The European Federation of Insurance Intermediaries

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Retail Investment Strategy (RIS)

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General introductory comments

- MiFID II and IDD regulate the conduct, distribution, intermediation and Product Oversight and Governance (POG). F**ocus should be on product quality and product disclosures (via the existing POG rules).**
- It is not proportional nor economically efficient to impose new rules to an entire sector because **some problems with some products in some Member States** were identified.
- The RIS proposal should be tested, before the finalization of the trilogue, against **the new objectives of the Savings and Investment Union and the needs of the EU** economy in terms of growth and competitiveness.
- BIPAR continues to call upon lawmakers to simplify the rules, to apply in the RIS negotiations the simplification objectives of the current mandate. If not, the rules will decrease the participation of retail investors rather than increasing it.
- For example, the suitability test imposed on customers is already very complex in particular since the introduction of the sustainability rules.
- What is on the table for the negotiators may introduce extra and very complex best interest tests, inducement tests, and other. So not only the intermediary, but also the consumer will be burdened by extra complexity at the level of the consumer journey.
- The text should be high-level, ensuring that the diversity of situations and products in the EU are reflected.
- There are too many "interpretations" (17 references to level II and III) left to level II and III which in practice results in less implementation time, less legal certainty and (more) costs for the sector and the economy overall.

1) RIS is about investment products/IBIPs – not about non-life insurance products and intermediation (RIS proposed changes in 17 articles in the general chapter of the IDD without impact assessment)

The Retail Investment Strategy is about ensuring that retail savers become investors and therefore RIS should not result in changes which impact the non-life insurance market.

BIPAR opposes any **amendments to articles in the general part of the IDD (Chapter I to V) that apply to the distribution of all insurance products**, including IBIPs but **also non-life** insurance products. They do not aim at improving citizens' participation in capital markets. We believe that **changes to the IDD affecting non-life and (pure) life insurance distribution rules should not be made in the framework of the RIS** Omnibus Directive. At least those changes should be subject to an impact assessment before approval in Trilogue.

Changing regulation has a cost and is a barrier to competitiveness and innovation in the sector. Some of the proposed changes in RIS also impose heavy unnecessary administrative burden to

(SME) intermediaries who assist their clients (often also SMEs) in their cross-border business development.
In particular:
Training requirements: (art 10 IDD and line 476 in the 4 columns text)
Reporting requirements (art 9a in Commission RIS proposal and line 453 and following in the 4 columns trilogue text)

2) **Longer implementation and transposition period**

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 Parliament, makes more sense - and can be combined with the 36 months proposed by Council in order to have a more realistic timing for application (and less costs). This would also be better in line with proportionality principles.

3) **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** (See art 29a on inducements and line 750 and following in the trilogue document)

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.

BIPAR is opposed to the use of the term "inducement" to describe payment or remuneration to intermediaries for work carried out on behalf of consumers and insurers.
We consider the term pejorative to the Intermediary community. Dictionary definitions of inducement include bribe; incitement; lure; a thing that leads someone to do something. The use of this term in the European market does nothing to promote confidence in financial products or services which is crucial to achieve citizens' participation in capital markets. Indeed, the term may in fact serve as a deterrent in participation in CMU by promoting distrust in financial products and advice. A more appropriate term would be third party payments. (i.e. fees, commissions or any monetary or non-monetary benefits paid to or received by investment firms and insurance undertakings and intermediaries by or from persons other than the client or customer).

Focus should be on the **product costs and relevant disclosures** (on a level playing field basis) rather than on the retail intermediation costs (retail intermediation costs are well covered in IDD and MiFID II and are only a fraction of the overall cost).

If the RIS objective is to turn savers into investors in a consumer-focused way, then the (retail) intermediaries are possibly the best allies to this objective. On a "no cure no pay" basis they are the ones who – on the basis of an already highly regulated and supervised – process sit with the client to create awareness about risk and savings and investments – in a personalized (demands and needs/ appropriateness and suitability test based) conversation. Intermediaries create value and should not be considered as a cost.

If a ban on inducements when the customer is informed that advice is given on an independent basis would remain, it should be clear that being an **"independent profession"** is not confused with "**informing the customer that advice is provided on an independent basis".**

All rules in terms of remuneration/ inducements… should also be made applicable to Direct operators' marketing and distribution and publicity costs in order to avoid an unlevel playing field.

4) **Focus should be on product quality (POG) and on product disclosures**, while keeping the distribution rules as stable as possible.

Benchmarks
As intermediaries are not present in the product design process, there should not / cannot be any responsibility imposed on the intermediary for the manufacturing POG process or for the disclosures made by the manufacturers. This would lead to confusion and economic and legal and supervisory inefficiencies.

Value for money
We start from the assumption that every product that comes on the market has value for money via the POG process (see also EIOPA about Value for Money). Intermediaries must be able to rely on the product POG process and the disclosures they and the clients receive from manufacturers. The intermediaries' role is to match a product with the demands and needs of the client. All this is already regulated in the IDD and MiFID II. Supervisors should have time to supervise in a stable regulatory environment.

5) **New "best interest test" instead of "no detrimental impact test" 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. (to be compared with one-click investment offers available for all citizens …)**
We believe that it would be best to **keep the current wording** as in IDD and MiFID II respectively, that is to say the current system of "no detrimental impact" (IDD) and "quality enhancement" (MiFID II) which are much clearer than the new Commission proposal.
The concepts are very recent, changing again the existing concepts makes it unnecessarily complex and undermines credibility of rules. It would create legal uncertainty also for investors. Changing rules are a barrier to competitiveness and innovation.

Regarding the best interest test **requirement a)** on the assessment of an appropriate range of products, we believe that the Commission proposal could lead to the de facto exclusion of certain distribution business models (e.g. exclusive agents), We strongly support Council and EP amendments that prevent that situation to happen and believe the Parliament wording is clearer.

Regarding **requirement b)** on the most cost-efficient product, we believe that the Commission and the Council proposals are not realistic and adapted to insurance products. They both place too much emphasis on the cost while for IBIPs the product features are also important. The protection of retail investors is not only linked to the pure return of a product, but to the fact that it offers them a product that is adapted, balanced and, above all, that takes into account their requirements and needs, including their preferences in terms of sustainability, which do not always go in the direction of short-term profitability.

Regarding **requirement c**) on products without additional features that are not necessary to the achievement of the customer's objectives and that give rise to extra costs; as the Commission proposal was open to confusion, we fully support its deletion by Parliament and Council.

Regarding the Parliament's new **requirement ca)** not to place the financial or other interest of the insurance undertaking or insurance intermediary ahead of the interests of the client; this is already covered by the general principle in IDD + RIS (see article 29a) to act honestly, fairly and professionally in accordance with the best interest of the customer. The proposal is therefore superfluous/a duplication.

We do not support the addition by the Council of a **new "inducement test".** These principles are complex and burdensome and seem excessive when there already is a new "best interest test" or the currently existing "no detrimental impact" test.

Regarding the Parliament and Council's concept of "Peer Analysis", peer analyses are impossible and unrealistic for insurance intermediaries and potentially anti-competitive.

Regarding the Parliament's amendment that an intermediary upon request has to provide assessments to the competent authority, including the **justification and demonstration of the proportionality of costs and charges** of the IBIP: the product cost should be (and can in practice only be) the responsibility of the **manufacturer**. Intermediaries are not present in the POG process of an IBIP and have to be able to rely on the disclosures made by the insurer or manufacturer.

6) 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.
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.

7) Continuous Professional Development of 15h/y is supported but with flexible content, no formalisation of certificates, and MS possibility to recognise equivalence

We are in favour of Continuous Professional Development (CPD) and agree with 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.
The contents of the training requirements (annex) should be left as flexible as possible. It would not make sense that a specialist in marine insurance needs to follow CPD for car insurance. Also topics should be adaptable to needs in function of market and regulatory evolutions.

Member States should have the possibility to "recognize" that some modules in relation to CPD hours and systems in the framework of MiFID II investment intermediation as being equivalent to continuous training in the framework of IDD IBIPs and vice versa.

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.

8) Review Clause

BIPAR is in favour of the 5-year review clause as proposed by both the Parliament and Council. The revision or evaluation should be an **overall** evaluation and there should be sufficient time to ensure that measures are indeed reflected in reality. Any IDD revision before this review would be counterproductive.