BIPAR

February 2025

Retail Investment Strategy

Suggestions for simplification of the RIS based upon intermediaries' real market experience

BIPAR, the European Federation of Insurance Intermediaries (www.bipar.eu) represents 47 national associations in 31 countries, representing an estimated 700 000 insurance and financial intermediaries (agents, brokers and financial advisors) who are in direct contact and on a daily basis, with millions of consumers and investors (small or large, private or professional) around the EU.

The assistance of an intermediary is of great value to consumers. Intermediaries are also of great value to the economy and to the CMU and the SIU. They "nudge" or "solicit" consumers in a highly regulated environment to think about their risks and long-term savings and investments.

BIPAR and its national associations welcome the invitation by the EU and national legislators and regulators to propose suggestions to simplify the regulatory framework.

High level summary

In general terms BIPAR and its national associations call on the EU and national legislators and regulators to consider the following going forward:

- No more legal uncertainties for financial market participants and need for regulatory stability. Constantly changing rules undermine the trust of consumers and clients in the market. MiFID II and IDD regulate the conduct and procedures of intermediaries when in dialogue with their clients very strictly. They also give the supervisory authorities the powers to intervene where necessary.
- Reduce complexity and bureaucracy.
- Avoid information overload. Information should be relevant and adapted to the product specificities.
- Ensure phased and realistic implementation time.
- Focus should now be on ensuring that all existing rules are adhered to by all market participants. Product Oversight and Governance by manufacturers, well designed products and transparency of the relevant information are important in this respect.

We do not ask, in the short term, for simplification of the current existing EU regulatory framework (IDD and MiFID II) for intermediaries because "simplification" can be complex and can be costly and needs impact assessment. The exception to this is the recent series of rules in relation to sustainability.

We remain obviously at the disposal of the EU and national legislators and regulators for suggestions on how to simplify the existing rules in IDD and MiFID II and other horizontal rules applicable to our sector.

This paper focuses on the Retail Investment Strategy.

Key general messages for the RIS

On the basis of practical experience, we invite EU and national legislators and regulators to consider the following going forward in relation to the RIS:

- **Improve legal certainty and (thus) consumer trust in investment products, IBIPs, intermediaries and the market in general, by keeping the regulatory framework as stable as possible for the long term.**
  There is a need for regulatory stability in order to create more trust. Constantly (or often) changing rules undermine the legal certainty and thus the trust of consumers and clients (but also of intermediaries) in the market. Changing rules, even if the intention is "simplification" may be complex, create costs and legal uncertainty, for operators and are a barrier to competitiveness and innovation.

- **Give (much more) time for rules to become reality and trust supervisors to intervene**
  MiFID II and IDD already regulate strictly the conduct, processes and obligations of intermediaries when in dialogue with their clients. The rules also give the supervisory authorities the power to intervene where necessary. If there are gaps in the supervisory system, then these should be corrected, not by re-regulating the overall existing rules applicable to market parties, but by giving targeted extra powers and means to supervisors to supervise. Furthermore, intermediaries have professional liability if they make mistakes, and the market is highly competitive with many different players. Intermediaries have many incentives to do their job in a professional and consumer friendly way. The fact that in the EU so many consumers are having an extra pension income, are insured against losses and that business people develop their businesses is also thanks to intermediaries and insurers.

- **Ensure phased and realistic implementation time**
  The market and in particular intermediaries need a longer-term outlook of the regulations if they want to invest and innovate in their business. The world is uncertain, but stable regulation and longer-term objectives in combination with "staged" application objectives helps to make it less uncertain for entrepreneurs in our sector. Also, it helps to have a longer-term outlook. Also, it would help to avoid that level II or level III rules become public at a moment too close to the practical application moment. A five to 6 years or longer outlook would not only result in more proportionality but also in more competitiveness, credibility and better compliance.

- **Ensure that all existing rules are adhered to by all market participants (if necessary in a staged approach)**
  IDD and MiFID II are activity-based rules and can be applied, also, to "new" or innovating players. Even for the issue of "finfluencers", existing rules can be applied. Members of professional national associations are supported by their national associations in their processes to be compliant. Most intermediaries use technology in combination with face-to-face service, at local level, with local employees. Proportionality or simplification should not result in excluding certain operators from the scope but should result in leaving time to market parties in scope to deal with the many sectoral and horizontal rules that are imposed "at the same time" and often in a non-coordinated way, creating legal uncertainty for all parties involved.

- **There is no "European average"**
  "There are some problems in some market for some products" … was one of the main reasons to design RIS. Studies underpin (partly) this statement. But there is no European "average". If and where problems are identified then the supervisory system should intervene, but why should this be a reason to re-design the entire regulatory framework and burden those who do well? It means that the current existing system is capable of identifying problems … so it works … but perhaps supervisory powers do not allow to intervene even when the existing regulatory framework allows for it?

- **Product Oversight and Governance (POG) by manufacturers is key**
  If the products in the market go through the existing (but relatively new) POG procedure by manufacturers, few things can go wrong. Well-designed products and transparency in terms of product quality and overall cost are important. Re-evaluating what information is relevant and allowing for information that is in line with product-specific features is important in this respect. Again, supervision is important here because it allows for an adapted approach. The main role of intermediaries is "to match client demands and needs with appropriate existing products". This intermediation function is very strictly regulated in MiFID II and IDD, and we trust supervisors to supervise also the (relatively new) POG process by manufacturers. Intermediaries start from the assumption, under the current rules, that products on the market are designed and manufactured in compliance with the rules. It would be utterly inefficient to make intermediaries co-responsible for the design of the products. Intermediaries and consumers need to be able to trust and understand the disclosures of the PRIIPs KID and product information. Information should be relevant and adapted to the product specificities.

BIPAR suggestions for consideration by the RIS Trilogue negotiators

List of suggestions which will contribute to the simplification (and the objectives of the Savings and Investments Union) without a negative impact on consumer protection:

- **New "best interest test" instead of "no detrimental impact test" in IDD or "quality enhancement test" in MiFID II is unnecessary and is above all unclear.** The proposed tests result in the fact that 4 tests will have to be carried out before a consumer can invest in a regulated product proposed by a regulated intermediary.

- There are **too many "interpretations"** (17 references to level II and III for IDD) **left to level II and III** which in practice result in less implementation time, less legal certainty and (more) costs for the sector and the economy overall.

- **Ensure phased and realistic implementation time:** The Commission proposal to apply the new rules 18 months after the entry into force of the level I Directive is not realistic and is expensive. Using the level II publication date as a starting date as suggested by the Parliament, makes more sense - and can be combined with the 36 months proposed by the Council in order to have a more realistic timing for application (and less costs). This would also be better in line with proportionality principles.

- **RIS is about investment products/IBIPs – not about non-life insurance products!**

- **Remuneration or the so called "inducements" or third-party payments – there should be no bans, nor indirect bans via unworkable cumulative conditions for receiving or paying them**: The current IDD and MiFID II allow for different business models in the market and transparent supervised remuneration for work done by and value created by an intermediary. Bans would lead to an advice and "solicitation" gap.

- **The proposal for a new category of "limited" advice on an independent basis creates loopholes in consumer protection and creates confusion:** We are not in favour of creating a new, separate category of "light independent advice" and we therefore are in favour of the Parliament's deletion of this concept.

- **Continuous Professional Development of 15h/y is supported but with flexible content, no formalization of certificates, and MS possibility to recognize equivalence:** We support the IDD existing minimum 15h system managed at national level. This is a balanced and proportionate requirement. More than 15h (compulsory) would not be possible/workable for micro/SMEs intermediaries and would not be proportionate.

- **PRIIPs KID shouldn't be accessible on the "distributor" website**: It should be the manufacturers' responsibility to keep their KIDs up to date on their websites and then distributors/ intermediaries and advisors can make links on their own websites to these manufacturers' websites.

Annex
BIPAR list of burdensome requirements to be deleted /amended in the Commission, EP and Council texts

Insurance Distribution Directive (IDD) & MiFID II

Need for simplification by limiting RIS scope to IBIPs-part of IDD

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 (pure) life insurances. 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. The impact of these proposed changes has not been assessed in the Impact Assessment that was published with the RIS proposals.

We therefore propose considering withdrawing all the changes from the RIS proposal to the IDD general chapters that apply to the distribution of all insurance products, including IBIPs but also non-life and life.

Most of our comments concerning the IDD are also applicable in MiFID II concerning the inducements, the need for reduction of the level 2 and 3 measures, the simplification of the advice process and the need for simplification of reporting requirements regarding cross-border activities, POG and Benchmarks. See our comments related to MiFID II in the IDD part of this annex.

Need for simplification regarding record-keeping and reporting in case of inducements

For inducements, new **record keeping requirements** are introduced **and overarching principles** for inducements (ex: Council), for marketing communications and for the standardized warning issued for the suitability and appropriateness assessments (Council):

1. Comply with the **existing robust IDD requirements to identify, prevent, manage and disclose conflicts of interest.**

2. Comply with the **4 overarching principles, which introduce significant and unclear limitations** – line 751 of the 4-column text.

   The Council general overarching principles **must be respected at all times by intermediaries paying or receiving inducement to better mitigate conflicts of interest**. Intermediaries should be able to demonstrate to competent authorities that the overarching principles are taken into account and should explain in their inducement policy or procedures how they ensure that they comply with the overarching principles.

3. Comply with the **6 cumulative criteria** under the inducements test, which would make it even **more restrictive to sell a product under a commission-based system**. – line 754a of the 4-column text.

   The Council "inducements" test (for IDD and MiFID II) further clarifies the criteria for inducements (including inducement schemes) which are considered not to impair compliance with the duty of intermediaries to act honestly, fairly and professionally in accordance with the best interest of their clients.

Not all criteria could be relevant in both IDD and MiFID II in all circumstances. **If a criterion is not taken into account, this should be explained by the insurance intermediary to its competent authority.**

These criteria must be fulfilled on an ongoing basis as long as intermediaries continue to pay or accept or retain inducement.

The inducements test should, where applicable, be performed when setting up the inducement (including inducements schemes) between the payer and the receiver of the inducement and in case of changes to the existing inducement.

The inducements test should – where linked to a product - be part of the product approval process. The analysis of the inducement should in any case be performed before any payment has been made or received.

In case of ongoing inducements, firms must fulfil the requirements of the inducements test on an ongoing basis as long as they continue to pay or accept and retain the inducement.

4. Comply with the new criteria of the **new best interest test – Line 765 and following of the 4-column document.**

5. Comply with **additional bureaucracy**, for example by keeping internal list of all inducements and records of tests performed. Indeed, intermediaries must **keep a list of all inducements and keep records of the inducements test performed and the results of those tests for each inducement or inducement scheme) – Line 754a of the Council of the 4-column document.**

Need for reduction of the level 2 and 3 measures

A very high number of **empowerments** would be conferred to the EC and EIOPA/ESMA for new Level 2 and Level 3 measures (in the EC, EP and Council texts).

Need for simplification of training-related measures

The training requirements have been made more burdensome in the RIS proposals – Line 476 of the 4-column document and Annex III of RIS amending Annex 1 of the IDD.

- In Article 10 of the IDD, the EC proposes a requirement for a certificate proving continuous professional development. Training institutes and associations have, in function of national education systems, set up and developed at high cost, various systems over the last years. Changing now the rules or for example requiring a certificate would again create costs and administrative burden. This again would have an unnecessary impact on the competitiveness of the market. Having well-trained people is also a competition issue and market operators should have the possibility to train people to become experts in the fields the business plan of the operator focuses on.
- Annex I, part II (on IBIPs) has been amended and extended by RIS. The contents of the training requirements (annex) should be left as flexible as possible. Also, topics should be adaptable to needs in function of market and regulatory evolutions.
- BIPAR thinks that 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.

Need for simplification of reporting requirements regarding cross-border activities, POG, Value for Money / Benchmarks

On top of that, the **reporting requirements** are also increased for cross-border activities (Line 452 and following of the 4-column document), for the Product Oversight and Governance (POG) product approval process (Line 621 and following of the 4-column document) and Value for Money (VfM - see in particular line 633 and following of the 4-column document), for marketing communications and strategies…:

1. Article 9 (EP text) widens the scope of a) and c) and d) and e) requiring reporting on the scale and scope of insurance distribution in home and home MS (not only in host MS as proposed by the Commission). **The impact of the Commission proposed Article 9a has not been assessed in the Impact Assessment that was published with the RIS proposals.**

   The proposed reporting requirement would be administratively burdensome for no clear benefits. If Article 9a can't be deleted/withdrawn, the limitation of its scope is necessary (the Council text is the most workable. It also refers to 500 customers instead of 50). **We support better cross-border supervision and better cooperation between NCAs but we are wondering whether this new reporting requirement will improve this supervision.**

2. **Article 25.5 (EP text) (pricing process for distributors)**
   We question the very expensive and practically very confusing co-existence of the 2 procedures for manufacturers and distributors, since each of the parties will have to assess whether the total costs and expenses are justified and proportionate on the basis of the EIOPA benchmark. Why should intermediaries do this if both the manufacturers and the supervisors in principle should do this test? There should be no duplication by the distributor, who in any case depends on the manufacturer to have access to information which makes such an assessment possible.

3. **Article 25.6, 7, 8 and 9 (Commission and EP text):**
   EP amendments add to the provisions proposed by the Commission regarding a pricing process for distributors based on a mandatory EIOPA benchmark. We believe that the Commission and MEPs proposed provisions would be cumbersome to implement, especially for small intermediaries, with a risk of uniform upward pricing due to a restriction of competition.
   We also question the co-existence of the 2 procedures for manufacturers and distributors, since each of the parties will have to assess whether the total costs and expenses are justified and proportionate on the basis of the EIOPA benchmark.

Simplification of the "advice-process"

The **advice process** would become longer due to new requirements in the suitability assessment and a new best interest test, on top of the demands & needs test and sustainability preferences assessment. As a result, the advice process to buy an IBIP could last much longer and contain more than 14 pages of questionnaire. The EC has also introduced a new type of independent advice with a reduced suitability test.

1. Article 29 of the EC proposal (as of line 704 of the 4-colums document and in particular lines 712 and 783) for instance requires the intermediary when providing advice to take into account the existing portfolio diversification. Customers are not always willing to share this information. This new information requirement is burdensome, and we support its deletion by the European Parliament.

2. Article 30 (3) of the EC proposal introduces a new category of **"limited" advice on an independent basis (see lines 784 but also 711 of the 4- column document).** This creates loopholes in consumer protection and creates confusion. Such a concept in combination with all the other requirements would not be workable and could create distortion of competition and loopholes in consumer protection. It undermines the credibility of the framework, it undermines the level playing field, it complicates processes. On the other hand, the simple fact that proposal is made, seems to suggest that it is recognized that the proposals are imposing too heavy procedures overall. We are in favour of the Parliament's deletion of this concept.

Deletion of EP new rules for third country intermediaries

The EP has introduced **new rules for third country intermediaries** that are not proportionate nor legally correct and that do not cover retail cases but mainly (or even exclusively) commercial, industrial, or specialty lines insurances/ solutions. (Art 1 (6) IDD and line 416 a and following in the 4-column document).

The EP amendment deletes IDD Article 1.6.2 (the reference to the fact that IDD does not affect a Member State's law in respect of insurance and reinsurance distribution activities pursued by insurance and reinsurance undertakings or intermediaries established in a third country and operating in their territories).

It states that Member States shall require insurance intermediaries and reinsurance intermediaries registered in a third country to establish a branch in their territory and apply for registration.

In accordance with IDD, the conditions under which a third country insurance intermediary or insurer can or cannot operate in a member state/ third country or vice versa are national competence. The proposed amendment would require other changes to other articles in the IDD (and possibly Solvency II). Some parts of these amendments do not seem to be legally correct (and do not cover what they seem to want to cover, i.e. the use of their third country branch by EU intermediaries) and can lead to some serious confusion. These amendments also do not include the proportionality element the EIOPA Statement includes ("proportionate to the nature, scale and complexity of its business"). The business models that the amendment seems to try to cover are mainly (or even exclusively) used in commercial, industrial, or specialty lines insurances/ solutions.

Finally, the EP amendment creates "confusion" between private and public law. Its impact on liability both for insurance companies and intermediaries has not been assessed.

Simplification of disclosures

The number of warnings + **disclosures** are increased. In addition, the information consumers receive on a regular basis would also increase with the "new annual statement" (Article 29 – see line 721 of the 4-column document).

Simplification /consistency in terminology: "consumer"

Use of the word "consumer": In our opinion, art.2 should be amended to integrate a new definition regarding "consumer" for the IBIPs chapter. Indeed, the IBIPs part should refer to "consumer" as defined by the consumer rights Directive. The different texts that are on the table use a mix of the words: "customer", "retail customer", "investor", "retail investor", "consumer" with no precise definition of these words. This lack of precision will lead to legal uncertainty.

Limiting the scope of the text to "consumers" would also make it possible to remove the derogations proposed in certain articles for large risks and professional clients and thus to simplify the text.

Also, in MiFID II, the proposal wrongfully refers to **"independent firm"** – it should use the correct reference to "advice provided on an independent basis" instead.

Packaged Retail and Insurance-based Investment Products (PRIIPs)

Simplification need regarding accessibility of KIDs on distributor websites

In PRIIPs, the Commission proposal introduced a new requirement that the KID shall remain accessible on the website of the person advising or selling the PRIIPS.

This new requirement for persons selling/advising / intermediating/ distributing is not logical and not efficient. Distributors/ advisors/ sellers etc. potentially have a very large number of KIDs that they should thus have on their website and keep updated there. It should be the **manufacturers' responsibility to keep their KIDs up to date on their websites** and then distributors/ intermediaries and advisors can make links on their own websites to these manufacturers' websites. This approach also facilitates supervision and avoids confusion. We are therefore in favour of the Council's position.

Simplification need regarding ESMA's/EIOPA's online comparison tool

We are not convinced that the comparison tool, as further developed in the European Parliament's position, will be efficient. We do not support the EP addition that intermediaries/firms should promote its use and add this tool to their websites – this is a further addition of burden.