agreement was reached between the representatives of producers/insurers and distributors (amongst which some BIPAR members like agéa, CNCGP and Planète CSCA) of retirement savings plans and life insurance products, that aims at reinforcing the transparency of the costs of these products.**
In the agreement, it is explained that "*the signatories demonstrate their commitment to increasing the transparency of retirement savings plans costs, as well as those of life insurance policies, with the aim of improving the comparability of products for savers and encouraging the emergence of ever more innovative offers to mobilise savings for business financing*".
It is also interesting to note that on the occasion of the signing of the agreement, the French Ministry of Finance said:" "*I think that the measure adopted is much* ***more effective than imposing a cap or whatever that would not have the expected effects*****"**. Such initiatives are totally in line with the main objectives of the Commission's Retail Investment Strategy, namely, to ensure that transparent, comparable and understandable product information is provided to the retail investor.

Such initiatives also illustrate that the IDD is still maturing and that the IDD clearly allows for national solutions where necessary or useful. In other Member States other initiatives are taken. We do not see the need to change the IDD now. It is too early to measure effects and Member States are still different.

Re product disclosures, **BIPAR believes that the following elements are the "most important" regarding IBIPs and should be communicated to the customer prior to the conclusion of the contract:**

- The level of risk – being informed that higher possible returns imply taking higher risk
- The level of guaranteed investments (what is the maximum loss I can make? (under the assumption that the company does not go bankrupt – what in case of bankruptcy?)
- What part of the premium payment (investment) is effectively invested and can thus generate returns (one amount) - This disclosure should allow to clarify that this cannot be compared with pure investment products because the IBIPs have a protection element.
- There is a need to clearly specify the type of insurance / protection associated with the product
- Tax-related issues for which an expert advisor (intermediary / tax advisor, …) should be consulted
- A clear past performance and one or two future performance scenarios
- Can the consumer skip an annual payment/scheduled payment? (What are the consequences?)
- "Liquidity": can I recover my money in case I would need it before the initially agreed end term?

Also linked to the question as to whether a selection can be made of "vital information", it is important that with regard to **digital** documentation architecture, the information shared via digital channels should be the same as it would be on a paper format.

Regarding layered information architecture, the pros and cons need to be studied carefully. Choice in combination with intermediary assistance is possibly the best way forward.

Intermediaries' experience distributing IBIP products shows that the essential information for their clients is the overall profitability of the product in relation to their "objectives"/ demands and needs, the security of the savings and its "availability". However, the experience of intermediaries with the current product disclosures also shows that, although beneficial, the product disclosures (in particular if they are standardised) alone do not completely resolve the difficulties of understanding how contracts work for customers, despite the intention to keep things simple. Consequently, **the need for professional assistance should not be underestimated. Consumer testing should underpin the above-mentioned market experiences.**

Furthermore, without ignoring the contribution of behavioural sciences/digitalisation in the delivery of information to the customer, it is surprising that the importance of the support of intermediaries and their proximity to customers are not mentioned in the consultation paper. Insurance and financial intermediaries meet regularly face to face with customers; they go through information provided on

paper or via digital means and explain it. **It is regrettable that the importance and value of such a privileged customer relationship is ignored in the consultation. Clients of intermediaries value their relationship and the services of intermediaries. If not, they go elsewhere (the competition in our sector is very strong).**

EIOPA question

Q6. Do you currently see specific issues with misleading advertisements and marketing material in relation to the sale of IBIPs, which would merit specific regulatory treatment and if so, which aspects?

BIPAR response

We believe that IDD and PRIIPs rules on marketing communications already ensure that consumers are provided with fair information.

BIPAR is not opposed in principle to Level 3 guidance that could provide some clarity where needed, in particular, regarding digital distribution models. However, we do not believe that additional requirements are needed in this respect.

We suppose that national supervisory authorities and ombudspersons' services at national level can provide additional input for answering this question **- in particular, regarding marketing and publicity by purely digital distribution models**.

One option proposed by EIOPA would be for the IDD to invert the current approach to have a "digital by default" approach, with the option for consumers to ask for information both precontractually and periodically, on paper or in a printable format if they wish.
BIPAR agrees in principle with the proposal that allows taking into consideration the needs of consumers wishing to receive the information on paper.

At the same time as digital technologies are evolving, it is not uncommon to read advertisements on the Internet or on posters in the street, on public transport, etc., which boast of the speed with which products can be taken out, sometimes "in a few clicks". S**peed is inconsistent with the distribution of IBIPs which, because of the financial stakes for the insured, in the medium or long term, require a minimum of awareness on the part of the client of his/her commitments.**

2) EIOPA draft advice to the Commission - assessing the risks and opportunities presented by new digital tools and channels

EIOPA question

Q7. Do you agree on the current level of development of the market for online platforms distributing IBIPs? If not, please could you provide examples of where you see evidence of online platforms selling IBIPs at present and how you see this impacting the customer journey and if possible, any quantitative data you can provide on this distribution channel.

BIPAR response

BIPAR agrees with EIOPA that not many IBIP products are distributed today via online platforms in the EU. In general, insurance intermediaries note that the majority of customers for this type of product need support and a relationship of trust with a professional.

It is interesting to refer here to the conclusions of the French Supervisory Authorities, the ACPR/AMF (Control Conference, 25 November 2021) on digital underwriting, which show that online underwriting often means:

- a lack of clarity in precontractual information,
- a lack of clarity on the risks associated with investments,
- insufficient study of the customer's demands and needs and
- Inadequate support for the client.

Based on these findings, it appears that these difficulties are those that can be found in relation to distance marketing in general. Consequently, as EIOPA points out, the purely digital distribution channel requires appropriate regulation to protect the consumer.

To date, robo-advisors appear to be tools available to professionals to refine the client's asset management approach, **and the approach of combining the best of digital and human aspects appears to be the one of intermediaries.**

The realities of the market must be taken into account: in the French market for example, IBIPs are mainly sold via insurance intermediaries, in line with the wishes of French investors. **The search for a relationship of trust between a professional intermediary and a client should, therefore, not be considered as obsolete but as a reality**, or even a condition for clients to invest in IBIPs (regarding the topic of robo-advisors in a B to B to C model: Revue Banque, 24 Jan. 2020, Développement et perspectives du marché des robo-advisors : quels enjeux pour les banquiers et assureurs ?).

Lastly, we would like to refer to the EIOPA's Expert Group report on Digital Ethics published in June 2021. The Report sets out governance principles for an ethical and trustworthy AI in the insurance sector, and provides in particular non-binding guidance on how to implement fairness and non-discrimination, transparency and explainability, human oversight, data governance and robustness in a risk-based and proportionate manner.

As explained in the above-mentioned Report, when robo-advisors are used to provide advice to consumers (e.g. about investments options in life insurance), "***it is important that consumers are aware that they are interacting with an AI system and not a human. Consumers should also be provided with meaningful and timely information about the system's capabilities and limitations, and to the extent possible, consumers should be allowed to request the intervention of an employee/ human intermediary at some point of the process. In the specific case of robot-"advisors", consumers or supervisors should also have a view of the algorithms behind the recommendations and the data (potentially "mined" form social media for example without the consumer knowing about it as well as information whether human assistance is available from the firm and how it can be accessed."***

EIOPA question

Q8. Do you see the potential for the growth of open architecture models for the sale of IBIPs in the future and if so, in relation to which types of products?

BIPAR response

To move towards a data-driven financial sector has many risks that will be difficult to mitigate in the short- (and long) term. Scope and objectives of the use of open architecture need to be properly assessed before any regulation is introduced on the issue. This is crucial. Specificities of the insurance sector need to be taken into account. **Insurance is not banking.**

The IDD is based on the (insurance distribution) activity and not on categories. Any "new" market participants (ex: InsurTech) carrying out an activity of insurance distribution as defined by the IDD (Article 2 (1) (1)) should fall under the scope of IDD. The IDD does not provide any definition of comparison websites, but the distribution of insurance products includes the activities carried out by comparison websites. Thus, entities performing the comparison can be qualified as insurance distributors, and they fall within the scope of the IDD.
This makes the IDD futureproof. It ensures consumer protection and a level playing field between operators.

The "cost" of data via social media should be studied by EIOPA. The business models of comparison websites in other sectors may give an indication of the possible risks related to "platforms"- for example, in terms of pricing or discrimination.
When talking about "inducements" the business models of pure digitals should be studied as a matter of priority and the application of the existing rules should be enforced (rather than giving priority to revising existing rules overall).

Price-comparison websites may be at first sight efficient to compare standardised and/or commoditised products used by a very large number of the population – like basic bank accounts or credit cards – but the discussion about the importance of consumer financial education illustrates very well the importance of people talking to people in order to make the correct comparisons in insurance products or insurance products with an investment element.

Pension trackers could be useful for objective information about the existing pension situation of a consumer, for example, when they allow every person to have access to a complete overview of his or her pension data (See also in this respect EIOPA's recent consultation paper on pension trackers).
This can trigger more awareness and better understanding of pensions (how savings behaviour can affect retirement income) and, therefore, more engagement and more planning from consumers on this issue. Such info can then also be helpful for intermediaries assisting the consumer to optimise the individual situation.

As usefully explained by Professor Marano in his article on "***Navigating InsurTech: The digital intermediaries of insurance products and customer protection in the EU"*:** *The comparison of insurance products "through a website or other media" falls within the scope of the IDD "when the customer is able to directly or indirectly conclude an insurance contract using a website or other media". This definition of insurance distribution includes both traditional comparison websites and the alternative models of comparison such as the price comparison apps for smartphones, and the data analyser services. The IDD refers to websites and other media, without providing a definition of the latter media.* ***This may lead to the conclusion that the IDD – intentionally or otherwise – provides for the non-exhaustive list of the technical and organisational measures by means of which distribution services will be rendered****. Thus, the apps fall within the definition of insurance distribution as media allowing the customer to compare insurance products and, directly or indirectly, conclude an insurance contract."*
He further concludes: "*The main finding achieved is the capability of the current regulatory framework to deal with almost all the issues posed by the InsurTech when applied to indirect distribution, that is, distribution carried out by intermediaries, of insurance products.* ***Although the EU discipline on the distribution of insurance products is still predominantly principle-based and of minimum harmonisation, the standards and principles introduced mainly by the IDD do not call for new rules".***

The focus should be on the education of the distributor and the demands and needs of the consumer. The financial product that fits does not only depend upon the product itself but also depends upon the situation and objectives of the consumer. Quality product disclosures (based upon POG) are key in this respect.

Lastly, re open architecture models, it is interesting to refer here to the Swedish situation where the use of power of attorney is a well-established and functioning construction in the market. It enables intermediaries/advisors to access information on behalf of their clients. Digital platforms are available to all distributors for the management of power of attorneys for the life insurance and IBIP market.

EIOPA question

Q9. Do you share EIOPA's assessment of the types of risks that could arise in the context of the growth of more diverse distribution channels for IBIPs? Are there any risks which you see arising, but which EIOPA has not identified in this paper?

BIPAR response

Comparison portals can only reflect the comparison between products. This does not give an answer to the question of how far a product is adapted to the demands and needs of a consumer in a specific situation. There is the risk of consumers buying the wrong product.

Furthermore, there is a serious risk that comparison websites only focus on the lowest possible price. This leads consumers not to focus on the adequate products that they really need. This is well explained in the EIOPA report on "Good Practices on Comparison Websites" published in 2014 and in a 2019 article by Professor Marano on "*Navigating InsurTech: The digital intermediaries of insurance products and customer protection in the EU*"[3]: *Customers tend to over-rely on the price of products, rather than the underlying terms and conditions. Such a representation to the customer is misleading. The premium to be paid to the insurer is normally the result of the underlying terms and condition of the product because they regulate the 'amount' of risk actually transferred to the insurance undertaking. The lower the premium is, the less the risk underwritten by the insurer is".*

What is key is to have a technology neutral framework (no technique or approach may be favoured over the other by regulators). **Different disclosure requirements for digital versus non-digital channels have to be avoided.** These are not two separate worlds. Insurance professionals combine digital and non-digital channels (fygital) and the regulatory framework has to introduce the digital format on the same level as the paper format. A pdf and email can be as efficient in terms of information as more sophisticated digital tools.

Retail investors who are less at ease with new technologies, however, may continue to prefer paper-based information. Smartphone formats are possibly less desirable for certain important investment decisions. Digital, non-digital, human factors are, for the moment, interacting with one another. We are in a hybrid-mixed situation.

The IDD is activity-based. The scope and distribution rules of IDD have to be as wide as possible. Within the context of consumer protection, it is important that online platforms (including third-party ownerships) fall into the scope and, therefore, need to follow the rules (product knowledge, education, information requirements, suitability-test, conflict of interest rules, inducement rules,…) and are supervised.

[3] https://journals.sagepub.com/doi/abs/10.1177/1023263X19830345

3) EIOPA draft advice to the Commission- tackling damaging conflicts of interest in the sales process

EIOPA question

Q10. Do you agree with EIOPA's analysis of differences between IDD and MiFID II? Are there any other differences not mentioned which you consider to be relevant?

BIPAR response

The focus here should not be on the differences in isolation but on the overall framework of existing measures and requirements. MiFID II architecture is focusing overall on a much broader and more diversified market and operators. The IDD IBIPs chapter is designed for the purpose in combination with more general rules in the IDD.

Insurance is not investment – The existing differences between MiFID and IDD are needed to reflect the differences between the distribution of insurance and investment products. A full alignment between MiFID and IDD is neither recommendable nor necessary. The existing training requirements in IDD are important. This should be better highlighted in EIOPA's paper.

In its paper, EIOPA analyses, both from a regulatory and supervisory perspective, the impact of the regulatory treatment of inducements (Level 1), and, in particular, the following two provisions: the MIFID II quality enhancement test and the IDD "no detrimental impact" test.

EIOPA explains that the "quality enhancement" criterion might imply more positive action[4] to be taken by the investment firm to comply with the criterion and that some NCAs have indicated the fact that **there is little evidence to date of material differences in terms of supervisory outcomes between applying the "quality enhancement" criterion and the "no detrimental impact" criterion.**

BIPAR believes that the differences between the two provisions are justified and should remain so.

It is to be reminded that the concept of detrimental impact was introduced in the IDD at the trilogue level. The Council had first proposed introducing "quality enhancement" criterion in the IDD IBIP chapter, **but during the trilogue, this was not supported by a majority of Member States that considered that it was not clear what was meant by "enhance the quality" criterion, that this could lead to legal uncertainty and that** criteria should be more objective in nature.
The concept was, therefore, changed into the "detrimental impact" concept, seen as more fit for the insurance context.

The IDD rules are **more recent** and **offer an additional layer of consumer protection** **such as the fact that even in execution only situations a demands and needs test is required.**

On p 47, point 122, EIOPA states that MiFID II refers to inducements as examples of conflicts of interest, adding that this is not the case in the IDD but *" while it would be beneficial for the IDD Level 1 text to explicitly refer to inducements as an example of type of conflict of interest that needs to be managed by insurance distributors, the fact that there is no explicit reference in the IDD should not be seen as a barrier to inducements being considered as causing conflicts of interest that are damaging to the best interests of customers".*

It is to be reminded here that apart from the subject of conflicts of interest, the IDD contained a **distinct competence** to issue a delegated act to specify the criteria for assessing whether inducements paid or received by an intermediary or an insurer have a detrimental impact on the quality of the relevant service to the customer and, beyond that, comply with the obligation of the intermediary or insurer to act honestly, fairly and professionally in accordance with the best interests of the customer (see Art. 29 (4) IDD). **In line with this, the IBIP Regulation takes up the subject of inducements separate from the subject of conflicts of interest in an article of its own (see Art. 8 IBIP Regulation).**

[4] As illustrated in Article 11 of the MiFID II delegated directive and ESMA Q&A 9.12:
https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf

Independent advice

The current rules in IDD are adequate. They are more recent than the MiFID II. All basics are in the existing rules. If at national level Member States wish to do so, they can develop an independent advice concept at national level. This independent advice concept is well defined in the IDD so when it is introduced at national level it is coherent with the concept in the IDD and in other Member States. It is good that all systems co-exist in the market. It allows for choice for the consumer.

The principles developed in the IDD are virtuous and are still being refined in their implementation (e.g. integration of sustainability advice). They protect consumers and do not need to be amended.

Moreover, the approach of the IDD, based on minimum harmonisation, still seems relevant. Indeed, as the consultation paper points out, the market for the distribution of IBIPs in the EU is nationally specific. Consequently, it seems appropriate to keep a minimum harmonisation approach (IDD), unlike the requirements of MIFID II, in order to let Member States adapt their respective legislations, necessarily in a consumer-friendly way.

In France, two initiatives should be noted in this respect:

- The reinforcement of the information of the policyholder (Law "PACTE" n° 2019-486 of 22 May 2019 on the growth and transformation of companies);
- The "Accord de Place" on fees of 2 February 2022 and regulatory adjustments on fee transparency.

Maximum harmonisation legislation at EU level would have had the effect of blocking these initiatives that benefit customers.

In conclusion, we believe that the two sets of rules should not be changed. Any argument for change should be evidence-based. For every change a cost benefit analysis should be made, including the impact of the change in terms of costs and administrative burden for SMEs.

EIOPA question

Q11. Do you have any views on EIOPA's analysis of the structure of different distribution models for the sale of IBIPs in the EU?

BIPAR response

BIPAR believes that EIOPA's analysis – also based on the EIOPA report on the IDD application - captures the existing key differences between different distribution models, but there are additional national specificities that are not covered. It should be noted that the existence of varying distribution systems in different national markets is not inherently negative and does not itself present a problem that requires regulatory intervention at EU level.

EIOPA question

Q12. Has EIOPA captured, in your view, all relevant policy options? Do you agree with the different pros and cons listed for these options and the potential impacts indicated for these options? Are you in favour of any particular options or combination of options? Are there any other policy options and pros and cons to be considered in your view?

BIPAR response

General comments

We believe that EIOPA has not assessed one key option-that is, the possibility of maintaining the IDD as it is.

The IDD provides for the obligation to put the customer's interest first, specifying in particular that no remuneration should lead to the customer being offered a less suitable product because of a higher remuneration. This framework is reinforced for the distribution of IBIPs.

These principles need time to be fully implemented in practice. Consequently, we believe that this option, with its pros and cons, should be included in the EIOPA technical advice.

Any new rules introducing restrictions on commission, or a commission ban would require a complete assessment of the insurance distribution in the EU Member States. Thorough impact assessments need to be carried out and national situations properly analysed. **It can't simply be presumed that changes that may work in one country would also work in another. It is, in any event, clear that all systems have pros and cons. Leaving choice on a transparent basis is important.**

Overall, we believe it is important that costs which have an impact on the potential return must be transparent. **BIPAR has, from the outset, agreed that for all products which include an investment risk, specific, proportional and relevant precontractual information should be available. However, we also pointed out from the start how extremely ambitious and difficult it is to achieve a level playing field and relevant, real comparability between all products in the scope of PRIIPs, adding that there was a risk that harmonisation could result in misinformation of the retail investor.**

Commissions have the advantage of mutualising the cost of the advisory/ intermediation / distribution service. Both %-based-, hourly rate-, flat rate systems have pros and cons depending upon the situation of the client. These are transparent costs. There is choice.

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 has always insisted also on the need for a level playing field and comparability of products and solutions that are comparable. BIPAR has always pointed out as well that too many details about the costs can be counterproductive or misleading.

Lastly, on Point 116 of its paper, EIOPA explains that "*some Member States have experienced mis-selling with regard to the distribution of IBIPs to which high commissions paid to distributors significantly contributed and have taken significant regulatory measures as a result. Some examples of these recent reform national measures (for example, in NL, IE and SE) are listed in the Annex VI to this Consultation Paper".*
BIPAR's Irish member, Brokers' Ireland, would like to correct that statement. They believe that no mis-selling as described above took place in the Irish market. In Ireland it was simply decided to apply MiFID II rules to the distribution of IBIPs.

This illustrates again that national authorities have the possibility to adapt the regulatory framework.

Specific comments on proposed options

EIOPA sees the need to address the risk of inducements materially impacting the cost efficiency and value for money of IBIPs and believes that these aspects should be addressed throughout the product life cycle and not just at the point of sale.
EIOPA has set out the pros and cons of a number of different policy options to more strictly regulating the payment/receipt of inducements to obtain feedback from stakeholders.

Policy option 1 - Refining existing rules in the IDD on inducements

- As explained by EIOPA, this option will provide a "clear hook to supervise existing Level 2 and to make them more impactful" where necessary.
    - We agree with EIOPA that further refinements at Level 2 are quicker and easier to implement for NCAs who have the requirements already on their statute books at national level and would not require a wide-ranging reform at EU level of the retail investment market.
    - **There is now indeed a need for regulatory stability so that the current framework can be used to promote the CMU objectives and the sustainable products. Supervisors should intervene only when and where necessary** (attention should be focused on new (pure digital) business models, non-regulated products, POG, sustainability – avoiding greenwashing in this transitional period where sustainable finance framework is not finalised)

- With regard to inducements, the IDD rules are clear. IDD has created a clear legal framework in relation to remuneration of intermediaries, which provides supervisors with powers to intervene in individual situations where the rules would not be observed. Intermediaries work and offer service based upon their know-how. In our world this work deserves remuneration.
  We, therefore, regret the word "inducement" because the work intermediaries do add value to the process in the interest of the client. Intermediaries facilitate a process. Costs related to the activities of intermediaries would otherwise have to be picked up elsewhere. **The current rules on inducements are adequately calibrated. At this time we have no indication that these rules are insufficient. Supervisors have the powers to supervise this.**

- The intermediary who is in contact with the end consumer cannot be compared with players higher up in the chain. The intermediary in contact with the client fulfils a specific and necessary role when the consumer decides to use an intermediary (the consumer is free to use or not to use the services of an intermediary). The intermediary's remuneration is transparent and already heavily regulated. Whether costs higher up in the chain are always necessary or whether or not they create conflicts which are detrimental to consumers might need to be studied.

- This could be addressed or partially addressed thanks to transparency regarding what part of the premium payment (investment) is effectively invested and can thus generate returns (one amount). In this manner the client would be able to compare products and potential yields. There are various ways to ensure this at national level.

- **The current regulatory framework 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. Inducements fall under the conflicts of interest rules overall.**

- Distribution costs paid as a percentage of the premium have the advantage of mutualising the cost of the advisory / intermediation / distribution service.

- Inducement arrangements that are not an 'out-of-pocket'-model (fee) for consumers, will benefit retail investments overall. Consumers with long-term sustainable savings can access very qualified mentoring /advice through existing distribution models, where consumers with large capital to some extent finance those with less (mutualisation). Business models, and markets, which allow for inducement arrangements between the producer and the distributor, increase the possibility of cross border business and innovations for consumers.

Policy option 2 - Further enhancing disclosure of inducements and making the concept of inducement easier to understand

Regarding this option, EIOPA explains in its consultation paper *"**that it could include explicitly mandating disclosure of the amount of inducements to customers on an ex ante and on-going basis, or quoting premiums net of commission**. In such disclosures, consumers should be made aware that an inducement increases the risk of a conflict of interest arising for the distributor. It could also be done, for example, by requiring information on costs included in the PRIIPs KID to be formally broken down to refer to the amount of inducements paid/received".*

- With regard to the option of requiring the information in the KID to be formally broken down to refer to the amount to inducement paid / received, **it must be noted and reminded that the KID is a precontractual and standard document – at this stage the remuneration of the intermediary will not necessarily be known**. For this reason, the KID, logically, contains the following reference that the KID may not necessarily contain all information and that the adviser will inform the client about it when possible:

"Art 8,3.f (PRIIPs regulation level 1) (...) "*The key information document shall include a clear indication that advisors, distributors or any other person advising on, or selling, the PRIIP will provide information detailing any cost of distribution that is not already included in the costs specified above, so as to enable the retail investor to understand the cumulative effect that these aggregate costs have on the return of the investment".*

IDD is clear about the transparency of the "inducements".

In its description of the potential disadvantages of this option, EIOA refers to *"the risk that this information is not absorbed by consumers and does not significantly change their behaviour/decision-making as a result[5] as they may not fully understand how an inducement could influence the financial advice process or the types of IBIPs that are recommended to them. In addition, the levels of commissions on the same product might differ depending on the distribution channel, while the PRIIPs KID for a product is the same, irrespective of the distribution channel".*

BIPAR would like to add that if it is important to understand the nature and impact of an inducement, it is equally important for the client to also understand the impact of staff remuneration from direct writers in cases where no intermediaries are involved. **A level playing field with regard to these disclosures should be ensured.**

Policy option 3: further bolstering rules on inducement at product design phase and enhanced conduct supervision / enforcement by NCAs

EIOPA explains that this option "*would involve making rules regarding product design, the selection of distribution channels and choice of remuneration models more stringent so that there is less risk of mis-selling to the target market through biased advice". It adds that "enhancing existing rules on product design (including the management of conflicts of interest and the selection of distribution channels and remuneration appropriate to the target market and the types of products distributed to that target market) would take the focus exclusively off the point of sale only, whilst also strengthening rules to prevent mis-selling*".

- **We value the initiative to debate costs and value of operations higher up in the chain instead of focusing on the point of sale – for which efficient rules already exist and need to be supervised / enforced.**
  Product Oversight and Governance (POG) is very important for investment products, and intermediaries need to be able to rely on information that is provided by manufacturers and they need to be able to rely on supervisors that the latter supervise (proportionally) the POG processes of manufacturers. We have no information about how certain costs are taken into consideration by "direct insurers" in the POG process (such as publicity and marketing costs and other costs higher up in the chain).

- According to EIOPA, enhancing existing rules on product design **could include the management of conflicts of interest and the selection of distribution channels and remuneration appropriate to the target market and the types of products distributed to that target market.**
  It would be useful to better understand what EIOPA means with rules on product design that would include the selection of distribution channels and remuneration appropriate to the target market.
  EIOPA explains that it could leverage existing work developed on target market identification, distribution strategies and remuneration practices to address undue costs being charged to policyholders.

  BIPAR would like to underline here that any further interference on these issues would not be acceptable for our sector. It is not needed in a highly competitive market, already regulated via efficient rules on POG (Levels 1 and 2) and could stifle innovation in insurance markets to the detriment of the customer. This option could deprive certain consumers (and intermediaries) to have access to certain solutions. This option, furthermore, would create unnecessary discussions, confusion and unlevel playing fields.

[5] The limits of disclosures to consumer reflect, in particular, the experience in the Netherlands with their regulatory framework and the introduction of an inducement ban (see Annex IV)

- With regard to the IDD POG rules (Levels 1 and 2) for distributors, we believe it is interesting here to give the following practical example of the successful implementation of those rules for the protection of the consumers: In the French market, a health insurance product previously intended for both professionals and individuals has recently had its target market revised: it is now distributed only to a target market of professionals. **Therefore, the directive has had a beneficial effect on this point by clarifying the offer.**
  For IBIPs, the target markets determined via the allocation of available units of account within the same product have been more finely segmented, based on customer profiles.
  This national example illustrates that the current rules leave possibility for national solutions.

Policy option 4 – mandatory concept of independent advice in IDD and ban on inducements such as MiFID II

This option would effectively involve aligning the IDD with the equivalent provisions in MiFID II relating to "independent investment advice" and th**e ban on the payment/receipt of inducements (**excluding minor non-monetary benefits) **for independent investment advice in Article 24(7)(b), MiFID II.**

- **BIPAR agrees with the description of the potential disadvantages of this option, the regulatory arbitrage and the advice gap being amongst the key ones.**

- **A pure fee-based market could exclude many people from accessing any level of advice or assistance in their search for an appropriate insurance product, as has been the practical experience in Member States that have prohibited commission payment approaches.** Many consumers could be priced out of receiving advice. The creation of multiple share classes to accommodate different charging structures could emerge as an issue. Unadvised/ unaccompanied investors might favour execution-only platforms or go direct as a consequence of the new pricing structures. A lot of consumers will most likely exit the market for financial advice/ guidance entirely. Other costs in the chain may, over time, progressively go up because of the lack of competition.
  - The independent advice concept is already in the IDD and Member States can decide to adopt it in their national legislation.

- It cannot be stressed enough that consumers **are much less likely to shop around for the insurance or investment product which best meets their needs in a fee-only based environment as they will have to pay a fee each time they interact with an intermediar**y – whether or not they decide to follow the advice or buy the product.

- The remuneration of intermediaries being in principle commission-based with the possibility to agree fees has been and continues to be a major contributing factor in the successful development of insurance markets all over the world. Any other situation would ignore the fact that the insurance intermediary typically renders services to both sides of the contract, the customer and the insurance company: as with any commercial relationship both types of services have to be remunerated by the beneficiary. It would also deprive consumers of the choice between business models. Remuneration for work done is a key concept in our economy.

- Insurance intermediaries are mostly micro or SMEs, employing many thousands of people locally. **It is important to ensure that any future European policy on conflict of interests for intermediaries mediating IBIPs does not have any unintended side effects, does not result in less choice for consumers and does not jeopardize intermediaries' activities and business models.**

- BIPAR notes that the text of IDD already foresees that distributors have to act in accordance with the best interests of the customer and that benefits should not have a "detrimental impact".
  - Under the IDD, insurance distributors have the duty to act honestly, fairly and professionally in accordance with the best interests of their customers (art 17) and the intermediary will take this into account before accepting any benefit.
  - The fact that an intermediary receives fees, commissions, benefits from third parties may mean that an intermediary is able to charge less for the service that they provide to that customer. This is of significant benefit in that it makes insurance markets accessible to as wide a cross section of the public as possible.

- Also, one has to look at the overall services that intermediaries offer. Indeed, the quality of an intermediary's services is intrinsically linked with the quality of a specific service provided to a particular customer. In fact, without a high overall level of quality, it is not possible to provide a high quality individual service.

- **IDD should not be "aligned" with MiFID II. IDD is a more recent text and contains valuable and additional consumer protection such as the demands and needs test for ALL sales, even non-advised ones.**
  EIOPA lists as potential benefits that "*It could enable consumers to decide which type of advice they prefer, and how they want to pay for it*". We would like to stress that this choice already exists today. And as mentioned before, this choice is key.

- Banning commission means institutionalising a two-tier insurance system, the first victim of which would be access to service/ advice/ guidance/ assistance for all. The changes introduced by the IDD are more than sufficient to correct what needs to be corrected when the client's interest is not as central to the individual professional's concerns as it should be.

Policy option 5 – ban/restrict the payment/receipt of all inducements across the EU in relation to the provision of insurance advice

EIOPA explains that this option would imply a complete prohibition on the payment/receipt of any inducements in relation to the provision of insurance advice on IBIPs (something which is currently a national option under Article 29(3), IDD), with a system whereby a fee is paid directly by the customer to obtain a regulated distribution service, such as advice on IBIPs.

- Various European initiatives (MiFID II, IDD) have made it possible in recent years to create a legal framework that fully regulates and secures the relationship between advisor, intermediary, customer and supplier. **The existing framework (in many Member States still under implementation) results in transparent choice for the consumer.**

- After years of study and debate between all parties concerned (including consumers, providers, politicians, academics), **MiFID II introduced the concept of independent advice for those consumers who want to pay a fee for advice. Thanks to the commission system, (strictly regulated) consumers** who want it, can continue and shop around to find the ideal product.
  Similarly, the IDD allows Member States to do the same for IBIPs. **In any event, consumers who want to pay for financial advice on a fee basis can ask their advisors to work on such a basis. Those who want to shop around or have different suggestions before deciding what the best investment is considering their personal situation at a given time may prefer a commission system.** For this system, MiFID II and IDD have introduced appropriate transparency together with a series of rules to manage conflicts of interest, to avoid mis-selling, POG rules, training, and strict supervision... Those who opt to have advice on a fee basis need to be aware that they will have to pay a fee even if they decide not to follow the independent financial advisor's investment advice.

- **From an economic perspective, overall, there exists no system which is preferable in all circumstances and the co-existence of various remuneration systems, and, in particular, the freedom to decide on a transparent basis about the remuneration systems between the parties, is the best guarantee for competitive, efficient and dynamic markets that work for the client and guarantee to ALL consumers in the EU access to the investment market at a low (because mutualised) cost.**

- **The choice of systems** also allows those systems to be competitive. All options are also heavily supervised. This transparent system is also helpful in the ecosystem of digital providers where incumbent players and digital players join forces to improve the service to the consumers. **It is also recognized that this system is the best system to avoid the advice gap. For smaller investors, fees are not affordable and the commission system allows intermediaries to spread the cost of know-how and to put their know-how paid by the "larger" investors to the service of the "smaller" investors (mutualisation of advice and service costs).**

- **A ban on all forms of "inducements" for every retail investment product across the EU would be a draconical measure, disproportionate and unjustified**. It is certainly not simpler to enforce or supervise than the current conduct rules and disclosure rules. A total ban does not automatically lead to better investment choices. In one way or another it leads to an advice gap and reduction of choice for the consumer.

- The term "inducement" is furthermore misleading. Everybody has the right to be remunerated for work done.
    - A ban on commission favours direct/own distribution from the product providers and limits access to assistance from an intermediary / advice. The cost of distribution does not simply disappear by banning commission; it would merely redirect consumers to direct distributors.
    - One has to bear in mind that intermediaries and financial advisers have a real responsibility towards their client. They see the whole picture when they work for their clients. Indeed, their relationship is traditionally one of long term and it is, therefore, not in their interest to recommend the most "charged" products, but they will look at those that are best adapted to the client's situation. A contrario, the relationship with the client would quickly end, which is not in the intermediary's interest.

- **Also it has to be reminded that financial advisors and intermediaries who do not comply with the MiFID II and/or IDD rules not only face severe monetary penalties, but are also subject to civil charges of their clients.** One should, furthermore, have trust in the power and competence of national competent supervisory authorities, courts and legal systems.

Policy Option 6: Intermediate options to a full ban on the payment/receipt of inducements:

- Ban/restrict the payment/receipt of enhanced or additional inducements contingent on sales targets/volumes

  EIOPA explains that this option would address specifically damaging practices focused on the payment of variable remuneration such as commissions (rather than fixed fees) such as "volume override arrangements" whereby extra commission is paid out by a product provider when a distributor surpasses a target threshold of sales for a given product.

  BIPAR believes that these issues are already correctly addressed by the IDD, and, in particular, by articles 17(3) and 8.2 of the IDD Delegated Regulation on IBIPs.

- Ban/restrict the payment/receipt of certain non-monetary benefits such as hospitality gifts

  EIOPA explains that minor non-monetary benefits such as hospitality gifts, in particular, are designed to influence an insurance intermediary to place business with a particular provider rather than to provide any direct benefits to consumers.

  BIPAR believes that this issue is again correctly addressed in the IDD Delegated Regulation on IBIPs (Article 5 (1)f that refers to the establishment of a "gifts and benefits policy" as a means to manage conflicts of interest and prevent them from damaging the interests of customers. As mentioned, based on this article, some Member States have already adopted legislation in this respect.

- Ban/restrict the payment/receipt of inducements in the case of "execution-only sales"

  It is to be noted that under the IDD (Article 20.1), even in the case of an execution-only sale or non-advised sales (where the appropriateness test applies), , before the conclusion of the contract, the insurance intermediary needs to carry out a "demands and needs" assessment for the customer.

- Ban/restrict the payment of inducements in the case of the sale of high risk or highly complex products

  The existing rules concerning product governance and product disclosures are in place. Focus should be on enforcing these rules.

- Introduce a cap on the payment/receipt of inducements

  The title of this option refers to caps on **inducements,** but in the first sentence, EIOPA says introducing a cap "*would prevent the marketing of products with very high* ***distribution costs***". These are not synonyms, and the question immediately arises whether an "inducement cap" will guarantee that costs

higher up in the chain are reduced in order to leave a sufficient margin for the necessary coaching / advice by intermediaries?

EIOPA then refers to the IDD Delegated Regulation, saying a cap is synonymous with the proportionality concept according to which "*the value of the inducement paid or received in relation to the value of the product and the services provided*" should be considered. We do not agree. The current value assessment in the IDD is part of an **overall analysis** of factors which may increase or decrease the risk of detrimental impact on the quality of the relevant service to the customer, and will **depend on the specific situation**. The concept of a cap would most likely be applicable to all situations.

BIPAR does not support any forms of caps to costs or remuneration. They are disproportionate, unacceptable in a free economy and go against the very freedom of contract. As recognised by EIOPA, caps also have the risk of leading to price-alignment, which is generally not to the benefit of consumers. In an EU Single Market context such caps would also have unintended side effects and be very difficult to implement in practice.

- Further measures: enhancing existing Level 2 criteria relating to the payment/receipt of inducements

  EIOPA states in point 132 that "*EIOPA's advice on inducements, as part of its package of technical advice on the implementation of the IDD in February 2017, specified a set of criteria to be considered when assessing whether an inducement or inducement scheme "increased the risk" of exposure to a detrimental impact on the quality of the relevant service to the customer, but this was not carried over into the text of the Delegated Regulation . The effect of the current criteria (i.e. whether they increase or decrease risk) is left to the discretion of the distributor and the criteria are drafted in a principle-based manner whereby it would require clarification of supervisory expectations if they are to be effectively implemented with legal certainty in a common way across European markets."*
  Indeed, the assessment must be performed in terms of an **overall analysis** of factors which may increase or decrease the risk of detrimental impact on the quality of the relevant service to the customer (Art. 8 (2) sentence 2 IBIP Regulation)

  We believe that this "overall approach" taken in the final IBIP delegated Regulation is key. It is very important that when assessing inducements and "detrimental impact" or not, the delegated acts take into account the overall services that intermediaries offer. Indeed, the quality of an intermediary's service is intrinsically linked with the quality of a specific service provided to a particular customer. In fact, without a high overall level of quality, it is not possible to provide a high quality individual service.

4/ EIOPA draft advice to the commission- promoting an affordable and efficient sales process

EIOPA question

Q13. Where do you see the most significant overlaps lie between the demands and need test and suitability assessment and what can be done to address these overlaps?

BIPAR response

As underlined by EIOPA, while the assessment of suitability and appropriateness is only required for IBIPs, the demands and needs test applies to all insurance contracts.

BIPAR does not believe that there is, in reality, an overlap issue between the IDD demands and needs test and the IDD assessment of suitability and appropriateness as long as the demands and needs test results can be integrated in the suitability test (this is possibly a matter of supervisory proportionality). We need more time to study this in more detail but, in general, the demands and needs test in IBIPs and appropriateness and suitability test have a different function at different stages of the intermediation process. Instead of introducing "streamlined advice" the demands and needs in IBIPs could be considered as a kind of "pre-advice" phase.

Also, IBIP products, contrary to MIFID II products, include a protection element ("life" insurance). This is one of the elements which makes an IBIP product different from other products.

Any change that would impact the IDD demands and needs tests would have to be properly assessed.

In France, for example, according to the IDD implementation, in addition to the demands and needs test, it is required for the distribution of IBIPS products to check at least that the investment solution proposed by the professional is consistent with the client's financial situation; his/her investment objectives and his/her knowledge and experience in financial matters. In addition, it is not uncommon for criteria relating to risk tolerance and capacity for loss to be incorporated into the process, as will be the client's appetite for sustainable investments (see Delegated Regulation 2021/1257 of 21 April 2021, OJEU 2 August 2021).

EIOPA question

Q14. Do you see scope for streamlining the suitability assessment and in what way, could digitalisation be harnessed to make advice on IBIPs more affordable?

BIPAR response

Since the suitability assessment can't be left to digital or even AI-solutions, BIPAR sees more scope for streamlining the suitability assessment in a more proportionate application. For customers who have straightforward needs or demands or for customers who want a guaranteed insurance IBIP product (products with capital guarantee where the risk is transferred to the insurance company), the existing suitability assessment can be too burdensome and create frustration with the customer.

Instead of proposing a new concept of "streamlined" advice, the existing IDD demands and needs test could be considered as a kind of pre- advice "streamlining" the process, as a kind of early stage advice. It creates awareness with the clients.

More proportionality in the supervisory application in some Member States would be welcome but the principle of demands and needs in general is good.

EIOPA question

Q15. Do you see any specific risks for consumers in streamlining the advice process further?

BIPAR response

Streamlining the advice raises the potential issue of confusion between the target market resulting from product governance requirements and the personalised advice provided by the distributor to the client. However, we believe that a process that relies on IDD demands and needs test, on IDD POG requirements, with the provision of quality product disclosures, with the IDD assessment of the suitability and appropriateness by a distributor, gives a reliable distribution of products.

In some markets, intermediaries notice that often, the questions asked are not proportionate to the product that the client wants. This over-questioning can create the feeling of intrusion with the customer. The development of tools enhances the risk of over-questioning. This is why a more proportionate approach of the existing system is recommendable.

The debate about profiling is also a debate that needs a broader perspective in terms of privacy and rights of consumers regarding the use of their data.

Regarding the use of systems, the insurance market currently has plenty of tools which are used by intermediaries, advisors and distributors to streamline demands and needs or suitability. These are mostly used in a hybrid digi/human environment. There are digital tools in the market that can facilitate the gathering of information of the client. Those tools can help all distribution channels and not only automated advice players. Digital tools support the intermediary with his/her face-to-face contact towards the client. They don't replace the intermediary and his/her added value.

Robo "advice" can be useful for more "experienced investors" who do not want personal contact and have some knowledge of the market.

For the time being, without more details about the objectives and possible details on the possible introduction of "streamlined advice" on top of the demands and needs test and advice as defined in the IDD (with, in some Member States, already the distinction between independent advice and advice), we are, in principle, against it since it is leading to confusion. It seems to be a concept that is aimed ONLY at digital distribution. We stress again that it is key that the same rules and the same level of protection apply regardless of the channels of distribution.

EIOPA question

Q16. What is your view on possible demand-side solutions to facilitate the provision of affordable advice on the sale of IBIPs and support wealth management, such as financial guidance and what benefits could this bring?

BIPAR response:

The reasonable/affordable cost of advice is achieved giving the consumer the choice between different business models, the choice to remunerate the intermediary by way of commission or by way of fee or a combination of both, in a transparent way. This is achieved by the IDD.
It has to be reminded here again that the system of remuneration makes it possible to mutualise the cost of advice and, therefore, in the precontractual phase, to provide it free of charge to all, even if the product is not taken out. Moreover, it enables intermediaries to continue to advise the policyholder throughout the life of the contract without any specific additional cost.

Any other solution seems theoretical, even if we agree with EIOPA that financial education should be promoted.

In its paper, EIOPA explains that although it is a topic not addressed specifically in the Commission's Call for Advice, **more can clearly be done to enhance the level of financial education of consumers seeking to purchase IBIPs and to raise awareness about potential scams and significant cases of mis-selling**.

Solutions like financial guidance (the wording used can lead to confusion) would not be possible in all EU Member States.

The concept of financial planning advice is regulated in Belgium. Since in Belgium financial planning advice can only be given by regulated undertakings, it could not be seen as a solution for the provision of affordable advice on the sale of IBIPs and to reach a wider group of consumers. Not many consumers are willing (or able) to pay for this sort of planning.

5/ EIOPA draft advice to the Commission - Assessing the impact of complexity in the retail investment product market

EIOPA question

Q17. Do you agree with EIOPA's interpretation of complexity and cost efficiency in light of the changing market environment?

BIPAR comments

In principle, mass products should be simple to understand or at least their key features and rights and obligations should be clear. KID, POG rules are key in this respect. The positive impact of the POG should be tested, but it is possibly too early to measure its positive impact to its full extent.

Regarding value / cost, every step of the product and distribution should be cost-effective, that is why insurers work with insurance intermediaries, the latter having the advantage of focusing on the consumer and other clients, building processes which enables lower (and variable) cost distribution of IBIPs. Having a wide range of quality products, well documented, available in the market is key.

Training requirements are already well regulated in the IDD.

Regarding knowledge/experience of consumers, there are perhaps products that are (unnecessarily) too complex to be offered to retail investors (depending obviously on the level of knowledge of the retail investor) without assistance from intermediaries. But then the POG requirements should ensure that this is reflected in the product disclosure, or the supervisor should intervene. We wonder if the KID is leaving enough "flexibility" to describe specific "risk" or "protection" features of individual products.

On this issue, BIPAR can agree with the EIOPA draft technical advice and, in particular, the first 4 bullet points as these remedy the issue at the level where it should be remedied: at the product manufacturing and product disclosure level under POG. The current IDD POG rules allow for this.

The lack of financial education does not mean that the consumer has a lack of critical sense, but they may underestimate their future needs (see also EIOPA paper on pension tracking). Intermediaries help to create awareness in this respect.

Regarding caps, and as explained in the consultation paper, a cap on products' costs would be counterproductive and would have the effect of limiting the offers available to intermediaries to provide a suitable product to the client.

EIOPA question

Q18. Do you agree with EIOPA's assessment of the types of products and/or products features which could be considered simpler?

BIPAR response

There may be confusion between complexity and risk.

Does the KID leave enough flexibility to explain" certain features" which may make the product riskier or offer certain advantages?

To which extent does the current POG not allow for solutions in terms of complexity?

EIOPA question

Q19. How would you, as an external stakeholder, define simpler and cost-efficient products? Could you please provide concrete examples of products that you consider simpler and cost-efficient?

BIPAR response

Individual preferences, priorities and circumstances differ across consumers.
The essential questions that should be asked should be: Is the product sound and transparent and then does it fit for the target market? Are consumer disclosures clear?

EIOPA question

Q20. Do you consider, as an external stakeholder, that other measures could be more effective in ensuring cost efficiency? Examples of such measures could include amending the wording of the POG Delegated Regulation and state more clearly that, in the product testing, manufacturers should also assess whether costs may be too high and hence not to fit for any target market

BIPAR response

Product design and testing as per POG rules, intermediation, advice, distributors' continuous training, suitability test, appropriate precontractual disclosures and product monitoring already ensure a high level of consumer protection through the whole product life cycle, so there is no need to introduce further limitations to the product design and distribution. Supervisors have the power to deal with individual cases.

EIOPA question

Q21. Do you agree with the advantages and disadvantages of the different options proposed? Are there additional aspects which should be highlighted?

BIPAR response

See also Q 17

Product design and testing as per IDD POG rules, advice, distributors' continuous training, suitability test, appropriate precontractual disclosures and product monitoring ensure a very high level of consumer protection through the whole product life cycle, so there is no need to introduce further limitations to the product design and distribution.

The complexity of a product should be correlated with the POG requirements. As long as the target market is clearly defined, the risk of mis-selling is very limited. The IDD should be sufficient to remedy problems if they occur in certain markets, with the intervention of the supervisory authorities.

Moreover, national situations should be taken into account in this respect. Each Member State is able to take measures and regulate its level of requirements in relation to its population and the products offered on the national market.
In some markets such as France, for example, according to the French IDD implementation, insurance agents are required to carry out minimum due diligence, which already ensures the appropriateness of IBIPs (see Q. 13), which tends to prove that the IDD should be sufficient in this respect.

BIPAR does not agree with the two sub-options described in the EIOPA advice, nor with the third option, where complexity is linked to distribution / conduct requirements.

As affirmed in the EIOPA advice, complexity is different from risk. The sub-options in option 3 in 5.5 are very complex "regulatory" pseudo - solutions trying to "regulate" indirectly the offer/ demand of certain - complex- products by indirect measures and moving the burden (and responsibility) of managing complexity to intermediaries / distributors, depriving potential consumers from complex (but thanks to or due to the complexity) low-risk products.

The EIOPA advice gives examples of overly complex products but does not give an indication of their importance in the market and in which (national) markets they are on offer. The examples of interventions by supervisory authorities illustrate that the current regulatory framework offers tools to intervene where necessary or to reflect the risks related to the "complexity" in the KID or POG process.

With reference to para 177, BIPAR is of the opinion, as explained above, that complexity is an issue between manufacturers, product disclosures and supervisors. Here again the POG and its resulting disclosures in terms of target market and also the KID are relevant.

Lastly, although it is a topic not (enough) addressed specifically in the Commission's Call for Advice, more can clearly be done to enhance the level of consumers' financial education.