Response to EC consultation on suitability and appropriateness

Our reference:	COB-DIS-22-57	Date:	24-03-2022
Referring to:	EC targeted consultation on options to enhance the suitability and appropriateness assessments		
Related documents:			
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Pages:	14	Transparency Register ID no.:	33213703459-54

Introduction

- **An enhanced client assessment regime – general**

The new regime would be built around two parts: a first part focused on assessing, via a unique standardised questionnaire, the retail investor's investment objectives, risk tolerance and personal constraints and a second part dedicated to establishing a basic but personalised asset allocation strategy for the retail investor's investment portfolio.

Question 1. *Do you consider that a unique and standardised retail investors' assessment regime, as described above, applicable to all investment services and enhanced with the provision of a personal asset allocation strategy, could address the weaknesses of the current suitability and appropriateness regimes?*
Yes/ No/ Don't know
Please provide a detailed answer.

- No

Insurance Europe does not agree that there are significant "weaknesses" in the application of the suitability and appropriateness tests in the insurance market that need to be addressed through this initiative. The suitability test under the Insurance Distribution Directive (IDD) has only been in place for two years, but functions well and meets the needs of insurance customers and distributors.

This is evidenced by the recent report by the European Insurance and Occupational Pensions Authority (EIOPA) on the application of the IDD, which did not highlight any significant failings in the application of the suitability test for insurance. In fact, EIOPA is instead examining the application of the insurance specific "demands and needs test", as there is a more urgent need for streamlining with regards to this preliminary stage of the sale process rather than the later suitability test. The EC's own consultation in the context of the Retail Investment Strategy (RIS) also did not highlight major concerns in this area. Based on the EC's summary, respondents saw scope for improvements to the current framework mainly in financial literacy (69,28%), disclosure requirements

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(43,98%), digital innovation (38,55%). In the ranking of the areas where respondents saw more scope for improvement (Figure 4), “suitability and appropriateness” comes only at the 8th position (22,89%).

Insurers see many drawbacks in a unique and standardised retail investors’ assessment regime. The industry takes the view that this approach does not take into account three elements as: i) differences across investment regimes, both within and between member states; ii) differences among investors; and iii) differences across advisory services.

> i. Investment regimes are very diverse. For example, some investments are locked-in long-term due to tax treatment, where others can be immediately drawn down (albeit subject to a fee). Furthermore, in many instances taxes on capital gains vary between investment regimes, giving rise to liquidity considerations. Thus, an asset class has different characteristics depending on the particular investment regime. For this reason, tests and asset allocation strategies must suit both the individual investor's needs and knowledge, and be tailored to the specific investment regime in question.
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> ii. It is important that retail investors receive an appropriate test and meaningful advice on risk appetite and tolerance and that advice focuses on achieving a suitable asset allocation. However, investors are very diverse. Some have a thorough understanding of investment products and economics and require little advice in relation to basics such as risk tolerance and asset allocation, whereas others with limited knowledge may benefit significantly from a minimum level of guidance.
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> iii. Advice is a valuable service as it brings personalisation and consumers benefit from the professional knowledge of the distributor. Consumers also benefit from healthy competition between advisors. Advisory services are a component of a complex national framework in which there are several type of advisors. Advice is focused on the customer and this means that there is competition in offering advice that best suits them. This is particularly relevant for insurance products that are not only financial products but embrace a plurality of customer needs. A too rigid model risks not taking this plurality into consideration.

Insurers, as manufacturers & distributors of IBIPs, will be significantly impacted by the EC’s RIS and the corresponding legislative rules. The EC’s consultation paper does not appear to have given due consideration to the specific nature of insurance-based investment products (IBIPs) or to insurance distribution systems. Instead it looks to apply a regime designed for investment firms, and wealth management clients in particular, to a completely different set of products and consumers. As such, it is likely to result in considerable consumer detriment rather than offer any improvements to a system that currently works well in the insurance market. Moreover, while drafting new legislation, the specificities of sectors affected by it must be taken into consideration.

IBIPs have more to offer than pure investments and can address different type of consumer needs (protection, financial planning, risk diversification, etc). Insurance Europe has included further details of the features of insurance markets that have been overlooked in the annex attached to this response. IBIPs are insurance-based products designed for consumers looking to purchase a product with a degree of additional cover/protection. They are sold via well-established insurance distribution systems that operate differently to those under MiFID. This proposed regime appears to have completely overlooked this.

Question 2. *Do you think a new retail client assessment (enhanced with a personalised asset allocation strategy) and its transferability could bring benefits and opportunities to retail investors and financial intermediaries? Please provide a detailed answer.*
- Yes, it could bring them benefits and opportunities
- No, it would not bring them specific benefit
- Don’t know /no opinion / not applicable

- No, it would not bring them specific benefit

No, as currently proposed, insurers do not see any particular benefit to consumers in the introduction of a new retail client assessment. Furthermore, insurers are not aware of any specific consumer need in the insurance sector that this is designed to address. Insurers' products are specific in nature and have specific features. The current distribution system reflects the nature of insurance products and enables insurers to provide suitable products to consumers. More details on the specific features of IBIPs is included in annex to this response.

The proposals included in this consultation paper are unlikely to shorten or streamline the suitability test. Instead, they seem likely to make the process longer and more burdensome. The suitability assessment already covers the key aspects needed and will shortly be updated to also cover ESG preferences. Further changes under this regime are unnecessary.

The proposals, as drafted, would impact product innovation, both when it comes to design and asset allocation. It would remove development and competition on the quality of advice.

Question 3. *Should retail investors be able to transfer the results of their assessment together with their personalised asset allocation strategy to brokers/financial intermediaries of their choosing in order to facilitate switching between or using multiple brokers/financial intermediaries and generally enhance the investor experience? Please explain your answer.*
Yes/ No/ Don't know

Consumer consent would need to be at the heart of any new system, with consumers themselves deciding who has access to any information they have provided. Under the IDD, a right to access a copy of the record of your suitability assessment (and other relevant information) already exists (Article 23(3) of the IDD). This right should be protected and not overridden by any aspect of this new initiative.

Insurance Europe would also like to point out the relative unimportance of online switching services for IBIPs. Personalised, long-term products like IBIPs will inevitably be switched much less often than pure investment products. Extensive switching is unlikely to be in the consumers benefit (eg cancellation costs, lower guaranteed interest rates, or poorer biometric parameters due to changed entry age or health status), and so actively encouraging switching is not advisable.
Further feedback on the potential drawbacks of portability is included in answer to Question 8.

Question 4. Would you see any drawbacks that could emerge from the creation and use of such a new suitability assessment applicable to all investment services (including its sharing/portability if any) for retail investors and financial intermediaries? Yes/ No/ Don't know

- Yes

As currently designed, the proposed new system would be completely unworkable for insurance. This would result in considerable consumer detriment and ultimately is likely to restrict rather than enhance access to financial advice. The one-size-fits-all approach taken in the EC's proposals would result in an unworkable regime that ultimately would have a negative impact on consumers.

IBIPs are entirely different to other investment products and cannot simply be brought into the same distribution system. If the EC intends to make changes to the existing IDD distribution regime, these need to be calibrated specifically for insurance markets, taking into account the specific nature of products, existing regulatory framework, distribution systems and consumer expectations.

More details on the specific features of insurance that have been overlooked in this consultation are included in the annex attached to this response. A solid impact assessment is urgently needed as these proposals entail a complete overhaul of the current system. However, this impact assessment would only be useful if insurance aspects were included in the assessment. In particular, the feasibility should be examined and potential benefits evaluated. Consumers' reactions to treating all investment and life insurance transactions together should also be examined. An impact assessment would also have to assess how the services (data collection, assessment, recommendations/advice, placement of products, portability, and after-sales services such as funds switching) would be remunerated in the future.

Insurance Europe also wishes to note that four weeks is also insufficient to provide full feedback and does not give stakeholders enough time to consider some of the new proposals in sufficient detail. It is vital that such short consultation periods do not become the norm. Stakeholder input is vital to ensuring initiatives such as these can work in practice. This rushed consultation without detail proposals on which to comment is entirely insufficient.

Many aspects of the proposed approach are also unclear:

- Would this system replace both the suitability and the appropriateness test in a single approach?
- Would the new system be optional?
- Would execution only sales remain possible? It is key that execution only sales remain possible given the needs of certain customers and the benefits of technology in the industry.
- Why does the consultation refer to intermediaries and not to product manufacturers given the importance of product design and target groups?
- How would it affect costs for the intermediaries? Would it, for example, drive up investment-related costs, as the industry would have fewer standardized products?
- Is the EC proposing to invest a certain percentage of retail investors' budget in shares/bonds/funds/derivatives and a certain percentage in IBIPs? Or does the EC expect insurers to design IBIPs that have fixed lines of investment?
- Where could a customer seek redress or raise a claim, given that it is unclear who would have liability for the transferable asset allocation strategy and investor profile?
- How would the proposal sit alongside and interact with the new regime for assessing a customer's ESG preferences?
- How would this regime operate in markets with a mandatory advice requirement?
- Does it also apply to direct sales and, if so, how?
- How does this process interact with the IDD demands and needs test?
- How would the asset allocation strategy be applied to guaranteed products where some assets are held in the insurer's general account?
- Who has the responsibility to monitor the customers asset allocation strategy as the portfolio will divert from the proposed strategy over time?
- What's the difference between personalised asset allocation strategy (Q3) and standardised personal investment plan (Q6)?

Insurance Europe would also like to stress the difficulties created by having several concurrent workstreams:

- New rules on suitability assessments including sustainability preferences with potential further guidance from the ESAs.
- A forthcoming consultation on Open Finance.
- A just ended EIOPA consultation on certain retail investor protection aspects.
- The European Single Access Point (ESAP) proposals.

The current IDD rules provide sufficient safeguards through the whole product life cycle and there is no clear need to change the current suitability and appropriateness system. Meeting consumers' expectations and needs is essential to the success of the insurance industry and insurers need to maintain a diverse range of products to satisfy the varying needs of consumers across Europe. The insurance sector takes the view that developing an entirely new system, with new definitions, procedures and tests, will needlessly create additional red tape, legal uncertainty and compliance costs.

Question 5. *Who should prepare the clients' assessment and their asset allocation strategy?*
- Any financial intermediary selected by the retail investor
- An independent function within the financial intermediary selected by the retail investor
- An independent financial intermediary selected by the retail investor
- Other (e.g. public entity)
Please explain your answers (in particular if you ticked the box for "other").

- Any financial intermediary selected by the retail investor

Distribution structures across Europe differ. It is up to the client to choose which advisor they would like to use. This could be an intermediary, but also a product manufacturer.

The sale of IBIPs in many markets is predominantly remunerated on the basis of commission. This commission-based advice offers some advantages to consumers and should not be put at risk by this new initiative. All qualified financial advisers must be treated equally under regulation, regardless of how they are remunerated. The introduction of an asset allocation strategy should not favour one distribution system over any other.

Enabling only certain advisors to prepare the client assessment/asset allocation strategy could inadvertently restrict access to advice in markets where 'independent' advice is not available. Access to advice is vital and a crucial aspect of consumer protection in the insurance sector.

Not only would this restrict access, but also cut off the asset allocation strategy from the more holistic advice covering the client's entire financial situation including insurance and savings.

Equally, requiring intermediaries to establish an independent function would be impossible for most insurance markets. Many insurance distributors are micro-enterprises or sole traders, which do not have the manpower to designate an independent function solely for this purpose.

There are, however, instances where it would also be appropriate for public entities to have the ability to create a client assessment in the context of retirement planning where a pension product is offered directly by a public entity.

Question 6. *What should be the key components of a standardised personal investment plan?*
- A description of the investor
- A description of duties and responsibilities of the investment adviser drawing up the personal investment plan, custody arrangements and the duties of the client to signal changes in her personal circumstances
- Procedures and reviews that are necessary to keep the IPS topical and up-to-date
- Investment objectives
- Investment constraints
- Technical guidelines specifying technical aspects on how the investment should be carried out, such as permissible use of leverage or derivatives; exclusion of specific types of assets from investment, if any
- ESG factors, such as specific types of assets to be excluded from investments
- Evaluation and review
- Rules on identifying strategic asset allocation – including the baseline allocation of portfolio assets to asset classes
- Rebalancing – policies on rebalancing asset class weights Please explain your answers

The contents of any standardised personal investment plan should not require the insurer to collect any information not already required under the IDD and accompanying delegated acts.

In particular Article 9(3) and 9(4) of the Commission Delegated Regulation 2017/2359/EU specify that certain information is only required to be collected 'where relevant'. The introduction of any new personal investment plan should not require this information to be collected as standard, as this would require insurance and insurance distributors to overload consumers with a large number of irrelevant questions, potentially putting them off completing the sale. This is at odds with the overall objective of streamlining access to IBIPs. Article 9 also includes a degree of proportionality. This should not be overridden by any more granular requirements.

Notwithstanding the above, the list proposed in this consultation overlooks some of the key factors to be considered by a client when buying an IBIP. In particular, the proposals do not include any need to consider the consumer's need for any insurance cover or financial guarantees. These are key features of IBIPs and are often equally as important as the investment component. The proposed list seems to suggest that the investor profile for an insurance customer would not include any detail at all on their wish to buy a product that includes additional insurance benefits. Without this information, the personal investment plan will serve very little purpose in establishing which IBIP is most suitable for a particular customer, or for establishing whether an IBIP or a different fund-based product would be most suitable.

Question 7. *What are the main investment objectives and constraints that should be addressed in a personal investment plan? Please explain your answers.*
- Return objectives: Long-term investment return per year, in nominal terms, net of fees
- Constraints: Liquidity – expected investor outlays, etc.
- Time horizon
- Tax situation
- Legal and Regulatory factors, if any
- Unique investor circumstances, e.g., ethical or environmental preferences

As above, the list proposed in this question does not include many of the key features of an IBIP and focuses only on the investment component. This is not an adequate framework for use in the distribution of IBIPs. In particular, the need for a financial guarantee is a key consideration when buying an IBIP and should be included in this list.

Insurance Europe would also like to point out that many of the criteria and language included in this list are inappropriate in an insurance context (eg liquidity, investor outlays).

Question 8. *Storage and accessibility of the new suitability assessment, including the asset allocation strategy. Do you agree with the following statement? Yes/ No/ Don't know*

All data in the suitability assessment and the personalised asset allocation strategy (the "personal investment plan") should be stored electronically and, subject to the client's consent, the investment plan personal should be accessible to all financial intermediaries that the client employs ("open finance").

- Don't know

Whether or not Insurance Europe agrees with this statement would depend on the level of detail of the new regime, including the mechanisms for transferring information and the contents of the various documents themselves.

Consumer consent would need to be at the heart of any new system, with consumers themselves deciding who has access to any information they have provided. Under the IDD, a right to access a copy of the record of your suitability assessment (and other relevant information) already exists (Article 23(3) of the IDD). This right should be protected and not overridden by any aspect of this new initiative.

In principle, beyond those rights already legally guaranteed, companies should be able to decide freely how they handle their data co-operations. The data basis already developed by insurers is an important part of their business value. Insurers should be able to protect this, rather than face mandatory data-sharing with BigTechs and others looking to use this data to enter the market. Free access to data would have strong network effects for platform and eco-system based distribution models, leading to market dominance and limiting access to customers to a few market participants ("winners take most").

Any portability of investor profiles should be limited to generic data provided by the customer. Generated data, e.g. based on company-own techniques could raise intellectual property or competition issues and should therefore not be subject to portability. With this in mind, a possible way forward would be to allow for the portability of any input data provided by the customer, but not to make any data that has been generated or analysed by the intermediary/insurer available to competitors. In practice this would mean splitting the proposed client assessment into two parts. The first part, consisting of the generic data provided by the customer could be made portable, the second part where the data is analysed would be the proprietary work of the insurer/intermediary and should not be made available. The asset allocation strategy should not be portable.

Insurance Europe would also like to highlight the relative unimportance of online switching services for IBIPs. Personalised, long-term products like IBIPs will inevitably be switched much less often than pure investment products. Extensive switching is unlikely to be in the consumer's benefit (eg cancellation costs, lower guaranteed interest rates, or poorer biometric parameters due to changed entry age or health status), and so actively encouraging switching is not advisable. This means that there is very limited consumer benefit from making insurers' client assessments available to other providers, as consumers are unlikely to benefit from moving to a new provider.

Question 9. *How often should the client's assessment and asset allocation strategy be updated?*
- Once per year
- Upon significant changes in the retail investor's personal circumstances or objectives, communicated by the investor to its financial intermediary
- Upon suggestion of the financial intermediary selected by the investor, subject to providing the investor with any necessary written justification evidencing the need for an update, and subject to the investor's agreement + duly stored
- Other.

Question 9.1 *When the investor is NOT under advice (please select as many answers as you like)*

- Other

It is not appropriate or necessary to set up specific rules on update frequency as this depends highly on the specificities of the individual investor. Short-term investments with sophisticated investment products or leverage may require frequent interaction between investor and advisor while long-term investments with basic asset classes may require very little interaction.

It should be noted that the specific features of IBIPs would impact the appropriate timeframe for carrying out any updates. Many IBIPs are very long-term with minimal exit options, meaning regular updates would be unnecessary. Similarly, many IBIPs offer features such as life-cycling where changes in the investment strategy are built into the product itself (including for dynamic hybrid products). In this context, there is no need for updates to the asset allocation strategy, as this would have been considered at the point of sale.

For these reasons, it is not appropriate to set one single timeframe/parameter for carrying out updates.

Aside for any specific comments on the potential triggers for an update, insurers are unclear on who would be responsible for carrying out any update to the client assessment/asset allocation strategy where a client is not 'under advice'. This presents considerable liability issues that need to be addressed. It is also not clear how this service would be remunerated.

Question 9.2 *When the investor is under advice/portfolio management*
- Once per year
- Upon significant changes in the retail investor's personal circumstances or objectives, communicated by the investor to its financial intermediary
- At the initiative of the financial intermediary providing the advice and subject to written justifications evidencing the improvement, communicated to the investor and duly stored
- Other.

See response to Question 9.1

Question 10. *Please provide us with an estimate of the necessary costs to set-up and update this possible new client assessment (including the personalised asset allocation strategy) in a structured and machine-readable format as well as for its storage in a way accessible for future reference by the retail investor and competent authorities. Please explain your answer and provide a breakdown of the most important cost components.*
- One off costs (estimate in EUR).
- Ongoing costs (estimate in EUR).

Neither Insurance Europe nor its members have been able to estimate the requested costs.

Question 11. *Please provide us with a cost comparison between the costs associated to this possible new client assessment regime (including the personalised asset allocation strategy) in and your current costs associated to compliance with the current suitability and appropriateness regimes? Please explain your answer.*
- Your current costs associated to compliance with the current suitability and appropriateness regimes (estimate in EUR).
- Estimate costs associated to compliance with the possible new suitability assessment regime (including the personalised asset allocation strategy) (estimate in EUR).

Neither Insurance Europe nor its members have been able to estimate the requested costs.

Question 12. *Do you consider that the new client assessment regime would allow material cost savings for financial intermediaries taking into account the standardised and single nature of the possible assessment regime, once the initial sunk costs are absorbed? Yes/ No/ Don't know*
Please explain your answer. If possible, please provide estimates.

Insurance Europe is not able to provide specific cost estimates. It is impossible to quantify a cost per individual compliance requirement, as it also depends on the size of the company and of the distribution network, whether the company needs to outsource activities, the number and type of products in the portfolio, the frequency of review, etc.

The overall costs would also be dependent of the details of the new regime. In particular, the content and level of detail of the data to be collected/analysed and the format in which it must be provided. It is possible to provide machine-readable data via a PDF at a low cost, but any more granular stipulations on data format would be much more expensive to implement.

However, it should be noted that the set-up costs for streamlining the advice process should not be underestimated. This has been demonstrated by the relatively slow adoption of robo-advice services, where costs are one the key reasons that more insurers are not already offering this service. As currently proposed, this new system would not only entail changes to the IDD suitability and appropriateness tests, but also to the product oversight and governance process, training of intermediaries and rules on the provision of advice. These changes would create significant set-up costs and would likely entail increased ongoing costs.

The consultation paper seems to presuppose that this would be offset by cost savings created by the streamlining of the process going forward. However, the industry sees very limited potential for these changes to lead to cost savings for insurers/intermediaries. Regardless of the availability of previous client assessments, Insurance Europe does not expect that insurance distributors would be prepared to base their advice to the client on an assessment performed by a third party without themselves re-assessing and re-evaluating the assessment and check if it is updated. The end result would be a system that operates in a similar manner to the existing IDD system (with a limited number of clients making use of their rights under Article 23.3 of the IDD), but with intermediaries facing the increased costs incurred by having to implement the new standardised questionnaire and potentially new data formats.

- **A personalised asset allocation strategy**

A personalised asset allocation strategy would be the main output of the new client-centric assessment carried out by a financial intermediary. It would represent a basic investment framework for achieving the retail investor's investment objectives and aim to provide the investor with maximum returns in view of its personal circumstances, while exposing the investor to an optimal amount of risk. This would be achieved by setting out a unique plan for exposure (in percentage terms for instance) to an optimal diversification of broad asset classes (eg fixed income, equity, commodities, etc) and set the right risk- return profile for the retail investor's investment goals.

The rules on asset class categorisation could feature a varying level of details and granularity. For example, the legislation could establish very general asset classes across which diversification should be ensured (eg equity, bonds, commodities, real estate, private equity, hedge funds) or it could foresee or allow for a creation of more detailed 'sub-asset classes' (government bonds vs. corporate bonds, high yield vs investment grade bonds, large cap vs. small cap shares, etc).

This personalised asset allocation strategy could then be made portable and transferable across financial intermediaries that the retail investor chooses to interact with. It should then be determined whether and to what extent financial intermediaries should be allowed to depart from this personalised asset allocation strategy and under what conditions.

Question 13. *Should the rules on personalised asset allocation strategy foresee standardised investor profiles based on retail investors' personal constraints, risk/return appetite and objectives?*
Yes/ No/ Don't know / no opinion / not applicable

- No

Question 13.1 ***If no***, *please provide a detailed answer to question 13*

The use of a personalised asset allocation strategy is not coherent with rigid, standardised investor profiling. Personalisation means flexibility. Standardised investor profiles would not represent the diverse nature of EU consumers, who have different personal needs, constraints, fiscal treatments, retirement frameworks, risk protection needs, preferences in terms of assets, need for more or less liquid instruments (eg saving accounts, real estate), risk/return appetite and objectives that need to be considered. Therefore, fixed definitions are not advisable and would not work in practice.

Also, a rigid classification of consumers would not help satisfy consumers' individual interests. For example, the consultation paper mentions that a personalised asset allocation strategy would "*aim to provide the investor with maximum returns*". However, consumers' needs might be different, for example: to diversify their investment, protect their savings or plan their succession, balance returns and sustainability goals. Consumers can value different services and features differently, their priorities can change during their lifetime and the economic and financial environment is also constantly evolving.

This is why the current IDD approach works well. It is the product manufacturer who defines the target market of the product as part of the product oversight and governance (POG) process. The product manufacturer is best placed to apply the existing POG requirements through measures and procedures that are proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the manufacturer. Product manufacturers can leverage their experience and market intelligence, bringing innovations and addressing emerging needs in a timely manner. Furthermore, the general nature of POG in its current application ensures that it applies equally well to very heterogeneous insurance products in different markets. Distributors can then use the demands and needs assessment to understand the consumer overall life situation and which areas needs more specific questions. This approach provides consumers with better services and more choice.

Besides, there is already an EU product definition for packaged retail investment and insurance products (PRIIPs), with reinforced requirements for these products. The limits of a standardised approach already emerged when applying a standardised key information document (KID) for all PRIIPs. A classification of PRIIPs clients into standardised profiles would face the same limits and would not improve the quality of the distribution process.

Question 14. *Which elements should form the basis for distinguishing between asset classes within the asset allocation strategy? Please explain your answer and provide details on the additional criteria if any.*
- Risk
- Return
- Paired correlation with other asset classes
- Additional criteria

The consultation paper does not provide sufficient details on the proposal of "*standardised investor profiles*" and a "*basic but personalised asset allocation strategy*". In general, as also explained in response to Question 13, many aspects need to be considered, like risk, returns, duration, liquidity, etc.

It is not clear if the asset allocation strategy would be assigned after a holistic assessment of the client's overall financial and insurance position, investment goals and priorities. A holistic assessment would be important to raise consumers' risk awareness and help them bridge their protection gap in a diversified saving plan, but this would be ambitious to achieve through a "*unique standardised questionnaire*" and would require extensive expertise on the part of the adviser.

The paper writes that the strategy should work "*on an overall portfolio basis*", with a "*defined (in percentage terms, for instance) exposure to any financial instruments and products distributed to retail investors, including but not limited to, shares, bonds, funds, structured products (including insurance based investment products)*".

First of all, assigning all IBIPs to the generic definition of "*structured products*" fails to recognise the distinctive features and benefits of insurance products, and the fact that they can have either a linear or non-linear investment structure. Insurers offer a wide range of IBIPs that combine investment with unique features as explained in Annex. The difficulties in applying the standardised approach pursued in the KID for all PRIIPs has already demonstrated the impossibility of applying a single standard to all these products.

Secondly, it is not clear if the EC's proposal would be to recommend consumers to assign a certain percentage of their disposable income to direct investments in shares/bonds/funds/derivatives and a certain percentage of their budget to IBIPs, or if the expectation of the EC would be to force insurers to design IBIPs that have fixed lines of investment (eg a fixed composition of shares/bonds/funds/derivatives in the underlying investments). Such a standardisation in the design of IBIPs is not only unrealistic (eg insurers have prudential duties under Solvency II; insurers are professional investors who need to appropriately manage/invest the asset backing reserves of their products to fulfil their duties; insurers can offer financial guarantees or sell products that can follow the lifecycle of the customer; insurers can apply risk mitigation mechanisms etc) but also detrimental in terms of consumer choice. The standardisation will also limit innovation and prevent new asset classes/new investment products to be included and developed.

Insurance Europe takes the view that the existing regulatory framework under the IDD and its Delegated Acts on POG and conduct of business rules for IBIPs ensure a high level of consumer protection through the whole product life cycle. Therefore, due attention should be paid to supervising the application of the current rules, rather than introducing further limitations to the design and distribution of IBIPs, or an artificial product standardisation that would limit the competitiveness of IBIPs.

The consultation paper states that in any case "*retail investors should ultimately remain free to take autonomous investment decisions, even where they do not align with the allocation strategy*". It is important to respect consumers' preferences, but also product manufacturers' autonomy to design their products and distributors' roles and expertise under the well-functioning IDD rules. The first step of the RIS should be to build the investment culture that is still missing among retail investors. It is premature to expect an average retail investor to pro-actively demand an asset allocation strategy that is more sophisticated than the one recommended under the standardised process envisaged in this consultation paper. It is also not clear how the new system proposed in this consultation paper would incentivise consumers to engage more in financial markets:

- The onboarding phase would be even longer, with potentially more questions included in the suitability or appropriateness questionnaire (both in a face-to-faces sales or an online robo-advice).
- Consumer choice would be limited to a basic asset allocation strategy with more restricted or more complicated opportunities of personalisation than before.
- Once the decision to invest in an IBIP with the provider for a medium to long term is taken, a consumer may not wish to be contacted by other financial intermediaries with different proposals and may anyway stand to lose part of their expected benefits if they surrender the original insurance contract early.

Question 15. *Exposure to assets, as set out in the asset allocation strategy, could be achieved either by investing directly in securities (e.g. shares, bonds), or via investment in potentially complex financial products (e.g. funds, structured products, insurance-based investment products) or a combination thereof.*
How should a financial intermediary assess best value-for-money when considering asset classes or sub-asset classes offering the optimal exposure for the retail investor? Please explain your answer.

The design, distribution and review of IBIPs are carefully regulated by the IDD, which has introduced solid POG rules on professional advice, distributors' continuous training, suitability/appropriateness/demands and needs tests, transparency requirements and product monitoring.

Consequently, Insurance Europe takes the view that the existing regulatory framework already offers all the necessary tools to ensure a high level of consumer protection through the whole life cycle of products that — if implemented and supervised diligently — will guarantee that consumers receive products that are tailored to their demands and needs.

Therefore, due attention should be paid to supervising the application of the current POG rules, rather than introducing further limitations to the design and distribution of IBIPs, or artificial standardisations that would limit the competitiveness of the services offered to retail clients as well as consumers' choice.

Also, affirming that IBIPs are potentially complex *per se* is too one-sided. From a consumer's perspective, the engineering of most IBIPs adds additional layers of protection, rather than complexity.

Question 16. *The rules on the asset allocation strategy should allow for the establishment of asset classes that are fit to achieve the investment objectives of retail investors.*
How should those rules take into account situations where the investment intermediary wishes to offer products that do not fit into one of the common asset categories?
- Where the intermediary proves that the risk, return and correlation properties of the product are equivalent to those attributed to one of the established asset classes, they can consider that instrument as belonging to that asset class
- Such products should only be made available to the investor at their explicit request, and not as a part of the investable universe determined by the asset allocation strategy
- Other solutions. Please explain your answer, in particular where you express support for 'other solutions'.

- Other solutions.

It is important to respect consumers' preferences, as well as a company's autonomy to define their business strategy and intermediaries' role and expertise under the well-functioning IDD rules.

Insurance Europe does not see any benefit in restricting consumer choice by proposing basic asset allocation strategies with more restricted or more complicated opportunities of personalisation than today.

As to the first option, it would be burdensome and lengthy for intermediaries to prove the equivalence of the "*risk, return and correlation properties of the product*" (and/or further or different elements that should form the basis for distinguishing between asset classes within the asset allocation strategy – since this is subject to consultation under Question 14) and difficult for supervisory authorities to objectively assess the intermediary's judgement.

As to the second option, the RIS should help to build the investment culture that is still missing among retail investors. It is premature to expect an average retail investor to pro-actively demand an asset allocation strategy that is more sophisticated than the one recommended under the standardised process envisaged in this consultation paper. This option would only be possible once the EC´s CMU goals regarding an increased level of financial education, and hence a higher financial competence among average retail investors, is achieved.

Question 17. *Although the form and content of the asset allocation strategy should be prescribed to a certain extent, financial intermediaries will always exercise a degree of discretion when establishing the asset allocation for a given investor. Competition between financial intermediaries in establishing an optimal asset allocation strategy for a given set of client data could yield better quality asset allocation propositions for the client. On the other hand, changing without objective reasons the investment guidance set out by the asset allocation strategy should be avoided in order to ensure that his or her investment goals are attained.*

Should a financial intermediary other than the one that drew up the client assessment be able to propose a different asset allocation strategy than the one originally established, where the data required to produce the asset allocation strategy are made available to that financial intermediary? Please explain your answer
- Yes, but only when there are objective reasons (see notably (b) and (c) in Question 9.1 and 9.2 respectively.)
- No
- Don't know

- Don't know

Consumers are already provided with extensive pre-contractual information allowing them to compare different offers and shop around if they wish. The benefits for consumers of more restricted *ex ante* competition among providers (since the "*unique standardised questionnaire*" would assign the client to a basic allocation strategy with restricted and burdensome possibilities of customisation whatever provider they consult), only partially compensated by a potential *ex post* competition, are not clear.

Also, the question refers to "*a financial intermediary other than the one that drew up the client assessment*". It is not clear if this suggests a scenario where a financial intermediary only drew up a client assessment, bearing the compliance costs of the process, and did not enter a contractual relationship with the consumer (see answer to Question 8). If that financial intermediary agreed an allocation strategy with the client, it is also not clear which kind of innovations or personalisations another financial intermediary could offer within the standards indicated in this consultation paper.

Question 17.1 *Should the investor be required to give explicit consent for the development of a new asset allocation strategy? Please explain your answer.*
Yes/ No/ Don't know

- Yes

As per Insurance Europe's response to Questions 3 and 8, consumer consent would need to be at the heart of any new system, with consumers themselves deciding who has access to any information they have provided. Under the IDD, a right to access a copy of the record of your suitability assessment (and other relevant information) already exists (Article 23(3) of the IDD). This right should be protected and not overridden by any aspect of this new initiative.

The explicit consent of the data subject needs to prevail as a general principle. The crucial role of consent is enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. In Question 10, the EC mentions the "*set-up and update this possible new client assessment (including the personalised asset allocation strategy) in a structured and machine-readable format as well as for its storage in a way accessible for future reference by the retail investor <u>and competent authorities</u>*". The need for the explicit consent of the data subject for supervisory authorities' access to the information related to the client assessment and personalised asset allocation strategy (which could potentially include personal information on the client's regular income, assets including liquid assets, investments and real property, regular financial commitments, and other elements not yet defined) should also be considered.

National competent authorities already have adequate access to companies' records to verify the compliance with the IDD rules and ensure high standards of consumer protection, complemented by the intervention powers foreseen in the PRIIPs Regulation and the reporting collected under Solvency II to monitor the overall market stability.

Question 18. *Would you have any general comments on an enhanced client assessment regime and/or personalised asset allocation strategy? Please explain your answer.*
Yes / No/ Don't know/ no opinion/ not applicable

- Yes

The consultation contains important new proposals and requires stakeholders to consider an entirely new way of conducting suitability and appropriateness test. It is impossible for the industry to give these proposals full consideration within the four-week deadline set by the EC. Stakeholder consultations must run for a minimum of 12 weeks in line with the EC's Better Regulation principles, and this consultation should have been conducted on this basis.

The IDD rules provide sufficient safeguards through the whole product life cycle and there is no clear proof of evidence about the need to change the current suitability and appropriateness system.

Meeting consumers' expectations and needs is essential to the success of the insurance industry and insurers need to maintain a diverse range of products to satisfy the varying needs of consumers across Europe. The insurance sector takes the view that developing an entirely new system, with new definitions, procedures and tests, will create additional red tape, legal uncertainty and compliance costs.

As currently designed, the proposed new system would be completely unworkable for insurance. This would result in considerable consumer detriment and ultimately is likely to restrict rather than enhance access to financial advice and financial products. This would not enhance the diversity of the market, but instead restrict consumers' choice.

IBIPs are entirely different to other investment products and cannot simply be brought into the same distribution system. If the EC intends to make changes to the existing IDD distribution regime these need to be calibrated specifically for insurance markets, taking into account the specific nature of products, existing regulatory framework, distribution systems and consumer expectations.

Insurers, as manufacturers and distributors of IBIPs, will be significantly impacted by the EC's RIS and the corresponding legislative rules, Insurance Europe wishes to highlight that this consultation paper does not appear to have given due consideration to the specific nature of IBIPs or to insurance distribution systems. While drafting new legislation, the specificities of sectors affected by it need to be taken into consideration.

More details on the specific features of insurance that have been overlooked in this consultation are included in the annex attached to this response.