

Response to the ESMA call for evidence on aspects of retail investor protection

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Contact person:	Francesca Bertolo, Arthur Hilliard, Danilo Gattullo	E-mail:	bertolo@insurancееurope.eu , hilliard@insurancееurope.eu , gattullo@insurancееurope.eu
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Q1: Please insert here any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.

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.

The insurance industry is not in the scope of Markets in Financial Instruments Directive (MiFID) II investor protection regime. Nevertheless, Insurance Europe would like to contribute to this discussion. The European Commission's (EC) work on the Retail Investment Strategy (RIS) provides an excellent opportunity to learn lessons from the successes and failures of previous EU legislative initiatives. This would enable retail investors to take full advantage of capital markets, which in turn can help to underpin Europe's economic recovery from COVID-19 and the transition to a sustainable economy. The European Securities and Markets Authority's (ESMA) technical advice will be a key input to the EC and Insurance Europe appreciates that ESMA intends to coordinate with the European Insurance and Occupational Pensions Authority (EIOPA), which received a separate call for advice on certain aspects related to retail investors investing in insurance-based investment products (IBIPs). However, the timeline set by the EC for EIOPA and ESMA to deliver their technical advices on aspects of retail investor protection is too short and raises severe limitations; the same for the EC deadline for the European Supervisory Authorities' (ESAs) technical advice on the review of investor disclosures aspects under the Packaged Retail and Insurance-based Products (PRIIPs) Regulation. In particular, the tight timeframe restricts the possibility to explore the issues set out in the different EC calls for advice. It also places constraints on the ESAs' ability to perform adequate testing of any new proposal on all the products in scope as well as the necessary, extensive testing with consumers. It is therefore vital for Europe's insurers to take every opportunity available to contribute to the debate, and hopefully facilitate discussions between the different competent

authorities and a common understanding of the specific features of the insurance business and insurance products.

With IBIPs accounting for almost 90% of the current PRIIPs market (around five trillion euro of assets under management in 2019), it is paramount that the future framework respects the specific features of IBIPs and enables consumers to take better informed decisions. In line with Insurance Europe's [response](#) to the EC public consultation on the Retail Investment Strategy (RIS), Insurance Europe would like to highlight that IBIPs are unique due to their long-term nature. Furthermore, in contrast to direct investments, IBIPs offer distinctive features in terms of biometric risk covers, guarantees or other capital protection mechanisms, payment flexibility, switching/shifting options, estate benefits etc. Such elements can be designed and structured in various ways, to offer a diversified choice to consumers and better adapt to their needs. For example, the current definition of IBIPs includes unit-linked products, profit participation products, hybrid products and certain annuities, as well as national-specific products classified as PRIIPs, such as certain funeral products. All these products can have different types and levels of guarantees at maturity, be linear or structured, static or dynamic (for example in the case of hybrids) and in many cases they allow consumers to choose among different underlying investment options (MOPs). These characteristics are key to consumers' protection and purchasing decisions and should, therefore, be recognised by EU rules and properly represented in the disclosures made to consumers. At the same time, the co-existence of different products, services and providers is in the interest of consumers, as it allows them to choose the best solutions based on their needs and preferences.

When considering changes, regulators should look at where improvements can be made to the consumer experience. For example, **the Retail Investment Strategy could examine how to better explain the characteristics of different products, rather than trying to adopt a common approach for all financial products.** For instance, the PRIIPs Key Information Document (KID) should prominently display at the top of the document and/or in the first layer, the existence or lack of insurance covers, guarantees or other capital protection mechanisms, and allow adequate space to explain the insurance benefits.

Furthermore, **the regulatory framework must be digital-friendly for all products and services.** The relevant regulation should be amended to be digital by default, with information provided on paper when requested by the consumer. It is also important to ensure that new entrants to the market, such as BigTech, are subject to the same regulatory and supervisory framework (ie "same activities, same risks, same rules") to ensure a level playing field and to maintain a consistently high level of consumer protection.

Moreover, action is needed to increase financial literacy across Europe. Financial literacy is an essential skill that enables citizens to take charge of their personal finances and here the EC should play a greater role: for example, by supporting the development and implementation of national strategies for financial literacy and education, including insurance education.

Finally, any review should not be rushed. Extensive technical and consumer testing and an adequate timeline for the consultation of stakeholders should be pre-requisites set in the legislative texts for any review. To ensure the best outcomes for consumers, it is also key to allow sufficient time for the implementation of any new rules. Manufacturers need at least 12 months from the publication in the Official Journal of the European Union of all the measures at Level 1 and 2 to implement any required changes, given the significant compliance and operational effort required from the industry. As they are instrumental to a proper implementation, any Level 3 measures also need to be available a year before the framework implementation deadline. As in the pan-European Personal Pension Product (PEPP) Regulation, a dynamic deadline in the legislative texts would be a practical solution to ensure this timeline is respected and to avoid legal uncertainties in case of delays in the legislative process that are outside manufacturers' remit.

Q5: *What do you consider to be the vital information that a retail investor should receive before buying a financial instrument? Please provide details.*

It is important to take into account that there are various types of investment products. Pre-contractual information should therefore strike the right balance between comprehensibility and comparability, and

comparability should not be achieved at the expense of understandability and fairness of the information provided. This means that the specificities of different products should be appropriately reflected, and not be simply omitted.

A key lesson from the COVID-19 pandemic is that the most crucial information consumers must understand is the added value of an insurance product, such as the protection against risks. In this respect, consumers should not be encouraged to take their financial decisions solely based on a product's potential costs or product structure, resulting in the selection of sub-optimal but cheaper options. Pre-contractual information should reflect insurance products' distinctive features so that consumers can better understand the differences between products which will aid their decision making. In the PRIIPs KID there is no space to properly explain elements of the product other than plain investment, for IBIPs for example. If there are no insurance covers or guarantees, the information is simply omitted. This does not help consumers to understand the specificities of insurance products or to properly assess costs and benefits.

As to the PRIIPs KID intermediate time periods: displaying costs and performance after one year and half of the recommended holding period (RHP) is not appropriate for IBIPs and does not help consumers to understand the long-term nature of IBIPs. A correct understanding of the recommended holding period is key to reap the full benefit from the investment cycle. From a purely technical perspective, information on intermediate time periods (eg one year, half RHP) for products with a RHP of 30 years would not be comparable with the corresponding figures of a product with a RHP of 15 years, as their overall structure and duration is different. As opposed to direct investments, insurance products have a contractually agreed duration. Cancellations are possible, but the product is not actually designed to be terminated prematurely.

As to costs, the Reduction in Yield (RiY) is a robust and accurate indicator. In the 2019 joint consultation paper concerning amendments to the PRIIPs KID, the ESAs noted that RiY figures could be used to comply with requirements in MiFID or the Insurance Distribution Directive (IDD).

While the current version of the RTS had a truly comparable representation of costs of all PRIIPs, as there was consistency of representations of total costs (table 1) and composition of costs (table 2) based on the RiY, the changes on costs introduced by the revised RTS represent a step backwards, making it impossible for consumers to compare costs, while there is no objective justification for such a differentiated approach.

More in general, any disclosure format should be user- and digital-friendly to facilitate navigation and help consumers easily find the information they are looking for. Any new legislative proposal must be properly tested on the full range of different products to which it applies to ensure it is workable, accurate and meaningful. Consumer testing is essential and must demonstrate a clear improvement in consumers' overall understanding of the information received and of the decision-making process. At the same time, consumer testing is only meaningful if it encompasses a broad range of products, markets and consumers.

The excessive quantity of information also represents an obstacle that discourages consumers and distracts them from vital information. Insurance Europe, therefore, appreciates the intention of ESMA to consider not only the requirements of MiFID II itself, but also parallel legislation which provides regulation on similar issues. Regarding consumer information, the development of new requirements without a proper consideration of the existing legislation has led to significant information overload to the detriment of consumers. One prominent example which is of relevance not only in the insurance market but also the financial sector is the Directive on Distance Marketing of Consumer Financial Services (DMFSD), which is currently being reviewed. Care should be taken to ensure that overlaps and duplications are eliminated and that less relevant information requirements are reconsidered in order to reduce the overall amount of information to be provided to the customer. Specifically for the insurance sector, the cumulative impact of the Solvency II Directive, the IDD, but also the DMFSD, the PRIIPs Regulation and the General Data Protection Regulation (GDPR) has led to an excessive increase in the number of individual disclosures, which will increase even further with the new Regulation on sustainability-related disclosures in the financial services sector (SFDR) and the Taxonomy Regulation (TR).

The RIS should therefore focus on better, not more, information for consumers. It must consider the cumulative impact of regulations that lead to information overload and the duplication of requirements and take steps to remove this where it exists. Rules should focus on requiring individuals to be given high-quality, vital pre-contractual product information, rather than just a high quantity.

Q13: *Which technical solutions for digital disclosures (e.g., solutions outlined in paragraph 27 or additional techniques) can work best for consumers in a digital - and in particular smartphone - age? Please provide details on solutions adopted and explain how these have proven an effective way to provide information that is clear and not misleading.*

Pre-contractual documents should be available in electronic format by default, but on 'paper upon request', except where the contract between the retail investor and the distributor took place via digital means, where the alternative option could be 'printable upon request'. This would avoid creating obstacles to pure digital players, while still allowing retail investors to print a paper copy of the precontractual disclosures if they feel the need.

To avoid information overload, disclosures should be clear, meaningful and avoid inconsistencies, overlaps and duplications. The disclosures format must also be engaging and flexible to adapt to consumer preferences.

The regulatory framework should be flexible enough to be future proof, technology neutral: for example, not based on an A4 document, avoiding long columns/table structures to facilitate navigation on a smartphone or tablet.

The use of layering and cross-referencing through hyperlinks should also be promoted. By using layering and different (digital) means, information is easier to understand. A layered approach also puts consumers in control of the type and amount of information they wish to access.

Moreover, the use of icons and simple and direct language where possible from a legal point of view are encouraged.

Q17: *To financial firms: Do you observe increased interest from retail investors to receive investment advice through semi-automated means, e.g., robo-advice? If yes, what automated advice tools are most popular? Please share any available statistics, data, or other evidence on the size of the market for automated advice.*

Robo-advice is a costly and sophisticated tool that requires huge investments and several years to be implemented.

Insurance is rarely demanded on the customers' own initiative and many consumers still prefer human advice.

In general, the development of open platforms and comparison websites is higher for non-insurance-based investment products, not characterised by multiple features that require a different approach, like insurance benefits (eg biometric protection and possible annuity payments or the lack thereof), level of guarantees and other risk mitigation techniques, and flexibility of payments and other services.

Setting up costly tools to display the basic version of different IBIPs (ie their minimum features) would not increase consumers' choice and access to the most suitable products. On the contrary, it could limit consumers' understanding of the potential opportunities offered by IBIPs and of the different options available on the market.

Q43: *Do you believe that consumers would benefit from the development of an 'open finance' approach similarly to what is happening for open banking and the provision of consumer credit, mortgages, etc? Please explain by providing concrete examples and outline especially what you believe are the benefits for retail investors.*

Open finance/insurance, if designed right, has the potential to positively impact both consumers and the industry. However, the definition of any potential framework is crucial and will play a key role in determining its overall impact. Further elaboration of the exact scope and objectives of any open finance framework is therefore necessary.

Q44: *What are, in your opinion, the main risks that might originate from the development of open finance? What do you see as the main risks for retail investors? Please explain and please describe how these risks could be mitigated as part of the development of an open finance framework.*

The European insurance sector is a comprehensively regulated and supervised sector with a sound conduct of business and prudential framework in place. However, while new technological opportunities and new customer behaviour enable new service concepts, new service providers (eg BigTech) have also entered the market.

A key challenge for the future will be to ensure a level playing field and fair competition between market players and business models. One of the risks associated with BigTech companies gaining substantial market share in financial services relates to competition issues and potential abuses of market power. BigTech companies may make use of their market power when entering into partnerships or commercial agreements with certain financial service providers or provide them with favourable conditions to the detriment of their competitors. This could result in restricting access to certain services by other financial service providers, or imposing unfair terms and conditions, such as requiring payments to be made only via the BigTech company's own platform.

Q45: *Which client investor data could be shared in the context of the development of an open finance framework for investments (e.g., product information; client's balance information; client's investment history/transaction data; client's appropriateness/suitability profile)?*

The focus should be on context-relevant customer data. Any open finance framework must be based on the principle that the personal data supplied by or on behalf of customers is owned and controlled by those customers. Data should not be accessed without the explicit consent of the customer and there should be possibility for the data subject to withdraw consent and have their data erased.

Q46: *What are the main barriers and operational challenges for the development of open finance (e.g., unwillingness of firms to share data for commercial reasons; legal barriers; technical/IT complexity; high costs for intermediaries; other)? Please explain.*

From a legal perspective, there are possible limitations and restrictions for insurance undertakings wishing to implement innovative digital strategies. Under the Solvency II regulatory framework, some new digital activities might be classified as "non-insurance business". Consequently, they would not be permissible for insurance companies. This is counter to the level playing field principle, as it puts insurance companies at an unjustified disadvantage relative to other participants in the digital economy. Therefore the current definition of "insurance business" should be reconsidered in a way that the new cooperation and digitally related activities of insurers are encouraged and will be considered as an integral part of their core insurance business.

The industry would also refer to Recommendation 24 of the Commission's Expert Group on Regulatory Obstacles to Financial Innovation (ROFIEG), which proposes that the impact of existing activities' restrictions for financial institutions' non-core business (eg Article 18 of Solvency II) should be reviewed to determine whether these restrictions remain proportionate. According to the ROFIEG, in this review particular regard should be paid to cross-sectoral considerations, in order to ensure a level playing field between different types of players in the financial sector, including BigTech.

In addition, data sharing should be carefully considered in the context of competition law and intellectual property law, which may constitute obstacles by impeding the contractual parties' ability to exchange data. Data which constitutes trade secrets or business sensitive information should not be subject to any data sharing requirements.

In any potential open insurance framework, it will also be important to develop standards to facilitate data sharing. In order to ensure these standards are well aligned with specific national and general industry standards and practices, Insurance Europe looks forward to being involved into this work going forward.

Standardisation of application programming interfaces (APIs) would be a prerequisite for the opening of data in order to facilitate data sharing. It is also important that data is retrievable in a structured format and allows for automated data feed and analysis. Data should therefore be made available in open, easily readable file formats (JSON, XML, CSV, txt). Both the format and interface chosen should consider the type of data that is being processed. Wherever possible, open finance should seek to build on existing standards and practices to accelerate the implementation process and reduce costs for industry.

Q47: *Do you see the need to foster data portability and the development of a portable digital identity? Please outline the main elements that a digital identity framework should be focusing on.*

Digital identities play an essential role in digitalisation, especially in the completion of onboarding and business processes. It is crucial that the use of digital identities is based not only on secure and trustworthy identification procedures, but also enables user-friendliness. Therefore, the establishment of an open, non-discriminatory, and interoperable ecosystem is considered important. This ecosystem should not only allow innovative processes based on new technologies such as self-sovereign identity (SSI), but also already existing and established ones in a co-existing and equal manner. For this, it is also crucial to place the requirements and values of a digital identity and the identification process in the context of the respective process. In addition to these requirements, it is also crucial that the ecosystem is accessible to the public from a technical point of view. High technical obstacles shall be avoided.

It should also be noted that, according to Article 20 GDPR, data portability requires (i) that the processing of data is based on consent and that (ii) the processing is carried out by automated means. It is important that any open finance framework does not amend/undermine these conditions.

It will be crucial when considering the introduction of any data-sharing framework to clearly define which data sets would be subject to data sharing. One can distinguish between data which is directly supplied and controlled by the consumer on the one hand, and proprietary data on the other, which is created on behalf of consumers, but maintained by insurance companies. Insurers should not be obliged to share trade secrets, business sensitive information or proprietary data that they have generated and analysed/enriched themselves, and which is the outcome of their own work. This data is distinct from the personal information that belongs to the customer and is consequently captured by the GDPR data portability rules, which provide data subjects with the 'right to receive the personal data concerning him or her, which he or she has provided to a controller'. In contrast, proprietary data is a result of companies building risk profiles as well as underwriting and claims performance models. As such, it represents a competitive advantage and should be seen in the context of an insurer's portfolio, which differs from one insurer to another. Any work done in this regard (eg including any internal risk models, or data from such internal risk models) and any classification is individual and tailored to the insurance company and should not be under any requirement to be shared.

Q48: *Do you consider that regulatory intervention is necessary and useful to help the development of open finance? Please outline any specific amendments to MiFID II or any other relevant legislation.*

Insurance Europe suggests a modernization of the prohibition of non-insurance business (Art. 18 Solvency II). See Q46.

Q49: *What do you consider as the key conditions that would allow open finance to develop in a way that delivers the best outcomes for both financial market participants and customers? Please explain.*

Firstly, 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 European insurance sector is a comprehensively regulated and supervised sector with a sound conduct of business and prudential framework in place. As new market entrants appear, it will also 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.
- A fair allocation of costs among the parties to ensure a balanced approach to the funding and development of any new infrastructure.

Further consideration and on-going discussion between the industry and policymakers will be crucial in finding an optimal and balanced solution for consumers, insurers and their supervisors.

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