Response to the European Commission consultation "Retail investment – new package of measures to increase consumer participation in capital markets"

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Executive summary

Insurance Europe supports the goal of the Retail Investment Strategy (RIS) to increase retail participation in financial markets, while protecting investors from unfair practices. Within a well-designed legislative framework, insurance-based investment products (IBIPs) are key to enabling consumers to invest with confidence in capital markets, access insurance protection and prepare for old age.

Insurance Europe welcomes the RIS effort to make the regulatory framework more digital, streamline consumer information, promote financial education, use consumer testing and preserve the IDD minimum harmonisation with options for member states to introduce further restrictions where appropriate for their market (eg, mandatory advice or a full ban on inducement).

However, the industry is concerned that **some of the RIS proposals would make it much more complicated for consumers to invest, discourage them from doing so or steer them to buy the cheapest, rather than the best, product.**

Insurance Europe sets out in the Annex a list of recommendations to improve the proposal, particularly on the following issues:

- The proposals entail **multiple bans on inducement**. New bans on commissions for execution-only sales, non-advised sales and independent advice are introduced, plus new problematic requirements for the payment of inducements for other advised sales. All these new measures run counter to the RIS goal of making investing more inclusive, as it will be difficult, or even impossible, for consumers to consider shopping around and to take investment decisions without having to pay an upfront fee.
- The use of **value for money benchmarks** focusing on costs and performance would be against the market freedom to design products and would lead to price controls and other unintended negative consequences. The industry's concerns are manifold: i) value encompasses more than just costs and

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returns (protection, ESG features, service, assistance, etc.); ii) it will be complex, if not impossible, to develop meaningful and practical pan-EU benchmarks, given the diversity of products and markets; iii) benchmarks will not be conductive to competition and innovation and will ultimately restrict consumer choice; and iv) it is not proportionate to impose additional burdens on all market participants to target a few outliers. Similarly, there is a risk that **Level 2 criteria to determine whether costs are justified and proportionate** would be another form of price regulation.

- Many provisions will make consumers' **investment journey longer and more burdensome**. Additional steps are added to the already long "suitability" and "appropriateness" tests. New processes and bureaucracy are introduced, and the reporting and record-keeping requirements are increased. This additional bureaucracy will discourage consumers from investing and will make financial services less cost-efficient, as compliance costs will increase.

- The combined effect of the new disclosure requirements, the "best interest" test and certain value for money provisions will be to **push consumers towards the cheapest product**, even if it means having fewer or no guarantees, lower insurance coverage and less flexibility, which may not be in their best interest. The current proposals often are not fit for insurance, use fund-oriented terminology (eg, market value, portfolio composition/diversification) and do not consider the diversity of insurance distribution systems and IBIPs' features.

- **More can be done to streamline disclosures and make them more user-friendly**. The Key Information Document (KID) needs to remain a standardised document and better display the insurance features.

- **Too many requirements would be developed at Levels 2 and 3** and removed from the political debate. To facilitate implementation, Level 1 needs to be sufficiently clear and leave some flexibility for national adaptations.

- The **unrealistic application dates** would create significant impediments to industry compliance.

Annex

On 24 May 2023, the European Commission published its proposed Retail Investment Strategy (RIS) package, which will introduce changes to the Insurance Distribution Directive (IDD), the Markets in Financial Instruments Directive (MiFID II), the Directive on the coordination of laws, regulations and administrative provisions relating to Undertakings for Collective Investment in Transferable Securities (UCITS), the Alternative Investment Fund Managers Directive (AIFMD), the Solvency II Directive and the Regulation on key information documents for Packaged Retail and Insurance-based Investment Products (PRIIPs Regulation).

RIS is a complex package aimed at addressing a multifaceted problem — the low level of retail investment in the EU. However, many new measures proposed in the RIS will not make it any easier for consumers to invest.

Insurance Europe outlines below some key messages and recommendations for improving the current proposals with respect to the proposed amendments to the IDD (p. 3) and the PRIIPs Regulation (p. 25).

RIS proposed amendments to the Insurance Distribution Directive (IDD)

Multiple bans on inducements, problematic requirements for the payment of inducements for other advised sales (Art. 29b) and new obligations for the suitability test (Art. 30.1)

Insurance Europe agrees with the EC's statement that an EU-wide ban on inducement would be too disruptive for capital markets and also believes that it would severely restrict consumers' access to advice and investment. The insurance market is primarily a supply, not a demand, market, and evidence shows[1] that very few consumers would be willing or able to pay an upfront fee to access advised or non-advised sales. Where advice is provided but commission is banned, the customer must pay for the advice in a different way (usually a specific fee or a subscription model or in instalments over a certain period).

As a result of the combined effect of the Commission's proposal, the payment of inducements will not be allowed for execution-only sales, non-advised sales with the appropriateness test, and sales provided with independent advice. This means that these kinds of transactions will not be accessible to consumers who are not willing or able to pay an upfront fee to cover the cost of the service. For example, in the UK, where a ban on inducements has been introduced, the FCA (Consumer Investments: Strategy and Feedback Statement, 2021) found that half of UK adults with £10 000 or more of investible assets (around 8.4 million people) did not receive any formal support to help them make investment decisions over the last 12 months (RDR/FAMR Evaluation). Moreover, only 8% of UK adults received financial advice. This result will be even more pronounced in domestic markets with low levels of investment/insurance awareness among consumers. For example, the Kantar study[2] found

[1] A KPMG study (KPMG, The future of advice, 2021) on financial services in Germany found that only 0.3% of respondents would be willing to pay the current average hourly fee of €180 for investment advice. Moreover, a Kantar Study (Kantar, Disclosure, inducements, and suitability rules for retail investors, 2022) supporting the EC's work on the Retail Investment Strategy proposal, found that only 42% of respondents would strongly or slightly agree to pay for financial advice *if it was affordable.*

[2] Kantar, Disclosure, inducements, and suitability rules for retail investors, 2022

that in markets where investments are not very developed and the markets are thus small, banning inducements could drastically impact the offer and have greater negative externalities for consumer.

In this respect, Insurance Europe would like to flag a statement within the Bocconi study requested by the ECON Committee of the European Parliament which states that *"concerning how substantial rules on inducements are currently drafted, and how they might be improved […] the impression that one gathers is that the discussion is somehow out-of-focus. Rather than simply concentrating on the alternatives between allowing or prohibiting inducements, what legislation should ultimately ensure is that investors are able to effectively understand and evaluate whether, in a certain context or transaction, they are indeed being provided with some kind of "support" for their investment decisions."*[3]

Overall, the proposed RIS measures would not make investing more accessible, as it will be difficult, or even impossible, for consumers to consider shopping around and to take investment decisions without having to pay an upfront fee.

Within the RIS proposals, the alternative option for consumers will be to ask for an advised sales process by a non-independent advisor as defined in the IDD, which will be subject to a new "best interest test" (Art. 29b) and will require the completion of a longer suitability test (Art. 30.1). The new criteria envisaged by the Commission for both tests are highly problematic for the reasons explained below.

A new "best interest test" when advice is provided (Art. 29b)

On top of the revised "suitability test", a new "best interest test" would be required for all advised sales with respect to IBIPs. The payment of commissions would only be allowed if the four cumulative criteria of the new "best interest test" are met: (a) assess an **appropriate range of IBIPs** and, where applicable, underlying investment assets; (b) recommend the most **cost-efficient product** from the range of suitable products; (c) present at least one alternative, **cheaper option without additional features** that are not necessary for achieving the customer's objectives and that give rise to extra costs; and (d) recommend an IBIP whose cover is consistent with the insurance **demands and needs** of the customer.

Art. 17 of the IDD already requires insurance distributors to always act in accordance with the best interest of the customer. However, the new criteria proposed by the Commission to define the "best interest test" are problematic.

First, the new criteria cannot be met by all insurance distributors. This is because insurance distributors might not have a sufficiently large range of IBIPs in their product catalogue to comply with the "best interest test" (Art. 29b(1) criterion (a)), as it requires assessment of an "appropriate range of IBIPs". This is the case for insurance agents or insurers' employees, small insurance companies and companies operating in smaller member states, distributors specialised in specific types of services/target markets and, in general, all those who prefer to offer a limited number of IBIPs as more cost-efficient (it should be considered that normally insurance distributors

[3] Filippo, A., Retail Investment Strategy – How to boost retail investors' participation in financial markets, publication for the Committee on Economic and Monetary Affairs, European Parliament, 2023

offer life products, non-life products, IBIPs and pensions — not just IBIPs). If they do not meet the criteria required for the "best interest" test, they would not be allowed to receive inducements.

On the supply side, the "appropriate range" requirement could represent a problem for the development of freedom of services (FoS) activities, as the entities entering new markets often do not start with a large range of similar products. The "appropriate range" requirement would also be an obstacle to the provision of tailor-made products by distributors who are specialised in specific types of clients or small target markets. Specialised insurers — often smaller and medium-sized insurance undertakings that provide tailored solutions for consumers of one target market — would be squeezed out of the market. Ultimately, the requirement would mean a massive intervention in the business strategy of insurance companies: either insurance undertakings would need to pay higher compliance costs to broaden their product range, or they would be limited in their distribution systems or they would run out of business.

For Insurance Europe, the "appropriate range of IBIPs" criterion would not bring any real benefit in terms of consumer protection, as there is no correlation between the size of the product catalogue and the quality of the product offered (ie., whether it meets the consumer's demands, needs and objectives and provides value to the consumer).

In addition, it is unclear what is meant by "appropriate range" (eg., scope, size and whether it is limited to the IBIPs available in the insurance distributor's product catalogue). The "Questions and Answers" (Q&A) published by the Commission with the proposal state that the conditions for offering an adequate range of products can also be met by tied agents, if the advice on an appropriate range of products is ensured through products from one manufacturer and clients are informed in line with applicable requirements. However, such a clarification would not have any legal value and would not solve all issues around the interpretation of "appropriate range".

Similarly, the Commission clarification in the explanatory memorandum of the RIS proposals (p. 16) "*In view of the diversity of the insurance distribution structures in the Member States, it should also not prevent insurance intermediaries that are not employed by or contractually tied to an insurance undertaking but receive inducements from presenting themselves as not contractually tied to a specific insurance undertaking*" helps understand what is intended by the proposed requirements on independent advice and preserve consumers' choice on the type of service they wish to receive.

It is also not clear whether the "best interest test" (Art. 29b(1)) criteria (b) and (c) — (b) recommend the most cost-efficient product from the range of suitable products, and (c) present at least one alternative, cheaper option without additional features that are not necessary for achieving the customer's objectives and that give rise to extra costs — would imply that distributors always need to have more than one suitable product in their portfolio (eg, different versions with different levels of costs, or no additional features).

Besides the remuneration aspect, the "best interest" test criteria are highly problematic as they would lead to recommending the **cheapest product** instead of the one that best meets the customer's demands and needs. This would be against the best interest of customers: the cheapest IBIP is not always the best choice for consumers, especially in an insurance context, as it will offer less protection, less assistance and fewer benefits

(for example, no financial guarantee or a lower level of guarantee, more restricted biometric risk covers, less flexibility, etc.). An excessive focus on costs comes with the risk that other aspects, inherent in IBIPs and important for consumers, are neglected. These aspects include, for example, security, quality of business processes, financial strength of the product provider or even sustainability aspects. In other words, the best interest of customers is broader than costs. It should be noted that the demands and needs assessment and a suitability test are already performed for IBIPs sold with advice, thus ensuring high levels of consumer protection.

Moreover, the "best interest" test criteria do not take into account the fact that **IBIPs serve different needs from pure investment funds and are sold via distribution systems that operate differently from those under MiFID**. Many insurance distributors are sole traders or employees, and they work on the basis of a contractual relationship with one company, so they can only sell the products manufactured by that company. However, the new requirements seem designed with wealth managers or similar service providers in mind, thus creating an unlevel playing field among different service providers. The new requirements would favour certain distribution channels over others and would increase concentration in the market, restricting consumers' ability to choose between different types of distributors and providers. This would not be in line with the RIS's stated goal.

The "best interest" test requirement also does not consider that a broader product catalogue leads to higher **compliance costs**, which are ultimately passed on to consumers. This would not be in line with the RIS's stated goal to make investment simpler and more accessible.

On top of that, several aspects are not clear in the proposal:

- The link between the cost-efficiency criteria in the "best interest" test and the value for money requirements in the product oversight and governance (POG) requirements. The value for money requirements will already ensure that the costs of the product are proportionate, taking into account the qualitative and quantitative characteristics of the product, with no need to apply an additional filter.
- What is considered as a "product" and what is considered as a "feature". Recital (6) mentions that features might include, for example, a capital guarantee. However, the existence of a capital guarantee is a core element of the value proposition of the product, and not just an additional feature. It should be taken into account that IBIPs are different from other financial products.
- The treatment of additional investments by consumers after the initial advice.
- How to deal with situations in which consumers are not willing or able to provide the information requested under the suitability test, and they do not intend to pay an upfront fee to buy the product without advice.

The empowerment to further develop the "best interest" test criteria at Level 2 is equally worrying, since this could become a means to further restrict the payment of inducements at EU level. The "best interest" test criteria would need to be clearly defined at Level 1 and not removed from the political debate. Moreover, the empowerment under Art. 29a(5) is too broad and could affect the interpretation of the general principle that applies to all insurance products under Art. 17. The existing empowerment in Art. 28(4) IDD sufficiently

addresses any issues of potential conflicts of interests. Additional empowerments would defer politically sensitive and controversial topics to Level 2 and undermine the principle of minimum harmonisation.

To conclude, the cumulative impact of the proposals would lead to a situation in which:

1. **Consumers who are not willing or able to pay an upfront fee would have less or no access to products and advice.** Overall, those consumers who are in most need of financial advice and access to products are generally the ones who are least able to afford to pay an upfront fee. There is a risk that consumers will rely on the misleading information that is available on social media and turn to high-risk, non-regulated products such as crypto-assets or that they will not invest at all and instead keep their savings in bank accounts. A lack of consumer access to professional advice by trained intermediaries would be against the stated goal of the RIS and might exacerbate the investment, protection and pension gap in Europe.

2. **Consumers are recommended to buy the cheapest IBIP, even if it provides less protection, less assistance and fewer benefits.** The cheaper solution is not necessarily the best one for consumers. What is more important is that any advice on IBIPs is consistent with the customer's demands and needs and that the product is suitable and appropriate. The demands and needs test under Art. 20(1) is unique to the insurance sector and ensures that the consumer's interests are appropriately identified. In addition, the suitability and appropriateness test under Art. 30(1) ensures that the recommended product meets those interests, in particular the consumer's financial situation. IBIPs that meet those requirements are in the best interest of the consumer.

A longer suitability test when advice is provided (Art. 30.1)

The new requirements under the "suitability test" cannot be met by all insurance distributors because insurance distributors cannot always assess the "composition of any existing portfolios" and "the need of portfolio diversification" of the client (Art. 30.1). Insurance distributors are qualified and licensed to manufacture and sell insurance products only. They have a high level of professional knowledge and skills, but without the respective business license, insurance distributors would not be allowed to provide advice on financial products other than IBIPs. So, they would not be able to complete the suitability test and proceed with the sale pursuant to the proposed requirements.

On the other hand, IBIPs sales require specific knowledge, qualifications and professional requirements, which financial distributors not licenced under the IDD do not have. Insurance-based investments serve different consumer demands and needs from pure investments; for example, they can provide guarantees, offer protection and provide contractual options. Moreover, the distribution of IBIPs require for a demands and needs assessment on top of the suitability test. Therefore, the new requirement does not seem appropriate in an insurance setting.

The "portfolio diversification" requirement seems to focus on investment products that are not IBIPs. IBIPs are often used for old-age provision, as well as death and disability cover, and contractual guarantees can be agreed. The capital is not invested on an individual level, but on a collective level in insurance coverage funds.

Only when advice is provided on an independent basis and is limited to well-diversified, non-complex and cost-efficient IBIPs, the RIS would not require to check customers' knowledge and experience and the composition of their portfolio. However, it is not clear whether the insurance distributor would still have to assess the need for any portfolio diversification. Moreover, this exemption seems restrictive since the vast majority of IBIPs might be considered complex products.

Therefore, the requirement that intermediaries or insurance undertakings must take into account the composition of any existing portfolios and the need for portfolio diversification when providing advice on insurance investment products should be deleted from the suitability test in all cases.

Recommendations

The IDD already includes a general principle to act in the best interest of the client, clear rules regulating the payment of inducements and a member-state option to restrict or prohibit the payment of inducements.

The following changes are needed to make the Commission's proposal work in practice:

- The new "suitability test" requirements to assess the "composition of any existing portfolios" **and "the need of portfolio diversification" of the client must be removed.**
- The "best interest test" conditions need to be revised:
  - Condition (a) needs to be deleted.
  - Condition (b) need to be rephrased to say "recommend the IBIP that best meets the demands and needs".
  - Condition (c) needs to be deleted. The focus should remain on the quality of the product and whether it is consistent with the customer's demands and needs, and this is already ensured under Art. 20(1) of the IDD.
  - Condition (d) is not problematic, but it is redundant with respect to Art. 20(1) of the IDD
- Delete the Level 2 empowerment to specify the "best interest criteria", since the conditions need to be clear in Level 1.

These changes will be important to ensure that consumers can have an access to IBIPs and can choose the distribution channel they prefer, maintaining a level playing field among all types of distributors.

A ban on inducements for non-advised sales (Art. 29a) under the new appropriateness test (Art. 30(2))

The RIS proposals prohibit the payment of inducement for non-advised sales without appropriateness test (so-called execution-only sales, which are permitted only for non-complex investment products and still require a demands and needs test under the IDD) and for non-advised sales with appropriateness test. While the use of execution-only is limited in insurance, non-advised sales under the appropriateness test can be carried out in those countries where advice is not mandatory for the sales of IBIPs. Therefore, non-advised sales under the appropriateness test are intended to serve the largest possible number of investors.

Non-advised sales under the appropriateness test are not just "an execution-only transaction of complex products" (as summarised in the Commission's FAQs accompanying the proposal). The distributor needs to collect information on the customer's knowledge and experience and assess whether the IBIP is appropriate. Based on the IDD requirements, the distributor also needs to perform the demands and needs assessment, provide the required information to consumers, etc.

This process would become even lengthier under the RIS proposals, as, on top of the current requirements, the distributor would also need to collect information on customers' ability to bear losses and their risk tolerance. The proposed burdensome process would make it more complicated for firms to offer digital sales based on the use of the appropriateness test and would entail higher costs for the distributor. Practical experience has shown that the length of distribution processes can form a hurdle to invest at all. Moreover, it is not to be expected that consumers who waive the possibility to receive advice (with suitability assessment), would be willing to provide such copious information. Thus, the appropriateness assessment should stay limited to the consumers knowledge and experience in the investment field.

A ban on inducements for non-advised sales with appropriateness test would make this type of service inaccessible or unaffordable, depriving those consumers who are not willing to pay an upfront fee from accessing this service.

Recommendations

- Do not ban inducements for non-advised sales (Art. 29a) with the appropriateness test.
- Maintain the member-state option to restrict or prohibit the payment of inducements.

Bans on inducements for independent advice and execution-only

Given the diversity of European markets, including distribution structures in individual countries, the impact of an EU-wide ban on inducement for independent advice or execution-only will vary greatly from one EU member state to another and will reduce consumers' access to insurance-based investment products in some markets. These EU-wide bans should therefore be reconsidered.

Value for money (Art. 25)

Ensuring the value for money of products is important for the industry. A proper value for money assessment requires a holistic approach that considers all the qualitative and quantitative features that bring value to the consumer, including the financial stability of the manufacturer, financial guarantees and other risk protection mechanisms, insurance covers, advice, assistance, access to certain asset classes such as alternative assets services, flexibility, sustainability features, etc. In this regard, the insurance sector welcomes the Commission's specification that, in relation to IBIPs, the pricing process would need to take into account the characteristics, objectives, strategy and performance of the product, as well as the guarantees and insurance coverage of biometric and other risks. "Value" encompasses more than just costs, it is subjective, and has different meanings for different consumers, depending on their life situation, goals and personal values.

However, the industry is concerned that the RIS proposal contains elements of price regulation that contradict the principles of the EU Single Market, which is based on competition and freedom to set prices. In a market economy, price is determined by supply and demand, not by regulators.

The proposals would instead introduce a profound regulation of the product pricing through "value for money benchmarks" and new criteria to assess whether costs are "justified and proportionate" to be defined in detail by the Commission at Level 2. Through the proposed provisions, the Commission would effectively replace the providers' discretion over product pricing. Such a far-reaching intervention in the freedom to conduct business (Art. 16 EU Charter of Fundamental Rights) is not justified. It should be noted that:

- Art. 52(1) of the EU Charter of Fundamental Rights requires that all limitations to fundamental rights are proportionate.
- Art. 181 and 182 of the Solvency II Directive respects insurers' freedom to set policy conditions and scales of premiums.
- Recital (8) of the IDD Delegated Regulation on POG clarifies that the POG requirement should not be understood as an interference with the manufacturers' freedom to set premiums or as a price control in any form.
- Art. 5 of the Treaty on European Union (TEU) on the subsidiarity principle specifies that European action should not be pursued unless it is more effective than action taken at national, regional or local level.

Supervisory authorities already have comprehensive powers under current law to identify and address bad practices in the market. The focus of product governance processes should continue to be on ensuring that products — including their costs — are suitable for their target market. Within this framework, pricing should remain the sole responsibility of manufacturers.

On a more granular level, the industry has serious concerns about the use of "value for money benchmarks" as proposed by the Commission in its Omnibus Directive and the proposed requirements for product manufacturers to perform additional testing and provide justification, where the cost and performance of the product deviates from the benchmark, as a pre-condition to selling the product. The use of benchmarks on costs and performance, as proposed by the Commission, is problematic for the following reasons:

- **The introduction of a benchmark is likely to result in price setting/regulation**, as any deviation from it would become burdensome for both manufacturers and distributors. Regulation should not result in a reduction in consumer choice but instead support the development of competitive and innovative products and services.
- **It will be very difficult, if not impossible, to develop meaningful pan-European benchmarks that will be practical to use for both market participants and NCAs**. First, they need to take into account the diversity of products in terms of:
    - Different risk classes
    - Recommended holding periods
    - Different levels of guarantees or capital protection mechanisms

- Biometric insurance
- Premium payment modality (single, ongoing)
- Advice
- Sustainability features
- Services
- Quality of assets
- Access to special investments such as alternative assets
- Quality of risk mitigation techniques
- Financial strength of the insurer
- Existence of an annuity phase etc.

- Second, they should appropriately account for the diversity of markets (eg, different costs of living, investment portfolios, types of client, remuneration systems, costs of capital, regulatory costs, distribution channels, fiscal advantages, etc. that cannot be quantified). This will be particularly challenging for multi-option products (MOPs), as they can invest in different combinations of funds. There is also a risk of an unlevel playing field based on the size of the product manufacturer; larger firms can benefit from higher economies of scale when investing in third-party funds, while the costs of investing would be higher for small companies.

- Since it is practically impossible to define benchmarks that take into account all of the above (non-exhaustive) features, the informative value of the benchmarks will always be limited. They could therefore serve at most as indicators for the supervisory authorities to identify products that require closer examination. It should be clarified at Level 1 that value for money indicators are only meant to help supervisors identify outliers in the market.

- If the purpose is to identify the few outliers in the market, it is not proportionate to impose additional requirements for testing, documentation, reporting and scrutiny on all market participants. Authorities can use other tools to monitor the market and deal with the identified outliers.

- It must be recognised that value encompasses more than just costs and returns (eg, biometric risk covers, financial guarantees, sustainability preferences, advice, assistance, services, etc.). The combined effect of the "value for money" test with benchmarks focusing on costs and performance, the "best interest" test with the "cost-efficiency" criteria and the multiplication of figures on costs will instead nudge consumers to buy the cheapest product, even if this product might not be the one that best meets their demands and needs; certain products could provide a particular added value to clients that would be difficult to quantify solely in purely numerical terms.

- In addition, it should be noted that conclusions derived from benchmarks could be distorted due to many factors — for example, if benchmarks are not sufficiently granular, if they do not consider reasonable timeframes or due to market fluctuations.

- Such a focus on costs also creates the risk of a "race to the bottom", therefore decreasing quality and variety of the products to comply with the benchmark; innovation will also be hampered since it often comes at a cost.
- Benchmarks would discourage the development of new and innovative products, due to the lack of historic price data or the over-reliance on old data.
- The experience with pan-European personal pension products (PEPPs) already shows that over-regulated products, characterised by unrealistic performance expectation and with strict caps on costs, do not work in practice. It has been possible to register PEPPs since 22 March 2022, following the publication of the PEPP Regulation in the Official Journal of the EU. However, to date, only a single provider is offering a PEPP in two versions in three countries.

Manufacturers would also need to **report** detailed information on performance, costs and charges, distribution costs and third-party payments, as well as other product features to NCAs, as a basis for EIOPA's work to develop and publish the common benchmarks on costs and performance. Data already available to EIOPA should be used for this, in order not to increase the reporting burdens for companies. For example, data can be extrapolated from the PRIIPs KIDs published by manufacturers and their Solvency II reporting; some authorities are already making use of technology to extract and aggregate such data in an efficient way.

Furthermore, there is the European Single Access Point (ESAP) project to create a platform for sharing product data (including KID data). The use of the ESAP could be sufficient for authorities to monitor the market and should be considered as an alternative to the collection of further data from manufacturers. It should be noted that, in March 2023, European Commission President Ursula von der Leyen announced that the Commission would "put forward concrete proposals to simplify reporting requirements and in fact to reduce them by 25%" in the autumn. In this spirit, **the RIS should not lead to an increase in the reporting burden** or the need to develop IT systems to comply with the new requirements which would ultimately lead to increased costs for insurance undertakings.

From a reputational perspective, companies that deviate from the benchmark published by EIOPA would be automatically perceived as "black sheep" even if their products are perfectly compliant, thus undermining consumers' trust and influencing their preferences, once more, in favour of cheaper products. If indicators are developed, they should therefore be for use by experts and should not be made publicly available, as there is a risk that indicators could be misinterpreted by consumers.

Meanwhile, **distributors** would be required to assess whether the "total costs and charges are justified and proportionate", including a comparison with the relevant benchmark. It is still not clear how this would work in practice. Furthermore, there is no need for distributors to repeat the value for money assessment if they do not add any further distribution cost to the total cost of the product, as it would be equivalent to asking them to duplicate the exercise already carried out by the manufacturer which will have no added value to consumers.

As for the **information to be made available to distributors** under the proposed Art. 25(3), the requirement is not clear. Insurance Europe is concerned that it might include commercially sensitive information about certain manufacturers' pricing decisions. Insurance Europe proposes not to remove the word "appropriate" in sub-

paragraph 2, which was deleted in the proposal. This would at least leave room and discretion for the product manufacturer to determine what information is useful to the distributor.

In Insurance Europe's view, if indicators are developed, they should be meant to support NCAs in identifying outliers in the market. This means that NCAs should be allowed a certain **flexibility** in the use of the indicators, for example to adapt the indicators or deviate from them in order to take into account market characteristics, supervisory experiences and practices.

Furthermore, the Commission would also be tasked under Art. 25(9)(b) with defining **new criteria to determine whether costs and charges are justified and proportionate**. In Insurance Europe's view, the introduction of criteria on whether costs are justified and proportionate would form the basis for a regulation of pricing at Level 2. The rules on POG should remain focused on ensuring the suitability of products for their target markets and there is no need to further clarify the criteria to assess whether costs and charges are justified and proportionate through more detailed Level 2 measures. It should be the role and responsibility of the manufacturer to assess whether the cost and charges of the product are in line with the demands and needs of the target market, for the reasons explained above.

Recommendations

- POG should continue to focus on ensuring the suitability of products for the objectives and needs of the target market. This includes the suitability of the product costs. Within these limits, however, the pricing decision should be left to manufacturers. The requirement that costs must be "justified and proportionate" with a mandate for the European Commission to specify the relevant criteria at Level 2 could result in the European Commission determining adequate prices for IBIPs.
- The approach to cost and performance benchmarks needs to be reviewed:
  - A risk-based approach is recommended, whereby those products that pose the greatest risk of consumer detriment are given supervisory priority.
  - To achieve this goal, it needs to be made clear that EIOPA would be tasked to develop "indicators" as supervisory tools to support NCAs in identifying outliers in the market, meaning products whose value for money requires further analysis by NCAs, in line with the existing approach of EIOPA's methodology on value for money (2022). Manufacturers would be required to duly document the pricing process, but without the additional burden of justifying *ex ante* any deviation from EIOPA's indicators.
  - EIOPA's indicators would need to consider both qualitative and quantitative aspects of products, be flexible and adaptable by NCAs to accommodate the diversity of products and markets across Europe.
  - It needs to be made clear that EIOPA and NCAs should make use as much as possible of existing data to avoid increasing reporting costs for insurers.
- It should be specified in Art. 25(3) that manufacturers will make available to distributors "appropriate" information, in line with the current IDD provisions.
- **The empowerment of the Commission to develop Level 2 criteria on how to assess whether costs and charges are justified and proportionate is not necessary and should be deleted**.

A longer and more burdensome consumer investment journey

The sales of IBIPs are already highly regulated in the IDD, with a requirement to obtain and assess a long list of information as part of the suitability test and sustainability preferences assessment, which apply to the advised sales of all types of IBIPs. On top of that, a demands and needs test is always required for all types of sales under the IDD. The completion of an advised sales process for a green IBIP already requires one and a half to two hours of consumers' time under the current IDD rules.

The proposal introduces additional requirements to the suitability test for advised sales (Art. 30(1)): an assessment of the consumer's "composition of existing portfolios" and the need for "portfolio diversification". A simplified, but still long, suitability test would be possible under certain conditions for "independent advice" only. While the IDD remains neutral and applies the same rules to the different distribution channels, the "simplified suitability test" for independent advisors will create an unlevel playing field.

On top of that, the "the best interest test" would need to be performed for all advised sales. Insurance Europe is concerned that the overwhelming volume of requirements adds complexity that may discourage consumer engagement in the investment process, as the suitability test would become lengthier (about three hours with the new requirements), more complex and more burdensome, thus contradicting one of the key objectives of the RIS which is to stimulate retail investors' participation in the capital markets. As mentioned above, practice shows that the lengthy sales and advisory processes can create a barrier to consumers investing at all.

At the same time, the proposal introduces additional requirements to the appropriateness test for non-advised sales (Art. 30(2)): collecting information on the consumer's ability "to bear full or partial losses" and their "risk tolerance". Non-advised sales are preferred by consumers looking for a short and simpler sales process. Under the new requirements, this will no longer be the case.

When distributing products with an appropriateness test, no personalised recommendation is given to the client, meaning that no advice is provided under the IDD definition. In this case, distributors can proceed with an appropriateness test to identify an appropriate product or appropriate products for the consumer. This means that more consumers have the opportunity to invest and to purchase appropriate products for old-age provision.

It is not obvious why these two core elements of advice should now also be included as mandatory components in sales with an appropriateness test without advice. Consumers who wish to have a comprehensive examination of whether a product corresponds to their financial situation and risk expectations have the possibility to receive advice. Therefore, we recommend the appropriateness assessment being limited to the current scope.

Moreover, it is unclear how the efforts of the new appropriateness assessment pursuant to Art. 30(2) IDD is to be remunerated in the future, as the payment of a commission would be only permissible upon strict conditions in sales with advice (see comments above). For both the suitability and the appropriateness tests, standardised explanations, warnings and (upon request) a report of the information collected would need to be provided to customers. If consumers do not want to receive full advice, for example because they cannot or are not willing to provide all the information, minimum legal requirements must still be met. These include, among others, the

ascertaining of the consumer's demands and needs, the provision and explanation of pre-contractual information or warnings and the provision of reports. The efforts to fulfil these legal requirements need to be remunerated and cannot be done for free. Limiting the possible ways of paying will ultimately result in less investment, which is against the intention of the RIS.

The level of bureaucracy will increase significantly throughout the whole value chain, with additional tests (eg, the "pricing process including benchmarking" with additional testing, assessment and justification if there is a deviation from the benchmark), more reporting (eg, detailed information on costs and charges, distribution costs and third-party payments, as well as other product features, as a basis for EIOPA's work to develop and publish the common benchmarks on costs and performance; cross-border activities) and record-keeping (eg, on marketing communications in relation to IBIPs, including marketing communications made by any third party remunerated or incentivised through non-monetary compensation). This increased red-tape will not make financial services more cost-efficient, but will instead have significant repercussions for consumers in terms of increased costs. There is also the risk that smaller companies and intermediaries might not cope with this burden and might have to reduce the quality of the service they provide or even disappear from the market. This reduced competition and choice would not be beneficial for consumers. It should also be noted that, in March, European Commission President Ursula von der Leyen announced that the European Commission would "put forward concrete proposals to simplify reporting requirements and in fact to reduce them by 25%" in the autumn. In this spirit, the RIS should not lead to an increase in the reporting burden.

Recommendations

- There is a need to ensure leaner, more streamlined and more cost-efficient sales processes, while preserving the interests of retail investors and making the information provided clearer and understandable to consumers.
- There is no need to change the existing requirements for the appropriateness test.
- The "best interest test" conditions need to be revised as set out above.
- The "suitability test" conditions need to be revised as set out above.

Disclosures in the IDD

Insurance Europe supports and acknowledges the work done by the Commission to move towards "digital-by-default" communication, as well as the effort to streamline disclosures with Solvency II and the newly introduced member state obligations on financial literacy, as more educated consumers can better understand the information received and ask the right questions, thus reducing the purported information asymmetry.

In addition, it is important that member states **promote the financial and insurance education of consumers with initiatives adapted to their different needs and age groups** to help them understand the information they receive and ask the right questions. In this respect, Insurance Europe welcomes the RIS proposal on financial education. This could build on the financial competence framework developed by the European Union together with the OECD. Similarly to the Mortgage Credit Directive (MCD) requirement under Art. 6, the Commission and/or the European Supervisory Authorities (ESAs) could also be required to collect and

publish information on the financial and insurance education initiatives available to consumers in the member states to make them more visible and accessible.

However, the RIS also introduces measures on disclosures that would make the consumer journey more tedious without any tangible benefits and would add to the existing 339 pieces of pre-contractual information received for a green IBIPs under the various applicable EU regulations.

The increasing number of technical disclosures and warning obligations depart from the stated goals of reducing information overload and encouraging consumers to invest. Besides, the proposed new warnings can make investing less appealing and are likely to discourage retail investors' participation in the capital markets.

A number of new EU information templates (the insurance product information document (IPID) for non-IBIPs life products, a standardised format for IBIPs pre-contractual information and the new annual statement for IBIPs) are proposed, even if experience from the PRIIPs KID has shown that standardised templates, content and terminology do not work well in practice — as demonstrated by the need for 14 batches of changes, continual Q&As, etc. — and appropriate solutions for non-IBIPs life products have already been developed at national level. A standardised IDD document for IBIPs is neither required nor feasible, as the information needs to be tailored to different types of products.

The new templates would need to be produced and delivered for a plethora of products, increasing the operational burden on insurance companies and intermediaries. It is unclear how the IBIPs pre-contractual information would be delivered in a "personalised form" (Art. 29(1)) but "standardised terminology and format" (Art. 29(4)).

The division of roles and responsibilities between manufacturers and distributors needs to remain clear: for example, under Art. 20(6) it needs to be specified that it is the responsibility of the manufacturer to draw up the IPID for non-IBIPs life products.

Certain pre-contractual and annual information proposals must be simplified to make them more user-friendly, focusing on what matters most to consumers:

Precontractual information on IBIPs (Art. 29)

Pre-contractual information should not be standardised for IBIPs in IDD. The purpose of a standardised information document is to provide consumers with key product information in a comparable form, to help them compare different products. This purpose is already addressed by the PRIIPs KID, which is standardised. In the PRIIPs KID, a compromise was intentionally made between comparability and comprehensibility, to help consumers compare products. The price for this compromise was immense: 14 batches of changes including a recent Level 2 review, long technical standards, continual Q&As, several delays, etc. Personalised information in the IDD must be tailored, accurate and understandable. Therefore, there is no need to repeat the PRIIPs experience nor to have a separate standardised EU document under the IDD in addition to the PRIIPs KID.

Furthermore, IBIPs markets are very heterogeneous in the EU. It is essential to maintain the principle of minimal harmonisation in the IDD. The information should fit national markets and specific products in order to be understandable to customers.

If further, personalised information is required in addition to the PRIIPs KID, it is sufficient to specify the relevant information at Level 1. As in the IDD and the Solvency II Directive, there is no need for further specification at Level 2.

Furthermore, the terminology should not be standardised at European level. The PRIIPs KID is the best example. In the German version of the PRIIPs KID, several terms are used that are not common and are even confusing: the PRIIPs term "Anlage" should be "Gesamtprämie", the PRIIPs term "Ziele", should be "Kapitalanlageziele", the PRIIPs term "Versicherungsprämie" should be "biometrische Risikoprämie".

Annual statement for IBIPs (Art. 29)

The Level 2 empowerment should be deleted for the same reasons as explained above for pre-contractual information. The annual statement should primarily provide consumers with information on how their product developed without any need for cross country comparisons between products. Heterogeneous IBIPs are shaped by national civil law (in Germany, for example, insurance investment products are strongly oriented towards old-age provision) and the language of the respective markets. Instead of delivering additional templates, Insurance Europe considers it preferable to provide information through documents that are already used by undertakings, such as documents already required under national law.

As to the detailed contents:

- In **letter a),** the requirement to disclose costs on a "compounded basis" should be deleted. If relevant, the information to be given to consumers is the costs over the last 12 months. In this regard, the existing wording of IDD in Art 29(1) should be retained: *"where applicable, such information shall be provided to the customer on a regular basis, at least annually, during the life cycle of the investment*". What is important for consumers is the total cost, with a breakdown upon request.
- In **letter b**), the past performance of underlying investment assets and the product over several years should not be included. Annual statements should only show one year of the development of a contract.
- In **letter c),** the granularity of tax disclosure is too great, customers will be overloaded with unnecessary information. Instead, taxes accrued by the insurance undertaking over the last 12 months which are charged to the customer in connection with the insurance-based investment product should be disclosed. The reference to "total" taxes should be deleted.
- In **letter e),** the wording is not appropriate for IBIPs, as it refers to "payments made" instead of focusing on the premiums agreed.
- In **letter f),** clarification that performance scenarios should be linked to the PRIIPs methodology is not needed on Level 1 as this is too technical, with a risk of inappropriate information. National regulators should decide how the performance scenarios are calculated.

Moreover, it would be extremely hard, or even impossible, to build systems and collect data to comply with the following requirements for MOPs with many underlying investment options:

- **Letter (b),** the annual performance of each of the underlying investment assets of the insurance-based investment product and the annual global performance of the portfolio, each compared with past performance over previous years.
- **Letter (f),** adjusted individual projections of the expected outcome at the end of the contractual or recommended holding period, based on the current value of the investment and its performance development so far and linked to the pre- contractual performance scenarios in the KID provided for in the PRIIPs Regulation, and a disclaimer that those projections may differ from the actual final value of the investment.
- **Letter (g),** information on the conditions and financial consequences of an early termination of the investment or switching of providers, including the surrender value and conditions for surrendering the insurance policy.

There is also a need to clarify that the new annual statement should be delivered only to new clients, while the regulation of the periodic information for existing clients should be left to members states. This is because certain historical data will not be available for contracts concluded before the entry into application of the new requirements. Moreover, a new annual statement for IBIPs will confuse existing clients, who have already received pre-contractual or annual information based on different indicators, a different terminology and a different methodology for the calculation of costs and performance.

Cost disclosures

Consumers should receive balanced information on products. Transparency about cost is important, but this should not distract consumers from other important information. Consumers need to receive meaningful, essential information on costs and not be confused by excessive details.

This is particularly important for the disclosures on costs and inducements, to make sure that the information is meaningful and understandable (see recommendation box). Consumers already receive up to 30 figures on costs in the PRIIPs KID. Under the RIS proposals, consumers will receive even more figures on costs with the new disclosure requirements in both the IDD and PRIIPs Regulation. This — together with the excessive focus on costs in the "best interest" test and value for money benchmarks — will be confusing for consumers and will push them to make decisions on the basis of the lowest costs (with no regard for the quality of the product), which might not be the best option for them (ie., less coverage, less protection, etc.).

Document for life insurance products other than IBIPs

The introduction of an IPID document for non-IBIPs life products is a positive example of concise, key information which can be provided to consumers pre-contractually.

However, the definition of the scope of Art. 20(5) and Art. 20(8a) of the IDD seems too broad and therefore it could also include products for which the IPID is not suitable. The IPID is designed to provide concise information

on pure risk life products (biometric insurance products). The chosen scope of "insurance products that are not insurance-based investment products" could unintentionally include other products, such as pension products.

For pension products, tailored information requirements have been defined at national level to take into account their specific characteristics. For IORPs, precontractual information is included in Art. 41 of the IORP II Directive. Consumers should continue receiving suitable information according to the existing law provisions. For these reasons, pension products were already exempted from the PRIIPs Regulation (Art. 2(2) PRIIPs Regulation) and the IDD rules for IBIPs (Art. 2(1)(17) IDD).

Regarding the content of the IPID for pure risk life products, letter d), the reference to the premiums for each benefit should be removed, since it is personalised information that is not compatible with the standardised nature of this pre-contractual document; in fact, there is no similar requirement in either the KID for PRIIPs or the IPID for non-life insurance. Letter j) referring to information on surrender value should be deleted, since it is not relevant for risk products. The general information on the tax applicable under letter l) could also be misleading due to the different tax regulations in force in member states.

In the design of this new standardised document, it is vital that the consumer's perspective is taken into account, offering relevant information for decision-making in a user-friendly and attractive way. It is essential that a broad "consumer testing" exercise is carried out, in which various formats and content options for this new IPID are tested with consumers from different EU countries, in different age groups and with different socio-economic profiles. In order to carry out this exercise effectively, a realistic timeline should be provided.

Recommendations

- Given the importance of consumer protection, any new disclosure requirement would need to be subject to appropriate and extensive consumer testing before it is introduced in order to ensure that the information provided is understandable and useful to consumers. Information should not be simply added, quality of information should prevail.
- The principle should be respected that the PRIIPs KID remains a highly standardised non-personalised document that enables comparison of different products while IDD pre-contractual information is more tailored. Therefore, the development of a standardised format with standardised content and standardised wording in delegated acts for the **pre-contractual information requirements** (Art. 29(1)) must be rejected. Due to the diversity of products and different national information obligations, only the minimum content should be regulated at EU level at Level 1. In terms of minimum contents, in line with the above comments on "portfolio diversification", the proposal under Art. 29(1)(a)(v) to inform consumers "how the recommended IBIPs take into account the diversification of the customer's portfolio" needs to be deleted.
- In line with the above, the development of a standardised format with standardised content and standardised wording in delegated acts for the **annual statements** (Art. 29(2) and Art. 29(3)) must be rejected. Due to the diversity of products and different national information obligations, only the minimum content should be regulated at EU Level on Level 1. The new annual statement for IBIPs should apply only to contracts sold after the entry into application of the new requirements, while the regulation of the periodic information for existing clients should be left to member states. In terms of minimum

contents, in letter a), the requirement to disclose costs on a "compounded basis" should be deleted; in letter b), the past performance of underlying investment assets and of the product over several years should not be included. The annual statement should only show one year of the development of a contract; in letter c), only taxes accrued by the insurance undertaking over the last 12 months which are charged to the customer in connection with the insurance-based investment product should be disclosed. The reference to "total" taxes should be deleted; in letter f), the reference to the PRIIPs performance scenario methodology should be deleted. Especially for MOPs, letter b), f) and g) should be reconsidered due to the practical implications noted above.

- There is a need to clarify that the **IPID document for non-IBIPs life products** should apply to life insurance products other than IBIPs, and other than life insurance products within the meaning of Art. 2(1)(17) from letter (c) to (e). In terms of contents: letter d), j) and l) of Art. 20(8a) should be removed. **Transparency** requirements should become simpler and be of high quality in order to avoid overloading consumers with information. For retail investment products, the commission an intermediary will receive should be disclosed to the customer, upon request, as a monetary figure or percentage. In line with the minimum harmonisation approach of the IDD, member states may maintain more stringent provisions, including additional restrictions as envisaged by Art. 22 and 29 IDD, where local conditions make it appropriate.
- In line with the Article 24b of MiFID proposal, if the **disclosure of any costs,** associated charges or third-party payments cannot be ascertained prior to the provision of the relevant investment or ancillary service, the method of calculating the amount shall be clearly disclosed to the client in a manner that is comprehensible, accurate and understandable for an average retail client. It is not always possible to disclose the precise amount of commission in euros or as a percentage at the point of sale. The level of commission to be paid can vary based on a variety of factors and while aspects such as the amount to be invested or the product chosen are known, other factors related to the distribution are not. For example, in certain cases it is not possible to provide complete information about inducements (in euros) in advance when distributing unit-linked insurance, because the compensation depends on the premium deposit, the amount of capital and which funds the customer ultimately chooses. Therefore, it is crucial that the information on the calculating method is disclosed in these circumstances under the IDD, as proposed in MiFID.
- The division of roles and responsibilities between manufacturers and distributors need to remain clear: for example, under Art. 20(6) it needs to be specified that it is the responsibility of the product manufacturer to draw up the IPID for non-IBIP life products.
- Similar to the proposed amendments to the PRIIPs Regulation, the option (yet not an obligation) to use layering of information should also be allowed in the IDD.

Timeline

Member states would need to adopt the national transposition measures within 12 months of the entry into force of the RIS Level 1, for an application within 18 months of entry into force, in the absence of the necessary Level 2 measures. It is important to note that the timeline is unrealistic and will make it impossible for both authorities and market participants to properly implement the new rules and requirements.

Insurance companies, especially small and medium-sized ones, need adequate time and sufficient legal clarity and certainty to implement the new requirements and adapt their infrastructure, IT and distribution processes.

In addition, the proposal includes a review clause three years from entry into force (Art. 29a(6)) to assess if the proposed measures addressed conflicts of interest or if there is a need to introduce an EU-wide ban on inducements. This would be too early for a proper assessment of the effect of the proposed measures, as well as too focused on a single element of the proposals, losing sight of the overall goal of the RIS. In this regard, the executive summary of EIOPA Report on the application of the IDD admits that even five years after its implementation it is too early to draw robust conclusions about the application.[4] Furthermore, according to the Explanatory Memorandum of the Omnibus Directive, the review should be undertaken three years after the transposition of the Directive.

In addition, it remains unclear on which basis (ie., indicators and methods) the Commission will decide whether to introduce more far-reaching measures - up to an outright ban on inducements. The indicators and methods must be laid down in the legislative text. Consumer testing in all countries of the EU and appropriate time for a stakeholder consultation should precede any revision of the legal framework. Both should be included in the legislative text as a precondition for the revision.

Recommendations

- Manufacturers need at least 12 months from the publication in the Official Journal of the EU of all the measures at Level 1 and 2 to be able to implement any required changes, given the significant compliance and operational effort required from the industry.
- As Level 3 measures are instrumental for the proper implementation of the proposals, they need to be available a year before the framework implementation deadline.
- A dynamic deadline in the Level 1 legislative text would be a practical solution to ensure that the timeline works for member states and insurance companies, and avoid the need of quick fixes.
- The effectiveness of the RIS should be reviewed as a minimum five years after the full implementation of the new requirements.
- The review should not be limited to the effects of third-party payments in view of potential conflicts of interest and the availability of independent advice, but should take into account the RIS effects on the overall level of retail investment in capital markets; the number of products and distributors in the market; the degree of innovation and competitiveness, consumer protection, etc. An appropriate timeframe for stakeholder consultation should be a legally binding precondition for the evaluation. Where applicable, based on the indicators chosen by legislators, consumer testing should also be carried out in all countries.
- In order to support a speedy implementation, Level 1 should be sufficiently clear and comprehensive and the number of Level 2 and Level 3 empowerments should be reduced.

[4] EIOPA, Report on the application of the Insurance Distribution Directive, 2022, p. 3

Other points of attention

Extensive empowerments for the development of Level 2 and Level 3 measures

About 20 new empowerments would be granted to EIOPA and the EC with many Level 2 and Level 3 measures to be developed at a later stage. This increases the legal uncertainty for market participants and does not allow an in-depth political debate on key aspects such as the approach to disclosures, value for money, etc. Furthermore, care needs to be taken not to exceed the limits of Art. 290 Treaty on the Functioning of the European Union (TFEU), according to which only "non-essential elements of the legislative act" may be delegated at Level 2.

Recommendations

- The Level 1 proposals need to be clear and comprehensive, and should not delegate key aspects to Level 2 and Level 3 as per Art.290 TFEU.
- Member states need to maintain a certain degree of flexibility in the application of the IDD to better take account of national characteristics.

Proportionality

The RIS proposals do not provide simplifications or incentives to increase consumers' access to investment and to reduce compliance costs. A better application of the "one in, one out" approach should be considered to ensure that regulation achieves benefits, is targeted, easy to comply with and does not add an unnecessary regulatory burden.

Also, the recent Commission communication on the Long-term competitiveness of the EU stressed the need to better assess the cumulative impact of policies, check the impacts of each proposal on competitiveness and innovation, and apply — wherever possible — regulatory models that incentivise rather than prescribe, and therefore reduce compliance costs while achieving the same results. Insurance Europe would like to propose a better use of the proportionality principle.

Marketing communications

New general requirements on marketing communications and practices could contribute to enhancing consumer trust through a clear allocation of responsibilities between manufacturers and distributors and greater supervisory attention.

However, these new requirements should not impose a disproportionate burden on insurance undertakings and intermediaries, for example through specific periodic reports to the management board or disproportionate record-keeping requirements.

The requirements relating to the preparation of annual reports to management bodies and the need to keep records containing information on all own IBIP marketing materials or own marketing materials disseminated by a third party for a period of five years (or seven years if requested by a supervisory authority) will be costly for insurance undertakings and intermediaries, as well as difficult to comply with, in particular in the case of

marketing material made available on the internet or through social media. This will significantly limit the possibility of advertising and presenting IBIP information to customers.

Therefore, the following changes are suggested:

- Paragraph 5 of Art. 26 could be removed or redrafted, replacing the reference to a specific annual report with a more general wording referring to the internal control system of insurance undertakings and intermediaries.
- Paragraph 7 should be redrafted without prescribing such granular information on the content of the records and without extending the record-keeping period beyond five years.

Moreover, the proposal mandates the Commission to specify in delegated acts the conditions under which marketing communications for IBIPs are fair, clear, not misleading, balanced and appropriate. Insurance Europe is concerned that it would be impossible to capture the diversity of marketing communications unless the delegated acts are extremely granular. Pan-European standardisation of marketing communications may be to the detriment of customers: communications must take into account the characteristics of the market and the level of customer education in a particular country. The insurance industry therefore believes that it would be better to leave the determination of whether individual communications comply with the aforementioned abstract principles to the civil courts, as is the case currently under the Unfair Commercial Practices Directive. The mandate for delegated acts on this point should, therefore, be deleted.

Proposed amendments to the general part of the IDD

The EC introduces changes to the general part of the IDD, which also applies to non-IBIP products. The new provisions include increased supervisory powers as well as the new IPID for non-IBIPs life products.

All the existing IPIDs for non-life products would also need to be updated to include a piece of information that is currently required under the Solvency II framework (the law applicable to the contract and competent jurisdiction) and sufficient lead-in time should be provided for the proper implementation of the proposed amendments.

As for the new provisions in Art. 5 on the breach of obligations when exercising the freedom to provide services, to avoid ambiguity, these need to specify what is meant by "obligations". If increased, the impact needs to be assessed in relation to the power of home NCAs to conduct continuous monitoring.

Art. 9a of the draft proposals introduces extensive reporting obligations for cross-border business. Bilateral exchanges between home and host supervisors are the most effective and secure way of exchanging information.

The information already available needs to be considered in order to avoid placing an additional burden on home and host supervisory exchanges.

In any event, cases in which the policyholder changes their place of residence after conclusion of the contract should not be covered. In such cases, there is no deliberate cross-border activity by the company.

Companies are already required to reveal if they are acting under the freedom of services or freedom of establishment. In order to avoid duplications, Article 9a could be deleted. At least, the reference to "insurance distribution activities" should be replaced by "cross-border activities under the freedom of services or freedom of establishment".

Moreover, the sharing of information about complaints is commercially sensitive and possibly restricted as it relates to individual policyholders. Enhanced information-sharing and the centralisation of information at EIOPA could give rise to issues of confidentiality and data protection.

As to Art. 10 on professional requirements, the RIS proposals should clarify that certificates obtained after completing an internal training are accepted.

In relation to Art. 12 on the enhanced powers of NCAs, the RIS proposals include new far-reaching tools that remain unclear. The new powers should not undermine the established and functioning system of home-country control. The powers related to first-time licensing and ongoing supervision rest with the home supervisor, with information exchange and collaboration with the host supervisor. Where there is more than one NCA in a country, NCAs are expected to collaborate closely (para 3). This needs to be carried out in an efficient way so as not to jeopardise home/ host relations. Home NCAs are at present responsible for centralising information and making it available. This system works well and there is no need to grant the host NCA additional powers to access the information.

With reference to Art. 12b on collaboration platforms, it is important to ensure consistency between the requirements under the IDD and other legislation (eg, Solvency II) where the concept of collaboration platforms is introduced. In the absence of harmonisation, different regimes might make the exchange of information more difficult. Mandatory collaboration platforms are unwelcome, as the nature of information collected under the IDD is specific to the policyholder and unsuitable for mass exchanges, as suggested by Collaboration Platforms.

Industry testing

EIOPA will develop guidelines on the electronic format (Art. 23(4)) and draft Regulatory Technical Standards (RTS) on standardised terminology and the format of the pre-contractual information and annual statement for IBIPs (Art. 29(4)) after consumer testing and unclear "industry testing". "Industry testing" is also proposed as part of EIOPA's work on RTS on value for money data to be reported by manufacturers (Art. 25(2a)).

Recommendations

- Any new proposal needs to be properly tested on the full range of different products to which it applies to ensure that it is workable, practical and meaningful. This is the role and responsibility of the NCAs.
- Stakeholder consultation and engagement are an integral part of the legislative process. However, the "industry testing" should not be interpreted as a possibility to delegate to market participants the burden to test whether the draft proposals work in practice.

Impact assessment

Finally, the impact assessment does not provide a robust basis for justifying the changes proposed by the Commission and reservations were raised by the Regulatory Scrutiny Board (RSB). The suggestion of the Board was to carry out a more in-depth economic analysis to assess the impacts on distribution, in particular the extent to which Member States will be affected differently. [5]

RIS proposed amendments to the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation

Insurance Europe welcomes the RIS proposed changes to the PRIIPs Regulation that would allow a digital-by-default provision of the Key Information Document (KID), the layering of information for product manufacturers who wish to use this approach and a better display of the insurance benefits in the "Product at a glance" dashboard.

However, the "Product at a glance" dashboard should also highlight the existence or lack of financial guarantees and other capital protection mechanisms to help consumers fully understand the benefits that products can offer.

Moreover, Insurance Europe welcomes the Commission's intention to exclude immediate annuities from the scope, in line with the ESAs' advice. However, the wording proposed by the Commission for this exemption is not fit for purpose.

The industry is also concerned about the requirements for Multi-Option Products (MOPs) which hinder the standardised nature of the PRIIPs KID and would make it too complex to offer these products.

Overall, it is crucial to maintain the standardised and concise nature of the PRIIPs KID since consumers are already overwhelmed with information. Product manufacturers would also need sufficient time to implement the changes.

Insurance Europe outlines below some recommendations to make the proposed changes to the PRIIPs KID work in practice.

Scope (Art. 2)

The proposal excludes "pension products, including immediate annuities without a redemption phase" from the scope of the PRIIPs Regulation. Insurance Europe has strongly advocated the exclusion of immediate annuities from the scope, since the PRIIPs KID is not relevant, and can be even misleading, for these kinds of products.

In their Technical Advice to the Commission, the ESAs recommended explicitly to exempt immediate annuities (which do not have an accumulation phase) from the scope of the PRIIPs Regulation (p.6).

[5] Regulatory Scrutiny Board, Opinion on Retail Investment Package, 2023

However, the wording used in the Commission's proposal is not clear and limits the applicability of the exemption: pension products are already excluded from the scope, while the wording "redemption phase" is not appropriate either for this type of product or for use in an insurance context.

Recommendation

- Art. 2(2)(h) needs to be reworded "(h) immediate annuities".

Multi-option products (MOPs) (Art. 6(3))

The Commission proposes a new requirement to always disclose "the costs of the PRIIP other than the costs for the investment option" of multi-option products (MOPs). The proposal also introduces three conditions for the provision of information for MOPs: (a) PRIIPs producers should provide investors with tools adapted to retail investors that facilitate research and comparison of investment options and costs; (b) retail investors should have easy access to the pre-contractual information documentation relating to the investment products backing the underlying investment options; and (c) PRIIPs producers should provide investors, upon their request and in reasonable time, with the complete costs of the PRIIP relating to this investment option.

It is vital to ensure that the RTS Art. 10(a) and 10(b) options for MOPs can still be used[6] and that the standardised nature of the PRIIPs KID is maintained.

The PRIIPs KID has been designed as a highly standardised document. Consumers are supposed to have a first impression of the product and be able to compare different products. The proposed changes on MOPs would make it individualised by forcing manufacturers to develop a tool where consumers can view KIDs based on different combinations of investment options. First, consumers receive individualised product information within the IDD. Second, the methodology in the PRIIPs KID, which follows the PRIIPs RTS, is not designed for individualised calculations. The methods used are based on highly sophisticated mathematical calculations that take hours of calculation time. Furthermore, new narratives would have to be generated in real time. Insurers should not be forced to generate real-time PRIIPs KIDs either on the website or during the advice process. The PRIIPs KID is not designed for this purpose.

It is also not clear how the new "Product at a glance" dashboard and "How environmentally sustainable is this product?" section would work for MOPs, which have many underlying investment options.

It is absolutely essential to avoid a situation in which it will become too complex and burdensome, or even impossible, to offer MOPs based on the new PRIIPs and IDD rules (eg, proposed annual statement and new rules on pre-contractual information, see above).

[6] PRIIPs Delegated Regulation Art. 10: *where a PRIIP offers a range of underlying investment options, and the information regarding those underlying investment options cannot be provided within a single, concise, stand-alone key information document, PRIIP manufacturers shall produce one of the following:*
(a) a key information document for each underlying investment option within the PRIIP, in accordance with Chapter I, including information about the PRIIP as a whole, with each key information document reflecting the case that the retail investor invests in one investment option only;
(b) a generic key information document describing the PRIIP in accordance with Chapter I, unless otherwise specified in Articles 11 to 14, including a description of where the specific information on each underlying investment option can be found.

Recommendations

- There is a need to ensure that the RTS Art. 10(a) and 10(b) options for MOPs can still be used and that the standardised nature of the PRIIPs KID is maintained. The PRIIPs KID should be kept as an abstract document that gives consumers a first impression of the product.
- The following changes are needed to make the proposal workable:
- For the cost disclosures of MOPs do not change the level 1 and keep using the current RTS : for MOPs using the current RTS Art. 10(a) option, a full KID can be drafted for each option; for MOPs using the current RTS Art. 10(b) option, the RTS have been recently revised also in relation to cost disclosures (see RTS Art. 13) and it would be too early to assess the need for further changes.
- Condition (a) needs to clarify that a static list or table would be sufficient to meet the requirement, without filtering or other mechanisms. It is worrying that the Commission's Impact Assessment would favour a burdensome "IT tool" which "would give dynamic 'real-time' information on costs" to retail investors without any estimate of the costs of such tool.
- Condition (b) needs to clarify that it is sufficient to state where more detailed pre-contractual documentation relating to the investment products backing the underlying investment options can be found (eg, through hyperlinks). 996245
- Condition (c) should be removed.

Structure of the Key Information Document (KID)

"Product at a glance" (Art. 8(3)aa)

The proposal introduces a new section entitled "Product at a glance" before the "What is this product?" section, providing information on the type of PRIIP, the summary risk indicator (SRI), the total cost, the recommended holding period (RHP) and whether the product offers insurance covers.

Insurance Europe strongly supports improving the display of the insurance benefits at the top/in the first layer of the PRIIPs KID and welcomes the Commission's proposal in this regard.

However, the existence or lack of a financial guarantee and other capital protection mechanisms should also be immediately identifiable in the "Product at a glance" dashboard.

Insurance Europe therefore recommends ensuring that the PRIIPs KID prominently displays not only the existence or lack of insurance covers, but also the existence or lack of financial guarantees, as these are key elements in informing consumers' choice and assisting customers in understanding the benefits offered by the product.

Furthermore, the KID is already a detailed and technical document; to ensure that the proposed dashboard adds value, it needs to highlight only the information that truly matters to consumers, without duplications and without increasing the KID's total number of figures/pages. The three-page limit needs to be maintained, given the importance of the KID being concise. Therefore, the addition of a dashboard warrants the deletion of some part of the existing KID document to maintain the three-page limit.

Recommendations

- Art. 8(3)aa point (v) needs to be reworded as follows:

(v) whether or not the PRIIP offers the insurance benefits referred to in point (c)(iv) and whether or not the PRIIP offers financial guarantees.

"How environmentally sustainable is this product" (Art. (8)(3)(ga))

The proposal introduces a new ESG dashboard for PRIIPs on which financial market participants are to disclose the precontractual information required by the Sustainable Finance Disclosures Regulation (SFDR) in order to highlight the following: (i) the minimum proportion of the investment of the PRIIP that is associated with economic activities that qualify as environmentally sustainable in accordance with Articles 5 and 6 of the Taxonomy Regulation, and (ii) the expected greenhouse gas (GHG) emission intensity associated with the PRIIP according to the SFDR RTS.

The proposal does not explain the rationale behind the choice of these indicators over others. The disclosure of the expected GHG emission intensity is more meaningful and better defined at entity level, rather than at product level. This means that the SFDR pre-contractual template is not so specific on the GHG emission intensity at product level and focuses instead on other aspects. Besides, the expected GHG emission intensity is not straightforward to calculate at product level and it would be difficult for consumers to understand this information and put it into perspective.

It is also not clear how the new sections would fit into the three-page limit of the PRIIPs KID, since the short "comprehension alert" part would be deleted, but the new "Product at a glance" dashboard and ESG dashboard would be added.

Recommendations

- Insurance Europe is concerned that the ESG dashboard will increase the information overload on consumers and will not bring tangible benefits, as disclosure templates are already prescribed under the SFDR.

Three-page limit

The three-page limit needs to be maintained, given the importance of the KID being concise. However, it is already difficult to fit into three pages, since most of the content is mandatory, and the Commission now proposes to add new sections.

It should be noted that insurance products have more information to include since they have to describe both the investment and the insurance elements. The same text in some languages is also longer than in others.

Recommendations

- It is essential to maintain the three-page limit since consumers are already overwhelmed with information.
- The "one in, one out" principle should be followed: if new sections are introduced in the KID, other less important elements should be deleted. For example, instead of up to 30 figures on costs, the KID should focus on what matters to consumers: the total costs at the end of the recommended holding period (RHP). At the same time, some information in the mandatory narratives is repetitive, for example the recommended holding period and the invested amount are repeated throughout the document.

Personalisation (Art. (14)(2)) and Art. 6(3) on MOPs

Insurance Europe would like to stress that the KID was designed with the clear aim of being a standardised document that is not personalised and allows comparison of different products. Therefore, it should not include personalised elements. The personalisation of the PRIIPs KID is presented as optional in the proposal, but there is a risk that the prescriptiveness and expectations of personalisation will increase over time, with major consequences for compliance costs, especially for smaller entities. Moreover, for non-linear products such as IBIPs the complex calculations for different underlying options would be a source of errors, which could not be imposed on manufacturers.

There are objective limits to turning what is necessarily generic information into a tailor-made tool, such as the coherence between the standardised KIDs published on the manufacturer's website and the tailored KID, the multiplication of KIDs and the compliance risks of keeping several personalised versions of the same KID updated.

Furthermore, the methodology in the RTS is not designed for personalisation. The methodology for the calculation of performance scenarios is based on highly sophisticated methods. The costs and the risk indicator are derived from this methodology.

Recommendations

- It is necessary to preserve the generic nature of the PRIIPs KID. The use of "an interactive tool that enables the retail investor to generate personalised KID upon certain conditions" should not be supported.

Timeline

The EC proposes an application date of 18 months after the entry into force. Given that the ESAs have 12 months to develop the RTS, that leaves the industry only six months for implementation. The very short timeline increases the risk of insufficient time for the development of Level 2 and Level 3 measures.

In fact, due to the unrealistic timeline, quick fixes to postpone the application of the PRIIPs provisions were necessary in the past. It is of the utmost importance to ensure that an appropriate deadline for application is made clear in Level 1.

Recommendations

- Manufacturers need at least 12 months from the publication in the Official Journal of the EU of all the measures at Level 1 and 2 to be able to implement any required changes, given the significant compliance and operational effort required.
- As Level 3 measures are instrumental for the proper implementation of the proposed measures, they need to be available a year before the framework implementation deadline.
- A dynamic deadline in the Level 1 legislative text would be a practical solution to ensure that the timeline works for member states and insurance companies.

Other points of attention:

Layering (Art. (14)(4))

The layering of the PRIIPs KID is provided as an option in the proposal. It is clearly mentioned that the dashboard referred to in Article 8(3), point (aa) should appear in the first layer.

However, it is not clear whether other information apart from the dashboard should be included in the first layer. If there is no clarification of which information might be moved to subsequent layers, there is a risk that providers will include all the information in the first layer in order not to "hide" anything.

Recommendations

- Art. 14(4) needs to be reworded as follows: the key information document may be presented in a layered format. In that case, the dashboard referred to in Article 8(3), point (aa) shall appear in the first layer. All the other information items can be moved to subsequent layers.
- The last sentence of 14(6) needs to be deleted as it is not clear what the point is of giving all the history of KIDs to the retail investor.

Revision of the KID (Art. 10(2)(b))

The new provision on the revision of the KID "distinguishing between PRIIPs that are still made available to retail investors and PRIIPs that are no longer made available" is not clear, and the potential implications of defining the concept of "made available" are not analysed in the EC impact assessment. The KID is a pre-contractual document. When a PRIIP is not actively marketed to retail investors, the updating of the KID should no longer be required.

Removal of the comprehension alert (Art. 8(3)(b))

The deletion of the "comprehension alert" part is welcomed. Instead, what is relevant from the customer's point of view is the level of risk of the products, which is indicated in the SRI.

Scope of changes

The new PRIIPs Regulation introduces several changes to the Level 1 text: scope, MOPs, dashboard, information on ESG features, digital by default, etc. For some of them, Level 2 changes are required.

However, the empowerment in Art. 8(5) for the ESAs to submit revised Level 2 is too general. A clarification is needed to restrict the Level 2 review to the targeted changes that are made necessary by the revised Level 1.

Impact assessment

Finally, the impact assessment does not provide a robust basis to justify the changes proposed by the Commission.

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out over €1 000bn annually — or €2.8bn a day — in claims, directly employ more than 920 000 people and invest over €10.6trn in the economy.