

Response to EIOPA consultation on retail investor protection issues

Our reference:	COB-DIS-22-	Date:	02 March 2022
Referring to:	EIOPA's consultation on the call for advice on retail investor protection		
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Pages:	24	Transparency Register ID	33213703459-54

Do you have any general comments on the Consultation Paper?

Insurance Europe would like to welcome the opportunity to comment on the European Insurance and Occupational Pensions Authority's (EIOPA) draft advice to the European Commission (EC). The EC's upcoming Retail Investment Strategy (RIS) has the potential to significantly impact the insurance industry and it is vital that the specific nature of our industry is considered in any legislative proposals. In this regard, EIOPA's detailed and balanced analysis of the current functioning of the market, and assessment of potential policy options is welcome. It is important that EIOPA continues to be fully involved in the policy process even once the formal advice to the EC is completed.

We welcome EIOPA's general findings in this report and in the recent IDD application report: ie that the IDD provides a solid and market appropriate framework for the distribution of insurance. The report also highlights that, given the short period of application of the IDD and the fact that the impact of legislative change takes time to bed-in, it is too early to draw robust conclusions about the application of the IDD. Given this conclusion, the starting point should be to maintain the current rules coupled with supervisory measures where needed, instead of introducing legislative changes.

There has been significant focus on the differences between the IDD and MiFID, but it is crucial to also understand the reasons behind these differences. Retail investment products, which are subject to MiFID II are purely for investment purposes and are held in individual accounts. Insurance-based investment products (IBIPs), on the other hand, combine investment and risk cover. Their investment is made collectively for the entire community of policyholders. This collective element works as a wrapping of protection for customers. Moreover, the insurance distribution system is fundamentally different to the distribution of banking or fund -based products. EIOPA's report highlights many of the key reasons why this is the case.

We would also like to emphasise the importance of the proportionality principle in assessing any new proposals. Regulation should always be designed to meet the needs of consumers while not being overly burdensome for insurers. This is particularly true in relation to the section on product complexity, but is a common theme throughout our response. It should also be highlighted that additional legal requirements generally lead to increased costs for companies and ultimately then consumers.

We also have some concerns regarding the supervisory architecture for insurance distribution and the future supervision of the IBIPs market. The consultation does not deal directly with this issue, but it is

evident that if there is further harmonisation of rules between IBIPS and funds (beyond that already seen in PRIIPs), the supervisory system will need to adapt to ensure IBIPs continue to be subject to insurance specific supervision. Therefore, a clear definition of supervisory competences and responsibilities between the ESAs is necessary.

We would also note that IDD was deliberately designed as a minimum harmonisation directive. This minimum harmonisation approach allows the necessary flexibility to consider local market structures and consumer behaviour. Access to advice, for those consumers who would benefit from it, is vital in all markets to increase consumer participation and trust in capital markets. Measures taken under the RIS should not restrict consumers ability to access affordable high-quality advice by working within existing market structures.

While we are grateful for the opportunity to comment on EIOPA's draft advice, we have some concerns with the timeline for the work. We understand that the short timeline is unavoidable given EIOPA's deadline of April 2022, but four weeks is insufficient to provide full feedback and has not given stakeholders enough time to consider some of the new proposals in sufficient detail. It is vital that there are further opportunities for stakeholder input as the EC's work progresses, and that such short consultation periods do not become the norm. It is also unfortunate that the results of the external study on distribution and disclosures have not been published in time to inform EIOPA's draft report or our response to the consultation.

We would also like to stress the difficulties created by having several concurrent workstreams. The consultation deals with the PRIIPs Regulation but this is currently subject to potential amendments as part of the ESAP initiative and the revised RTS are not yet implemented. Similarly, IDD rules on suitability assessments will shortly be updated to include sustainability preferences, while IDD in its entirety has only been in force for a matter of years. These ongoing changes make it difficult to fully assess the functioning of current regulation. This is compounded by the additional EC consultation on suitability assessments launched on 21 February.

1 - Addressing and enhancing investor engagement with disclosures and drawing out the benefits of digital disclosures

Q1. *What do you consider currently to be the most burdensome duplicative requirements between the different legislative frameworks? Do you consider there to be any duplicative disclosures which EIOPA have identified above between different legislative regimes to be not particularly burdensome for insurance undertakings or insurance intermediaries to comply?*

Insurance Europe appreciates EIOPA's analysis and supports EIOPA's commitment to removing repetition and streamlining consumer disclosures. Any duplication is rooted in legislative requirements, hence burdensome from a compliance point of view, as well as confusing for consumers, who need concise, simple and clear information.

EU rules developed in silos are currently overwhelming consumers with too much information, including disclosures repeated multiple times in different formats and wordings. For example, when buying an IBIP online, EU rules require insurers to provide consumers with 161 pieces of pre-contractual information, and this figure will soon rise to 190 for sustainable IBIPs.

Eliminating and avoiding future duplications is a much-needed first step in simplifying the consumer journey. Insurance Europe also recommends taking out unnecessary information and using cross-referencing, to avoid repetitions and guarantee consistency within and between the documents. The

information provided in one document does not need to be included in another one; in this case, providing a link to the first document should be sufficient. Insurance Europe also agrees with EIOPA that future disclosures need to be designed as a comprehensive solution from the perspective of the consumer, replacing existing documents and not simply being added on top of the existing disclosure requirements.

As to further simplifications, Insurance Europe strongly supports EIOPA's intention to allow a "digital by default" approach in the IDD, with the option for consumers to ask for information on paper or in a printable format if they wish. The use of paper as the default medium does not reflect consumers' preferences: according to a recent Insurance Europe survey, 72% of respondents prefer to receive information on products digitally rather than on paper. Insurance Europe also welcomes EIOPA's encouragement of layering and other techniques that can make disclosures more engaging and put consumers in control of the amount and type of information they wish to receive.

When considering further interventions on disclosures, prior to any legislative action, EU Institutions need to perform consumer testing on a broad and diverse sample of consumers in different markets, technical testing on all the products in scope and a careful impact assessment. Consumer testing by EU Institutions is critical to measure consumers' level of understanding of the information they might receive because of new legislation in a real-life situation - where they are not only confronted with a single graph or indicator, but with a full set of documents - and weight the benefits of any new proposals. Therefore, Insurance Europe agrees with EIOPA statement that consumer testing needs to be done as part of the process of drafting the Level 1 rules and delegated acts, so that the choices at that level also reflect behavioural insights.

On the other hand, it is not the role and responsibility of insurers to carry out consumer testing on product disclosures, as this would require costly investments and very specific expertise. Besides, consumer testing at company level would come far too late in the process: insurers develop pre-contractual disclosures in compliance with the EU legislation and local requirements, and they cannot fix elements that are prescribed in the legislative texts.

Stakeholder consultation is also key to integrating real-world experience into the legislative process, provided that full details of the proposals are explained in the consultation paper and sufficient time is allowed to carefully consider the impacts of any proposal.

In general, rushed and not properly coordinated legislative initiatives are not propaedeutic of high-quality disclosures. For example, the EC Call for Advice on certain retail investor protection aspects, including disclosures, runs in parallel with the one on essential aspects of the Key Information Document (KID), while the recent EC proposals on the European Single Access Point (ESAP) prematurely include KID contents that are still under review. New provisions for the design and sales of sustainable investment products are yet to enter full application, revised PRIIPs Regulatory Technical Standards (RTS) are not yet implemented, and insurers are still receiving supervisory guidance on both the current rules and the new ones. On 21 February, the EC also launched a consultation on suitability and appropriateness aspects leaving 4-weeks to comment on very new proposals. If the different initiatives are not examined in depth, the risk is of undermining the quality of the services and the accuracy of the information received by consumers. In this respect, it is regretful that the outcomes of the EC public consultation and the EC external study on key aspects of the RIS are not publicly available and cannot inform a more evidence-based public debate.

Q2. *EIOPA can see some specific benefits in disapplying a number of disclosure requirements in the Solvency II Directive and the Distance Marketing of Consumer Financial Services Directive and rationalising any remaining requirements in the IDD. Do you agree with this approach?*

Yes, Insurance Europe supports EIOPA's proposal to disapply a number of disclosure requirements in the Solvency II Directive and the Distance Marketing of Consumer Financial Services Directive and rationalise any remaining requirements in the IDD.

This would simplify the application of the overall disclosures framework and would also better reflect the different nature of the IDD and Solvency II, since the latter is primarily not a conduct of business directive. In addition, due to existing and well-established national specificities and local requirements, a thorough analysis of which changes bring about an improvement for both product providers and clients is needed.

For the well-functioning of a single disclosures framework, it must to be clear whether information should be delivered by the manufacturer or the intermediary. This liability aspect needs careful consideration, since Solvency II was designed as a framework for insurance firms, while the IDD provisions apply to both product manufacturers and distributors. At the same time, the interplay between personalised information and the standardised PRIIPs KID would also need to be analysed more closely, to avoid redundancies and preserve the generic nature of the PRIIPs KID.

As per Q1, Insurance Europe also supports EIOPA's proposal to allow a "digital by default" approach in the IDD, with the option for consumers to ask for information on paper or in a printable format if they wish, and EIOPA's encouragement of layering and other digital-friendly approaches.

These represent important steps towards a simpler consumer journey. Insurance Europe also recommends reducing the information overload faced by consumers, taking out redundant information and avoiding the proliferation of new templates and labels. In recent years, insurers have been confronted with a significant increase in the quantity of regulation and too frequent reviews and amendments to legislation, sometimes even before they have adjusted to the new rules and before there is sufficient evidence of a need for changes. This leads to inconsistency, overlaps and duplications, because the cumulative impact of individual rules is not considered and the coherence of the entire regulatory framework is not taken into account.

Market and supervisory transparency objectives should not be mixed with consumer protection objectives: disclosures are just one of the safeguards provided by the IDD and are effective only if they are designed around real consumer needs. The EC should be required to carry out "confusion audits", namely checks or reviews of the EU legislative acts to assess the level of confusion caused by different disclosure requirements, both in terms of legal uncertainty for financial market participants and in terms of consumers' ability to navigate and absorb the information received. A balance is needed in terms of compliance with disclosure regulations by product providers and a thorough understanding of information provided to clients.

Q3. *Notwithstanding the proposed approach set out in Q2, do you consider that there is an element of personalization under the provisions in Solvency II Directive that would justify delivery of personalized information separately and in addition to the generalized information in the PRIIPs KID?*

No, from a consumer's perspective, there is no need for an additional, separate, personalised document. Most of the provisions under Article 185 of the Solvency II Directive are of a generic nature. The remaining, potentially more personalised disclosures under Solvency II could be included in already existing documents. This approach would allow for the better integration of the relevant information, if necessary, into the formats already developed at national level with less disruption and confusion.

More personalised information cannot, in any case, be introduced in the PRIIPs KID. The PRIIPs KID is a standardised, generic document aimed at summarising the main features of the product, targeted at the type of retail investor to whom the product is intended to be marketed and based on a number of

assumptions, such as a fixed level of premiums. The EC should consider that the PRIIPs KID comes on top of the more personalised disclosures that consumers receive based on the IDD framework and in the contractual documentation, and is not the only tool to ensure an adequate level of consumer protection.

Q4. *Do you agree that to address the current gap on periodic disclosures, it makes sense to require the disclosure of an "annual statement" which could include information on paid premiums, past performance, current value of the savings, as well as adjusted projections?*

Well-established annual information already exists in many markets across the EU. Periodic communications have been developed at national level based on the most appropriate formats, partly with reference to national pre-contractual information requirements and, for some markets, local tax issues. National solutions also take into account the diverse features of the IBIPs offered in the different markets: for example, in some markets, certain traditional products are more popular than pure unit-linked products, or multi-option products (MOPs) can be more or less customised. Besides, many companies have already implemented their own platforms, portals or apps that allow clients to monitor their insurance and investment portfolios, sometimes with interactive features. It is therefore absolutely necessary to first assess the local issues and national situation.

Therefore, the answer to the question is no, it would not make sense to require the disclosure of a new EU "annual statement" for IBIPs, similar to the Pension Benefit Statement for IORPs and PEPPs. Simply adding up documents, or encouraging the co-existence of a new EU statement alongside national disclosures and digital solutions developed by insurers, must be ruled out. Hence, Insurance Europe rejects the suggestion of a new, EU-wide harmonized annual statement.

As to EIOPA's reference to IORP and PEPP periodic disclosures, pension products have very different objectives and features compared to IBIPs, and pension benefit statements cannot be used as a benchmark for other products' disclosures.

The standardised PRIIPs KID approach has already shown its limitations for pre-contractual disclosures. It would be problematic to require adjusted individualised projections in periodic disclosures for IBIPs. It is not clear if the term "adjusted" would also include inflation, which is the result of a complex set of factors that cannot be forecasted by providers.

At the same time, financial education has a key role to play for long-term savings, as well as the possibility for clients to ask questions and have easy access to comprehensive professional advice.

If, despite all this, the EC intends to pursue any new initiative in terms of EU mandated periodic disclosures, prior to any legislative action, EU Institutions need to perform consumer testing on a broad and diverse sample of consumers in different markets, technical testing on all the products in scope and a careful impact assessment. This would be critical to assess what is the essential information that consumers need and if they can be confused by receiving too many communications. In the interest of legal certainty, transparency and comparability, disclosures should always be limited to the most vital information. If any ongoing communication is considered, it would be important to clarify in the Level 1 who is responsible for issuing it. Any new requirement should only apply to contracts concluded after they entry into force of the review, to avoid a disproportionate burden on manufacturers.

Q5. *Do you agree with the proposed list of "most vital" product and intermediary information? If not, what elements do you identify as being "most vital", that is essential information that is most critical for consumers to read?*

Clear rules about the information to be included in the different layers are key. At the same time, insurers must be given flexibility to choose the most suitable approach to providing the information in an electronic format, also based on their corporate digital strategy, their resources and their customer base.

Insurance Europe broadly agrees with EIOPA's proposals for the different layers. The most vital information for the consumer is a clear and prominent explanation about the existence or lack of biometric risk covers, financial guarantees and other capital protection mechanisms at the top of the PRIIPs KID and/or in its first layer. In this respect, it might be not appropriate to include "information on what happens if the consumer dies (or other insured events occur)" in Layer 2 or 3, as this is strictly related to insurance benefits.

A clear understanding of the protection elements offered by the product is the starting point for consumers to truly understand the costs and benefits of different investment solutions and take a well-informed decision. This is the reason why it is so important to prominently display information about the existence or lack of such features at the top and/or in the first layer of the PRIIPs KID.

As to the most vital pre-contractual product information for IBIPs under paragraph 71, the PRIIPs KID should remain the key document for retail investors. While we fully support the comparability of different investment products, the PRIIPs framework was designed with pure investment products in mind and consistently overlooks the features of IBIPs, such as insurance covers, annuity payments, guarantees, or other capital protection mechanisms, payment flexibility, etc. These elements are core for customers buying insurance-based investment products and they are not simply add-ons.

As to costs, the reduction in yield (RIY) is a robust and accurate indicator that can be used to comply with requirements in MiFID or the IDD, as noted by the European Supervisory Authorities (ESAs) in the 2019 Joint Consultation Paper concerning amendments to the PRIIPs KID. Despite that, the revised PRIIPs Regulatory Technical Standards (RTS) introduced different cost indicators for MiFID and IDD products. This will not enable customers to compare the cost components of different products. Therefore, the cost representation should be again aligned and RIY should be used for all investment products as a key indicator.

As to the most vital information to be communicated by the intermediaries under paragraph 76, whether intermediaries are registered is not in question for the sales of IBIP. Consumers could be provided with more meaningful and concrete information like the registration number.

As to the concrete amount of remuneration received in relation to the contract, for consumers it is more important to know the source and nature of the intermediary's remuneration and how the total costs affect the returns of the product. Information on whether the intermediary has a holding in a given insurance undertaking or whether an insurance undertaking has a holding in the insurance intermediary is less vital information for most consumers and could be presented in the second layer. Information on whether the intermediary is acting on behalf of the insurance undertaking is more important.

Q6. *Do you currently see specific issues with misleading advertisements and marketing material in relation to the sale of insurance-based investment products (IBIPs), which would merit specific regulatory treatment and if so, which aspects?*

No, Insurance Europe's members are not aware of any systemic problem regarding the marketing material in relation to the sales of IBIPs.

Marketing communications are already regulated under the PRIIPs Regulation and the IDD to ensure that all information is fair and not misleading and that marketing materials are clearly identifiable as such. As to sustainable IBIPs, the Sustainable Finance Disclosure Regulation (SFDR) requires marketing communications to not contradict the disclosures that are prescribed by law. More in general, the Unfair Commercial Practices Directive also provides for a horizontal framework against unfair business-to-consumer commercial practices.

These comprehensive rules provide a more than adequate level of consumer protection, as well as a sufficient basis for lawsuits by consumer protection organizations or for supervisory action, should there be any contraventions. Further legislation is not required.

The EC should consider that disclosures are just one of the safeguards provided by the IDD: product design, testing and monitoring as per POG rules, professional advice, distributors' continuous training and suitability/appropriateness/demands and needs tests ensure a high level of consumer protection through the whole product life cycle. They provide supervisory authorities with a solid basis to monitor the market and swiftly and efficiently address any grievances even in a fast-evolving market environment.

2 - Assessing the risks and opportunities presented by new digital tools and channels

Q7. *Do you agree on the current level of development of the market for online platforms distributing IBIPs? If not, please could you provide examples of where you see evidence of online platforms selling IBIPs at present and how you see this impacting the customer journey and if possible, any quantitative data you can provide on this distribution channel.*

We agree with EIOPA's assessment that there are not a significant number of sales of IBIPs concluded online. One reason for this is the characteristics of the products themselves, with consumers seeking out face-to-face advice on the specific features of the products as they make what is perceived to be an important, long term investment in their financial security.

However, although sales are usually not completed online, this does not mean the entire sales process has taken place offline. An increasing number of sales come at the end of a hybrid process with consumers gathering information and 'shopping around' online prior to accessing formal advice. The recent COVID-19 pandemic has accelerated this shift as many customers sought to minimise their in-person contact. The result is that sales can no longer be meaningfully split between 'online' and 'offline', with online platforms now a key component of many offline sales.

The growth in the importance of online distribution is likely to continue as more younger people, who have a stronger need for online availability of products and information, start looking to buy insurance products. This trend should be encouraged, and the changes to product information and disclosure requirements noted in the previous questions are key to this.

In general, new regulation needs to facilitate this move online and provide a strong legal framework for the provision of advice online. This is best achieved through truly technology neutral legislation, that presumes online distribution and is sufficiently future proof that it will not need to be updated as new technology emerges. This is also vital for continuing to enable consumers to move freely between online and offline distribution. A system where an online sale is subject to a different set of requirements would create a barrier to consumers accessing information in whichever way they feel most comfortable. The end goal should be a single set of standards applicable to all distribution methods, meaning consumers can expect the same high standards whether they access insurance online, offline, or as a mixture of both.

With reference to EIOPA's assessment that a shift towards online sales could decrease costs for consumers, it should be noted that the implementation of online robo-advice is expensive and burdensome. This is a key reason why it is currently not widely available in many markets. Concentration of online sales with only the major market players able to afford the implementation costs and maintenance efforts should be avoided.

We would also like to point out the relative unimportance of online switching services for IBIPs. EIOPA notes this in the report but in our view personalised, long-term products like IBIPs will inevitably be switched much less often. Extensive switching is unlikely to be in the consumers benefit (e.g., cancellation costs, lower guaranteed interest rates, or poorer biometric parameters due to changed entry age or health status), and so actively encouraging online switching is not advisable.

Q8. *Do you see the potential for the growth of open architecture models for the sale of IBIPs in the future and if so, in relation to which types of products?*

Promoting a data-driven financial sector is an important and valuable aim. For insurers, a greater availability of data could lead to improved risk monitoring and assessment, a better customer experience and increased fraud detection.

Increased access to data generated by both public and private sectors could also provide the opportunity to increase innovation and competition in the insurance sector. The insurance industry is therefore supportive of efforts to facilitate appropriate data sharing.

However, while open insurance has the potential to positively impact both consumers and insurers, the design of any future framework will determine its overall impact. Further elaboration of the exact scope and objectives of such a framework is therefore necessary. There are a number of challenges that will arise with the development of any data sharing framework, many of which would also be dependent upon the exact scope of the framework.

It is vital, for example, that any framework takes account of the business model of insurers, in particular the data they use. The focus should be on ensuring any framework respects the features and complexities of the insurance sector. At the same time, it will be important to safeguard consumers' ownership of their data and to ensure that data sharing is consent-based. Consumers, as data subjects, should have absolute confidence in the security of their data and the right to determine to which services and under what conditions their personal data will be used. The purpose of the data sharing should also be clear.

The IDD already provides a high standard of conduct rules. As new market entrants appear, it will be important to respect the principle of "same activities, same risks, same rules" between the different market players. Maintaining a true level playing field will be key to ensuring consumers enjoy the same level of protection regardless of which company they are dealing with and that there is a fair allocation of costs among the parties to ensure a balanced approach to the funding and development of any new infrastructure.

We believe that the focus should be on promoting voluntary data-sharing solutions and avoiding any market distortions. In principle, beyond those rights already legally guaranteed companies should be able to decide freely how they handle their data co-operations. For example, insurers should not be required to share data with any other providers as this will exacerbate market dominance issues. The data basis already developed by insurers is an important part of their business value. Insurers should be able to protect this, rather than mandatory data-sharing with BigTechs and others looking to use this data to enter the market.

Q9. *Do you share EIOPA's assessment of the types of risks that could arise in the context of the growth of more diverse distribution channels for IBIPs? Are there any risks which you see arising, but which EIOPA has not identified in this paper?*

Yes, EIOPA has captured the key risks posed by the further development of diverse distribution channels. The risks and benefits of open insurance will ultimately depend on the specifics of the regulatory framework. With a careful and evolutionary approach in regulation and supervision, potential risks can be kept low compared to extensive and potentially disruptive impact of forced regulatory changes. In general, there is already a comprehensive regulatory framework that encompasses innovative market solutions and limits many of the risks mentioned for consumers and undertakings. Applying the existing IDD framework to all market players on a same activity same rules basis is the best way forward.

Without an assertive approach to counter market dominance and ensuring a level playing field for providers, strong network effects could occur from platform and eco-system based distribution models, limiting access to customers to a few market participants ("winners take most"). This is a well-known issue that is in the process of being addressed already, e.g., under the Digital Services Act, Digital Markets Act, and the Regulation on Fairness and Transparency for Business Users of Online Intermediary Services but is important to also note in the context of the RIS.

We would also like to note that some of the issues identified by EIOPA are not inherently risks. For example, risk-based pricing and the search for enhanced risk assessment are integral to private insurance markets. An important aim of this search is to acquire new customers by extending insurability, which is the opposite to exclusion. Therefore, we do not see the risk of financial exclusion. On the contrary, enhanced data use could well contribute to financial inclusion, by identifying and closing insurance gaps or improved insurability. We are also not convinced that passing on of development costs to consumers is a 'risk' as such. Consumers will see the benefits of the emergence of new systems but it is natural that this comes with a cost. Effective competition in the market will ensure consumers do not face unreasonable costs

3 - Tackling damaging conflicts of interest in the sales process

Q10. *Do you agree with EIOPA's analysis of differences between IDD and MiFID II? Are there any other differences not mentioned which you consider to be relevant?*

As noted in Annex VI, inducements should not be considered in isolation. We agree that the report highlights the main differences between MiFID and IDD from a point of sale perspective. However, there are other key differences that have an indirect impact on investor protection. The experiences listed from other jurisdictions demonstrate that the combination of various measures led to positive results. The role played by individual measures cannot be easily isolated.

The training regime under IDD is considerably more rigorous than that under MiFID, including a 15hr min requirement. In reality many member states go beyond this. This regime is a strength of IDD and has served to increase the quality of the advice provided to insurance consumers.

Differences between IDD and MiFID do not always need to be addressed through further harmonisation. For example, taping requirements under MiFID are an outdated barrier to the digital transition. These should not be transferred to IDD.

We also understand that EIOPA have considered the possibility of applying the MiFID 'quality enhancement principle' to the insurance market. EIOPA suggests that some NCAs see no difference between the

application of 'quality enhancement' and the IDD concept of no detrimental impact. This suggests there would be minimal value in doing so. While it is true that the principles can result in the same outcome for consumers, we do not believe that the specific L1/2 requirements on 'quality enhancement' could or should be applied to insurance. We do not see any value in changing the IDD approach on this point, but if policy makers were minded to do so, it would need to be accompanied by insurance specific principles at L2/3 that are directly relevant to insurers and our customers.

Inducements could be a source of conflicts of interests that need to be properly managed but it should not be presumed that inducements produce consumer detriment; there is no evidence in EIOPA's analysis to support this. Therefore, the 'quality enhancement' should not imply an unjustified reversal of the burden of proof, assuming that all inducements are detrimental for consumers unless the insurance intermediary or insurance undertaking is able to prove the opposite.

The report reflects the minimum-harmonisation approach taken in the IDD, which contrasts with the maximum harmonisation approach taken in MiFID II. This is a strength of IDD, not a deficiency that the upcoming RIS should look to address. This approach allows the necessary flexibility to consider local market structures and consumer behaviour. In some markets, local rules establish mandatory advice for which consumers would not be prepared to pay while, in others, customers are used to accessing financial services without advice but may be willing to pay for this additional service. These differences in consumer expectations need to be reflected in the application of rules at national level.

It is crucial to also understand the reasons behind the differences. The Insurance distribution system is fundamentally different to the distribution of banking or fund-based products. EIOPA's report highlights many of the key reasons why this is the case. These differences are reflected not only within the Level 1 texts but even more so on L2/3. Therefore it is a pity that the table in the Annex is limited to Level 1 only.

A key difference between IDD and MiFID are the interests of consumers. These need to be taken into account when designing insurance products following the POG process. These comprise individual and collective policyholder interests which need to be duly balanced and are best preserved by the basic principles in insurance, in particular the principles of solidarity and mathematical methods (see BOS EIOPA-CP-16-006 p.15/171 no.18).

Small distributors are a significant feature of the insurance distribution. Many more SMEs and natural persons are acting in the insurance sector than in other financial services sectors. MiFID II applies to larger, institutional organisations. In order to safeguard a functioning insurance distribution system this difference between both sectors should be maintained. Under the IDD there is no general ban on commission – quite deliberately. The co-legislators instead decided that the possibility for such a ban should remain as an option for member states. In general, possible harmonisation should always be oriented towards the desired goal of enhancing consumer protection and not be envisaged for the sake of harmonisation itself.

Specific features of the insurance sector also reflect our specific product offering. By nature, insurance products are different to other investment products. In addition, solvency II rules apply to insurers, but not to other financial services providers. It follows that an insurance product cannot be assimilated in a securities account, and is not a simple purchase with buy/sell orders. IBIPs are a long term component of one's financial planning.

Q11. *Do you have any views on EIOPA's analysis of the structure of different distribution models for the sale of IBIPs in the EU?*

We agree with EIOPA that there is a disappointing lack of data available. As a result, findings must always be interpreted with a certain degree of caution.

EIOPA is right to highlight the diversity of European insurance markets and distribution models for IBIPs. It is also correct to highlight the improvements in transparency of inducement models brought about by the IDD. We would like to reiterate that the IDD is a minimum-harmonisation directive and as such provides a baseline level of transparency, many countries have national rules that go beyond those in IDD.

Regarding specific distribution models, we would like to highlight the role of mandatory advice in some markets. In markets where this requirement exists, it is considered a useful consumer protection tool, ensuring consumers have better knowledge of the contract they are about to enter into. Where advice prior to the sale of a IBIP is mandatory, this advice is usually financed through commission. Requiring upfront payment for advice could restrict access to financial services products for those unwilling or unable to pay directly in these markets.

Commission-based advice is predominant in most Member States and offers some advantages to consumers. Severe restrictions or an outright ban on the use of commission to fund advice would be a fundamental overhaul of the current distribution framework in many countries and would need to be subject to a full impact assessment to ensure any restrictions do not result in consumer detriment.

Access to advice is vital. Any measures introduced as part of the RIS need to ensure consumers can continue to make use of affordable and high-quality advice. Measures, such as a commission ban, which could potentially prevent consumers who would benefit from advice from accessing it, either because it is unavailable or because they do not choose to access it, may ultimately not improve consumer protection.

Financial literacy is an important part of the CMU Action plan and helps consumers in making informed decisions. It can take place through various channels, e.g., at schools, universities, public campaigns, with employers, etc. but it is especially important when there is a concrete reason for accessing information (e.g. when buying a financial product). Advice at the point of sale can therefore contribute significantly to a consumer's financial education. Information deficits, misunderstandings, or objective misconceptions can be recognised and eliminated best at the point of sale, Restricting remuneration by way of caps or even bans may restrict the role advisors are able to play in financial risk awareness.

Q12. *Has EIOPA captured, in your view, all relevant policy options? Do you agree with the different pros and cons listed for these options and the potential impacts indicated for these options? Are you in favour of any particular options or combination of options? Are there any other policy options and pros and cons to be considered in your view?*

EIOPA has captured many of the relevant policy options but seems to have overlooked the possibility of making no changes at all to the IDD. As EIOPA noted in the report on the application of IDD, it is very early to make an assessment of the functioning of IDD, and therefore too early to consider such wide-ranging changes to the regulatory framework. It is crucial that the EC does not enact far-reaching changes such as those considered in the report without a comprehensive impact assessment. EIOPA accurately points this out within the detailed explanations, that this was not possible given the short time available, but it should also be explicitly included as advice to the EC.

Unfortunately, due to the limited scope given by the European Commission's mandate, there was no chance for EIOPA to take broader considerations into account e.g., with respect to the CMU objective of enhancing consumers' trust in financial markets. In our view, further restrictions on inducements can only make a very limited contribution and other measures would be more helpful.

As an industry we do not see a pressing need to make any changes to the IDD. It would be helpful if EIOPA's final report also included an analysis of the risks and benefits of simply maintaining the status quo.

Overall, there is a limit to how much impact rules at the point of sale will have on consumers. EIOPA's suggestion to look at other measures applicable throughout the lifecycle of the product is welcome. That said, we would like to highlight the following key points with some of the policy options considered by EIOPA.

EU-wide commission ban

An EU-wide commission ban, whether based on current MiFID rules, or going further and banning the charging of commission completely, is not a viable policy option for the insurance sector. The report repeatedly notes the diversity of the EU insurance markets. We would like to point out that the established national distribution systems have endured because they are able to meet the needs and expectations of national consumers and national regulators and reflect the national differences in culture and regulation.

Insurance Europe does not believe a single solution can be found that would be effective in all EU markets. In many markets there are less far-reaching measures that could address the potential concerns identified by EIOPA. Instead of bans or caps on inducements stronger efforts should be made to raise awareness of the importance of high-quality advice, which is a valuable professional service that comes at a cost. We also note that as a potential detrimental outcome to consumers arising from the payment/receipt of inducements, EIOPA refers to "high commissions paid" and "high costs" (e.g. point 116 and 117) without further elaborating on the elements considered to qualify them as "high". Rather than setting arbitrary limits, transparency and information should be used to support consumer choice.

Inducement bans and restrictions may have been effective in some markets, and where they are in place they could be maintained. However, in markets where distributors rely solely on commission, the introduction of a ban could limit consumers' access to advice. Access to advice, for those consumers who would benefit from it, is important for increasing consumer participation and trust in capital markets. Measures taken under the RIS should not restrict consumers ability to access affordable high-quality advice and should work within existing market structures

We understand that time constraints mean that a full impact assessment of this policy option has not been carried out. It is absolutely vital that the EC carry out an impact assessment as part of the development of the RIS if this option is to be considered. A commission ban would require a complete overhaul of the distribution system in many markets. A full impact assessment across *all* markets would be needed to properly assess the impact across all the diverse distribution systems currently operating in the EU.

The EIOPA final report should better reflect the potential detrimental impacts of introducing an EU-wide ban.

Transparency

Rather than restrict commission directly, a more proportionate policy option would be increasing transparency of the commission charged to the consumer. This enables them to make an informed choice of whether or not they feel the level of commission charged is reasonable. The IDD already includes some transparency requirements, but these could be strengthened.

Further feedback on other proposals made by EIOPA included in annex to our online submission

Independent advice

EIOPA suggest introducing the concept of independent advice' lifted directly from MiFID. This will not work in an insurance context, and it is not immediately clear what the perceived benefit of adding the definition to the IDD would be.

We agree with EIOPA that there is no scope to designate certain individuals as 'independent advisors' for insurance, as the regulatory status of advisors, brokers, agents etc varies between member states. It is also possible for an advisor to act in a different capacity in different instances.

Regarding the rules on inducements, MiFID II distinguishes between independent advice and other types of advice and introduces a ban on commission for independent advice. IDD is neutral about distribution channels: from the consumer's point of view, the same consumer protection standards apply to all distributors. Accordingly, a distinction between independent and other advice by transferring the MiFID II model into IDD could, depending on the national market structure, lead to uneven competitive conditions between the different insurance distribution channels.

Execution only sales

In many markets execution only sales of IBIPs do not exist. In markets where this does exist, we agree with EIOPA that even in execution-only sales, the insurance intermediary would still have to provide certain services (for example, provision of pre-contractual information), which should be remunerated somehow. There are also other services, such as digital tools, that all customers have access to on an ongoing basis. Therefore, a ban on commissions would not be appropriate. A general requirement on inducements to be proportionate and/or appropriate transparency requirements might be a better solution to address unreasonable commissions.

Commission caps

We do not believe that caps on commission would provide any benefit to consumers. Rather than placing restrictions on levels of the commission charged, enhanced transparency requirements would allow a consumer to understand what they are being charged and make their own judgement on whether it is reasonable. What appears to be a high rate of commission may in fact be justified by the specific nature of the sale/advice provided.

Ban on other non-monetary benefits

If further guidelines or recommendations on non-monetary benefits are seen to be necessary, it would be vital that this is calibrated in an appropriate way for all markets. Specifically, all training would need to be excluded from any ban.

This would mean excluding professional training required under IDD but also wider training initiatives such as industry seminars or more general personal development of the distributor (presentation skills training, conflict management training etc.).

Complex products

EIOPA proposes a specific commission ban for complex products. This does not seem logical as these are products where advice is most valuable. Any restrictions that risk limiting access to advice for these products should be avoided.

Further enhancing disclosure requirements

This option seems more viable at EU level than the introduction of a ban or other restrictions on inducements. It would be compatible with the commission-based model, prevailing in most EU Member States. However, one disadvantage of this option not mentioned by EIOPA is the risk that information on commissions could completely drive the consumer decision, becoming the key element for comparison of products and underestimating quite relevant information like net returns or risks of the products. Consumers should not be nudged towards making investment decisions based solely on costs.

Enhancing rules on inducement at the product design phase and enhanced conduct supervision

This option seems also more viable at EU level than a ban or restrictions on inducements. However, it should not result in disproportionate requirements or an unnecessary compliance burden. The need for changes in level 2 is referred to as a disadvantage for this option but it is not entirely clear why in this instance EIOPA views level 2 changes as less desirable.

In addition we would like to highlight the following specific points:

- More attention should be paid to the fact that independent fee-based advice remains partially unregulated. By way of example, the assessment of due costs within the POG-Process under EIOPA's "value for money" concept omits fees. Since they differ from case to case, they must be out of scope naturally. This also applies to any cap on costs, as known for the basic-PEPP, where intermediaries' individual and varying fees remain out of the scope. Moreover, it is important to understand that conflicts of interest could also arise in fee-based models. For example, more hours than needed could be charged for the advice. In contrast to the commission system, there are usually no claw-back mechanisms in case of early surrender. Which is a system that has proven very effective in avoiding potential conflicts of interest. In the case of flat-rate models costs could be charged without taking advice, obviously a poor value for money.
- In contrast to the commission model, it should also be considered that with fee-based advice models, each service is charged separately during the term of the contract, whereas with commission-based advice, no further charges are incurred apart from the one-off acquisition commission. Necessary changes and services such as the adjustment of the integrated funds to changed capital market conditions and/or changed circumstances of the client (e.g., change to low-risk funds at a higher age) are charged separately with fee-based models and cause additional costs.
- Insurers, as manufacturers of IBIPs, do not have any authority to issue any instructions to independent fee-based advisors, so they cannot set any minimum requirements for the quality of the advice or any upper limits for the fees charged. At the same time, they need to fulfil their POG-requirements, which may cause issues in assessing "value for money". In this respect distribution models with non-independent single-tied agents may have advantages. In any case, with a commission that was calculated within the premium, the manufacturer retains control of costs no matter what the intermediary/ broker operates on an independent or non-independent basis.

Additional Remarks on EIOPA Statements:

- **Poor fund selection and the proper handling of so-called kickbacks** (e.g., on Page 52 No. 3 and Page 58 No. 135): The German BaFin already issued interpretative decisions ([link](#)) on the described issue of poor fund selection and the proper handling of so-called kick-backs. This issue could have been already addressed in other European markets as well. We consider the existing supervisory tools to be proper to address any issues in this regard. Markets and products are very different; therefore this

could rather be an issue to be solved at the national level. By way of example, the German system of surplus participation considerably reduces potential conflicts of interest. However, this system does not exist in all markets.

- **Option No. 6 (page 55) Issue of “volume override arrangements”:** Recital 46 IDD is already very clear in this regard and emphasizes that “Remuneration based on sales targets should not provide an incentive to recommend a particular product to the customer.” This is backed up not only by Art. 17(3) IDD but also within Article 27 ff. and corresponding Delegated Regulation 2017/2359. We would like to reject the inherent assumption that sales targets are conflicts of interest per se. As described under Article 8 DVO 2017/2359 a holistic assessment shall be carried out in order to cover all factors which might increase or decrease the risk of detrimental impacts for consumers.
- **Option No. 6 (No. 136) Strengthening the rules on record-keeping:** This tool might not prevent conflicts of interest in advance and causes high administrative costs, which additionally increases product costs from the client's perspective. High costs are a hurdle and discourage retail investors from investing, ultimately it runs counter to the CMU's goals of encouraging more retail investors to invest. Whether this will lead to better consumer protection and more trust is at least questionable.

4 - Promoting an affordable and efficient sales process

Q13. *Where do you see the most significant overlaps lie between the demands and need test and suitability assessment and what can be done to address these overlaps?*

The demands and needs test is closely linked to establishing the investor profile, and both of these are an inherent part of the suitability assessment. In this regard, the question of overlaps is not really relevant. The process of establishing the demands and needs feeds directly into and is an integral part of the suitability assessment. Overlaps between the demands and needs test and the suitability assessment are inherent in the structure of the relevant provisions of the IDD and are not a problem in practice.

When advice is provided, the distributor owes a personalised recommendation as to why the proposed contract would best meet the customer's demands and needs. As EIOPA states in the consultation paper, advice is a continuation and enhancement of the demands and needs test and, therefore, does not lead to additional effort. The same applies to the suitability assessment, which specifies the requirements for the provision of advice on insurance-based investment products.

Additional guidance at the European level would not be helpful as this risks undermining well established national practices that enable the demands and needs test and suitability assessment to coexist. Where EIOPA has identified concerns, these should be resolved by national supervisors, the insurance ombudsman, and civil courts (as necessary). Extensive and detailed specifications of the requirements on level 2 or 3, on the other hand, often carry the risk of creating red tape in the form of processes which are necessary in some yet redundant in other cases, and which are nonetheless always applied for compliance reasons.

EIOPA's objective with this concept seems to be to ease the questioning of the customer by the distributor and to avoid tick and box approaches. However, there are already provisions in IDD to avoid excessive questioning the consumer. Article 20 and 30 IDD provides a framework for the questions that must be asked and specifies that the questions must relate to the client's investment objectives, including their risk tolerance, financial situation including capacity to incur losses, and the client's knowledge and experience. We would, therefore, suggest that the benefits of additional, detailed requirements should be carefully evaluated against possible disadvantages.

Q14. *Do you see scope for streamlining the suitability assessment and in what way, could digitalisation be harnessed to make advice on IBIPs more affordable?*

We appreciate EIOPA's consideration of how to make the advice process more efficient for consumers and distributors. While innovation here could have some benefits, the overall effectiveness would depend strongly on the detail of any new/additional regime. It would be vital that thorough consumer testing is carried out, as well as drawing on the experiences of other markets before any such changes to the advice process are introduced. This process could take several years, making it unlikely that a new regime could be introduced as part of the RIS (which we understand is expected to be finalised by the end of 2022). EIOPA should highlight the long-term nature of its proposals in the final report.

Regarding the specific proposal to introduce a concept of 'streamlined advice' in the IDD, we have some concerns that this may not be the right approach. For IBIPs, consumers often need to receive advice. Many IBIPs have additional features that need to be fully explained to the consumer via a personalised recommendation and in many circumstances there is a consumer expectation that such advice is provided. In some markets the provision of this advice is also guaranteed by law.

The current European provisions on the suitability assessment in Level 1 and 2 of the IDD provide for a rigorous yet practicable regulatory framework to ensure that the relevant information about the customer's needs and wishes is obtained and taken into consideration. Moreover, they allow for different designs of the advisory processes, for example, to include digital tools, as well as for adjustments to take account of different characteristics of products and customers. At the same time, they maintain a high consumer protection standard. We do not believe that introducing a secondary category of 'financial guidance' or 'streamlined advice' would add any benefit for consumers, who are entitled to receive the high-quality advice provided for in the IDD regardless of whether they decided to purchase a product online or in person.

There are significant advantages to applying the same strict requirements on algorithm-based decisions as on personal sales. If the decision trees are fixed and the algorithms are not self-evolving, it is also very clear on what basis sales recommendations were made. This offers advantages in terms of documentation and the traceability of advice afterwards. Consistent and recurring high-quality advice can be ensured. Furthermore, automated sales recommendations might also be less susceptible to potential conflicts of interest. Robo-advice can offer cost advantages in the long term, but the initial costs are enormous. Hence, the opportunity to use robo-advisors tends to be available only to larger market players rather than microenterprises or SMEs.

It is, however, not clear how streamlined advice could be offered in markets where there is a specific requirement to provide advice.

There are also currently issues with the application of the suitability assessment that should be addressed before any new innovations are considered. A much more important component of facilitating online sales is the restructuring of the disclosures regime to ensure appropriate and accessible information is provided to consumers via online platforms. We have provided further detail in our response to section 1.

At this stage there are also still significant inconsistencies between the Sustainable Financial Disclosure Regulation (EU) 2019/2088 (Art 8 and Art 9) and the IDD Delegated Act for insurance-based investment products (EU) 2017/2359 (Art 2 para 4) with regard to the customer's sustainability preferences. These present a material risk for consumers and a legal risk for providers. The highly complex, threefold notion of "sustainability preferences" under IDD leads to confusion of all stakeholders involved and is at odds with the aim of streamlining the sales process

Q15. Do you see any specific risks for consumers in streamlining the advice process further?

The primary risk, as identified by EIOPA, is that the introduction of streamlined advice devalues regulated advice and creates consumer confusion. Consumers should always be aware of whether they are receiving advice and of the standards they can expect from their advisor. They should be able to be confident of the quality and the fairness of the advice that is being provided to them.

There is a significant risk that more accessible and/or affordable streamlined advice is accessed by consumers who do not realise that this is not regulated advice and does not offer the same protections. As noted above, the provision of advice is highly beneficial for the sale of IBIPs. Under the current IDD where a consumer does not wish to receive advice they can actively opt-out of doing so and are duly informed of the consequences of this. If the line between advised and non-advised becomes less clear, consumers may not realise what services are being provided to them.

There is also a risk that over time, streamlined advice becomes more easily accessible than full regulated advice as providers do not have to meet the regulatory hurdles of advice provided under the IDD. This will be compounded by the difficulties for providers in complying with two regulatory regimes (offline and streamlined online advice) potentially forcing them to choose only one distribution method. This in turn could lead to an advice gap, where consumers who would like to access advice find themselves steered towards an inferior service.

We would also note that the majority of 'online' sales of IBIPs are in fact a hybrid of online and offline distribution with consumers accessing information and shopping around online, but ultimately conducting the sale offline. This process works well and offers significant benefits to consumers. There is a risk that overly streamlining the process pushes more sales online when, in fact, this hybrid process would better meet consumers' needs.

We also have concerns regarding the interaction between different pieces of legislation. Given the horizontal approach taken in the RIS, we anticipate that the rules related to IBIPs would be broadly in line with those under MiFID. We are concerned at the possibility of rules applicable and designed for MiFID products being applied in IDD more broadly and capturing insurers' full product offering. EIOPA should note in the final report that any streamlined process would not be appropriate for all products, and caution the EC against enacting rules (as with the recent amendments to the IDD delegated acts to facilitate the adoption of the SFDR) that inadvertently capture too broad a scope of products.

Q16. What is your view on possible demand-side solutions to facilitate the provision of affordable advice on the sale of IBIPs and support wealth management, such as financial guidance and what benefits could this bring?

We agree with EIOPA that it is important to also consider the 'demand-side' of the provision of advice. We are not convinced that there are currently a significant number of consumers ready access online streamlined advice, or who have the relevant level of knowledge to benefit from streamlined, over regulated advice.

Financial education has a vital role to play in ensuring that European citizens are equipped with the knowledge, confidence and skills necessary to improve their understanding of financial products and concepts. We would also highlight that as financial education is largely a matter for national governments, there is currently a significant divergence between levels of financial readiness between European markets. Measures need to be flexible enough to meet the cultural expectations of each national market. There is a limited role for coordination at the EU level increasing national demand for advice and guidance.

There are also significant differences between the insurance sector and the investment sector that need to be taken into account. While many consumers enjoy actively engaging with their investments and making investment decisions, very few have such a positive approach to pensions and the insurance of risks. These have much more negative associations with death, ill health, old age and are therefore often only accessed when a consumer has been actively made aware of their risks. This inherent need for these products to be 'pushed' would need to be taken into account in any initiatives geared towards the insurance sector. In a similar vein, the role of financial advice in drawing consumers attention to these products should not be underestimated. Any changes to the current rules on advice, that make advice less affordable or accessible (ie. overly restrictive rules on commission) will have a knock-on effect on the number of consumers accessing these products.

That said, advice centres and non-profit organisation (as mentioned in the report) may be effective in reaching out to consumers who wish to receive financial guidance. However, we see some potential issues that would need to be addressed. It should be ensured that these platforms provide the same quality as regulated advice. The current recital 12 IDD excludes websites managed by public authorities or consumers' associations which do not aim to conclude any contract but merely compare insurance products available on the market from the IDD scope. This exemption should be revisited to ensure appropriate safeguards are in place. The IDD requirements should also apply to services as listed in number 161 of this consultation paper, where the organisation is remunerated in any form for providing this service to clients.

5 - Assessing the impact of complexity in the retail investment product market

Q17. *Do you agree with EIOPA's interpretation of complexity and cost efficiency in light of the changing market environment?*

The current market environment is characterised by ultra-low interest rates, high volatility, soaring regulatory requirements and increasing longevity. This has required insurers to adapt their products' features to meet consumers' expectations in terms of higher returns while managing their exposure to risks, including an ever-increasing compliance risk. Consequently, it is key to ensure that there is not a trade-off between policy holder protection and financial stability. A legally rooted balance between Conduct of Business regulation and Prudential Regulation is absolutely necessary for maintaining healthy insurance companies and healthy markets. Hence both perspectives need to be taken into account when designing the RIS.

Still, traditional (non-linked) business constitutes a big portion of new business in many markets. As reported in EIOPA [Consumer Trends Report \(CTR\) 2021](#) (Fig. 1, p. 10), in terms of new contracts, insurance with profit participation products were more sold than unit-linked products in 15 EU countries in 2020. As to the year-to-year premium growth for unit-linked products showed in the Annexes of the consultation, under the Solvency II reporting, the premiums of hybrid products are split between the unit-linked and the profit participation lines of business. This means that both the unit-linked premiums and the with profit participation premiums are partially driven by the sale of hybrid products. For example, in Italy, 42% of unit-linked premiums collected in 2020 came from multi-class products with a guaranteed component (ANIA [Italian Insurance 2020-2021](#), p. 70).

Hybrid products are designed to combine potentially higher returns through a more or less diversified unit-linked component, with a certain degree of stability in terms of guarantees. Different constructions are possible, such as static hybrids, which offer a fixed split between the guaranteed and non-guaranteed components, and dynamic hybrids, where the proportion invested in each component can vary over time.

In particular, dynamic hybrids can foresee a higher investment in the unit-linked component at the inception of the contract, and gradually switch the investment towards the guaranteed part over the years, to adapt to the client's changing needs and risk aversion. This means that the weight of the unit-linked component for the premiums collected in 2017-2021 could be partially reduced in the coming years due to the life-cycle mechanism of some hybrid products, or changes in the investment strategy required by the client if the hybrid product offers switch options. From a customer perspective, this makes a huge difference, as the functioning of hybrid products is pretty easy to understand, and the client benefits from capital protection mechanisms that are defined in the contract.

At the same time, insurers' offering is constantly adapting to the market conditions, the regulatory framework and consumers' needs. Insurers' ability to offer traditional products with guarantees might increase again in the coming years, for example if certain flaws in the Solvency II capital requirements are fixed or the prolonged ultra-low interest rates environment finally improves.

Any limitation on the possibility to design and distribute products with sophisticated architecture and competitive features would significantly restrict insurers' ability to respond to their customers' demands and needs, notably in terms of protection against certain risks (e.g. longevity risk). This would be against the CMU goals of enabling consumers to invest in financial products that are most suited to their investment and risk preferences, benefiting from an efficient and competitive market and addressing their long-term financial needs.

In the current climate, focusing on the structure of the product to define its level of complexity is not the right approach. If the product's architecture helps protecting consumers against risks – for example through biometric risk covers, financial guarantees, other risk mitigation techniques and contractually agreed benefits at the end of the contract offered by IBIP - then this sophistication is in the interest of consumers and does not increase complexity. A PEPP or a guaranteed product, for example, are regarded as simple although they could apply sophisticated risk-mitigation techniques.

A distinction should be made between the product back-end engineering, the level of investment risks and consumers' understanding of front-end disclosures. While the back-end engineering can be difficult to understand for the average customer, it can make the product less risky; what is more important for consumers is to understand the front-end disclosures they receive about the level of risk of the product. To ensure fairness, a product with numerous underlying options should not be classified as complex simply by virtue of the number of options, in particular where the options themselves are classified as non-complex.

Q18. *Do you agree with EIOPA's assessment of the types of products and/or products features which could be considered simpler?*

The horizontal approach pursued under the PRIIPs Regulation has already revealed its limits. Equally, IDD chapter VI that was developed taking into account criteria originating from the securities market has not led to the desired outcome.

Features offered by IBIPs such as the long-term duration, agreed benefits at the end of the contract as well as fixed terms and conditions or the inclusion of a financial guarantee or insurance cover should not in any way be assessed negatively by EIOPA. On the contrary, these should be regarded as elements of non-complexity, requiring appropriate disclosures in the PRIIPs KID.

A more nuanced "complexity scale" adding different rules for every shade of complexity in every part of the consumer journey and life cycle of the product would lead to very complex regulation with very unclear

boundaries for manufacturers and intermediaries. This would not simplify the sales process. On the contrary it could increase the compliance costs that are ultimately passed to consumers and delay the time to market of any new product.

Also, focusing the attention on the structure of the product to define its level of complexity is not the right approach. If the product's architecture helps protect consumers against risks – for example through biometric risk covers, financial guarantees, other risk mitigation techniques and contractually agreed benefits at the end of the contract offered by IBIP - then this sophistication is in the interest of consumers and does not increase complexity. A PEPP or a guaranteed product, for example, are regarded as simple although they could apply sophisticated risk-mitigation techniques.

Affirming that "the structure of IBIPs is *per se* more complex than some other retail investments" is too one-sided. From a consumer's perspective, the engineering of most IBIPs adds additional layers of protection, rather than complexity. For example, a death cover and an annuity element are also part of the PEPP, which is generally perceived as a good example of simple product.

As to the link "more options-more complexity", this could unduly bring to consider all MOPs as complex, even if MOPs can be constructed in different ways (with or without a partial guarantee, with an open architecture or pre-defined lines of investment, structured or linear options, a static or dynamic asset allocation, etc.) and at the end of the sales process the client might invest only in one of the investment options.

With reference to the example of a product investing in linear funds, which would be risky but "not complex in itself", any new provision should not promote products exposing consumers to greater financial risks for the only reason that they may have a less complex structure. The same consideration applies to any encouragement to compare products solely on the basis of cost, even though the COVID-19 crisis has clearly demonstrated the importance of consumers understanding what a product covers. Such a focus on costs would also create the risk of a "race to the bottom", with providers focusing on lowering costs rather than improving the quality of their products.

Any restriction on the design and distribution of IBIPs that would indirectly favour the sales of pure investment funds would unavoidably become an unfair competition and unequal treatment. Fewer retail investors would receive advice on their insurance and risk-prevention needs, in combination with the assessment of their financial needs, which is the added value that the insurance industry can offer. This would in the end reduce the retail investments in the real economy, which is ultimately one of the key goals of the CMU, and increase the amount of savings stuck in bank accounts.

With reference to the "counterparty risk of the product", this concept is not fully clear for IBIPs, since insurers are subject to extensive capital requirements and have a strong Solvency position, which ensures their claims paying capacity. This represents another element that decreases the risk for the consumer.

As to the "Level of complexity in the understanding of the product from the perspective of an average customer", it should be the role of legislators to ensure that the PRIIPs KID delivers high quality information to consumers and to test consumers' level of understanding when developing any change.

Bearing in mind Article 9 of the EU Regulation 1094/2010 establishing EIOPA, that mandates EIOPA to take a leading role in promoting transparency, simplicity and fairness in the market, the insurance sector calls on the Authority to refrain from proposals that could create confusion and distortions, and focus instead on the supervision of the existing rules and meaningful improvements to the PRIIPs KID.

Q19. *How would you, as an external stakeholder, define simpler and cost-efficient products? Could you please provide concrete examples of products that you consider simpler and cost-efficient?*

The key objective of providers and regulators should be that every consumer receives a product which is suitable to their specific preferences and needs. Consumers should not be nudged to take their financial decisions solely based on product simplicity and costs, thus selecting sub-optimal options in a “race to the bottom” in terms of quality and innovation.

Higher sophistication can bring better risk mitigation, higher returns and more choices to adapt the product to consumers’ evolving needs, especially in the medium-long term since individuals are increasingly required to take responsibility for preparing for retirement themselves. For example, a PEPP or a guaranteed product are regarded as simple although they could apply sophisticated risk-mitigation techniques. Most of the features IBIPs have are also common to the PEPP, like the specified (minimum) death benefit to cover surviving dependents or an annuity factor.

It is surprising that in the EC consultation on the Retail Investment Strategy, UCITS were mentioned as less complex products, regardless of structure, costs or investment strategy. While some of these products may, initially, be cheaper, this may come at the price of increased risks for retail investors.

Consumers with the right profile need access to riskier investment solutions while those looking for low and medium-risk products should always be able to find a suitable solution. This is a precondition for enabling more risk-averse retail investors to participate in the European capital market. For example, modern investment products often include risk mitigation techniques. These can be guarantees in the products, which the manufacturer can provide through a suitable composition of the general account. An ongoing limitation of the risk of loss can also be agreed upon with lower guarantees in hybrid products. The provider can continuously adjust the allocation of new savings contributions and the composition of the client portfolio. This increased variability may well be perceived as complex. However, it is not detrimental to clients, as it considers their risk appetite in the investment process on a day-to-day basis. This is partly comparable to fund portfolios with automatic rebalancing.

As to the definition of simple products, criteria originating from the securities market cannot simply be transferred directly, while IBIP features such as the long-term duration, agreed benefits at the end of the contract as well as fixed terms and conditions or the inclusion of a financial guarantee or insurance cover should not in any way be assessed negatively by EIOPA. A “complexity scale” adding different rules for every shade of complexity in every part of the consumer journey and life-cycle of the product would not simplify the assessment and would be burdensome to implement.

A product is simple if the potential customer can easily find clear information on the products’ risks and understand whether such risks are mitigated or not by financial guarantees, biometric risk covers or other capital protection mechanisms. This can be achieved by re-organising and simplifying the PRIIPs KID: the essential information on the existence or lack of guarantees, the existence or lack of insurance covers and the existence or lack of other capital protection mechanisms should be prominently displayed in the first layer and/or at the top of the document and Insurance Europe would recommend a tick-box option to facilitate consumers’ comparison and understanding of the different product features (eg, “Is money guaranteed?” with YES or NO boxes to be ticked by the product manufacturer; “Does this product provide insurance cover and other benefits?” with YES or NO boxes to be ticked by the product manufacturer and with relevant explanations).

As to cost-efficiency, a product is cost-efficient if it meets consumers’ demands and needs. This is sufficiently ensured through the IDD provisions, which also provide supervisory authorities with a solid

basis to monitor the market and swiftly and efficiently address any grievances even in a fast-evolving market environment.

It should also be noted that the basic principles in insurance, in particular the principles of solidarity and mathematical methods, enable cost structures that would not be available on an individual standalone basis. For IBIPs these basic principles are translated into collective asset ownerships that represent an additional layer of protection for the retail investor. Right from the outset, IBIPs enable cost-efficiency and economies of scales.

Q20. *Do you consider, as an external stakeholder, that other measures could be more effective in ensuring cost efficiency? Examples of such measures could include amending the wording of the POG Delegated Regulation and state more clearly that, in the product testing, manufacturers should also assess whether costs may be too high and hence not to fit for any target market*

Product design and testing as per POG rules, professional advice, distributors' continuous training, the suitability/appropriateness/demands and needs test, appropriate pre-contractual disclosures and product monitoring already ensure a high level of consumer protection through the whole product life cycle. They provide supervisory authorities with a solid basis to monitor the market and swiftly and efficiently address any grievances even in a fast-evolving market environment. Under the PRIIPs Regulation, EIOPA and supervisory authorities are conferred with appropriate product intervention powers.

Any cost cap or de facto profit control within POG would be incompatible with the prudential regulation (Article 21 Solvency II): cost management is primarily the responsibility of the product provider and the supervisor only insofar as the tariff must not jeopardize the financial situation of the insurer. Furthermore, IDD Level 2 clearly states that the POG rules should not be understood as an interference with the manufacturers' freedom to set premiums or as price control in any form (Commission Delegated Regulation (EU) 2017/2358, Recital 8).

Benchmarks, for example on distribution or advisory costs, might have the same negative effects on the market as a legal cap on costs. For example, potential benchmarks or upper limits on distribution and advisory costs as mentioned in paragraph 214 might have the unintended negative consequence of decreasing the standards for the continuing training and the advisory processes to the absolute minimum, which would ultimately not be in the best interest of the consumer and would run counter the CMU goal to enhance trustworthy high-quality advice.

The IBIP market is very heterogeneous, and limiting the distribution of certain products would decrease consumers' choice and would not help them find products that best fit their investment preferences. Cost transparency is key in contributing to cost-efficiency and in this respect the Reduction in Yield (RiY) used in the PRIIPs KID is a solid and accurate indicator.

As to the proposal of a ban on inducements for highly complex or highly risky products this would be excessive and disproportionate intervention:

- Firstly, highly complex or risky products are not *per se* harmful to consumers. Of course, to assess the appropriate risk-return trade-off, many factors need to be considered, including the consumer's overall risk tolerance, investment horizon and objectives. All these elements are considered in the definition of the product's target market, based on the POG process under the IDD. In the pre-sale phase, a suitability test is then performed with customers, to check their investor profile and their correspondence with the product's target market. If highly complex or highly risky products are an appropriate solution for a certain segment of consumers, according to the suitability test, it would be inappropriate to prohibit any possibility to offer them such products. Generally speaking, this measure

would limit the product offering and consumers' choice, as well as the possibility for the retail investors with the appropriate profile to grasp more profitable returns or diversify their portfolio.

- Secondly, an accurate definition of such a category is difficult, particularly with respect to the heterogeneous IBIPs market. Therefore, there is a high risk that certain products will not be offered at all, just to avoid compliance risks due to difficulties in interpreting the definition.
- Thirdly, it is precisely for these products that consumers need comprehensive, unlimited-time advice, potentially provided by several people and financed on a solidarity basis.

Ultimately, it seems illogical that CMU goal of attracting more retail investors can be achieved by limiting the product range available on the market and setting high hurdles for distribution. A broad product range and functioning distribution systems coupled with better disclosures in the PRIIPs KID and more ambitious financial literacy targets are the essential prerequisites for the CMU success.

Q21. *Do you agree with the advantages and disadvantages of the different options proposed? Are there additional aspects which should be highlighted?*

Our preferred option is to maintain the regulatory status quo, which already ensures several layers of consumer protection. IDD provisions already introduced strong safeguards through the whole product life cycle and provide supervisory authorities with a solid basis to monitor the market and swiftly and efficiently address any grievances even in a fast-evolving market environment. Under the PRIIPs Regulation, EIOPA and supervisory authorities are conferred with appropriate product intervention powers.

What needs to be improved is the PRIIPs KID, as it needs to prominently explain at the top of the document and/or in the first layer the existence or lack of biometric risk covers, financial guarantees, other capital protection mechanisms or insurance benefits. To find space for that, it is sufficient to re-organise the other sections and simplify other contents that are redundant, such as the many different performance and cost figures at intermediate time periods. In this way, there will be no need to increase the length of the document, nor to add further labels and indicators in addition to the comprehension alert and Synthetic Risk Indicator.

As to EIOPA's other proposals, any cost cap or de facto profit control within POG would be incompatible with the prudential regulation (Article 21 Solvency II): cost management is primarily the responsibility of the product provider and the supervisor only insofar as the tariff must not jeopardize the financial situation of the insurer. Furthermore, IDD Level 2 clearly states that the POG rules should not be understood as an interference with the manufacturers' freedom to set premiums or as price control in any form (Commission Delegated Regulation (EU) 2017/2358, Recital 8).

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As to the idea to require more behavioural or market research to be performed at company level, for example for the target market assessment of more complex products, this would be a costly and complex outsourcing exercise and lengthy process especially for small and medium size enterprises, on top of the different safeguards already introduced by the IDD. As suggested by EIOPA in Section 1, behavioural research should instead be used by legislators as the starting point when designing consumer disclosures, in the phase of developing Level 1 legislation and not just at Level 2.

Although it is a topic not addressed specifically in the Commission's Call for Advice, more must clearly be done to enhance the level of financial education of consumers.

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out almost €1 000bn annually — or €2.7bn a day — in claims, directly employ nearly 950 000 people and invest over €10.4trn in the economy.