

# ANNEXES TO EIOPA'S CONSULTATION PAPER ON RETAIL INVESTOR PROTECTION

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## ANNEX I – TYPES OF INSURANCE CONTRACTS FALLING UNDER THE NOTION OF AN “INSURANCE-BASED INVESTMENT PRODUCT”

The classification of a contract as an IBIP will depend to some extent on how the legal provisions are interpreted<sup>1</sup>. However, life insurance contracts not only serve to cover biometric risks (longevity, mortality risk etc.), but frequently also contain an investment component, associated with risks and opportunities, which is intended to offer a value to policyholders both in the event of death and survival. Within the scope of the notion of an IBIP, are typically products such as:

- unit-linked or index-linked life insurance;
- whole of life insurance with profit participation used to reduce the maturity;
- endowment insurance with profit participation (regular premiums or single premium);
- deferred annuity insurance with profit participation;
- capital redemption products with participation features;
- traditional capital life insurance cover, and
- hybrid products.

N.B. Term life insurance contracts where the benefits provided by the contract are payable only in the event of death or disability due to an accident, such as term life insurance, are not covered under the definition of an IBIP. Personal pensions generally qualify as IBIPs under the definition and, therefore, are in scope. They are not in scope if personal pensions under national law are considered as “having the primary purpose of providing the investor with an income in retirement” according to Article 2(2) (e) of the PRIIPs Regulation.

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<sup>1</sup> The European Commission issued guidance in 2017 which states that manufacturers of retail investment and insurance products and persons advising on, or selling, those products to retail investors are responsible for assessing which products must comply with the provisions of the PRIIPs Regulation. This assessment must take into account, in particular, the specific economic features and contractual terms and conditions of each product ([Communication from the Commission – Guidelines on the application of Regulation \(EU\) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products \(PRIIPs\) Text with EEA relevance. \(europa.eu\)](#))

## ANNEX II – SUMMARY OF INPUT PROVIDED BY EIOPA'S INSURANCE AND REINSURANCE STAKEHOLDER GROUP TO AN INFORMAL FACT-FINDING EXERCISE

On 30 July 2021 after receiving the Commission's Call for Advice on Retail Investor Protection, EIOPA submitted an informal fact-finding survey to its [Insurance and Reinsurance Stakeholder Group \(IRSG\)](#) to gather some evidence for its work on the Call for Advice. EIOPA asked for input from IRSG Members by 24 September 2021 and the following is a summary of the input provided:

### ADDRESSING AND ENHANCING INVESTOR ENGAGEMENT WITH DISCLOSURES AND DRAWING OUT THE BENEFITS OF DIGITAL DISCLOSURES

EIOPA received the following input from its IRSG in relation to fact-finding on addressing and enhancing investor engagement with disclosures and drawing out the benefits of digital disclosures:

- Support for layering, focus on key product features, simple and direct language, icons and pictograms in layer 1.
- Electronic format by default, but on paper/printable upon request
- Mixed feedback on labels (industry representatives were not supportive of labels as this was considered an over-simplification of a consumer disclosure)
- As regards the potential for a differentiated approach to disclosure for particular products, IRSG Members mentioned that a differentiation per target market would be difficult to implement and it might be possible to differentiate on the content of the presentation, but not the content.
- Duplications across different disclosure requirements were identified - most noticeably, with regard to the information on the insurance undertaking's identity, duration of the contract, description of the underlying instruments, description of the surrender/cooling-off periods, description of risks, details of procedures for complaints and partially equivalent information on product benefits.
- Cost disclosure: Industry representatives were satisfied with the current level of detail and consistency between PRIIPs and IDD.

#### *More than a tick-the box exercise digitally*

- Consumer associations argued that a solution would be to require cooling off periods before signing a contract, where the consumer would be advised to check and compare other product offers in this period. In addition, websites could be required to signpost to full information on products from the start of the journey, as current disclosure is minimal on-line. There is 'terms and conditions' fatigue.

- Representatives of insurance undertakings and insurance intermediaries argued that there is no need for major changes, but disclosures should be technology-neutral. There was support for removing the current “paper by default” requirement in the IDD. Questions were raised as to whether a website could comply with the criterion of “durable medium”. It was stressed that different disclosure requirements for digital versus non-digital channels have to be avoided, but there needed to be, at the same, flexibility on the format of the disclosure.

*Use of comparison websites to support the “customer journey”*

- Representatives of insurance undertakings and insurance intermediaries argued that the promotion of comparison websites would create more risks for consumer as these led to consumers being too heavily focussed on the price of products without considering other elements such as deductibles and exclusions, and one association opposed the creation of a database with all IBIPs.
- A consumer association argued that comparison websites should be regulated and provide independent, reliable comparisons and another consumer association was in favour of NCAs providing their own non-commercial comparison websites or endorsing certain State-run websites such as Finansportalen in Norway<sup>2</sup>.

## ASSESSING THE RISKS AND OPPORTUNITIES PRESENTED BY NEW DIGITAL TOOLS & CHANNELS

EIOPA received the following input from its IRSG in relation to fact-finding on “assessing the risks and opportunities presented by new digital tools”. IRSG Members were asked a series of questions, for example, relating to:

- the current marketing, distribution and sales process for IBIPs in Europe and whether this should allow scope for an “open architecture”<sup>3</sup> model where open platforms can sell products of multiple insurers to reduce the potential for conflicts of interest and provide more individual choice and quality for the customer, as promoted by the CMU Action Plan
- whether, in the context of the distribution of IBIPs specifically, there would be any specific challenges to opening the “value chain” through sharing of investor data and whether there would any specific risks, opportunities or barriers with respect to retail investing arising from

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<sup>2</sup> <https://www.finansportalen.no/>

<sup>3</sup> By “open architecture”, this is understood as referring to a financial institution's ability to offer customers both proprietary and external products and services. The concept is more commonly used in the investment funds industry where investors can buy multiple funds from one broker and it can enable larger market penetration, help to accelerate financial inclusion and lower distribution costs. For example, it could provide greater options for customers when reaching out to a bank to buy insurance cover.

the increased availability of digital tools and the increasing levels of direct investor participation via online platforms

- whether they saw any need for additional clarification of the current regulatory framework/perimeter applying to online platforms and third party ownership of such platforms e.g. the extent to which an online platform selling IBIPs would be effectively captured under the scope of the IDD?

#### *Potential for growth of “open architecture” models*

As regards the potential for open architecture models to develop, some Industry representatives cited the need to ensure “same activities, same risks, same rules” and where platforms act as brokers, they should be governed by IDD rules.

There was some scepticism over making “open finance” compulsory. Sharing the data held by insurance undertakings with third party service providers could strengthen the role of intermediaries and aggregators and lead to an increase in distribution costs.

Industry representatives stressed the need for comparison websites and search engines rankings to be neutral, not influenced by payments of relevant suppliers, should not self-preference own products and not force suppliers into exclusivity arrangements.

Consumer representatives highlighted the need for the Distance Marketing of Financial Services Directive to be updated to ensure the proper regulation of marketing and advertising of investment products through online or digital media and platforms.

Risks specifically identified were the risk of data breaches, misuse of the customer’s personal data, ICT/cyber risks and API security risk (such as phishing or malware).

#### *Potential for opening up the value chain through sharing of investor data*

As regards the potential for further opening up the value chain through sharing of investor data, specific benefits identified were:

- For automated or semi-automated advice, this could facilitate the assessment of demands and needs, suitability and appropriateness-test for the products offered (see section of the CP below on “Promoting an affordable and efficient sales process”).
- Data-sharing should be consent-based and therefore, anonymised retail user data to refine product offers could be an acceptable example. Sharing this data with a third party would not be acceptable, however.
- In order to harness these benefits, there would need to be a change in existing legislation, which restricts insurance undertakings to the business of insurance and operations arising

directly therefrom, to the exclusion of all other commercial business (Article 18, Solvency II)

As regards risks related to the sharing of investor data, the following points were noted by IRSG Members:

- Mandatory data sharing of insurance related data could further increase the power of intermediary platforms. In addition, there was the risk of data being inaccurate/outdated and strengthening the role of BigTechs as gatekeepers between insurers and customers.
- Finally, a one-to-one approach of applying "open banking" as currently provided for in the second EU Payment Services Directive (PSD2) (of releasing data in a secure, standardised form, so that it can be shared more easily between authorised organisations online) to the insurance sector, was opposed.

#### TACKLING DAMAGING CONFLICTS OF INTEREST IN THE SALES PROCESS

EIOPA carried out informal evidence-gathering from its IRSG on "tackling damaging conflicts of interest in the sales process". IRSG Members were asked about topics such as:

- Which aspects concerning the payment/receipt of inducements relating to the distribution of IBIPs, had the potential to lead to the most detrimental outcomes for customers e.g. volume-override arrangements, churning etc.
- Conversely, if inducement arrangements were properly designed, were there any potential direct/indirect benefits for consumers e.g. encouraging consumer participation in financial markets and ensuring adequate supply/choice of products on the market
- The potential to address inducements, not just at the point of sale, but earlier in the product lifecycle, having in mind the outcomes of a previous thematic review carried out by EIOPA on monetary incentives and remuneration payments from asset managers to insurance undertakings in the unit-linked market, which illustrated the detrimental impact for policyholders arising from the flow of monetary incentives between asset managers and insurers at the product design phase
- Whether the current rules on inducements in the IDD were adequately calibrated to ensure that insurance distributors act in the best interests of their customers, or are any changes/additional regulatory levers were needed
- their views on the current lack of an EU-wide mandated concept of "independent advice" in the IDD and whether this inhibited the ability to tackle damaging conflicts of interest in the distribution of IBIPs

The outcome of the survey was generally a dichotomy of views between consumer and industry representatives, illustrating the polarising nature of the topic of inducements:

On the one hand, the risk of inducements leading to product bias and consumer detriment was emphasised and the fact that a ban could remove the negative impact of conflicts of interest on advice but it was acknowledged that it could be difficult to promote the take-up of such a ban. There was support for alignment with the MiFID II rules, considering that the current concept of “fair and personal” analysis was not sufficient and also for enhanced disclosure rules and applying the quality enhancement test to the payment/receipt of inducements.

On the other hand, the current rules applicable to inducements with a more principles-based approach was considered sufficient, as any restrictions might threaten the access to advice for lower volume investors. In addition, there was opposition to further alignment the corresponding provisions in MiFID II and little support for enhancing POG requirements further.

One area where there was a common position, however, was that robo-advice can also be influenced by inducements, algorithms might lead to increased bias. Lack of sophistication of most robo-advisors creates a significant barrier to trust for consumers.

#### PROMOTING AN AFFORDABLE AND EFFICIENT SALES PROCESS

Members of EIOPA's IRSG were asked a series of questions relating to the sales process for IBIPs in the informal fact-finding survey in particular about the following issues:

- The practices/activities during the manufacturing/distribution process that could have a detrimental impact on the quality of advice provided to customers;
- The parts of the suitability assessment considered to be disproportionate and leading to a tick-box exercise and scope for streamlining/calibrating the assessment to the age/experience of the customer through an initial filtering process, while at the same time not lowering the quality of advice;
- Use of any digital tools such as customer profiling tools that could be considered to simplify/streamline the “demands and needs” and suitability assessments to make them more affordable and efficient;
- Potential adaptation of current requirements relating to provision of advice in the IDD to better suit distribution of IBIPs through semi-automated/hybrid advice mechanisms, robo-advice or other digital technologies
- Whether better and more defined rules on target markets and target market definition could assist in simplifying the suitability assessment, whilst also limiting the potential for mis-selling.

EIOPA received the following input from an informal fact-finding exercise carried out amongst IRSG Members in relation to the “demands and needs” test and suitability assessment and the potential for making the advice process more efficient and affordable:

### *Streamlining the suitability assessment*

IRSG Members were asked for their views on the potential for further streamlining the suitability assessment. In particular, IRSG respondents highlighted the need to adjust the suitability assessment to take account of increasing digitalisation as currently the suitability statement cannot be provided on a website as stipulated by Article 23(5), IDD, but only on paper or another durable medium. BIPAR referred to the fact that the suitability assessment could be burdensome if the customer wanted a guaranteed insurance IBIP product or when the customer wanted to invest a small monthly premium

Some IRSG respondents suggested that it could be possible to streamline the suitability assessment for certain products based on the criteria of age, experience or some other factors or it could be possible to reuse personal data acquired from customers through initial fact-finding exercises and use this for the purpose of future suitability assessments regarding the same portfolio of products<sup>4</sup>.

### *Target market identification*

A consumer association noted the risk of potential financial exclusion of certain retail investor profiles that may occur from the definition of narrow target markets.

Insurance industry representatives in the IRSG also expressed a preference for a principles-based approach for the design of the manufacturing/distribution process to a detailed and very prescriptive rules-based approach and the possibility to re-use data in the suitability assessment. It was mentioned that, an advised context, investor might not be prepared to provide data on his/her whole portfolio to assess the suitability of a product but rather expects to discuss a product based on the product characteristics alone, i.e. closer to an appropriateness test.

Consumer representatives highlighted the need for provisions on record keeping related to how advice considered sustainability preferences, templates for suitability assessment of sustainability preferences and mandates to assess the advice market through mystery shopping exercises.

## ASSESSING THE IMPACT OF COMPLEXITY IN THE RETAIL INVESTMENT PRODUCT MARKET

EIOPA received also the following input from its IRSG on possible ways to facilitate the access of retail investors to simpler, cost-efficient, insurance-based investment products:

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<sup>4</sup> N.B. Article 17(3) of Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products, provides: "Where information required for the purposes of Article 30(1) or (2) of Directive (EU) 2016/97 has already been obtained pursuant to Article 20 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall not request it anew from the customer".



- The concept of a basic IBIP should be introduced and basic option products that are safe and suitable for any investors should be the default offer. There should be tiers of the same product with various premium levels and benefits and consumers can choose what they want;
- Mass marketed products should be simple to understand or at least key features and rights and obligations should be clear.

## ANNEX III – SUMMARY OF EXISTING LEGISLATIVE PROVISIONS FOR EACH SECTION OF THE CALL FOR ADVICE

### ADDRESSING AND ENHANCING INVESTOR ENGAGEMENT WITH DISCLOSURES AND DRAWING OUT THE BENEFITS OF DIGITAL DISCLOSURES

Both Chapter V and Chapter VII of the IDD contain disclosure requirements applicable to IBIPs:

- Chapter V of the IDD provides information requirements and conduct of business rules for all types of products, including IBIPs, while Chapter VI provides specific rules applicable to IBIPs.
- In Chapter V there are the following requirements:
  - Article 18 which provides general information provided by the insurance intermediary or insurance undertaking
  - Article 19 on conflict of interest and transparency for all insurance product
  - Article 23 related to conditions for providing information.
- The rules on disclosures included in Chapter VI are provided in:
  - Article 28 concerning conflict of interest and
  - Article 29 concerning additional information to be disclosed to customers, such as on costs & related charges
  - Article 30 concerning different types of reporting to customers
- The relevant elements of the PRIIPs Regulation are considered to be:
  - Article 6 (Section II) on form and content of the key information document (KID)
  - Article 7 on language requirements
  - Article 8 on the content of KID
  - Article 13 and Article 14 related to the provision of the key information document.
- Under Solvency II, additional disclosures are provided to consumers. The following disclosure requirements would need to be further assessed:
  - Article 185 - Information for policyholders

The Distance Marketing of Consumer Financial Services Directive (DMFSD) is relevant as a number of the provisions can be seen to overlap with insurance specific legislation, such as the IDD, including:

- Article 3 on the information provided prior to the conclusion of a contract;
- Article 5 on the means of communicating information (e.g. timing, medium)

The Directive on E-Commerce, including Article 5, provide for General Information to be provided.

## ASSESSING THE RISKS AND OPPORTUNITIES PRESENTED BY NEW DIGITAL TOOLS & CHANNELS

EIOPA has published a Q&A<sup>5</sup> regarding the extent to which digital platforms (which may be owned by third parties) are currently captured by the relevant regulatory framework. The Q&A indicates that, in the context of insurance distribution, *“the regulatory framework does not ultimately depend on the business model used for conducting those activities (e.g. via websites, platforms, walk-in shops, mobile applications, online or face-to-face activities) as the IDD is technologically-neutral. For example, using the digital environment for offering a service is comparable to using a phone or paper as a medium for an insurance distribution activity<sup>6</sup>”*. The NCA should *“determine on a case-by-case basis, depending on the activities performed using that particular business model, whether or not a provider should be identified and registered as an insurance intermediary or acts as an ancillary insurance intermediary”*.

EIOPA has also clarified that NCAs should *“take several aspects into account when determining whether the activities carried out by the third party provider could be identified as insurance distribution activities or, for example, if they fall outside the scope of the Directive in accordance with one of the scenarios set out in Article 2(2) of the IDD, if they are covered by the definition in Article 2(1) (1) of the IDD. These aspects are, for example:*

- *The question who does the marketing and “branding” of the insurance product, and the perception of the end customer with regard to this;*
- *Whether the third party significantly influences or engages in the performance of the key parts of the distribution process such as specifying the customer’s demands and needs, proposing an insurance cover, customers disclosures (incl. provision of IPID), POG obligations etc. or whether it designs the IT tool e.g. for demands and needs inquiry;*
- *Whether the third party provider collects the premium paid for the insurance product;*
- *How it is ensured that this premium is transferred to the insurance undertaking;*
- *Whether the third party provider gives the customer the opportunity to conclude the contract, has access to the contract and the essential information necessary to conclude the contract and whether it engages in characteristic activities during its conclusion administration or performance;*
- *The commission structure analysis, especially if the third party obtains commission or any remuneration directly for concluded contract, etc.*

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<sup>5</sup> Q&A 2260

<sup>6</sup> Reference is made to “other media” in Article 2 (1) point 1 of the IDD

EIOPA also notes that *“it would be particularly important for the competent authority to assess on a case-by-case basis whether the concrete situation could lead to consumer detriment because of the risks associated with the growth of new technologies and remote communication systems (e.g. “fake” or “ghost” insurance websites) or whether the arrangement is used to circumvent the professional and organisational requirements on insurance intermediaries. The decisive element from a competent authority’s standpoint, when assessing all of these activities, should be the consumer’s perspective and the potential for consumer detriment. This is without prejudice with the stricter requirements introduced at national level in order to tackle with the risks that may arise at national level (e.g. prohibition for outsourcing to a third party of the website of an insurance intermediary)”*.

## TACKLING DAMAGING CONFLICTS OF INTEREST IN THE SALES PROCESS

The IDD provides for general rules on conflicts of interest and transparency for all insurance products and more specific rules, in Chapter VI regarding the distribution of IBIPs. These rules have their origins in equivalent provisions for financial instruments in MiFID II.

The IDD also sets down general requirements in Chapter V relating to transparency and “status disclosure” for insurance intermediaries and insurance undertakings before the contract is concluded. For example, an insurance intermediary needs to indicate to the customer in good time before the conclusion of the contract in relation to the contracts proposed or advised upon:

- whether he/she is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and to provide the names of those insurance undertakings to the customer<sup>7</sup>.
- the nature of the remuneration received in relation to the insurance contract<sup>8</sup>. However, there is no explicit reference in this part of the IDD to a requirement to disclose the amount of the remuneration received.

Article 27 provides for the maintenance and operation of effective organisational and administrative arrangements to prevent conflicts of interest from adversely affecting the interests of customers. It is important to stress that these arrangements need to be proportionate to the activities performed, the insurance products sold and the type of distributor. Hence if there is a heightened risk of a conflict of interest in relation to a particular type of IBIP sold or the role or activity performed by the distributor in selling IBIPs, the arrangements put in place need to be proportionate to that heightened risk.

Article 28 addresses the identification conflicts of interest and disclosure of the general nature or sources of the conflict of interest where the organisational and administrative arrangements are not sufficient to prevent the risk of damage to the customer.

In addition, Delegated Regulation 2359/2017 also sets down rules on identification of conflict of interest and procedures and measures to manage the conflict of interest. In general, the IDD framework provides that disclosure of a conflict of interest to the customer as a measure of last resort in managing the conflict of interest.

Article 29(2) provides for a “no detrimental impact” test to determine whether the payment or receipt of inducements in connection with the distribution of an IBIP is in compliance with the duty to act in the best interests of the customer and the IDD’s conflict of interest obligations:

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<sup>7</sup> Article 19(1)(c)(iii), IDD

<sup>8</sup> Article 19(1)d), IDD

*“Without prejudice to points (d) and (e) of Article 19(1), Article 19(3) and Article 22(3), Member States shall ensure that insurance intermediaries or insurance undertakings are regarded as fulfilling their obligations under Article 17(1), Article 27 or Article 28 where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the customer or a person on behalf of the customer only where the payment or benefit:*

- (a) does not have a detrimental impact on the quality of the relevant service to the customer; and*
- (b) does not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers”.*

Chapter II of Delegated Regulation 2359/2017 concerning the distribution of IBIPs already provides the definition and the rules concerning the assessment of inducement and inducement schemes by setting down a non-exhaustive list of criteria which should be taken into consideration in assessing whether there is an increased or decreased risk of “detrimental impact” arising from the payment or receipt of an inducement.

The IDD does not currently ban the payment or receipt of inducements, but Member States have the option to do so. According to information provided by NCAs, five Member States (DK, FI, HR, NL, RO and SK) have limited or prohibited the acceptance or receipt of fees, commissions or other monetary or non-monetary benefits in relation to the distribution of any insurance product (Article 22(3) of the IDD). **Nine Member States (CZ, FI, HR, IE, IT, NL, RO, SE and SK) have prohibited or further restricted the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice on IBIPs (Article 29(3) of the IDD).**

In addition, the IDD provides for product oversight & governance requirements, which are also of equal relevance in ensuring that detrimental conflicts of interest do not arise at the product design phase and throughout the product lifecycle.

For example, under Commission Delegated Regulation (EU) 2017/23583, the product approval process should “**ensure that the design of insurance products.....supports a proper management of conflicts of interest**”. Furthermore, product manufacturers have to:

- **“carefully select distribution channels that are appropriate for the target market, thereby taking into account the particular characteristics of the relevant insurance products”** and
- **“provide insurance distributors with all appropriate information on the insurance products, the identified target market and the suggested distribution strategy, including information on the main features and characteristics of the insurance products, their risks and costs, including implicit costs, and any circumstances which might cause a conflict of**

*interest to the detriment of the customer. That information shall be clear, complete and up to date”.*

Concept of “independent advice”

The IDD does not provide for a mandatory concept of “independent advice”, but provides for a Member State option<sup>9</sup> to apply a formal “independent advice” concept, equivalent to the one in MiFID II, in relation to the distribution of IBIPs. This requires advice to be on assessment of a “sufficiently large number of insurance products available on the market which are sufficiently diversified with regard to their type of product and product provider” and “not limited to products or entities” with close links to the intermediary:

“where an insurance intermediary informs the client that advice is given independently, the intermediary shall assess a sufficiently large number of insurance products available on the market which are **sufficiently diversified with regard to their type and product providers** to ensure that the client’s objectives can be suitably met and shall **not be limited to insurance products issued or provided by entities having close links with the intermediary**”.

It is worth noting in this context that Article 20(3), IDD currently provides in relation to the distribution of all insurance products for a similar, but narrower concept of “fair and personal analysis” which, although requiring an analysis of a sufficiently large number of insurance contracts available on the market (in the same way as the text above), is linked only to compliance with “professional criteria”:

*“where an insurance intermediary informs the customer that it gives its advice on the basis of a fair and personal analysis, it shall give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation, **in accordance with professional criteria**, regarding which insurance contract would be adequate to meet the customer’s needs”.*

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<sup>9</sup> Article 29(3), 4th sub-para

## PROMOTING AN AFFORDABLE AND EFFICIENT SALES PROCESS

Article 20 of the IDD sets out provisions on advice (and standards for sales where no advice is given) on any insurance product, including IBIPs.

In particular, prior to the conclusion of an insurance contract, an insurance distributor has to specify, on the basis of information obtained from the customer, the demands and the needs of that customer and needs to provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision. Furthermore, any contract proposed has to be consistent with the customer's insurance demands and needs.

These requirements are collectively known as the “**demands and needs test**” and can also be further modulated according to the complexity of the insurance product being proposed and the type of customer. The main focus of the “demands and needs test” is to ensure that products are not sold to customer that he/she does not need and thereby avoid cases of mis-selling<sup>10</sup>.

It is important to note that the “demands and needs test” applies only prior to the conclusion of the contract and the IDD does not specify or develop further requirements for the demands and needs test.

**Where advice is provided** prior to the conclusion of any specific contract, the insurance distributor has to provide the customer with a **personalised recommendation** explaining why a particular product would best meet the customer's demands and needs.

Finally, where an insurance intermediary informs the customer that it gives its advice on the basis of a **fair and personal analysis**, it has to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

Chapter VI of the IDD includes specific additional requirements which apply only to the distribution of IBIPs. Article 30(1) of the IDD provides for an assessment of the suitability of the IBIP for the customer to be carried out by the insurance undertaking or insurance intermediary when recommending an IBIP to the customer. This assessment is “without prejudice to Article 20(1)”, IDD [i.e. the need to carry out also a demands and needs test], and requires the insurance undertaking or insurance intermediary to obtain the necessary information regarding the customer's or potential customer's knowledge and experience in the investment field relevant to the specific type of

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<sup>10</sup> Recital 44, IDD



product or service, that person's financial situation including that person's ability to bear losses, and that person's investment objectives, including that person's risk tolerance.

In addition in Article 30, there are requirements for the assessment of the appropriateness of the product for the customer where the product is distributed without advice and for an IBIP to be distributed without advice and without carrying out the appropriateness assessment (a so-called "execution-only sale") where certain specific conditions are complied with and the Member State in question has exercised a derogation to allow such sales.

In addition to these requirements in the IDD, Delegated Regulation (EU) 2359/2017 covers provisions relating to assessment of appropriateness, assessment of suitability and provisions common to the assessment of suitability and appropriateness and retention of records and EIOPA Guidelines<sup>11</sup> under the IDD on IBIPs that incorporate a structure which makes it difficult for the customer to understand the risks involved, set down further the conditions as to which products can be sold execution-only.

#### Overview of national implementation

Since the IDD is aimed at minimum harmonisation, several Member States have introduced national provisions governing advised or non-advised sales in addition to those set out in the IDD with the aim of providing additional protection for consumers purchasing insurance. For example:

- In 8 Member States<sup>12</sup>, the provision of advice has been made mandatory either for the sales of all insurance products, or, in some cases, for certain types of insurance products only;
- In 8 Member States<sup>13</sup>, the provision of advice has been made mandatory for the sales of any IBIPs, or for certain types of them. Some Member States have made the provision of advice on IBIPs not mandatory, but have adopted stricter provisions on the assessment of suitability or appropriateness to enhance customer protection. For example, in FR, the assessment of appropriateness for a non-advised sale of an IBIP has to take into account the financial situation and the investment objectives of the customer (which are normally only requirements to be fulfilled in a suitability assessment for an advised sale).

Therefore, in the majority of Member States (19 Member States), the provision of advice is not mandatory and non-advised sales are possible. In particular, in 13 Member States<sup>14</sup>, the Member

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<sup>11</sup> EIOPA Guidelines under the Insurance Distribution Directive on Insurance-Based investment Products that incorporate a structure which makes it difficult for the customer to understand the risks involved: [https://www.eiopa.europa.eu/media/news/eiopa-consults-guidelines-complex-insurance-based-investment-products\\_en](https://www.eiopa.europa.eu/media/news/eiopa-consults-guidelines-complex-insurance-based-investment-products_en)

<sup>12</sup> AT, BG, EE, EL, HU, LU, RO and SK

<sup>13</sup> CZ, EL, HU, IT, LU, PL, RO and SK

<sup>14</sup> BG, CY, DE, EE, HR, IE, LI, LU, LV, MT, RO, SE and SI

State derogation under Article 30(3), IDD has been exercised so that it is possible for insurance intermediaries or insurance undertakings to carry out insurance distribution activities within their territories without the need to conduct a appropriateness assessment (“execution only” business) if certain conditions are met.

In addition, some Member States have made specific efforts to elaborate further the content of the “demands and needs test” by specifying the type of information to be asked, rules on guidance which should be provided by insurance undertakings to insurance intermediaries for the pre-contractual phase and rules on providing the policyholder, in a clear and comprehensible manner, with objective information on the product<sup>15</sup>.

#### Overview of national professional requirements for selling IBIPs

EIOPA has also recently assessed **training and development requirements for financial advisors selling IBIPs** in the context of work being carried out by the Commission to assess the feasibility of setting up a pan-EU quality label for financial advisors<sup>16</sup>. EIOPA gathered input from 24 NCAs<sup>17</sup> with respect to qualifications of advisors in the context of the insurance industry and application of the IDD and highlight the need for enhancing the knowledge of advisors about the products they offer.

The following were the main conclusions from the 24 NCAs responding to the survey (more details can be found in the Annex to this CP):

- Almost every NCA requires natural persons providing advice on IBIPs to have a specific level of qualifications and/or experience before accessing the profession, but qualifications which are required can range significantly from advanced secondary education to university degrees - Some Member States<sup>18</sup> provide that the qualifications should not be lower than a certificate of advanced secondary education. In some cases<sup>19</sup>, Member States also require university degrees

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<sup>15</sup> For example, in Italy, the national implementation of the “demands and needs test”:

- specifies which information should be asked (e.g. specific information on age, health condition, profession, family status, financial and insurance position and expectations as regards the signing of the contract, in terms of coverage and duration, also taking into account any insurance coverage already in effect, the type of risk, the characteristics and complexity of the proposed contract);  
- states that the insurance undertakings, for each distributed product, shall provide the intermediaries and the employees, of which they avail themselves for the distribution of the insurance products, with instructions that guide them in the pre-contractual phase for the acquisition from the policyholder of useful and pertinent information concerning the type of the proposed contract;

<sup>16</sup> Action 8 of the CMU Action Plan indicates that “subject to a positive impact assessment carried out in the context of the reviews of the IDD by Q1 2023 and MiFID II by Q4 2021, the Commission will introduce a requirement for advisors to obtain a certificate that proves that their level of knowledge and qualifications is sufficient to access the profession, and shows that they take part in an adequate level of continuous education. This aims to maintain a satisfactory level of advisor performance. In addition, by Q1 2022 the Commission will assess the feasibility of setting up a pan-EU label for financial advisors, which can be used to comply with the requirement to obtain a certificate.”

<sup>17</sup> BE, BG, CZ, DE, DK, EE, FI, IE, EL, ES, FR, HR, IT, MT, LI, LV, LT, LU, HU, PL, PT, SE, SI, SK

<sup>18</sup> CZ, EL, HR, IT, LV, PL, PT, SI, SK

<sup>19</sup> FR, HU, LU

or master degrees depending on the type of education and/or the role they perform in the undertaking. IE noted that depending on the qualification, professional educational bodies require a certain level of education (high school diploma, university degree, etc.) for entry to the qualifications. BG mentioned that there are no additional requirements established in the Insurance Code for qualification and/or experience beyond those provided for in the persons involved in insurance distribution activities.

- Half of those NCAs have an examination procedure for awarding qualifications which is conducted by public bodies/supervisory authorities or by educational/accredited bodies, universities, trade associations, banking institutes, insurance institutes, insurers or intermediaries. 14 NCAs<sup>20</sup> stated that exams are organised in order to be able to access the profession and most Member States accept online assessments (trainings/exams), which have proliferated with the advent of the pandemic. In more than a half of those NCAs, (re)insurance undertakings, brokers, trade associations and accredited/educational bodies, universities or a combination thereof are able to provide CPD training.
- In case the body providing training for CPD is a body other than a public body (e.g. trade associations, insurance associations, private bodies, universities), there is no accreditation procedure for these bodies in many Member States. The type of assessment that is conducted in order to verify the knowledge and competence of natural persons is either: (i) both training and exams, (ii) only an exam or (iii) only training. There are some Member States which require confirmation of attendance/certificate/document.

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<sup>20</sup> BE, CZ, DE, EL, FI, HR, HU, IT, LT, LU, LV, PL, SE, SI. N.B. Some Member States have the combination of exams, designations, training courses, only training courses or an alternative, depending on the conditions provided in their national legislation.

## ASSESSING THE IMPACT OF COMPLEXITY IN THE RETAIL INVESTMENT PRODUCT MARKET

### IDD - Commission Delegated Regulation (EU) 2017/2358

While neither the IDD nor Commission Delegated Regulation (EU) 2017/2358 define “product complexity” for the purposes of product design, the notion of complexity and the linkage between complexity and the target market are concepts which are enshrined in the Product Oversight and Governance regime. For example, Article 5(1) of Commission Delegated Regulation (EU) 2017/2358 explicitly establishes a link between the complexity of a product and the level of granularity of the target market:

*“(...) The target market shall be identified at a sufficiently granular level, taking into account the characteristics, risk profile, **complexity** and nature of the insurance product”.*

Recital 6 of the Commission Delegated Regulation (EU) 2017/2358 provides more information on the role the complexity of a product plays in the definition of the target market:

*“The level of granularity of the target market and the criteria used to define the target market and determine the appropriate distribution strategy should be relevant for the product and should make it possible to assess which customers fall within the target market. For simpler, more common products, the target market should be identified with less detail while for more complicated products or less common products, the target market should be identified with more detail taking into account the increased risk of consumer detriment associated with such products”.*

### IDD - COMMISSION DELEGATED REGULATION (EU) 2017/2359

Article 16 of Commission Delegated Regulation 2017/2359 sets down criteria for the types of non-complex products than can be sold execution-only. The product:

- (a) includes a contractually guaranteed minimum maturity value which is at least the amount paid by the customer after deduction of legitimate costs;
- (b) does not incorporate a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk, or pay-out profile of the insurance-based investment product;
- (c) provides options to surrender or otherwise realise the insurance-based investment product at a value that is available to the customer;
- (d) does not include any explicit or implicit charges which have the effect that, even though there are technically options to surrender or otherwise realise the insurance-based investment product, doing so may cause unreasonable detriment to the customer because the charges are disproportionate to the cost to the insurance undertaking;
- (e) it does not in any other way incorporate a structure which makes it difficult for the customer to understand the risks involved.

PRIIPs - Commission Delegated Regulation (EU) 2016/1904

Article 2(a) makes reference to complexity as one of the criteria for product intervention:

2. The factors and criteria to be assessed by competent authorities to determine whether there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of whole or part of the financial system within at least one Member State shall include the following:

(a) **the degree of complexity of the insurance-based investment product** or type of financial activity or practice of an insurance or reinsurance undertaking, taking into account, in particular:

- **the type of the underlying assets and the degree of transparency of the underlying assets,**
- **the degree of transparency of costs and charges associated with the insurance-based investment product, financial activity or financial practice and “in particular, the lack of transparency resulting from multiple layers of cost and charges”,**
- **the complexity of the performance calculation, taking into account whether the return is dependent on the performance of one or more underlying asset which are in turn affected by other factors,**
- **the nature and scale of any risks,**
- **whether the insurance-based investment product is bundled with other products or services,**
- or**
- **the complexity of any terms and conditions**

PEPP Regulation - Commission Delegated Regulation (EU) 2021/895 of 24 February 2021 – also sets out criteria on “complexity” in the context of product intervention

*Article 1*

EIOPA shall apply the following criteria and factors when considering the degree of complexity of the PEPP

- (a) the long-term retirement nature of the PEPP;
- (b) **the type, and degree of transparency, of the underlying assets;**
- (c) **the degree of transparency of costs and charges** associated with the PEPP;
- (d) the use of techniques drawing PEPP savers' attention to non-essential features in the PEPP presentation;
- (e) **the nature and transparency of risks;**
- (f) the use of product names or terminology or other information that imply a greater level of security or return than those which are actually possible or likely, or misleading product features;
- (g) whether there was insufficient, or insufficiently reliable, information about the PEPP to enable market participants to which it was targeted to form their judgment, taking into account the nature and type of the PEPP;
- (h) **the complexity of the performance calculation**, taking into account in particular whether the

return is dependent on the performance of one or more underlying assets which are in turn affected by other factors;

- (i) **the nature and scale of risks;**
- (j) whether the PEPP is bundled with other products or services;
- (k) **the complexity of any terms and conditions** of the PEPP;
- (l) the existence and degree of disparity between the expected return of the PEPP and the risk of loss, taking into account the following:
  - (1) the cost structure and other costs;
  - (2) the disparity in relation to the provider's risk retained by the provider;
  - (3) the risk and return profile;
- (m) **the pricing and associated costs of PEPP**, taking into account the following:
  - (1) the use of hidden or secondary charges;
  - (2) charges that do not reflect the level of service provided;
  - (3) the costs of guarantees or costs that do not reflect the actual cost or the fair value of the capital guarantee in the case of a Basic PEPP;
- (n) the ease and cost with which the PEPP saver is able to make use of the switching and portability services, taking into account the following:
  - (1) use of switching and portability services in relation to the phase in which the service is used, the fees and charges applied, or the loss of advantages and incentives;
  - (2) the fact that the use of switching and portability services is not permitted or is made factually impossible

**Summary of existing provisions relating to product complexity at the national level:**

- In Italy, while a specific definition of “complex products” is not existent in the legal framework there are some relevant provisions. Article 68-duodecies of IVASS Regulation no. 40/2018, implementing art. 121-septies, par. 1 of Code of Private Insurance, introduced the mandatory advice “for the sale of IBIPs, with the exception of non-complex insurance-based investment products referred to in article 16 of Regulation (EU) 2017/2359”. Furthermore, in case of mandatory advice, when insurance intermediaries and undertakings believe that the IBIP is not consistent with the policyholder’s insurance demands and needs, is not appropriate to the policyholder or potential policyholder, or they have not obtained from the policyholder the information required, they shall refrain from distributing such product, even when the contract initiative comes from the policyholder. As a general obligation, the manufacturers shall inform intermediaries of the list of products for which advice is mandatory.
  
- In Belgium, the FSMA introduced in 2011, a voluntary moratorium<sup>21</sup> on the distribution of certain complex structured products, and strict marketing guidelines regarding the marketing of financial products across various product types (including deposits, securities, funds and insurance products). There are four criteria:
  1. The underlying value is not sufficiently accessible and observable for the retail investor (e.g., CDS and hedge funds are considered non-accessible and non-observable for retail investors);
  2. The strategy of the product is overly complex (e.g., teaser products);
  3. The calculation formula comprises more than three mechanisms; or
  4. There is not enough transparency regarding all costs associated with the product, regarding the credit risk and regarding the market value of the product.

In order to create a level playing field for all structured products, the FSMA did not make any distinction, in its intervention, on the basis of the packaging of the structured product in question, be that as a UCI, an investment instrument, a class 23 insurance contract or a deposit.

- In France, a recommendation was published by the ACPR on the marketing of unit-linked life insurance policies composed of complex financial instruments. The AMF simultaneously published a position on the direct selling of the same products<sup>22</sup>. Coordination between the two authorities through the Joint Body made it possible to identify four criteria to determine whether the proposed financial instruments (French or foreign structured investment funds, complex debt securities) are likely to cause investors to underestimate the risks or even to misunderstand the product or policy:

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<sup>21</sup> [https://www.fsma.be/sites/default/files/legacy/sitecore/media%20library/Files/fsmafiles/press/2011/nipic/en/fsma\\_2011\\_02.pdf](https://www.fsma.be/sites/default/files/legacy/sitecore/media%20library/Files/fsmafiles/press/2011/nipic/en/fsma_2011_02.pdf)

<sup>22</sup> <https://www.amf-france.org/sites/default/files/private/2020-10/20130920-marketing-of-complex-financial-instruments.pdf>

- poor presentation of the risks or potential losses, especially when the product's performance is sensitive to extreme scenarios;
- • underlyings that are hard to identify or impossible to observe individually on the markets;
- • gains or losses that depend on simultaneous occurrence of several conditions across different asset classes;
- • multiple mechanisms incorporated into the formula used to compute gains or losses at maturity.

When these instruments are sold through unit-linked life insurance policies, the ACPR recommended that insurance companies and intermediaries should:

- provide intelligible information in all documents given to policyholders so that they understand the nature of the underlying units and the associated risks;
- be able to prove to the ACPR that they have taken the necessary measures for policyholders to understand that the units being marketed are a risky investment;
- gather proof that investors understand the nature of the underlying instrument marketed in the unit-linked contract and its associated risks;
- supply policyholders with information that is precise, clear and not misleading on the guarantees offered under the policy in the event of early redemption, whether because of the policyholder's death or partial or total surrender.



## ANNEX IV – NATIONAL EXAMPLES OF GROWTH IN DIGITAL TOOLS & CHANNELS USED TO DISTRIBUTE IBIPS

### Sweden (Input from Swedish FSA)

In Sweden, insurance undertakings are increasingly using digital sales, different types of robo-advice and other digital solutions and an increasing amount of companies themselves labelled as offering execution-only solutions. This has further been emphasized during the 2 years of COVID 19-based restrictions. This is not only due to cutting costs in a very competitive market, but also to enhance the customer journey and giving easy access services.

Internet-based insurance companies; usually in a group which also includes a bank licensed to provide investment services online increased their insurance market share during the past year and low cost products not using insurance intermediaries has further evolved. The digitalization in Sweden has been mainly bank-driven however many of the undertakings offering IBIPs today have an online channel with primary focus on sustainability and IBIPs with UCITS index funds (fund insurance). Due to the competitive market in Sweden, costs for IBIPs have further decreased.

### Estonia (input from Estonian FSA)

In the Estonian life insurance market, four life insurance providers currently offer IBIPs, one of which has developed a digital sales channel and one has expressed its intention to move sales to a digital channel. The insurance undertaking that has developed and uses the digital sales channel belongs to the banking group. The digital sales channel has been developed as a part of the bank's internet banking service. The insurer's experience in digital channel sales is about 20 years when unit-linked products started to be offered via the internet bank.

The digital channel allows selling the same products and performing all the contract-related activities offered for direct sales. According to the insurer, the majority of sales are made through the digital channel. Combined sales are also common, with some operations performed directly and some in a digital environment (e.g. contract changes). The COVID-19 situation increased the use of the digital channel. From a supervisory point of view, it has not emerged that customers are in a worse position with regard to digital sales than direct sales, given the size of the insurer's market share and the ratio of customer complaints.

## ANNEX V – ANALYSIS OF THE STRUCTURE OF DISTRIBUTION CHANNELS SELLING IBIPS ACROSS THE EU

1. The Commission seeks EIOPA's analysis "*as regards the structure of distribution models in different Member States, also taking into account any recent reform experience in the Member States*". In that respect, EIOPA has sought to draw on work it has carried out in developing its first report on the application of the IDD<sup>23</sup>, its Consumer Trends Reports, Costs & Past Performance Reports, Solvency II database and specific examples of recent national reforms are included in Annex III to this CP.
2. It is worth, however, stressing from the outset that there are specific limitations to the data which EIOPA could draw upon from its own Solvency II database and from NCAs (in particular, as regards specifically distribution of IBIPs) and therefore, data has been bolstered, in some cases, through alternative sources such as information provided by external stakeholders such as trade associations or third party studies. The following are, however, relevant findings in this context, starting with an overview of the number of registered insurance intermediaries and a description of their activities:

### *Numbers of registered insurance intermediaries*

3. Based on data from 25 NCAs<sup>24</sup>, there were 815,219 registered insurance intermediaries<sup>25</sup> in those markets at the end of 2020. In terms of the level of change in the number of registered intermediaries, the blue trend line of Figure 1 below shows that the total number of registered insurance intermediaries decreased significantly from 2016 to 2020, a trend which has been going on for several years<sup>26</sup>.

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<sup>23</sup> [https://www.eiopa.europa.eu/document-library/report/report-application-of-insurance-distribution-directive\\_en](https://www.eiopa.europa.eu/document-library/report/report-application-of-insurance-distribution-directive_en)

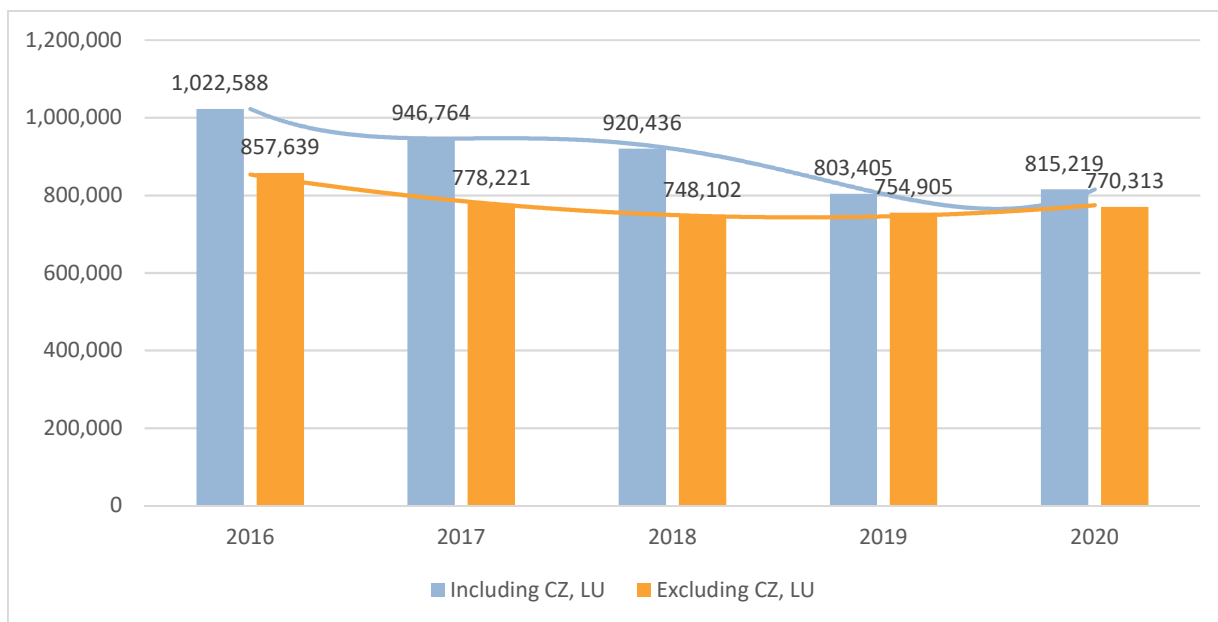
<sup>24</sup> GR, HU, IE and NL have provided information on the number of insurance intermediaries for 2019 and 2020 only. LT has provided only limited information for 2016-2019

<sup>25</sup> This includes registered ancillary insurance intermediaries and excludes ancillary insurance intermediaries exempt from the IDD

<sup>26</sup> See EIOPA's report on the Structure of Insurance Intermediaries Markets in Europe:

[https://www.eiopa.europa.eu/media/news/eiopa-evaluates-european-insurance-intermediaries-markets\\_en](https://www.eiopa.europa.eu/media/news/eiopa-evaluates-european-insurance-intermediaries-markets_en). It is important to note that, following the deletion of inactive insurance intermediaries from the national registers, the number of registered insurance intermediaries in CZ decreased sharply from 162,791 to 38,481 in 2018/2019 and in LU from 10,019 to 6,905 in 2019/2020. This has had a significant impact on the overall decrease in the number of insurance intermediaries. It is important that NCAs regularly identify and delete inactive intermediaries from their registers in order to have a correct overview of the number of intermediaries included in their registers

Figure 1: Total number of registered insurance intermediaries over the period 2016-2020



4. In order to have a better comparison across Member States of the data over the period from 2016-2020, the amber columns of Figure 3 exclude the number of CZ and LU insurance intermediaries. As illustrated in the chart, there was a significant decrease in the number of registered insurance intermediaries from 2016 to 2018, followed by an increase since 2018<sup>27</sup>.

*Decreasing number of intermediaries registered as natural persons*

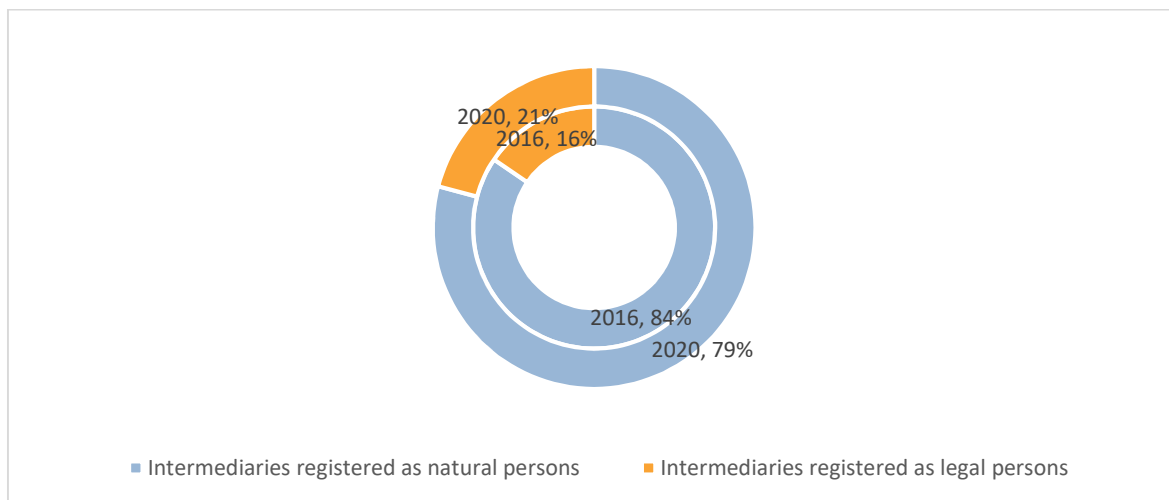
5. 24 NCAs<sup>28</sup> provided information on the number of registered insurance intermediaries split between natural persons and legal persons for 2016 and 2020. **Figure 2 below shows that, in 2020, insurance intermediaries registered as natural person represented 79% of the total number of insurance intermediaries, hence small intermediaries represent the majority of market participants.** However, it should be noted that the number of intermediaries registered as natural persons decreased from 669,670 (2016) to 466,942

<sup>27</sup> This can be explained by an increase in the number of insurance intermediaries registered in RO from 40,402 to 69,932 over the period from 2018 to 2020

<sup>28</sup> AT, BE, BG, CY, CZ, DK, ES, FI, FR, HR, IS, IT, LI, LT, LU, LV, MT, NO, PL, PT, RO, SE, SI, SK

(2020). Over the same period, the number of intermediaries registered as legal persons increased from 123,007 (2016) to 123,278 (2020).

**Figure 2: Intermediaries registered as natural and legal persons in 2016 and 2020**



### **Bancassurers remain dominant in the life sector**

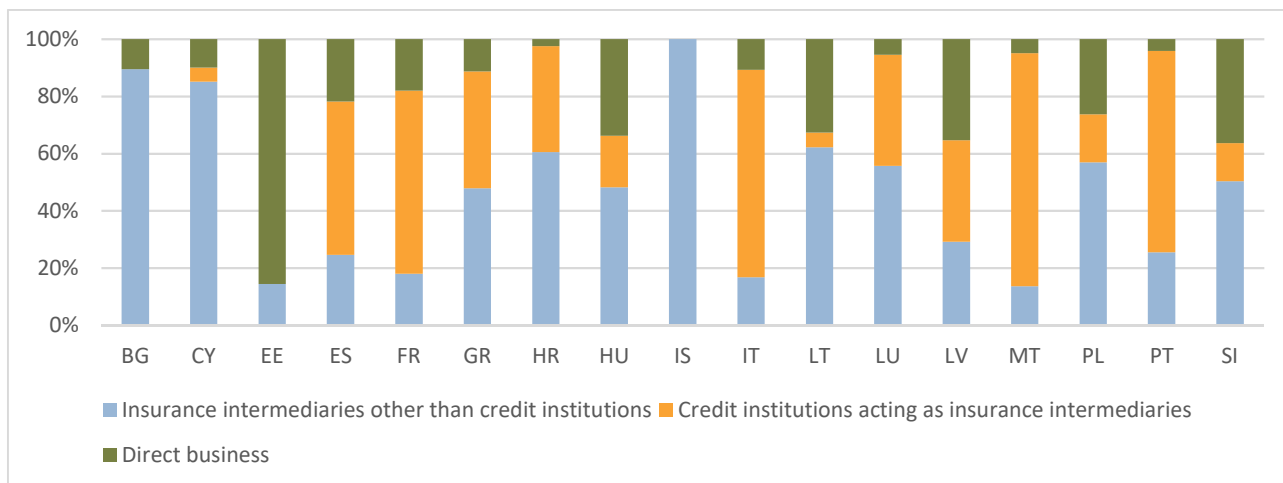
6. For the purpose of developing its IDD application report<sup>29</sup>, EIOPA gathered information from NCAs and some industry bodies on the total volume of gross written premiums (GWP) by the following distribution channels, split in life and non-life:
  - Direct business
  - Credit institutions acting as insurance intermediaries
  - Insurance intermediaries other than credit institutions
7. 15 NCAs were able to provide data on the total volume of GWP (split in life and non-life) by the three distribution channels indicated above for 2020<sup>30</sup>.

Based on the data provided by those 15 NCAs and some industry bodies, Figure 3 below indicates that credit institutions acting as insurance intermediaries played a significant role in the distribution of life insurance products in terms of GWP generated (in particular, in ES, FR, GR, HR, IT, LU, LV, MT, PT) during 2020.

<sup>29</sup> [https://www.eiopa.europa.eu/media/news/eiopa-publishes-report-application-of-insurance-distribution-directive\\_en](https://www.eiopa.europa.eu/media/news/eiopa-publishes-report-application-of-insurance-distribution-directive_en)

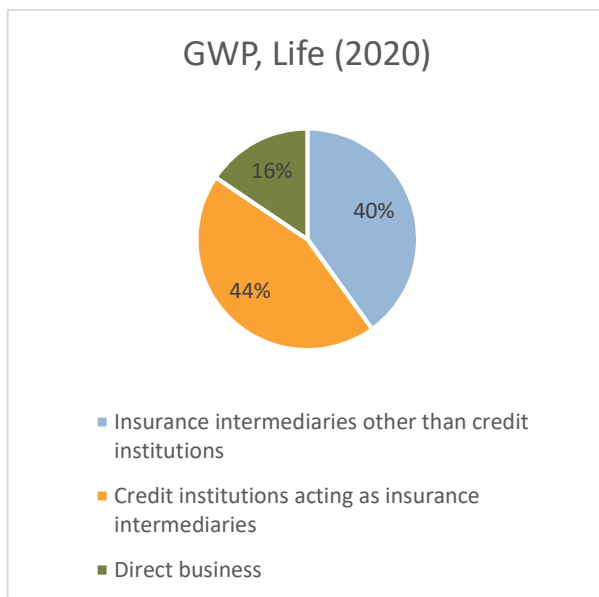
<sup>30</sup> 15 NCAs indicated that, for 2020, they are not able to provide data on the GWP by intermediaries other than credit institutions (AT, BE, DE, DK, FI, FR, IE, NL, NO, RO, SE, SK), credit institutions acting as insurance intermediaries (AT, BE, DE, DK, FI, FR, IE, MT, NL, PT, SE) or direct business (AT, BE, DE, DK, FI, FR, IE, LI, NL, RO, SE), split by life and non-life (CZ).

**Figure 3: GWP per distribution channel, Life (2019/2020)**



8. With regard to life insurance, Figure 4 below indicates that credit institutions acting as insurance intermediaries generate almost half of the premiums in the area of life insurance in 2020. Direct business accounts for approximately one fifth of the premiums for life insurance.

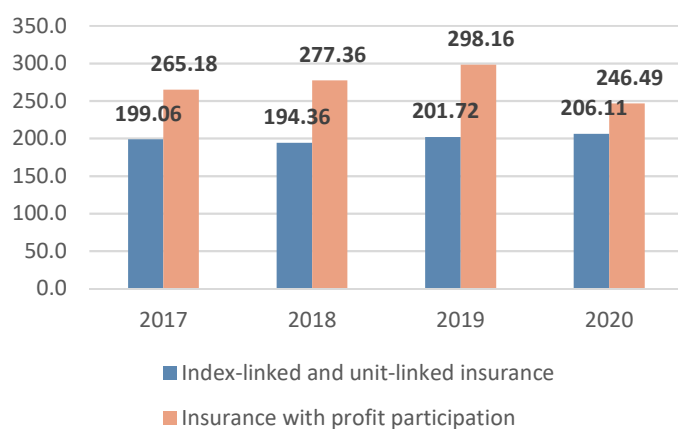
**Figure 4: Split of GWP for distribution of life insurance in 2020**



### Market developments with regard to specific IBIPs

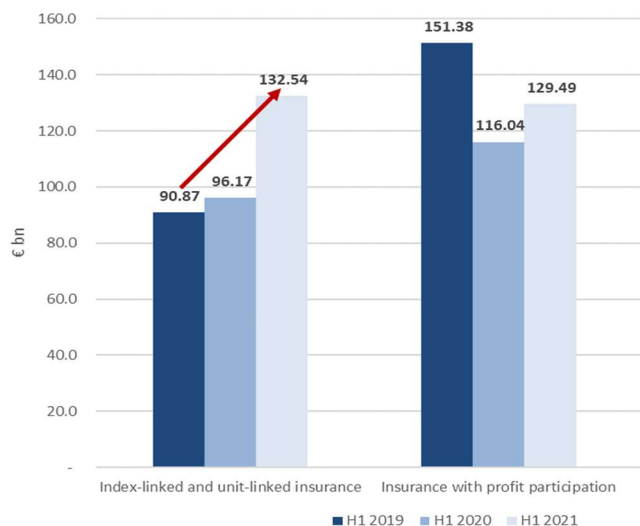
9. The shift from insurance with profit participation towards unit-linked life insurance is more and more evidenced throughout the years. In 2017, the GWP reported on profit participation business was around 265 € bn, whereas it was around 247 € bn by the end of 2020. Even though, the GWP related to unit-linked business is around 206 € bn at the end of 2020, the continuous increase is remarkable, especially looking at the starting point in 2017, around 199 € bn (see Figure 5 below).
10. This picture is enhanced when looking at the reported figures throughout the crisis triggered by the COVID-19 outbreak, highlighting the prominence of the unit-linked business at EEA level. The analysis of 2021 quarterly data also reinforces the aforementioned trends as unit-linked GWP registered in H1 2021 a 37.8% growth, being 45.9% higher than pre-crisis level. With profit-participation GWP also recovered by 11.6% in H1 2021, but the aggregated level is 14.5% lower than the pre-crisis point (see Figure 6 below).

**Figure 5 – Annual GWP (€ bn) for unit-linked and profit-participation Lines of Business, 2017-2020**



Source: EIOPA Solvency II database

**Figure 6 - Quarterly GWP (€ bn) for unit-linked and profit-participation, Q1 2019 - Q2 2021**

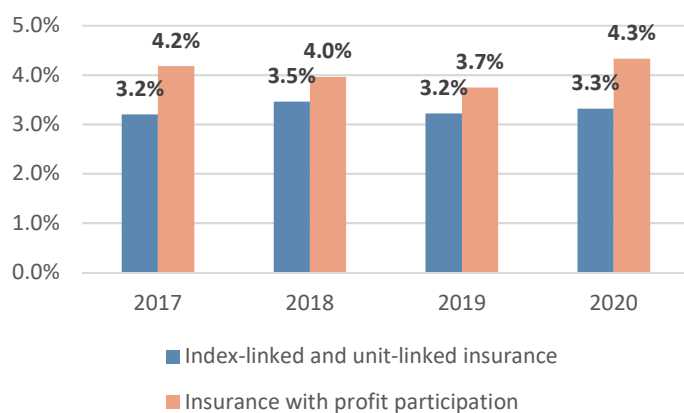


Source: EIOPA Solvency II database

Costs and charges for the distribution of IBIPs, in particular commission rates

- At EEA level, commission rates exhibit a stable behaviour, being slightly higher for profit-participation products (see Figure 7 below). Nevertheless, differences in practices, remuneration schemes and regulatory terms impact the different level of commission rates across member states. Based on Solvency II data, it is not possible to take into account distribution channels, therefore the aggregate figures must be interpreted with caution.

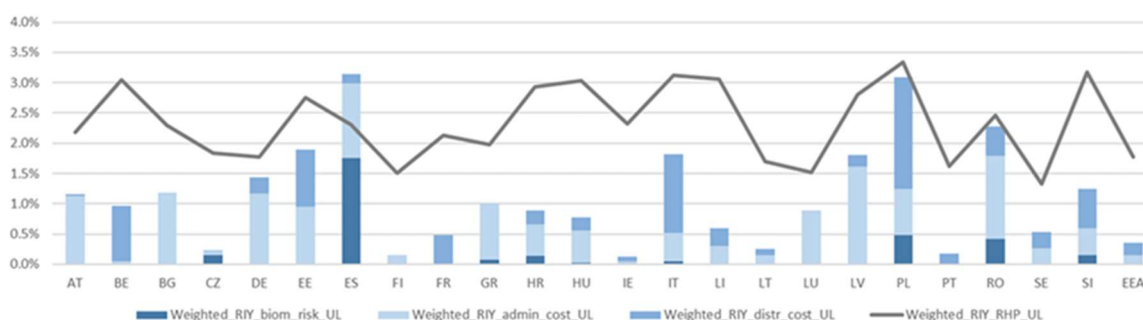
**Figure 7 - Commission Rate for UL and PP products, EEA, 2017-2020**



Source: EIOPA Solvency II database

12. In terms of costs composition, administrative costs continue being the most predominant driver of costs, often representing more than half of the total costs paid by consumers, followed by distribution costs (see Figures 8 and 9 below). Distribution costs are continuously pointed as a problem across the industry, accounting for, in RIY terms, 0.3% of total unit-linked costs, and 0.5% of total profit participation products.
13. Distribution costs have, on average, an impact between 10% and 30% of the total costs, in both unit-linked and profit-participation products (see Figure 10 below). Even though it does not seem to be a recurring practice, some undertakings might also not include these costs in the total costs reported, or disclose these costs jointly with administrative costs due to the lack of requirement to disclose such costs separately. This might be in particular the case of the data collected from Austria, Bulgaria, Greece and Luxembourg. Jurisdictions where intermediaries also provide either financial products services or other goods/services different from insurance/financial products tend to exhibit higher distribution costs<sup>31</sup>, in terms of RIY.
14. Additionally, the reduction in the number of registered intermediaries might have triggered further broker mergers and acquisitions and higher levels of concentration among the largest intermediaries, driving distribution costs higher. Interestingly, LV exhibits some of the lowest distribution costs, and simultaneously reported one of the strongest significance of online sales (around 70% for life insurance), reinforcing the hypothesis that technology will potentially decrease those costs across the industry. As a matter of fact, online insurance aggregators and direct channels are reporting greater volumes, especially following the COVID-19 crisis.

**Figure 8 - Breakdown of total costs for unit-linked products, across Member States, 2019**

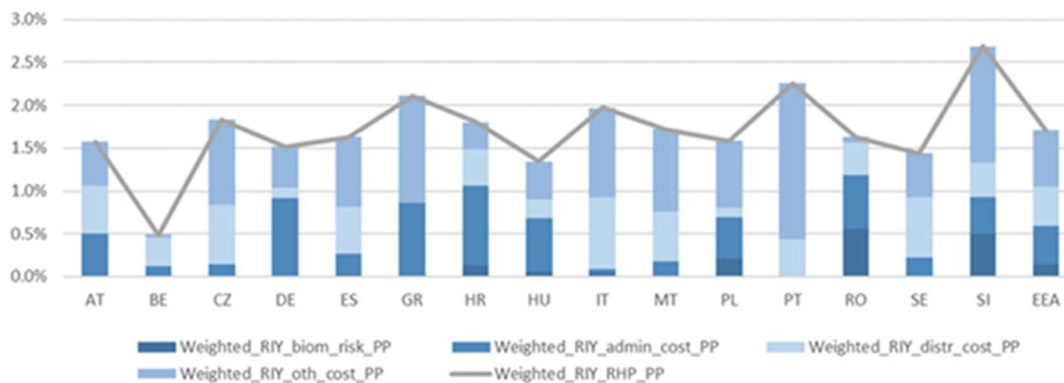


Source: EIOPA Cost and Past Performance Survey

<sup>31</sup> See Figure 1.3 of the [EIOPA Report on the application of the IDD](#) on page 20 as an illustration of this



Figure 9 - Breakdown of total costs for profit-participation products, across Member States, 2019



Source: EIOPA Cost and Past Performance Survey

Figure 10 - Proportion of the different costs driver on the total costs for unit-linked products (left) and for profit-participation products (right)

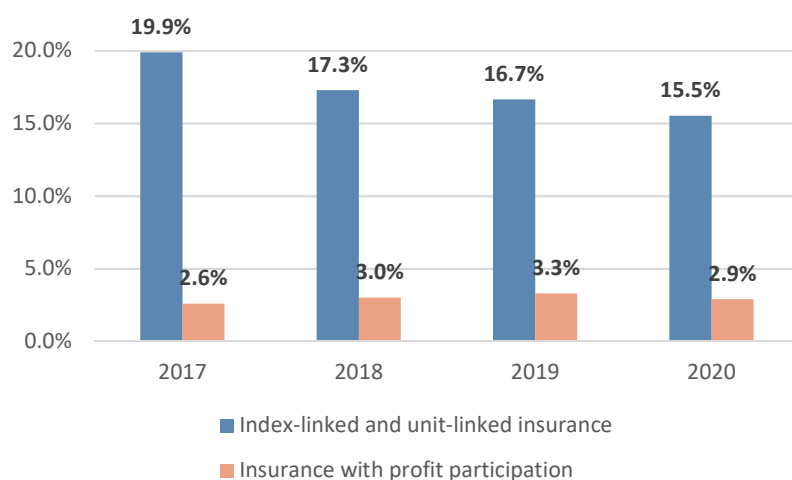


Source: EIOPA Cost and Past Performance Survey

- Despite observing a shrinkage in the overall cross-border activity, measured in terms of GWP written under FOS/FOE, the number of registered intermediaries' cross-borders has been steadily increasing (see Figure 11 below). Cross-border activity seems to be more significant across the unit-linked market, where the proportion of premiums written abroad ranges from 20% to 15%.

16. Stricter supervisory actions related to unit-linked products might have impacted the cross border expansion in the recent years. Nevertheless, the number of insurance intermediaries conducting cross border business has been increasing. Therefore, despite an expansion in the distribution network, the actual amount of business being written on a cross-border basis has decreased, particularly when it comes to unit-linked products.

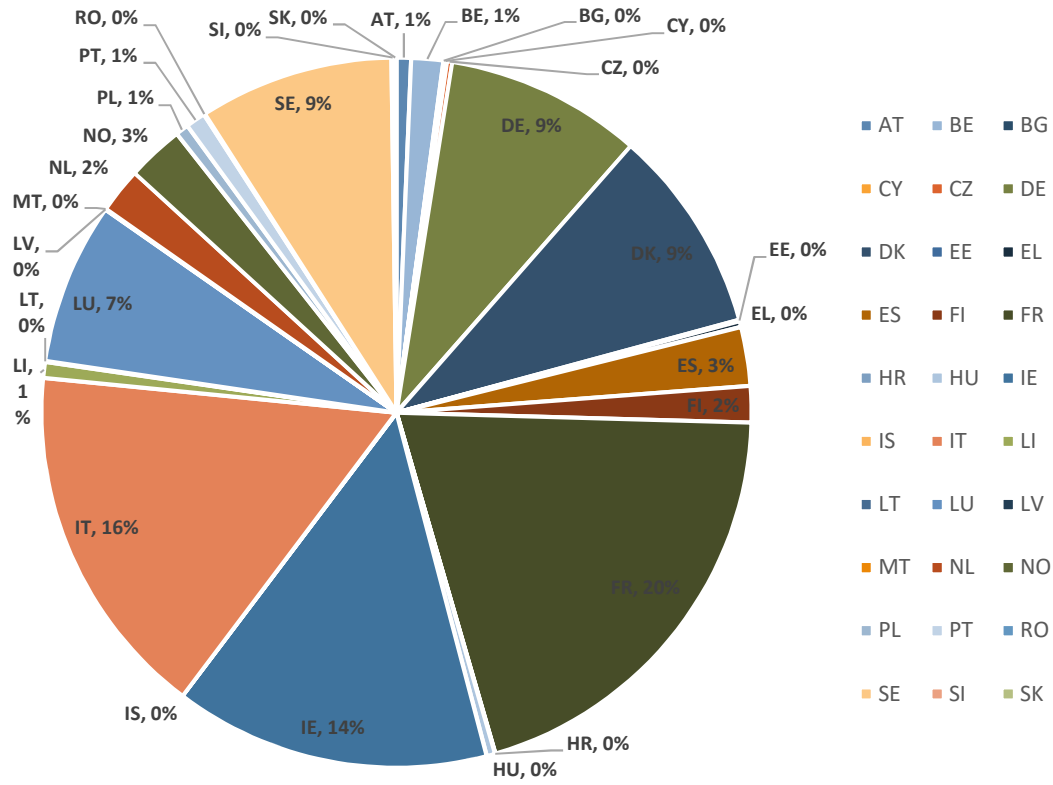
**Figure 11 - Proportion of GWP under FOS/FOE over total GWP, EEA, 2017-2020**



*Source: EIOPA Solvency II database*

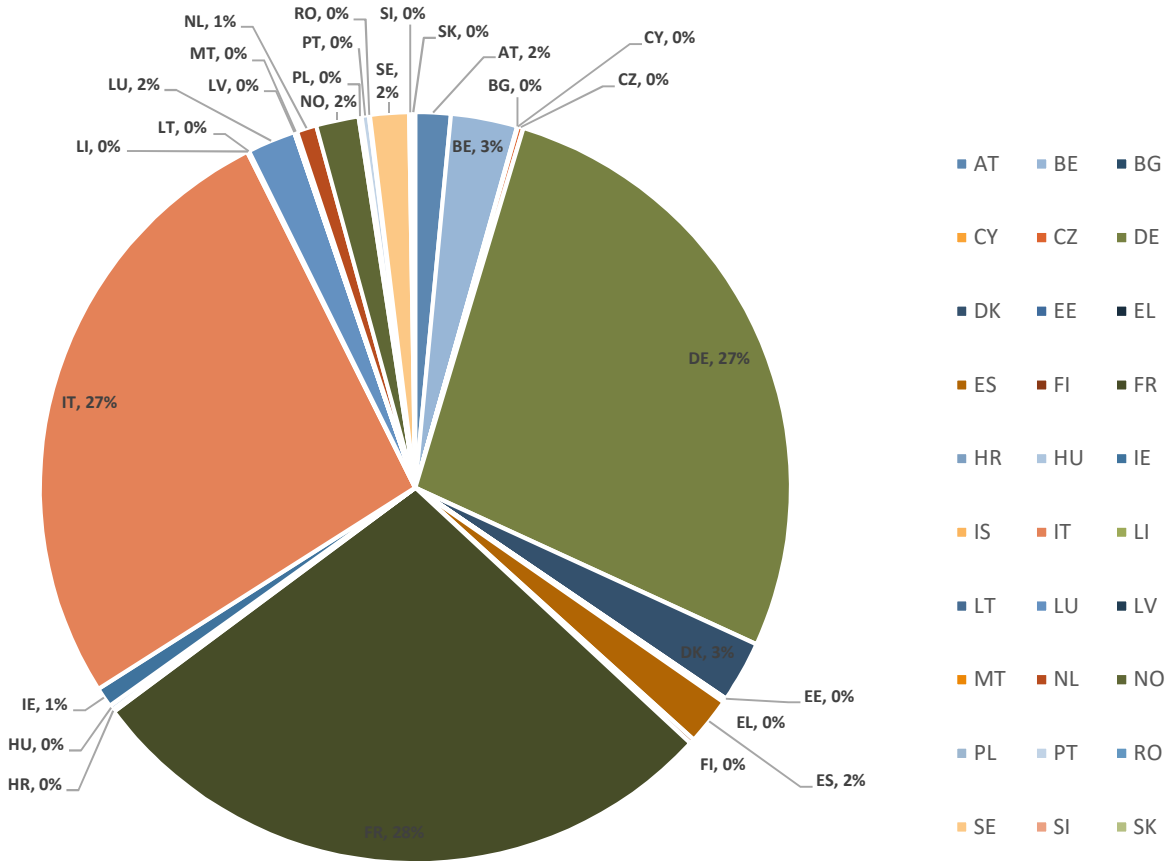
Despite the different size of each line of business and structural heterogeneity across countries (Figure 12), the trend of a shift from insurance with profit participation towards unit-linked life insurance is verified across 21 Member States. For some of them, namely BE, EE, FR, HU and LV, the decrease in the overall significance of profit participation decrease by over 5%. In an extreme case, PT observed a decrease of 21% in the weight of the profit participation GWP compared to the total life GWP (Figure 14).

Figure 12 - % GWP UL LoB across Member States, 2020



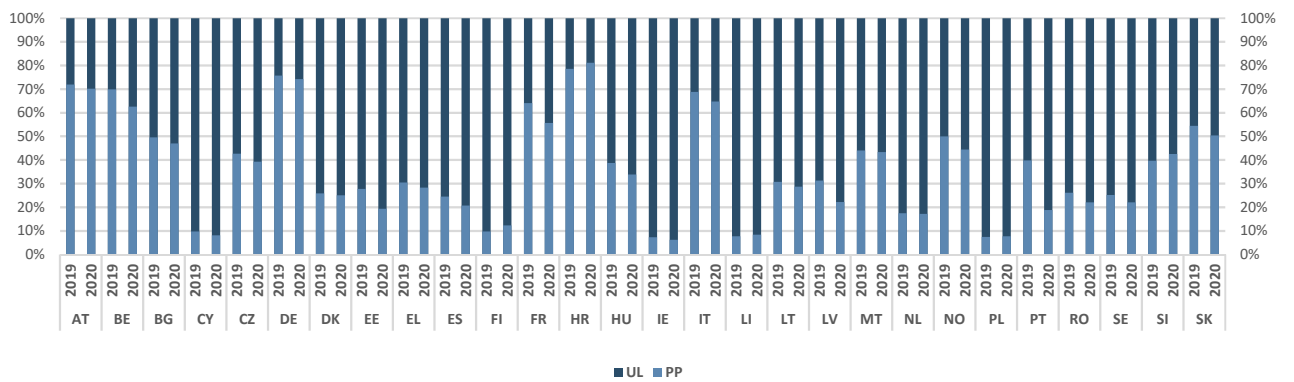
Source: EIOPA Solvency II database

Figure 13 - % GWP PP LoB across Member States, 2020



Source: EIOPA Solvency II database

Figure 14 - GWP distribution between UL and PP lines of business per Member State, 2019-2020

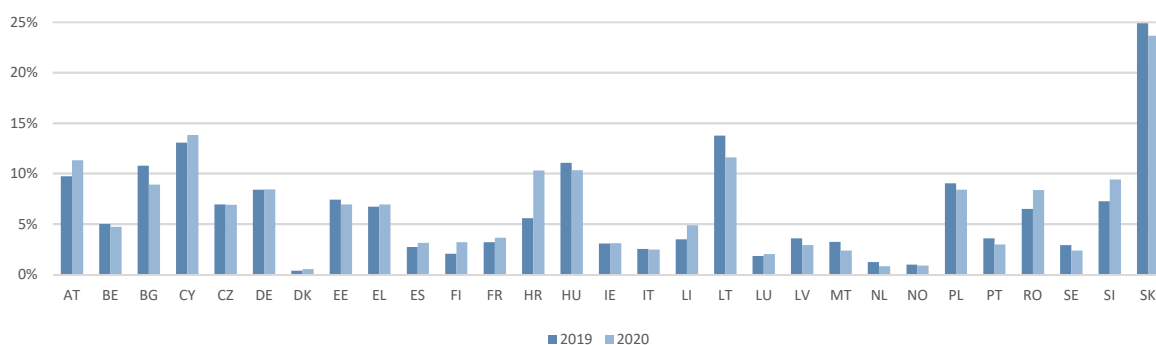


Source: EIOPA Solvency II database

Costs and charges for the distribution of IBIPs, in particular commission rates

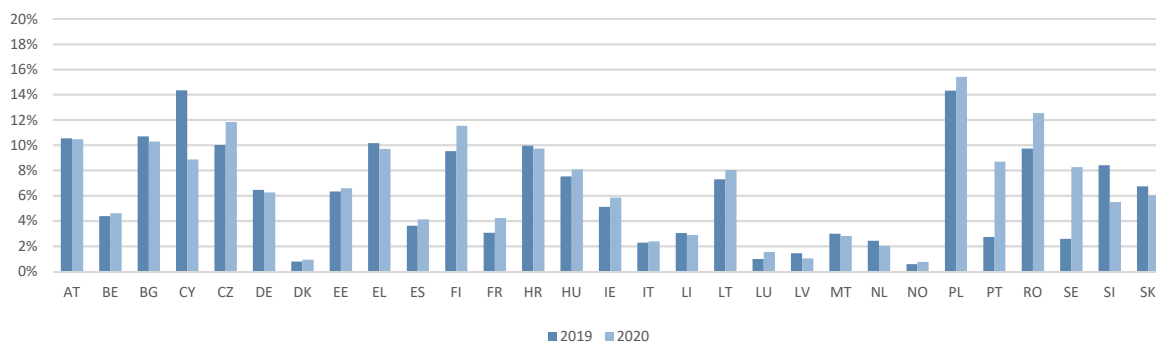
Considering the overall distribution strategies reported by each country (Figures 1.2, 1.3, 1.4 from EIOPA's IDD application report), it seems that markets where the majority of insurance intermediaries acted on behalf of one or more insurance undertakings, also tend to charge higher commission rates, especially for UL products (Figure 15).

**Figure 15 - Commission Rates for UL products, by Member State, 2019-2020**



Source: Solvency II database

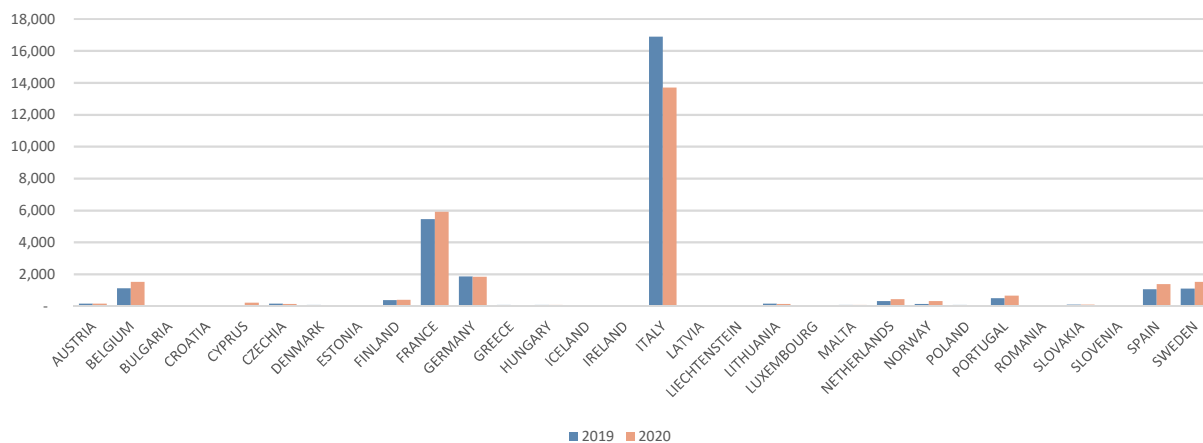
**Figure 16 - Commission Rates for PP products, by Member State, 2019-2020**



Source: EIOPA Solvency II database

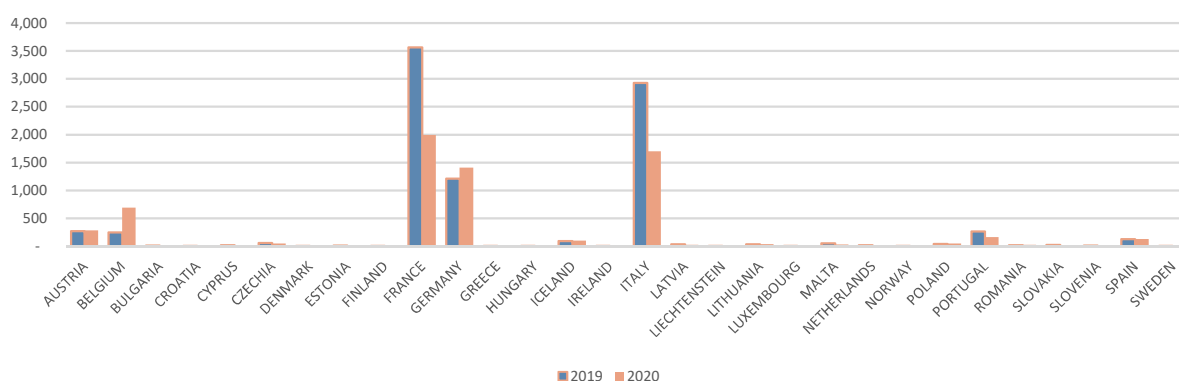
Regarding cross-border activities, Italy, France and Germany emerge as the largest markets reporting cross border activities, even though there are interesting dynamics across the Baltics and Nordics. The picture at country level reinforces the snapshot at EEA level regarding the decrease in amount of cross border activity in the past years (Figures 17 and 18).

**Figure 17 - GWP exported on cross border by LOB for UL products, 2019-2020**



Source: EIOPA Solvency II database

**Figure 18 - GWP exported on cross border by LOB for PP products, 2019-2020**



Source: EIOPA Solvency II database

### Growth in the market for online distribution of IBIPs

1. Given the ongoing digital transformation occurring in the EU distribution market, EIOPA has also looked at whether there has been any specific growth in the online distribution of IBIPs. EIOPA is not in a position, based on limited data provided by NCAs, to provide a detailed picture of the growth in the market for online sales of IBIPs. (As noted in the section of this Call for Advice related to digital tools and channels, the existence of online platforms selling IBIPs seems to be particularly low at present).
2. Generally speaking, EIOPA has noted in its IDD application report<sup>32</sup> that online sales for insurance products seem to be increasing on a yearly basis and it is likely that this trend

<sup>32</sup> [https://www.eiopa.europa.eu/media/news/eiopa-publishes-report-application-of-insurance-distribution-directive\\_en](https://www.eiopa.europa.eu/media/news/eiopa-publishes-report-application-of-insurance-distribution-directive_en)

will continue as this trend is being further enhanced by the COVID-19 pandemic and social distancing measures. Based on data for 13 Member States provided by NCAs and some trade associations, the proportion of online sales for insurance products in terms of total volume of GWP remains relatively low in many Member States, ranging mostly from 0.2% to 2%. It is interesting to note that for DK and EE, it is estimated that online sales account for 80% of the total volume of GWP and the proportion of online sales in LV is relatively high as well (70% for life insurance).

3. The aforementioned Commission Report on "Distribution systems of retail investment products across the European Union"<sup>33</sup> indicates that ***"for life insurance products (both with guaranteed capital and without guaranteed capital), these make up for 4% of the total number of products identified on distributors' websites in the Member States observed"***.
4. It is, however, emphasised in the report that *"the sample of distributors did not include brokers"* and *"the products availability depends largely on the market analysed"*. The report goes on to indicate that *"in France, Italy, Czech Republic, Belgium and Portugal, a relatively wide variety of life insurance policies are offered. However, in Denmark, Estonia, Germany, Spain, Sweden, and the UK, no such products were identified with their associated costs disclosed. In the cases of Denmark and Germany, the lack of information on life insurance costs and charges, although well known, is all the more remarkable, since life insurance and annuity entitlements represent a very significant share of households' financial asset portfolio. It must be noted however that there is no obligation for distributors to disclose fees for life insurance products on their webpages"*.

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<sup>33</sup> [https://ec.europa.eu/info/sites/default/files/180425-retail-investment-products-distribution-systems\\_en.pdf](https://ec.europa.eu/info/sites/default/files/180425-retail-investment-products-distribution-systems_en.pdf) - see page 20

## ANNEX VI – EXAMPLES OF RECENT REFORM EXPERIENCE AT NATIONAL LEVEL IN RELATION TO THE REGULATION OF INDUCEMENTS

### Netherlands (input provided by the Dutch AFM)<sup>34</sup>

The Netherlands experienced the worst product scandal in its recent financial history with the widespread mis-selling of complex unit-linked products in the 1990s and early 2000s, leading to approximately EUR 50 billion in damages. Although many factors contributed to the mis-selling, high commissions and other costs associated with the policies were a significant factor. As a result of these costs, there was often very little money left for policy holders.

In response, the Netherlands passed an inducement ban for complex products, which entered into force in 2013, with the aim of putting the client's interest front and centre. The ban takes away incentives for intermediaries and advisors to advise or sell a product that is not primarily in the client's best interest. The ban includes non-monetary inducements. In 2020, the AFM imposed a fine on an insurers for violating the ban on inducements for organising a trip to the Olympic Games for distributors.

Prior rules aimed at promoting cost transparency, which existed before implementation of the ban, proved ineffective in creating consumers' understanding of the costs associated with a financial product. This ineffectiveness of additional transparency and disclosure in removing conflicts of interests was one of the reasons for implementing a total ban on commissions and inducements.

The ban was impactful, not only for intermediaries but also for consumers who henceforth had to pay a fee for a service many had previously perceived to be free. According to an evaluation of the ban, consumers often underestimate the price of financial advice, while intermediaries sometimes struggle to convince consumers of the added value and benefits of advice. The AFM concluded in 2015 that, despite challenges with regards to changing their culture and business model, intermediaries complied with the ban.

The evaluation conducted at the request of the Ministry of Finance also concluded that the ban was effective in its aim of taking away incentives for intermediaries to advise or sell products not principally in the client's best interest, although the ban has to be evaluated together with other

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<sup>34</sup> Sources:

"Marktindrukken: Een beeld van de markt van financiële dienstverleners in een snel veranderende omgeving." December, 2020.

<https://www.afm.nl/nl-nl/nieuws/2020/december/marktindrukken-financieel-dienstverleners>

The letter to Parliament by the Minister of Finance and the underlying reports can be found here:

[https://www.tweedekamer.nl/kamerstukken/brieven\\_regering/detail?id=2018Z00927&did=2018D01944](https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2018Z00927&did=2018D01944)

Kwink Groep, "Evaluatie wettelijke regeling productontwikkelingsproces (artikel 32 BGfo Wft)" 12 June 2020,

<https://www.tweedekamer.nl/kamerstukken/detail?id=2020D27778&did=2020D27778>

The letter to Parliament about the evaluation of the inducement ban by the Minister of Finance and the underlying reports can be found here: [https://www.tweedekamer.nl/kamerstukken/brieven\\_regering/detail?id=2018Z00927&did=2018D01944](https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2018Z00927&did=2018D01944)



measures passed around the same time. Although some consumers were reluctant to pay for advice, this was a matter of willingness rather than affordability. The evaluation did not find evidence for restricted access to financial advice for consumers who wanted it. Although the number of registered intermediaries declined following the implementation of the ban, this trend had started years before the implementation.

The AFM concludes that the benefits of the ban on commissions and inducements outweigh the costs and that such forms of payment from providers to intermediaries do not fit open, transparent and financial markets. In our supervisory experience, the ban has played an important role in protecting consumers, avoiding mis-selling, and promoting cost-effective products aimed at long-term capital accumulation.

#### Ireland (Input from Central Bank of Ireland)

Intermediaries play an important role in the provision of financial services and products to consumers in the Irish market. Through the course of its work, the Central Bank of Ireland (the Central Bank) has identified many potential benefits to consumers from the operation of intermediaries in the Irish market, including access to advice, better competition in the market and a wider choice of products.

However, in keeping with its mandate to protect the consumers of financial services, the Central Bank considered the risks posed to consumers through the existence of commission arrangements between intermediaries and product producers. The manner in which product producers pay the intermediaries who sell their products can influence the behaviour of those intermediaries and potentially drive poor behaviours such as product or product producer bias, overselling, and higher costs for consumers.

Therefore, it is vital that commission arrangements are designed in such a way that they encourage responsible business conduct, fair treatment of consumers and avoid conflicts of interest. It is in this context, and in line with the Central Bank's strategic objective of Strengthening Consumer Protection, that amendments were introduced to the Consumer Protection Code 2012 (the Code) to enhance the consumer framework in relation to the payment of commission to intermediaries.

The Central Bank researched and developed these amendments through a comprehensive process of analysis and engagement. In 2016, the Central Bank published a [Discussion Paper on the payment of Commission to intermediaries](#). The purpose of the Discussion Paper was to seek views on the possible risks and benefits to the consumer on the practice of insurance companies, banks and other financial firms paying commissions to intermediaries that distribute their financial products.

Some of the risks identified included product bias, producer bias, over-selling, higher costs for consumers and lack of transparency. This Discussion Paper was followed by research on consumer

understanding of commission payments, by an examination of commission structures in the market and by a [Consultation Paper on Intermediary Inducements – Enhanced Consumer Protection Measures \(CP116\)](#), published in November 2017. The outcome of this lengthy project resulted in amendments to the Code.

The Central Bank did not introduce a ban on commission payments. Once properly designed, commission arrangements can be beneficial for consumers by providing them with access to advice without having to pay a direct and/or upfront fee for this service. Such commission structures serve to ensure that all consumers can avail of advice on financial products and services, whilst eliminating the risk of an advice gap emerging in the event that a consumer is unable or unwilling to pay for advice.

However, the Central Bank introduced new provisions to prohibit certain types of commission payments to remove clear conflicts of interest. Under the new rules, the Central Bank requires intermediaries to publish details of the commissions they receive from product producers on their website and in their public offices. In addition, the Central Bank no longer permits intermediaries to describe themselves and their regulated activities as 'independent' where they accept and retain commission in circumstances where advice is provided.

Certain criteria must be met in order for commission to be acceptable and commission linked to targets that do not consider a consumer's best interests is deemed a conflict of interest and is prohibited. Free hospitality for intermediaries, such as golf trips and sporting event tickets, is also prohibited under the new rules. Any commission received in the form of non-monetary benefits must demonstrably enhance the quality of the service to the consumer in order to be permitted.

In conclusion, these new provisions aim to increase transparency around commission arrangements, reduce information asymmetries between consumers and intermediaries, and promote the development of a consumer-focussed culture within financial services firms where commission payments are received. We consider that these amendments to the Code provide for a robust consumer protection framework around the payment of commissions, through addressing various conflicts of interest, by providing further clarity on the use of the term 'independent', and by introducing additional transparency obligations in relation to commission arrangements available to intermediaries. The provisions came into effect on 31 March 2020.

#### Sweden (input from SE FSA)

From a consumer perspective, it should not matter what legislative framework the company/undertaking must comply with or which distribution model the entity is using; especially

if the products are similar. This was the overarching principle steering the legislative framework in Sweden on advice, investment advice and inducements at the time of IDD implementation. The purpose was to, as much as possible, achieve a transparent regime and the same protection for consumers investing directly in financial instruments as investing in insurance based investment products. Furthermore, it was added that the measure aimed to strengthen a level playing field among market participants with different authorisations but similar activity. It was also considered that the increased consumer protection features in MiFID II and IDD would be the initial measure, instead of a complete ban on inducements/commissions as a first measure. The effects of these measures would then be followed-up and evaluated. Swedish Government to report on these issues at the end of 2021.

Inspired by MiFID II rules, there are specific features for insurance distributors in Sweden and further enhanced criteria on receiving commissions and inducements. There were also some clarifications into who would be able to sell IBIPs in Sweden.

If an insurance intermediary performs distribution services on the basis of impartial and personal analysis, commissions are prohibited.

An insurance distributor, in connection with distribution of insurance-based investment products or ancillary services, may not offer or receive remuneration from a party other than the customer where the remuneration:

1. to a material extent, relates to services which have not yet been performed,
2. in respect of its size, is based on premium payments which have not yet been made, or
3. is of such size that it is clearly disproportionate to the services which are performed.

This means a complete ban on up-front commission in Sweden. It also means that an insurance company have to think about putting a cap of on third party payments to intermediaries as, in certain cases, it might be seen as disproportionate to the services rendered.

Regardless of insurance product; inducements, commissions and/or non-monetary benefits received must be disclosed and is further regulated in the SE FSA regulatory Code.

Specific cost disclosures can also be found in the SE FSA Regulatory Code as well as record-keeping obligations.

**ANNEX VI – COMPARISON TABLE BETWEEN MIFID II AND IDD LEGISLATION REGARDING CONFLICTS OF INTEREST/INDUCEMENTS PROVISIONS**

Topic/ Issue	MiFiD II text	IDD text	Analysis/Conclusion
<p>Identification of conflicts of Interest</p>	<p>Article 23(1): Member States shall require investment firms to take all appropriate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof, <b>including those caused by the receipt of inducements from third parties or by the investment firm’s own remuneration and other incentive structures.</b></p>	<p>Article 27(1): Member States shall ensure that insurance intermediaries and insurance undertakings take all appropriate steps to identify conflicts of interest between themselves, including their managers and employees, or any person directly or indirectly linked to them by control, and their customers or between one customer and another, that arise in the course of carrying out any insurance distribution activities.</p>	<p>MiFiD II explicitly refers to the receipt of inducements from third parties as an example of a conflict of interest to be identified, whereas IDD does not.</p> <p>Although it would have been helpful for the Level 1 text of the IDD to also explicitly refer to the receipt of inducements from third parties or by the insurance intermediary’s or insurance undertaking’s own remuneration and other incentive structures as an exam, the reference “including” in the MiFiD II, makes it clear that it is an example and therefore, the lack of a reference to inducements in the IDD text, should not be a material barrier to identifying inducements as having the potential to cause a conflict of interest</p>

Topic/ Issue	MiFiD II text	IDD text	Analysis/Conclusion
<p>Rules governing the payment or receipt of inducements</p>	<p>Article 24(9) first subpara: Member States shall ensure that investment firms <b>are regarded as not fulfilling their obligations</b> under Article 23 or under paragraph 1 of this Article where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the provision of an investment service or an ancillary service, to or by any party except the client or a person on behalf of the client, <b>other than where</b> the payment or benefit:</p> <p><b>(a) is designed to enhance the quality of the relevant service to the client;</b> and</p>	<p>2. Without prejudice to points (d) and (e) of Article 19(1), Article 19(3) and Article 22(3), Member States shall ensure that insurance intermediaries or insurance undertakings <b>are regarded as fulfilling their obligations</b> under Article 17(1), Article 27 or Article 28 where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the customer or a person on behalf of the customer <b>only where</b> the payment or benefit:</p> <p><b>(a) does not have a detrimental impact on the quality of the relevant service to the customer;</b> and</p>	<p>MiFiD II starts from a position of the payment/receipt of an inducement meaning non-compliance with the duty to act in the best of interests of the customer and conflicts of interest requirements. Whereas IDD starts from a different position of compliance with the rules, provided the two conditions are fulfilled.</p> <p>MiFiD II establishes a test of the inducement needing to “enhance the quality” of the service, which implies a positive obligation, whereas IDD only requires that the payment/receipt of the inducement does not have a “detrimental impact on the quality” of the service<sup>35</sup>. Whereas the “quality enhancement” test requires more positive steps to be taken to protect the customer and the “no detrimental impact” test may appear more comparable with the MiFiD II requirement “not to impair compliance with the duty to act in</p>

<sup>35</sup> Particularly noteworthy in this respect are Article 11 of Commission Delegated Directive (EU) 2017/593 with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits. This sets out a series of binding cumulative conditions which need to be fulfilled for a fee, commission or non-monetary benefit shall be considered to be designed to enhance the quality of the relevant service to the client.

In addition, ESMA has provided further guidance in Q&A 12.8 on “how should the quality enhancement condition be applied that the inducement is justified by the provision of an additional or higher-level service to the relevant client, proportional to the level of inducements received”: [esma35-43-349\\_mifid\\_ii\\_qas\\_on\\_investor\\_protection\\_topics.pdf](https://esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf) (europa.eu).

Topic/ Issue	MiFiD II text	IDD text	Analysis/Conclusion
	(b) does not impair compliance with the investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients.	(b) does not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers.	the best interests of the client", some NCAs have highlighted practical difficulties in demonstrating that the payment/receipt of commissions, for example, (in comparison to minor non-monetary benefits such as hospitality gifts) do not enhance the quality of the service to the customer. In addition, some NCAs have indicated the fact that there is little evidence to date of material differences in terms of supervisory outcomes between applying the "quality enhancement" criterion and the "no detrimental impact" criterion.
Disclosure of the monetary amount of inducements	<b>Article 24(9) 2<sup>nd</sup> supara: The existence, nature and <u>amount</u> of the payment or benefit referred to in the first subparagraph, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service. Where</b>		MiFiD II includes an explicit provision requiring the disclosure of the amount of the inducement. The IDD does not include an equivalent provision under Article 29(1) and Article 19(1)(d) only requires the pre-contractual disclosure of "the nature of the remuneration received in relation to the insurance contract". Notwithstanding this provision, Article 29(1)(c), IDD refers to the need to disclose "as regards the information on all costs and related charges to be disclosed, information relating to the distribution of the insurance-based

Topic/ Issue	MiFiD II text	IDD text	Analysis/Conclusion
	<p><b>applicable, the investment firm shall also inform the client on mechanisms for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment or ancillary service.</b></p>		<p>investment product, including the cost of advice, where relevant, the cost of the insurance-based investment product recommended or marketed to the customer and how the customer may pay for it, <b>also encompassing any third party payments</b>". The reference to "third party payments" has been interpreted by some NCAs as implying an obligation to disclose the amount of inducements under the IDD as the legislative intention was to align as far as possible with the MiFID II provisions. In addition, retrocessions could be disclosed as good practice.</p>
<p>Independent advice</p>	<p><b>Article 24(7): Where an investment firm informs the client that investment advice is provided on an independent basis, that investment firm shall:</b></p> <p>(a) assess a sufficient range of financial instruments available on the market which must be sufficiently diverse with regard to their type and issuers or product providers to ensure that the client's investment objectives can be</p>	<p><b>Member States may require</b> that, where an insurance intermediary informs the client that advice is given independently, the intermediary shall assess a sufficiently large number of insurance products available on the market which are sufficiently diversified with regard to their type and product providers to ensure that the client's objectives can be suitably met and shall not be limited to insurance</p>	<p>MiFID II provides for a formal concept of independent investment advice, whereas this does not exist in the IDD. However, the IDD provides for a national option to include a similar concept the one in MiFID II and the IDD already includes a narrower concept of advice on the basis of a fair and personal analysis (Article 20(3), IDD).</p>

Topic/ Issue	MiFiD II text	IDD text	Analysis/Conclusion
	<p>suitably met and must not be limited to financial instruments issued or provided by:</p> <p>(i) the investment firm itself or by entities having close links with the investment firm; or</p> <p>(ii) other entities with which the investment firm has such close legal or economic relationships, such as contractual relationships, as to pose a risk of impairing the independent basis of the advice provided;</p> <p><b>(b) not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients. Minor non-monetary benefits that are capable of enhancing the quality of service provided to a client and are of a scale and nature such that they could not be judged to impair</b></p>	<p>products issued or provided by entities having close links with the intermediary.</p>	<p>MiFiD II provides for a formal ban on accepting and retaining inducements in the case of portfolio management or independent advice. Only minor non-monetary benefits that are capable of enhancing the quality of the service to a client are exempted from this ban, but they need to be properly disclosed.</p> <p>There is no equivalent provision in the IDD, but the IDD does provide for a national option to be exercised to ban/restrict the payment of inducements (see below)</p>



Topic/ Issue	MiFiD II text	IDD text	Analysis/Conclusion
	<p><b>compliance with the investment firm's duty to act in the best interest of the client must be clearly disclosed and are excluded from this point.</b></p>		
<p>Possibility to impose stricter requirements</p>	<p>Article 24(12): Member States may, in exceptional cases, impose additional requirements on investment firms in respect of the matters covered by this Article. Such requirements must be objectively justified and proportionate so as to address specific risks to investor protection or to market integrity which are of particular importance in the circumstances of the market structure of that Member State.</p>	<p>Article 29(3): Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may additionally prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice.</p> <p>Stricter requirements may include requiring any such fees, commissions or non-monetary benefits to be returned to the clients or offset against fees paid by the client.</p> <p>Member States may make the provision of advice referred to in Article 30 mandatory for the sales of any insurance-based</p>	<p>Both IDD and MiFiD II provide for stricter requirements to be imposed nationally in relation to the payment/receipt of inducements, but MiFiD II starts from the premise of maximum harmonisation (whereby any additional requirements should be limited), whereas IDD is minimum harmonising and allows more freedom for Member States in imposing specific requirements to protect consumers, although some examples are already included Article 29(3).</p>

ANNEXES TO EIOPA'S CONSULTATION PAPER ON RETAIL INVESTOR PROTECTION

EIOPA REGULAR USE

<b>Topic/ Issue</b>	<b>MiFiD II text</b>	<b>IDD text</b>	<b>Analysis/Conclusion</b>
		investment products, or for certain types of them.	

## ANNEX VII: OVERVIEW OF OVERLAPPING INFORMATION REQUIREMENTS IN EU LEGISLATION RELEVANT TO THE SALE OF IBIPS

Table 1 below lists the identical information requirements which EIOPA identified, while Table 2 lists the partially identical requirements. N.B. This summary is complemented by a more detailed list of the requirements further below.

The impact of the duplications varies depending on the relevance and type of information, as well as the level of consistency across the requirements. The practical burden of duplication and potential for increased confusion/hampering of decision-making for consumers is considered *high* with regards:

- Information on risks which is important, however the lack of consistency between PRIIPs and Solvency II disclosures which regards how risks are presented might make it too difficult for consumers to understand the final risk level of the product.
- Information on distribution costs, as it is duplicated but not disclosed in the same way under IDD and PRIIPs, and it is not disclosed separately under PRIIPs, also without a break down to specify inducements. Hence the practical burden of duplication and potential for increased confusion/hampering of decision-making for consumers, is considered high
- Information on the supervisory authority
- Underlying assets
- Means of payment
- Contract termination including cooling-off

The practical burden of duplication and potential for increased confusion/hampering of decision-making for consumers is considered at *a medium level*, with regards to:

- Information on benefits, in contrast, although it might not be fully consistent between these two frameworks, however the requirements might be more accurate under Solvency II rules at the national level than PRIIPs.
- Information on complaints-handling procedures
- IBIP term
- Tax system
- Compensation system / protection system
- Applicable law

The practical burden of duplication and potential for increased confusion/hampering of decision-making for consumers is considered *low* with regards to:

- Insurance undertaking's and intermediary's identity and contact details, address of the branch office
- Register of insurance intermediaries

**TABLE 1. OVERVIEW OF IDENTICAL INFORMATION REQUIREMENTS**

	<b>IDD 2016/97/EU</b>	<b>Solvency II Directive 2009/138/ EG</b>	<b>PRIIPs Regulation (EU) 1286/2014</b>	<b>DMFSD 2002/65/EG</b> <small>(in case of IBIPs sold at a distance)</small>	<b>Proposal for possible policy change</b>
<b><u>Pre-contractual obligations:</u></b>					
Insurance undertaking identity and contact details	<a href="#">Article 18 (b)(i)</a>	<a href="#">Article 185.2(a) and (c)</a>	<a href="#">Article 8.3 (a)</a>	<a href="#">Article 3.1(1)(a)(b)</a>	Although duplicative, identity information is important in each document that is delivered to the consumer.  Disapply requirements in the DMFSD for IBIPs sold online.
Insurance intermediary identity and contact details	Article 18(a)(i)			Article 3.1(1)(c)	Disapply requirements in the DMFSD for IBIPs sold online
Address of the branch office		Article 185.2 (c)		Article 3.1(1)(a)(b)	Disapply requirement in the DMFSD for IBIPs sold online
information on the supervisory authority			Article 8.3 (a)	Article 3.1(1) (e)	Disapply requirement in the DMFSD for IBIPs sold online
Register of insurance intermediaries	Article 18(a) (iv)			Article 3.1(1)(d)	Disapply requirement in the DMFSD for IBIPs sold online
Distribution costs	Article 29.1(c)		Article 8.3(f)	Article 3.2(d) and (e)	A disclosure on the amount of inducements could be added (seeking alignment with Article 24(9) of MIFID II). EIOPA could propose where to include such disclosure (IDD or PRIIPs).

	<b>IDD 2016/97/EU</b>	<b>Solvency II Directive 2009/138/ EG</b>	<b>PRIIPs Regulation (EU) 1286/2014</b>	<b>DMFSD 2002/65/EG</b> <small>(in case of IBIPs sold at a distance)</small>	<b>Proposal for possible policy change</b>
Contract term		Article 185.3(b)	Article 8.3(c)	(+)	Disapply Solvency II provisions for IBIPs sold online
Complaint procedures / extrajudicial dispute resolution	Article 18(a)(iii) and (b)(iii)	Article 185.3(l)	Article 8.3(h)	Article 3.1.(4)(a)	Disapply requirement from Solvency II, and DMFSD for IBIPs sold online

**TABLE 2. PARTIALLY IDENTICAL INFORMATION REQUIREMENTS**

	<b>IDD 2016/97/EU</b>	<b>Solvency II Directive 2009/138/EG</b>	<b>PRIIPs Regulation (EU) 1286/2014</b>	<b>DMFSD 2002/65/E G</b>	<b>Proposal</b>
<b><u>Pre-contractual obligations:</u></b>					
Product benefits/features		Article 185 3.(a)	Article 8.3(c)	(+)	
Underlying assets		Article 185 3.(i)	Article 8.3(c)(ii)		Disapply Solvency II for IBIPs. Note that in Solvency II, limited to unit-linked
Tax system		Article 185.3(k)		(+)	Disapply requirement in the DMFSD for IBIPs sold online
Terms of payment	Article 29.1 (c)	Article 185.3. (d)		Article 3. 1(2)(f)	Duplication of IDD and Solvency II with regards the product related terms. Solvency II is less specific as doesn't refer to intermediary service, unlike IDD.  DMFSD covers the "financial service", not explicitly the product itself sold.
Risks		Article 185.3(f) and 185.4	Article 8.3(d)	Article 3.1.(2)(c)	Disapply Solvency II for IBIPs.
Compensation system / protection system			Article 8.3(e)	Article 3.1(4)(b)	Disapply requirement in the DMFSD for IBIPs sold online
Contract termination		Article 185.3.(c) and (j)	Article 8.3(g)	Article 3.1(3)(c) and (j)	Disapply Solvency II for IBIPs, as PRIIPs is more specific

	<b>IDD 2016/97/EU</b>	<b>Solvency II Directive 2009/138/EG</b>	<b>PRIIPs Regulation (EU) 1286/2014</b>	<b>DMFSD 2002/65/E G</b>	<b>Proposal</b>
Applicable law		Article 185.3 (m)		(+)	Disapply requirement from Solvency II, and DMFSD for IBIPs sold online
<b><u>Obligations during the term of a contract:</u></b>					
Updating of information	(+)	(+)			

The tables below shows duplicative information requirements in EU legislation. The right column "impact" indicates the impact of the duplicate/contradictory information requirements in EU legislation on consumers in terms of information overload and confusion (red means high impact, amber means medium impact and green means low impact).

### 1 DUPLICATIONS BETWEEN DISCLOSURES IN IDD AND OTHER LEGISLATIVE ACTS

Topic	IDD Article	Overlapping information requirement in other EU legislation	Impact and proposal
<p>Identity and address of undertaking</p> <p><i>FULL DUPLICATION</i></p>	<p>Article 18:</p> <p>Member States shall ensure that:</p> <p>(a) in good time before the conclusion of an insurance contract, an insurance <u>intermediary</u> makes the following disclosures to customers:</p> <p>(b) in good time before the conclusion of an insurance contract, an insurance <u>undertaking</u> makes the following disclosures to customers:</p> <p>(i) its <u>identity and address</u> and that it is an insurance undertaking</p>	<p><b>Article 3 of the DMFSD (in case of distance contract):</b></p> <p>1. In good time before the consumer is bound by any distance contract or offer, he shall be provided with the following information concerning:</p> <p>(1) the supplier</p> <p>(a) the <u>identity</u> and the main business of the supplier, the <u>geographical address</u> at which the supplier is established and any other <u>geographical address</u> relevant for the customer's relations with the supplier;</p> <p>(b) <u>the identity of the representative of the supplier</u> established in the consumer's Member State of residence and the <u>geographical address</u> relevant for</p>	<p>The full duplication concerns, Solvency, IDD and PRIIPs, as the scope of DMFSD is narrower (only IBIPs sold at distance).</p> <p>Also the scope of DMFSD and Solvency II is not limited to IBIPs. Solvency II provisions could be disapplied for IBIPs, and DMFSD for IBIPs sold on-line.</p> <p>DMFSD does not identify the "insurance undertaking" and "intermediary" but the "supplier" and "any professional other than the supplier" respectively.</p>



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Topic	IDD Article	Overlapping information requirement in other EU legislation	Impact and proposal
		<p>the customer's relations with the representative, if such a representative exists;</p> <p><b>Article 5(1)(a)(b) and (c) of the ECD (in case the insurance intermediary or insurance undertaking provide an information society service):</b></p> <p>1. In addition to other information requirements established by Community law, Member States shall ensure that the service provider shall render easily, directly and permanently accessible to the recipients of the service and competent authorities, at least the following information:</p> <p><u>(a) the name of the service provider;</u></p> <p><u>(b) the geographic address at which the service provider is established;</u></p> <p><u>(c) the details of the service provider, including his electronic mail address, which allow him to be</u></p>	<p>No 100% overlap as IDD is more specific and requires the information to be provided before the conclusion of the contract.</p> <p>However, the requirements are duplicative and could be disapplied for IBIPs.</p>

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Topic	IDD Article	Overlapping information requirement in other EU legislation	Impact and proposal
		<p><u>contacted rapidly and communicated with in a direct and effective manner;</u></p> <p>Article 184 of the <b>Solvency II Directive:</b></p> <p>2. The contract or any other document granting cover, together with the insurance proposal where it is binding upon the policy holder, shall state the <u>address of the head office or, where appropriate, of the branch of the non-life insurance undertaking which grants the cover</u></p> <p><b><u>Article 185 of the SII with regards the Identity and address of the insurance undertaking:</u></b></p> <p>2. The following information about the life insurance undertaking shall be communicated:</p>	<p>IDD and PRIIPs are more specific than Solvency II about the timing of the provision by requiring it to be provided “in good time” before the conclusion of the contract. Solvency II provisions to be disapplied for IBIPs.</p>

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Topic	IDD Article	Overlapping information requirement in other EU legislation	Impact and proposal
		<p><u>(a) the name of the undertaking and its legal form;</u></p> <p><u>(c) the address of the head office and, where appropriate, of the branch concluding the contract;</u></p> <p><b>PRIIPs Article 8</b> paragraph 3 (a))</p> <p><u>3. The key information document shall contain the following information:</u></p> <p>(a) <u>at the beginning of the document, the name of the PRIIP, the identity and contact details of the PRIIP manufacturer, information about the competent authority of the PRIIP manufacturer and the date of the document;</u></p>	<p>No changes.</p>
Identity and address of the intermediary	Article 18:  Member States shall ensure that:	<b>Article 3 of the DMFSD (in case of distance contract):</b>	Scope of DMFSD is narrower than IDD. Could be proposed

Topic	IDD Article	Overlapping information requirement in other EU legislation	Impact and proposal
<i>FULL DUPLICATION</i>	(a) in good time before the conclusion of an insurance contract, an insurance <u>intermediary</u> makes the following disclosures to customers:  (i) its <u>identity and address and that it is an insurance intermediary</u>	1. In good time before the consumer is bound by any distance contract or offer, he shall be provided with the following information concerning:  (1) the supplier  (c) when the consumer's dealings are with any professional other than the supplier, <u>the identity of this professional, the capacity in which he is acting vis-à-vis the consumer, and the geographical address</u> relevant for the customer's relations with this professional;	to disapply DMFSD for IBIPs sold on-line.
Out-of-court complaint and redress procedures  <i>FULL DUPLICATION</i>	Article 18:  Member States shall ensure that:  (a) in good time before the conclusion of an insurance contract, an insurance <u>intermediary</u> makes the following disclosures to customers:  (iii) the procedures referred to in Article 14 enabling customers and other interested parties to	Article 3 of the <b>DMFSD</b> (in case of distance contract):  1. In good time before the consumer is bound by any distance contract or offer, he shall be provided with the following information concerning:  (4) redress  (a) whether or not there is an <u>out-of-court complaint and redress mechanism</u> for the consumer that is	Scope of DMFSD is narrower than IDD. Could be proposed to disapply DMFSD for IBIPs sold on-line

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Topic	IDD Article	Overlapping information requirement in other EU legislation	Impact and proposal
	<p>register complaints about insurance intermediaries and about the <u>out-of-court complaint and redress procedures</u> referred to in Article 15</p> <p>(b) in good time before the conclusion of an insurance contract, an insurance <u>undertaking</u> makes the following disclosures to customers:</p> <p>(iii) the procedures referred to in Article 14 enabling customers and other interested parties to register complaints about insurance undertakings and about the <u>out-of-court complaint and redress procedures</u> referred to in Article 15.</p>	<p>party to the distance contract and, if so, the methods for having access to it;</p> <p>Article 183 of the <b>Solvency II Directive</b>:</p> <p>1. Before a non-life insurance contract is concluded the non-life insurance undertaking shall inform the policy holder of the following:</p> <p>The insurance undertaking shall also inform the policy holder of the <u>arrangements for handling complaints of policy holders</u> concerning contracts including, where appropriate, the existence of a complaints body, without prejudice to the right of the policy holder to take legal proceedings.</p> <p>Article 185 of the <b>Solvency II Directive</b>:</p> <p>1. Before the life insurance contract is concluded, at least the information set out in paragraphs 2 to 4 shall be communicated to the policy holder.</p>	<p>Disapply Solvency II requirement for IBIPs.</p>

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Topic	IDD Article	Overlapping information requirement in other EU legislation	Impact and proposal
		<p>3. The following information relating to the commitment shall be communicated:</p> <p>(l) the <u>arrangements for handling complaints</u> concerning contracts by policy holders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a <u>complaints body</u>, without prejudice to the right to take legal proceedings;</p>	
		<p>Article 8 of the <b>PRIPs Regulation</b> (in case of IBIPs):</p> <p>3. The key information document shall contain the following information:</p> <p>(h) under a section titled ‘How can I complain?’, information about <u>how and to whom a retail investor can make a complaint</u> about the product or the conduct of the PRIIP manufacturer or a person advising on, or selling, the product;</p>	<p>No changes.</p>

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Topic	IDD Article	Overlapping information requirement in other EU legislation	Impact and proposal
Register of insurance intermediaries  <i>FULL DUPLICATION</i>	Article 18:  Member States shall ensure that:  (a) in good time before the conclusion of an insurance contract, an insurance intermediary makes the following disclosures to customers:  (iv) <u>the register</u> in which it has been included and the means for verifying that it has been registered;	Article 3 of the <b>DMFSD</b> (in case of distance contract):  1. In good time before the consumer is bound by any distance contract or offer, he shall be provided with the following information concerning:  (1) the supplier  (d) <u>where the supplier is registered in a trade or similar public register, the trade register in which the supplier is entered</u> and his registration number or an equivalent means of identification in that register;	Could be proposed to disapply DMFSD for IBIPs sold on-line.
		Article 5(1)(d) of the <b>ECD</b> (in case the insurance intermediary provides an information society service):  1. In addition to other information requirements established by Community law, Member States shall ensure that the service provider shall render easily, directly and permanently accessible to the recipients	Could be proposed to disapply ECD for IBIPs.

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Topic	IDD Article	Overlapping information requirement in other EU legislation	Impact and proposal
		of the service and competent authorities, at least the following information:  (d) <u>where the service provider is registered in a trade or similar public register, the trade register in which the service provider is entered</u> and his registration number, or equivalent means of identification in that register;	
terms of payment  <i>PARTIAL DUPLICATION</i>	IDD (Article 29 paragraph 1 (c))  1. Without prejudice to Article 18 and Article 19(1) and (2), appropriate information shall be provided in good time, prior to the conclusion of a contract, to customers or potential customers with regard to the distribution of insurance-based investment products, and with regard to all costs and related charges. That information shall include at least the following:	<p><b>Article 185 of the Solvency II Directive</b></p> 3. d) the means of payment of premiums and duration of payment	Partial duplication as only concerning the terms of the payment for the product. Solvency II more specific with regards the duration of payment. Disapply SII provision for IBIPs, unless this information under Solvency II is personalised.
		<p><b>Article 3 of the DMFSD (in case of distance contract):</b></p>	Partial duplication as only concerning the terms of the



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	<p>(b) as regards the information on all costs and related charges to be disclosed, information relating to the distribution of the insurance-based investment product, including the cost of advice, where relevant, the cost of the insurance-based investment product recommended or marketed to the customer and <u>how the customer may pay for it</u>, also encompassing any third party payments.</p>	<p>(2) the financial service</p> <p>1(2)(f) the arrangements for payment and for performance</p> <p>(b) the total price to be paid by the consumer to the supplier for the financial service, including all related fees, charges and expenses, and all taxes paid via the supplier or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it</p>	<p>payment for the financial service.</p> <p>Disapply DMFSD for IBIPs sold on-line.</p>
<p>Costs related to the distribution of IBIPs</p> <p><i>PARTIALDUPLICATION</i></p>	<p>Article 29:</p> <p>1. Without prejudice to Article 18 and Article 19(1) and (2), appropriate information shall be provided in good time, prior to the conclusion of a contract, to customers or potential customers with regard to the distribution of insurance-based investment products, and with regard to all costs and related</p>	<p>Article 8 of the <b>PRIPs Regulation</b> (in case of IBIPs):</p> <p>3. The key information document shall contain the following information:</p> <p>(f) under a section titled ‘What are the costs?’, the costs associated with an investment in the PRIIP, comprising both direct and indirect costs to be borne by the retail investor, including one-off and recurring costs, presented by means of summary indicators of</p>	<p>Member States have implemented the IDD requirements on the disclosure of costs and charges in different ways.</p> <p>There is a need to provide further guidance as to how the obligation to inform the</p>

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Topic	IDD Article	Overlapping information requirement in other EU legislation	Impact and proposal
	<p>charges. That information shall include at least the following:</p> <p>(c) as regards the information on all costs and related charges to be disclosed, <u>information relating to the distribution of the insurance-based investment product, including the cost of advice</u>, where relevant, the cost of the insurance-based investment product recommended or marketed to the customer and how the customer may pay for it, also encompassing any third party payments.</p> <p>Recital 42:</p> <p>Insurance intermediaries and insurance undertakings are subject to uniform requirements when distributing insurance-based investment products, as laid down in Regulation (EU) No 1286/2014 of the European Parliament and of the Council. In addition to the information required to be provided in the form of the key information document, distributors of insurance-based investment products should provide additional</p>	<p>these costs and, to ensure comparability, total aggregate costs expressed in monetary and percentage terms, to show the compound effects of the total costs on the investment.</p> <p>The key information document shall include a clear indication that advisors, distributors or any other person advising on, or selling, the PRIIP will provide information detailing any <u>cost of distribution that is not already included in the costs specified above</u>, so as to enable the retail investor to understand the cumulative effect that these aggregate costs have on the return of the investment;</p> <p>Article 3 of the <b>DMFSD</b> (in case of distance contract):</p> <p>1. (2) the financial service</p>	<p>customer on the distribution costs and charges of IBIPs should be implemented by insurance undertakings and intermediaries in order to facilitate supervisory convergence and effective supervision of insurance distributors.</p> <p>In particular under PRIIPs, distribution costs are mostly disclosed under the one-off and on-going costs.</p> <p>Need to address the current lack of disclosure of inducements.</p>

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Topic	IDD Article	Overlapping information requirement in other EU legislation	Impact and proposal
	<p>information detailing any <u>cost of distribution that is not already included in the costs specified in the key information document, so as to enable the customer to understand the cumulative effect that those aggregate costs have on the return of the investment.</u> This Directive should therefore lay down rules on provision of information on costs of the distribution service connected to the insurance-based investment products in question.</p>	<p>b) the total price to be paid by the consumer to the supplier for the financial service, including all related fees, charges and expenses, and all taxes paid via the supplier or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it (d) notice of the possibility that other taxes and/or <u>costs may exist that are not paid via the supplier or imposed by him</u></p> <p>(e) <u>any limitations of the period for which the information provided is valid</u></p>	

**1. DUPLICATIONS BETWEEN PRIIPS AND OTHER REGULATIONS (OTHER THAN THOSE LISTED IN THE FIRST TABLE)**

Disclosure	PRIIPs	Overlapping/contradictory information requirement in other EU legislation	Impact and proposal
Product features <i>FULL DUPLICATION</i>	Article 8.3(c) (iv) and Delegated Regulation (EU) 2014/653 (Article 2 paragraph 2, Article 11) with regard to reference values, options and insurance benefits  Article 8  3. The key information document shall contain the following information:  (c) under a section titled 'What is this product?', the nature and main features of the PRIIP, including:  (iv) where the PRIIP offers insurance benefits, details of those insurance benefits, including the circumstances that would trigger them	<b>Article 185 of the Solvency II Directive</b>  3. The following information relating to the commitment shall be communicated:  (a) the definition of each benefit and each option;	Solvency II might have been implemented in Member States in a more granular way. Disapply SII provision for IBIPs.
		<b>Article 3 of the Distance Marketing Directive</b>  1. In good time before the consumer is bound by any distance contract or offer, he shall be provided with the following information concerning: (2) financial service (a) a description of the main characteristics of the financial service	Disapply DMFSD provision for IBIPs sold on-line
Contract terms	Article 8	<b>Article 185 of the Solvency II Directive</b>	Solvency II requirement might be personalized as it refers to

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Disclosure	PRIIPs	Overlapping/contradictory information requirement in other EU legislation	Impact and proposal
<i>FULL DUPLICATION</i>	3. The key information document shall contain the following information:  (c) under a section titled ‘What is this product?’, the nature and main features of the PRIIP, including:  (v) the term of the PRIIP, if known;	3. The following information relating to the commitment shall be communicated:  (vi) the term of the contract	“contract” and not the life insurance product. Consider to disapply SII provision for IBIPs.
Underlying assets  <i>PARTIAL DUPLICATION</i>	Article 8  3. The key information document shall contain the following information:  ( c_) under a section titled ‘What is this product?’, the nature and main features of the PRIIP, including:  (ii) its objectives and the means for achieving them, in particular whether the objectives are achieved by means of direct or indirect exposure to the underlying investment assets, including a description	Article 185 Solvency II Directive 3. The following information relating to the commitment shall be communicated:  (i) an indication of the nature of the underlying assets for unit-linked policies;	PRIIPs risk disclosure is more detailed. PRIIPs and SII disclosures are not consistent. Disapply SII provision for unit-linked IBIPs (SII provision is limited to unit-linked policies).

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Disclosure	PRIIPs	Overlapping/contradictory information requirement in other EU legislation	Impact and proposal
	<p>of the underlying instruments or reference values, including a specification of the markets the PRIIP invests in, including, where applicable, specific environmental or social objectives targeted by the product, as well as how the return is determined;</p>		
<p>Risks <i>PARTIAL DUPLICATION</i></p>	<p>Article 8                      3. The key information document shall contain the following information:                      (a) under a section titled ‘What are the risks and what could I get in return?’, a brief description of the risk-reward profile comprising the following elements:                      (i) a summary risk indicator, supplemented by a narrative explanation of that indicator, its main limitations and a narrative explanation of the risks which</p>	<p>DMFSD                      Article 3.1                      (2) financial service                      (c) where relevant notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the supplier’s control and that historical performances are not indicators for future performances</p>	<p>Disapply DMFSD provision for IBIPs sold on-line</p>

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Disclosure	PRIIPs	Overlapping/contradictory information requirement in other EU legislation	Impact and proposal
	<p>are materially relevant to the PRIIP and which are not adequately captured by the summary risk indicator;)</p> <p>(ii) the possible maximum loss of invested capital, including, information on:</p> <ul style="list-style-type: none"> <li>- whether the retail investor can lose all invested capital, or</li> <li>- whether the retail investor bears the risk of incurring additional financial commitments or obligations, including contingent liabilities in addition to the capital invested in the PRIIP, and</li> <li>- where applicable, whether the PRIIP includes capital protection against market risk, and the details of its cover and limitations, in particular with respect to the timing of when it applies;</li> </ul>	<p>Article 185 Solvency II Directive</p> <p>3. The following information relating to the commitment shall be communicated:</p> <p>(f) an indication of surrender and paid-up values and the extent to which they are guaranteed;</p> <p>4. In addition, specific information shall be supplied in order to provide a proper understanding of the risks underlying the contract which are assumed by the policy holder.</p>	<p>PRIIPs is more detailed than SII.</p> <p>Disapply SII for IBIPs.</p>

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Disclosure	PRIIPs	Overlapping/contradictory information requirement in other EU legislation	Impact and proposal
	<ul style="list-style-type: none"> <li>(iii) appropriate performance scenarios, and the assumptions made to produce them;</li> <li>(iv) where applicable, information on conditions for returns to retail investors or built-in performance caps;</li> <li>(v) a statement that the tax legislation of the retail investor's home Member State may have an impact on the actual pay-out;</li> </ul>		
Means of terminating the contract <i>PARTIAL DUPLICATION</i>	PRIIP (Article 8 paragraph 3 (g))  (g) under a section titled 'How long should I hold it and can I take money out early?'  (i) where applicable, whether there is a cooling off period or cancellation period for the PRIIP;	<b>Article 185 of the Solvency II Directive</b>  3.(c) the means of terminating the contract  (j) arrangements for application of the cooling-off period;	Disapply SII for IBIPs
	(ii) an indication of the recommended and, where applicable, required minimum holding period;	DMFSD  Article 3 paragraph 1 (3) (c) information on any rights the parties may have to terminate the contract early or unilaterally by virtue	Disapply DMFSD provision for IBIPs sold on-line



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Disclosure	PRIIPs	Overlapping/contradictory information requirement in other EU legislation	Impact and proposal
	<p>(iii) the ability to make, and the conditions for, any disinvestments before maturity, including all applicable fees and penalties, having regard to the risk and reward profile of the PRIIP and the market evolution it targets;</p> <p>(iv) information about the potential consequences of cashing in before the end of the term or recommended holding period, such as the loss of capital protection or additional contingent fees;</p>	<p>of the terms of the distance contract, including any penalties imposed by the contract in such cases</p>	
<p>Compensation system / protection system</p> <p><i>PARTIAL DUPLICATION</i></p>	<p>Article 8</p> <p>3. The key information document shall contain the following information:</p> <p>(e) under a section titled ‘What happens if [the name of the PRIIP manufacturer] is unable to pay out?’, a brief description of whether the related loss is covered by an investor compensation or guarantee scheme and if so, which scheme it is, the name of the guarantor and which risks are covered by the scheme and which are not;</p>	<p>DMFSD</p> <p>Article 3 paragraph 1                      (4) redress                      (b) the existence of guarantee funds or other compensation arrangements, not covered by Directive 94/19/ EC of the European Parliament and of the Council of 30 May 1994 on deposit guarantee schemes and Directive 97/9/ EC of the European Parliament and of the Council of 3 March 1997 on investor compensation schemes.</p>	<p>Disapply DMFSD provision for IBIPs sold on-line.</p>

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Disclosure	PRIIPs	Overlapping/contradictory information requirement in other EU legislation	Impact and proposal
<p>Competent Authority</p> <p><i>FULL DUPLICATION</i></p>	<p>Article 8</p> <p>3. The key information document shall contain the following information:</p> <p>(a) at the beginning of the document, the name of the PRIIP, the identity and contact details of the PRIIP manufacturer, information about the competent authority of the PRIIP manufacturer and the date of the document;</p>	<p>DMFSD</p> <p>Article 3</p> <p>1. In good time before the consumer is bound by any distance contract or offer, he shall be provided with the following information concerning:</p> <p>(3) the supplier</p> <p>(e) where the supplier's activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority;</p>	<p>Disapply DMFSD provision for IBIPs sold on-line</p>

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