The European Federation of Insurance Intermediaries

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BIPAR Position

Retail Investment Strategy - A proposal for an Omnibus Directive amending the IDD, MiFID II, Solvency II, AIFMD and UCITS – Focus on IDD and on MIFID II

28 August 2023

Introductory comments

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 agents and brokers and financial intermediaries in Europe.

Besides some large multinationals, the insurance intermediation sector is composed of hundreds of thousands of SMEs and micro-type operators. It accounts for 0.7% of European GDP, and over 800 000 people are active in the sector. Insurance and financial intermediaries facilitate the insurance and financial process for several hundreds of millions of customers. The variety of business models, the high level of competition and the geographical spread in the sector ensure that everyone in Europe has easy access to competitive tailor-made insurance and financial services.

On 24 May 2023, the European Commission published its two proposals for the Retail Investment Strategy (RIS):

1. A proposal for an **Omnibus Directive** amending **the IDD, MiFID II, Solvency II, AIFMD and UCITS;**
2. A proposal for a Regulation amending the **PRIIPs** Regulation.

This position paper focuses on the Omnibus proposed Directive, and in particular on its proposed changes to the IDD and to MIFID II.

The objective, which is shared by BIPAR and its members, of the Omnibus proposed Directive, is to increase public participation in capital markets.

In this respect, BIPAR queries how many of these proposals will really assist in increasing participation in capital markets. BIPAR believes that ongoing discussions around methods of "inducements" to be at cross purposes with the idea of participation. The emphasis should be on what value the consumer derives from financial products and services. The method of payment is a matter for discussion between the provider, advisor/ intermediary and customer and it is imperative that a choice of payment method remains to safeguard the availability of competitive solicitation, advice and other intermediation services to consumers.

BIPAR also regrets and is **surprised (from a better regulation perspective) to note that the proposal also amends the general part of the IDD that is applicable to all insurance products, including non-life and (pure risk) life products**.

While BIPAR understands the objectives of some of the proposed changes to the general part (example: financial education of consumers, the proposed digitalisation of pre-contractual information, the proposal to widen the exemptions regarding information requirements for medium- sized clients), BPAR is of the opinion that most proposed changes are not acceptable because they are proposed without any impact assessment. Furthermore, this approach seems to go against the principles for the review of the IDD set out in Article 41, which provides for a specific procedure, including the publication of a series of reports by the European Commission and EIOPA.

With regard to **insurance-based investment products (IBIPs),** BIPAR has serious concerns about some of the provisions of the proposed directive. The proposal is obviously drafted from an investment perspective (MIFID II– clearly illustrated by wording referring to investments rather than IBIPs) and the specificities of the insurance-based investment products and its market structure (including distribution models) are not taken into account.

BIPAR believes that "inducements" are well regulated by MIFID II and IDD. Therefore, the RIS proposal should focus on the improvement of product and oversight governance rules (POG) and on cost and quality of product disclosures by manufacturers.

While the proposal does not introduce an overall ban on "inducements" – the proposed bans on inducements in respect of independent advice on IBIPs and non-advised sales on IBIPs - the proposed rules, scattered across various articles are so complex that they could ultimately lead to commission-based practices being abandoned to the detriment of retail investors, particularly the small ones. It is regrettable that the ultimate decision about if and when commissions are allowed is left to level II rules.
A ban on commissions would mean that consumers do not have the current transparent choice between various systems (fee or commissions or both). In the mid- term this will be to the detriment of all stakeholders and the entire European market. In the short term, it will result not only in an advice gap but also in a "nudging" or "solicitation" gap.

In the "pure investment" area, BIPAR groups associations of thousands of smaller and SME-size financial advisers and intermediaries who are daily and locally dealing with investors, many of these investors being small, private "consumers".
Most of the firms we represent are the link between the client and the final provider of a financial product. Many or most of MiFID II requirements are designed to apply higher up in the chain of activities but impact the client-intermediary relationship. The assistance of an intermediary, of a financial adviser, is of great value to investors. Intermediaries are also of great value to the economy and to the CMU. They "nudge" or "solicit" consumers in a highly regulated environment to think about their long-term savings and investments.

Most of the firms BIPAR represents in the MiFID II sphere are so-called "opt out firms".

■ BIPAR comments regarding changes to the IDD

BIPAR key messages

1. **The changes proposed by the RIS Omnibus Directive to the general part of the IDD (articles 1 till 26) have not been assessed in an Impact Assessment. They should be proposed in the framework of the upcoming IDD revision and NOT in the Omnibus proposed Directive.**
   In any case, an impact assessment on these proposed changes should be made and stakeholders consulted.

- The Omnibus proposed Directive introduces many significant changes to the IDD general chapters that apply to the distribution of all insurance products, including IBIPs but also non-life and life (ex: more than 15 articles are concerned, including new requirements re cross border activities which could be a real barrier for the development of SME trade in all sectors in the EU.). Even if some of these changes may be useful to clarify or correct some of the IDD provisions, they do not aim at improving citizens' participation in capital markets.
- We note that the impact of these proposed changes has not been assessed in the Impact Assessment that was published with the RIS proposals. Some proposed changes – including even level 2 texts - appear unrealistic and burdensome for the industry. There is for example no clear definition of what FOS (freedom of services) is in insurance intermediation. The new proposed requirements regarding cross-border activities will therefore be very difficult to apply in a harmonised way.
- BIPAR believes that changes to the IDD affecting non-life and life insurance should not be made in the framework of the RIS Omnibus proposed Directive. Those changes should be subject to an impact assessment or postponed until the general IDD revision.
- We note that according to the IDD (Article 41), the Commission had to review the Directive by 23 February 2021. The review has not taken place yet. It is expected to take place under the mandate of the next Commission (2024-2029).
  We therefore question the timing and the legal basis of those proposed changes and policy choice.

2. A European wide ban on the commission system is not the best way forward.

- It should be noted that while the RIS proposed Omnibus Directive does not introduce a total ban on inducements – which BIPAR welcomed - the proposed rules on remuneration of intermediaries, scattered across various articles, are so demanding and complex that they could ultimately lead to commission-based practices being abandoned to the detriment of all retail investors, particularly the small ones.
- The Omnibus Directive proposes a ban on inducements paid by manufacturers to insurance distributors in relation to non-advised sales of IBIPs and in relation to independent advice on IBIPs and introduces a new "best interest of the client" principle. BIPAR believes that these measures could have important disruptive consequences for the sector and consumers' access to investment and insurance protection. They may *de facto* lead in some cases to a quasi-ban of inducement, depriving investors of access to advice (advice gap) while also depriving many investors of financial products that are no longer available from financial intermediaries.
- BIPAR also believes that the proposed approach disproportionately focuses on inducements. It may lead clients to make the wrong choice, to prioritise the "cheapest" product over others that could potentially offer them greater value. This would be contrary to the client's best interest. The focus should be on product disclosures both in terms of quality, features and costs. The concept of value for money should also be considered in this broader perspective of what the value is for a specific client (for example security can be more important than return).
- BIPAR supports the co-existence of distribution models. It should be the choice of the parties, on a transparent basis, if the remuneration for work done is on a fee or a commission basis or on a combination of both. This will ensure that all consumers continue and have access to investment products and related advice and service.
- None of the independent studies illustrate a direct causal relationship between bans on commissions and consumer protection. Real market experience shows that consumers want a transparent choice between commissions and fees. Is restricting transparent and regulated choice between systems and services by consumers in line with free market principles? Would that be in the interest of the consumer? In the interest of the CMU?
- Since MiFID II and IDD, the rules in respect of inducements/commissions, conflicts of interest management and all other aspects related to intermediation are extremely strict and are strictly supervised by highly qualified supervisory authorities.
- The protection of retail investors is not only linked to the pure profitability of a product, but to the fact that it offers them a product that is adapted, balanced and, above all, that considers their requirements and needs, including their preferences in terms of sustainability, which do not always go in the direction of short-term profitability.
- The proposed text provides for a review clause enabling the Commission, only 3 years after the entry into force of the directive, to assess the effects of inducements paid by third parties and, if necessary, to propose legislative amendments to the European Parliament and the Council. Given the time required to transpose the proposed Omnibus directive and implement level II and III measures, the 3-year period is unrealistic, a source of legal uncertainty and in any case does not allow for enough time to assess the effects of the new requirements. Regulatory instability and uncertainty are not in the interest of consumer protection.
- We regret that commissions which are in most cases a way to remunerate intermediaries for work done (work that otherwise needs to be done by the provider) are defined as "inducements". This triggers a lack of nuance in the discussions on the issue. In this respect, the proposal also does not contain enough consideration of the competitive level playing field between distributors, direct writers and intermediaries, comparability of products on offer with service and without service.

3. **All costs which have an impact on the possible return of an investment should be made transparent in an understandable way**.

- BIPAR has been calling for this very simple principle for many years. We welcome the RIS proposal in this respect. We believe the proposal can be improved but we support its intention.
- For IBIPs, in general, less than 30 % of the IBIPs related costs are distribution costs and only a small fraction of these 30% are intermediation costs. In the case of commission, this fraction is even on a "no cure no cost basis". BIPAR would welcome the idea that the RIS require transparency about 70 to 90% of the other costs as well (other than intermediation/ distribution/ advice costs) and ensures at the same time that product features and qualities are better disclosed.
- Costs of comparable products should be comparable but not all products in the RIS scope are comparable and this factor needs to be studied carefully before imposing a "one size fits all approach".
- The cost (and features and characteristics) disclosure by manufacturers about their products is key. This needs further detailed attention in the legislative process also to ensure the level playing field between, for example, direct writers and intermediated products. Possible unlevel playing fields between non-regulated "investments" and those regulated in the RIS also need attention.
- Cost disclosure is not the only aspect that is important. Quality and features of the product are also important. IBIPs cannot be compared with pure investment products.

4. Some of the Omnibus proposed provisions are too complex, adding various extra layers of often mirroring requirements on all market participants, supervisors and consumers.

- According to the Impact Assessment, ESMA and EIOPA identified some problems in some markets. BIPAR believes that these problems in those markets could be solved by targeted individual supervisory intervention based on existing MiFID II and IDD or other EU existing rules. In any event, are all new requirements proposed in the RIS proposal necessary or efficient?
- At BIPAR we continue to be convinced that it is too early to adopt and implement new rules when the (positive) impact of the existing IDD and MiFID II rules and their related supervision has not been measured yet.
- Many requirements for manufacturers and producers are "mirroring" one another which double or triple costs and procedures to ensure the same "outcome". BIPAR wonders, for example, whether it would be more "cost efficient" (from all perspectives, including that of supervisory cost) to impose some of the requirements in the new proposed "best interest" test, at the level of the product manufacturing rather than imposing those at the distribution level?
- BIPAR queries in any event the efficiency of the proposed best interest test.
- The benchmark concept needs more careful examination. Regarding the proposed benchmark for the intermediation cost, we are of the opinion that it is contrary to the free-market principles and that the proposal would create a cost that is not proportional. The reporting and "verification" cost would be higher than the "benchmarked" remuneration itself. It would be inefficient to ask each intermediary to assess (or benchmark…) the cost efficiency of a product.
- The current national and European legal framework for pre-contractual information and transparency/display of costs is scattered across various regulations[1] and has become much more complex in recent years. Simplifying and rationalising all these provisions at RIS level could have been an opportunity and a means of harmonising at European level the information to consumers, who are currently confused by overly complex documentation that prevents them from effectively comparing offers that meet their requirements and needs. We regret that RIS does not even attempt to do this.

[1] MiFID 2 Directive 2014/65 of 15 May 2014, Delegated Regulation 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU as regards the organisational requirements and operating conditions applicable to investment firms and the definition of certain terms for the purposes of that Directive, European PRIIPs Regulation No. 1286/2014 of 26 November 2014 on key information documents-KIDs relating to insurance investment products, Directive 2016/97 of 20 January 2016-IDD

5. There are too many level II measures.

- BIPAR notes the (excessive) number of level II and III measures (delegated acts, technical regulatory standards (TRS), implementing standards (ITS), guidelines, etc.) introduced for the governance and distribution of IBIPs. It makes the regulatory framework more complex to the detriment of all retail investors and the industry.
- In addition, the excessive number of level II and III measures, particularly regarding distributor's remuneration (which is already detailed), makes it impossible to assess the impact of the RIS proposals on this major issue.
- Article 29b leaves the interpretation of the "appropriate range" to a level II decision while it is key for intermediaries to know what it means, and it triggers important consequences. To further illustrate the possible importance of the (non-assessed) impact of the delegated acts that are proposed, reference can also be made to article 30(6)(c) : The detailed description of the delegated act introduces a new concept that is not mentioned in any of the articles of the RIS, more specifically, it seems to give the powers to level II to draft a "standardized agreement" for the provision of services: *"the content and format of records and agreements for the provision of services to customers and of periodic reports to customers on the services provided."*
- It seems that such key issues should be dealt with at Level I and debated within the Council and the European Parliament, so that a genuine democratic debate can take place on these important questions.
- In addition, we wonder about the future of level II and III measures, delegated acts, guidelines, EIOPA guidelines etc. already adopted in the context of the IDD and whose current provisions/requirements cover the same areas as the proposed "omnibus" Directive[2]. In this respect, we believe that any existing redundant provisions/texts in the RIS should be deleted to avoid unnecessary administrative burden and costs.

6. The timeline for the implementation of the new requirements and the review of some is unrealistic.

- BIPAR believes that not enough consideration is given to the time needed by the industry to comply with the many level II measures and national provisions once published. They will trigger significant structural changes for the sector, in particular for SME intermediaries. At present, the transposition dates mentioned in the proposals are not realistic.
- We also note that the Omnibus proposal includes a review clause according to which, three years after the entry into force of the Directive, the Commission will assess the effects of third-party payments on retail investors, in view of potential conflicts of interest and as regards the availability of independent advice. BIPAR wonders about the value, interest, and feasibility of such review clause. Given the deadlines for national entry into force and application, such a short-term review clause would not allow the Commission to evaluate any impact of the relevant provisions. We also wonder why the scope of the review clause is so limited. A review must be done on the system as a whole and certain aspects individually cannot be measured.
- BIPAR wonders how the current IDD review procedures will interact with the RIS proposal reviews/revision. Will there be a revision of the RIS while the revision of the IDD overall is ongoing? Will there be again a change in rules for intermediaries in 2 years? Is this procedure in line with the better regulation principle?

[2] See e.g. Delegated Regulation 2017/2359 on information requirements and conduct of business rules applicable to the distribution of IBIPs, which contains a chap. II dedicated to conflicts of interest and inducements.

7. **BIPAR is concerned about the lack of clarity regarding the scope of some requirements.**

- The Omnibus proposal refers to customers and retail customers without giving any precise definition of these words. It is therefore not clear to which types of customers the requirements of the Omnibus proposed Directive apply. Certain articles (art.22-1 and 25) of the RIS exclude large risks and professional clients, but for the other provisions uncertainty remains over the exact scope of the requirements.
- Furthermore, in the RIS proposal, the words "customer[3] " and "retail customer[4] " are used randomly, as if they were two different categories, which further accentuates the lack of clarity as to the scope of the proposal.
- The proposal also wrongfully refers to “the independent advisor”. It is clear that it is not the advisor that is independent – it is the **advice** that can be provided on an **independent basis (or not – on a case-by-case basis)**. This should be corrected.

■ BIPAR comments regarding changes to MiFID II

BIPAR Key messages

At this stage, BIPAR wishes to emphasize the following key points.

- The proposal contains many mandates for level 2 and 3 rules, many of which should either be detailed at level 1 or should be left to the Member States (subsidiarity principle).
- It is unclear what happens with the currently already existing and numerous level 2 and 3 rules. Will these become automatically redundant? Why is this then not mentioned in the proposals? The effects of these indirect changes are not taken into consideration in the impact assessment. Every change in rules and procedures has a cost and creates an administrative burden. Is every proposed change really necessary?
  As an example, there are the ESMA Guidelines for the assessment of knowledge and competence or the MiFID II Delegated Directive 2017/593 with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, which includes further detail on the now removed “quality enhancement test”.
- The proposed changes to the articles that apply in an analogous way to opt-out firms need to be carefully assessed, as some of these new references are not logical.
- The benchmark concept needs more careful examination
- There should be no duplication of POG requirements for manufacturers and distributors. POG is an issue for the manufacturers. This is the most cost-efficient solution. Consumers, intermediaries, and advisors should be able to rely upon the POG process and on the product disclosures.
- Some of the requirements under the newly proposed “best interest” test should figure at the level of POG for the product manufacturing rather than imposing those at the distribution level. This would be more efficient from all perspectives (including the supervisory perspective)
- How are the newly introduced bans on inducements for non-advised sales combined with the payment for order flow ban in the parallel MiFIR/MiFID II review?
- A review is scheduled in 3 years after entry into force of the inducement rules. What is the value, interest, and feasibility of such review clause?
- Regarding costs, the focus should now be on all costs, not on inducements.
- Regarding training, BIPAR is not in favour of the requirement at European level of a certificate. Whether or not the knowledge is proven by a certificate should be left to Member States. Regarding the 15h of CPD, Member States should be able to apply equivalence rules for intermediaries who cumulate IDD and MiFID licenses (in IDD there are already clear rules for knowledge and training and continuous training). In order to ensure continuity, there should be a grandfathering principle.
- The proposal wrongfully refers to “independent firm” – it should use the correct reference to “advice provided on an independent basis” instead.

[3] See art. 28, 29a (iii), 29d...
[4] See e.g. art. 23, 26a, 30...

BIPAR specific comments on key articles

Article 3 – Optional exemptions

BIPAR comments
With regard to the optional exemption, the RIS proposal brings changes to the articles that apply in an analogous way to opt-out firms. Some of these new references, however, are not logical.

For instance, the RIS proposal states that opt-out firms should comply analogously with article 16(6) and (7), but these 2 paragraphs have been deleted by the RIS proposals (see article 1.8 (b) of RIS).

Article 16.11b) which should now also be applied analogously to opt-out firms, regards the mandate for the Commission to develop delegated acts. Such an article does not seem to be an article that could be applied analogously to firms.

Article 16 a – Product governance requirements

BIPAR comments
The RIS proposal introduces additional POG requirements, also on firms who do not manufacture, but who offer or recommend investment products.

BIPAR believes that there should be no duplication of requirements for manufacturers and distributors.
The manufacturer has the data and should make an assessment whether the costs are proportionate. This should not be duplicated by the distributor, who in any case depends on the manufacturer to have access to information which makes such an assessment possible.
In particular point 4 and point 6 of the articles (and recital 16) where a distributor is required to repeat the pricing process and where the distributor has to report data on the product and all costs when the manufacturer is not subject to the reporting obligation are not realistic and should be deleted.

The proposal introduces the concept of **benchmarks**.
The benchmark concept needs more careful examination. Regarding the proposed benchmark for distributors in point 9, we are of the opinion that it is contrary to the free-market principles and that the proposal would create a cost that is not proportional. The reporting and "verification" cost would be higher than the "benchmarked" remuneration itself. It would be inefficient to ask each intermediary to assess (or benchmark…) the cost efficiency of a product.

Article 24 – General principles and information to clients

BIPAR comments
The RIS proposal introduces a "best interest" test, replacing the "quality enhancement" test. BIPAR believes that points b) and c) belong in the manufacturer POG process, not in a "best interest test" for distributors providing advice to retail clients. Indeed, it would be more "cost efficient" (from all perspectives, including that of supervisory cost) to impose the requirements in the new proposed "best interest" test, at the level of the product manufacturing rather than imposing those at the distribution level.

According to point b), the professional has to recommend the most cost-efficient financial instruments among financial instruments identified as suitable to the client (...) and offering similar features. We interpret this as that the professional has to recommend the product with the least charges, which could lead to a biased advice.
According to point c), the professional has to recommend, among the range of financial instruments identified as suitable to the client, a product or products without additional features that are not necessary to the achievement of the client's investment objectives and that give rise to extra costs.

Such products without additional features that are not necessary to the achievement of the client's investment objectives and that give rise to extra costs, could be interpreted as being passive management products,

therefore ETFs.
However, ETFs are not necessarily the most suitable products for all clients. In addition, a generalized use of ETFs would favour non-European financial players who dominate this market and would pose a problem in terms of sovereignty (the first five actors who represent 80% of global passive management assets are American and the European champion, Amundi, only 2%).
If the Commission's project is to develop the European companies, they must have access to the market. However, small and mid cap ETFs will not finance small companies that are not part of the index.

In article 24-point 7a, the proposal introduces a new type of independent advice. This is referred to as "standard independent investment advice". BIPAR does not support this wording. It is confusing and not applying a full suitability test in the case of "simple" products is in contradiction with the rest of the philosophy of the Commission's RIS proposal. The product may be simple but therefore it is not suitable for the specific client.

New Article 24a – Inducements

BIPAR comments
The current ban on inducements in case the firm informs the client that independent advice is provided (and in case of portfolio management) remains, but an additional ban on inducements re. reception and transmission of orders or execution of orders is added ("non-advised sales").

How is this combined with the payment for order flow ban in the parallel MiFIR/MiFID II review?

A review is scheduled 3 years after entry into force, with regard to the inducement rules.
What is the value, interest and feasibility of such review clause? Given the deadlines for national entry into force and application, such a short-term review clause would not allow the Commission to evaluate any impact of the relevant provisions. We also wonder why the scope of the review clause is so limited. A review must be done on the system as a whole and certain aspects individually cannot be measured.
The reference point should at least be the application of the rules by MS.

Article 24b – Information on costs, associated charges and third-party payments

BIPAR comments
The focus should now be on all costs, not on inducements in particular. All costs (as a total) should be better disclosed (in combination with qualitative features of the product). Level playing field and comparability should be ensured. The required disclosures should be clear and brief. This should not result in another 5 pages of information.
Retail investors should be presented with clearer information on costs and product features.

Reference is made to the "average retail client". The average retail client is probably different in every Member State.

Article 24d – Professional requirements

BIPAR comments
The current ESMA guidelines are moved into a new annex V to MiFID II, and continuous professional development is added (15 h per year) and a training requirement re sustainable investment. A certificate is needed for all forms of training.
BIPAR is not in favor of the requirement at European level of a certificate. Whether or not the knowledge is proven by a certificate should be left to Member States.
With regard to the 15h of CPD, Member States should be able to apply equivalence rules for intermediaries who cumulate IDD and MiFID licenses (in IDD there are already clear rules for knowledge and training and continuous training). In order to ensure continuity, there should be a grandfathering principle.

Article 25 – Assessment of suitability and appropriateness and reporting to clients

BIPAR comments

Also in article 25 reference is made to the new type of "limited" independent advice and it is stated that there is no obligation to obtain information on the (potential) retail client's knowledge and experience about the considered financial instruments or investment services or on the retail client's existing portfolio composition.
Not applying a full suitability test in the case of "simple" products is in contradiction with the rest of the philosophy of the Commission's RIS proposal. The product may be simple but therefore it is not suitable for the specific client.

Moreover, it seems dangerous for retail clients to simplify the suitability test, even for a diversified portfolio of non-complex products. Indeed, these products do not offer any capital guarantee, and certain market conditions (for example, the "subprime" crisis or the Euro crisis) have shown that diversification can be ineffective in limiting the volatility of a portfolio, with all asset classes falling at the same time in the event of a loss of investor confidence in the financial system. The recommendation of a financial instrument with no capital guarantee must systematically be subject to an analysis of the client's situation.

The proposal also wrongfully refers here to "the independent firm". It is clear that it is not the firm that is independent – it is the **advice** that can be provided on an **independent basis**. This should be corrected.
Also in the recitals the word "independent advisor" is used and this should be corrected.

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BIPAR Position

Retail Investment Strategy - A proposal for an Regulation amending Regulation (EU) No 1286/2014 as regards the modernisation of the key information document

August 2023

Introductory comments

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 agents and brokers and financial intermediaries in Europe.

Besides some large multinationals, the insurance intermediation sector is composed of hundreds of thousands of SMEs and micro-type operators. It accounts for 0.7% of European GDP, and over one million people are active in the sector. Insurance and financial intermediaries facilitate the insurance and financial process for several hundreds of millions of customers. The variety of business models, the high level of competition and the geographical spread in the sector ensure that everyone in Europe has easy access to tailor-made insurance and financial services.

We have been following the PRIIPs file since the very beginning, have provided input to the various consultations and attended different hearings and workshops that have been organised by the European legislators and the ESAs.

BIPAR has, from the outset, agreed that for all products which include an investment risk, specific, proportional and relevant pre-contractual information should be available. However, we 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 mis-information of the retail investor.

The aim for real comparison was not achieved and insurance-based investment products currently can seem less “interesting” / more expensive at the moment compared to “pure investment products”.

BIPAR Key messages

At this stage, BIPAR wishes to emphasize the following key points:

- The current PRIIPs Regulation states that the KID should be accessible on “a website”, not “the website of the person advising or selling” as proposed now in Article 14 of the PRIIPs Regulation.
- This new requirement for persons selling/advising / intermediating/ distributing is not logical and not efficient. Distributors/ advisors/ sellers etc … would potentially have a very large number of KIDs which they would have to have on their website and keep updated. It should be the manufacturers’ responsibility to keep their KIDs (both current and historical) on their websites and then distributors/ intermediaries and advisors can, if they wish, put links on their own websites to these manufacturer’s websites. This approach also facilitates supervision and avoids confusion. We are therefore in favour of keeping the existing wording. If further specification is desired by the co-legislators, it should be the manufacturer’s website where the KIDs should remain accessible on (not the website of the person distributing / advising or selling).

- The current national and European legal framework for pre-contractual information and transparency/display of costs is scattered across various regulations[5] and has become much more complex in recent years. Simplifying and rationalising all these provisions at RIS level could have been an opportunity and a means of harmonising at European level the information to consumers, who are currently confused by overly complex documentation that prevents them from effectively comparing offers that meet their requirements and needs. We regret that RIS does not even attempt to do this.

[5] MiFID 2 Directive 2014/65 of 15 May 2014, Delegated Regulation 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU as regards the organisational requirements and operating conditions applicable to investment firms and the definition of certain terms for the purposes of that Directive, European PRIIPs Regulation No. 1286/2014 of 26 November 2014 on key information documents-KIDs relating to insurance investment products, Directive 2016/97 of 20 January 2016-IDD

Background

In the run-up to the RIS, BIPAR's overarching key points with respect to the RIS were as follows:
- the existing legislative framework is sufficient.
- insurance is not investment;
- need for regulatory stability, choice regarding remuneration/inducements/advice.
- BIPAR supports improved financial literacy.
- need for a level playing field (open finance / digital innovation).
- need for a broad study of consumer behavior and the influence of disclosures on consumer decision-making.
- regarding sustainable investment, intermediaries are willing to assist retail investors but need information from manufacturers.

BIPAR's Statement on the RIS proposals published on 24 May 2023

BIPAR and its members support the Capital Market Union (CMU) that aims to ensure that retail investors can take full advantage of the capital markets and to put capital markets at the service of people. Intermediaries, close to consumers, are key in realising these objectives.

After a first analysis of the proposed Omnibus Directive, BIPAR would like to highlight the following points:
- BIPAR welcomes that the proposal does not introduce an outright ban on inducements for the distribution of IBIPs (insurance-based investment products);
- However, the proposal includes complex provisions regarding product governance and advice for IBIPs.
- The proposal also introduces specific training and knowledge requirements for intermediaries distributing IBIPs and aims to improve the quality of information for pre-contractual and contractual requirements.
- The proposal raises issues for retail investors, in particular regarding their access to affordable financial products with an appropriate level of advice.
- The very important number of Level II measures (delegated Acts and RTS) may be a source of more complexity of the regulatory framework applicable to the distribution of IBIPs in Europe.

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

"We have trust in the existing recent and modern system. Although some problems have been identified in some Member States and for some products, the identification of a problem should not be the excuse to introduce new rules all over Europe. Rather than introducing a complex, expensive, revolutionary new set of rules, we are of the opinion that it would be more efficient, in terms of cost and legal certainty for all market parties, to use the existing regulatory/supervisory tools to address these issues".