

Feedback to EIOPA on the application of the Insurance Distribution Directive

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Insurance Europe welcomes the possibility to provide further feedback ahead of the publication of the next European Insurance and Occupational Pensions Authority (EIOPA) report on the application of the Insurance Distribution Directive (IDD) and appreciated the opportunity to participate in the recent public event.

Insurance Europe wishes to provide additional feedback on some of the issues raised at the event, as well as draw EIOPA's attention to some additional issues that the industry is experiencing which were not necessary addressed directly during the discussions.

That said, Insurance Europe would first like to reiterate that the IDD is working well, and its members report very few difficulties in applying the Directive or accompanying level 2 measures. The IDD has been successful in increasing consumer protection in insurance distribution and in professionalising the role of insurance distributors. The minimum harmonisation and principles-based approach taken in the IDD allows the rules to be appropriately applied at national level, taking into account the structure of the local market and the cultural expectations of customers. The issues the industry wishes to raise are minor problems regarding the application at a technical level and should be viewed in the context of an otherwise robust piece of legislation.

Scope and definitions

There are several issues related to the scope of the IDD that pose problems in applying the Directive.

IDD includes a broad, principles-based definition of distribution, which works well in practice.

In the industry's view, the IDD is primarily a retail/consumer protection focused piece of legislation, both in terms of the way the Directive is written and the way EIOPA and national competent authorities (NCAs) have approached its application and supervision of the rules. Therefore, the use of terminology should be consistent in respect of the terms "consumer" (i.e. referring only to retail policyholders) and "customer" (covering all categories of policyholders, large corporate to retail clients). Currently these terms are used interchangeably in some sections of the Directive, which creates confusion and regulatory uncertainties. Consequently, a large amount of business to business and commercial risks are still captured in part by the Directive.

Certain aspects of the sales process are not meaningful for commercial contracts and should be either disapplied or amended for these contracts. These include the use of the insurance product information document or IPID (in member states where this is required), performance of a demands and needs test, certain other consumer

disclosures, and the full application of product oversight and governance (POG) including the definition of the target market. While the IDD should be applied in a proportionate manner, the application to commercial clients is currently not proportionate. This disproportion is detrimental to professional and institutional policyholders, as it increases costs and reduces the attractiveness of Europe to address its protection gap by securing steady capital flows. Potential concerns regarding the lack of adequate technical expertise or specialist risk coverage in the EU were recently mentioned in EIOPA's Supervisory Statement on the use of governance arrangements in third countries to perform functions or activities (pt. 3.3).

The application of the IDD to small medium enterprises (SME) clients is also sometimes challenging, as fewer requirements are needed for clients who require less protection. The IDD exemptions for large risks do not capture enough of the commercial market, and a focus on the type of client may have led to an easier implementation.

The industry would also like to raise a specific issue regarding the types of functions that are included in the definition of what constitutes insurance 'distribution' in some markets. In particular, despite the exclusion in Article 2.2(b) of the IDD for claims management, in some markets, personnel who have no customer facing role and are only engaged in claims handling or in underwriting activities are still considered to be classified as part of the distribution process and so must undergo the same training regime as the distributors themselves. This is not a proportionate application of the Directive.

As highlighted in Insurance Europe's 2021 [response](#) to EIOPA's survey on the application of the IDD, the Directive's application to reinsurance is also an unnecessary burden that provides no benefit to the customer. In a reinsurance context, the sales and advice processes are carried out between two sets of expert practitioners. The consumer-focused IDD rules are not appropriate in this setting. Under the activity-based approach taken in the IDD, reinsurance should be outside the scope of the Directive, unless the reinsurer is carrying out business with retail clients. For instance, according to the fourth subparagraph of Article 10.2 of the IDD, member states shall be able to adjust the required conditions regarding knowledge and ability in line with the particular activity of insurance or reinsurance distributors and the products distributed. Accordingly, specific requirements, such as, for example, the specific requirement of at least 15 hours of professional training or development per year, should not be applicable to reinsurance distributors. A similar situation occurs with occupational insurance. In these instances, the client is not a retail customer, but an expert operating in a professional capacity. It should be assessed whether IDD consumer protection rules are appropriate in this setting.

Digitalisation

Insurance Europe would like to reiterate the comments expressed during the event that the number of sales conducted wholly or in-part online is steadily increasing. It is inevitable that this trend will continue, as more of life is conducted online, and as more digital natives look to buy insurance. The regulatory landscape must keep pace with this trend.

Through digitalisation, consumers' interactions with insurers are becoming more and more diversified. Insurers and intermediaries are adapting to consumers' preferences and offering digital solutions in addition to "traditional" offline communication. Consumers can use different communication channels and have numerous contact points. It is almost impossible to exactly quantify how often and when customers interact with digital tools.

Hybrid consumer journeys are becoming the new normal. For example, clients can search online before purchasing offline; conclude insurance contracts with physical distributors and then use the smartphone, apps and chatbots for assistance; ask for video-calls with their agents, etc. This variety of choice facilitates financial inclusion and must be preserved.

However, face-to-face sales and advice remain an important part of the insurance distribution system. Local, sometimes specialist, distributors provide a personalised service that gives some consumers the confidence to access capital markets who otherwise would not. These distributors are also available to provide ongoing advice and guidance throughout the lifetime of a contract, including assisting with any claims.

Robo-advice is not widely-available, as it is not easy to implement, nor necessarily easy to use. If used by a client on its own, it can necessitate a high level of financial literacy and time commitment by consumers, as the program first needs to be fed with detailed and accurate information on a person's financial situation and preferences. The application of the IDD must facilitate the development of these kinds of new tools but should not presuppose that this distribution channel will grow in popularity with consumers. The IDD can accommodate emerging digital trends if applied correctly and a level-playing field between all distribution models is maintained, without favouring one channel over the others.

Insurance Europe would also like to reiterate concerns raised before related to the paper-by default approach taken in the IDD. This prevents the full digitalisation of the distribution process even where customers wish to only operate online. When the IDD is reviewed this approach should be revised, so that digital distribution is thought of first, while still maintaining a parallel offline distribution process for those who need it.

Looking ahead, it is key to ensure a smooth consumer journey. If consumers are intimidated by the length and complexity of the advice process, or confused by the amount of EU pre-contractual information, the risk is that they might turn to unregulated advice offered through social media and be more exposed to scams or high-risk investments.

Sustainability

It is still very early to assess the impact of the new IDD rules on sustainability: however, it is already clear that the implementation of these rules has been particularly challenging for the industry.

The industry is still grappling with how best to handle the new requirements to the benefit of consumers. The IDD can also not be assessed in isolation, as it is part of the broader Sustainable Finance Disclosure Regulation (SFDR)/taxonomy package. There are still many issues regarding the practical implementation of the SFDR that have a knock-on effect on the application of the IDD rules including:

- Overly complicated product information, that makes it difficult for consumers to understand the choices they are making between products. The SFDR templates require at least five pages of additional pre-contractual documents for a simple ESG fund. This excessive length also makes the accessibility of the templates via digital tools (eg a smartphone or tablet) more difficult. If consumers cannot understand the precontractual information, they struggle to express a preference for which product/type of product they prefer. The SFDR periodic disclosures can also be very long. In particular, Multi-Option Products (MOPs) can give clients the possibility to choose between many different funds, for example a hundred funds. The annual sustainability report of each fund can be ten pages long or more. Moreover, annual sustainability reports should be given for any investment option invested in during the reference period, even if the investment options were not invested in during the whole reference period. This means that there might be a need to provide much more than 60 pages of SFDR periodic information to clients on top of the Solvency II periodic disclosures, often on paper, as there is no possibility to use hyperlinks to the existing periodic information of the underlying funds.
- The definitions used are also problematic as they are not aligned and not understandable by the average consumer. Terms like sustainable investment objective, sustainable characteristics, or principal adverse impacts are not easy to understand, and in addition distributors are reporting a general problem with a lack of useable definitions of E, S and G that they can convey to consumers. This also inhibits consumer understanding, meaning they cannot confidently express a preference.

- The IDD suitability process is already very long and these new requirements lengthen and complicate the process further. This makes it harder for consumers to engage with the advisory process, and also makes it highly unlikely that they would complete the entire process online themselves (ie via robo-advice).
- There is a lack of data availability for product manufacturers that limits their ability to offer 'sustainable' products. This is compounded by the mis-matched implementation timelines between the various pieces of relevant legislation. Insurance distributors are currently being asked to match consumers' often vague and unconfident sustainability preferences to a very limited product offering. This is an almost impossible task.

The industry is concerned that burdensome, unclear and fragmented regulatory framework might discourage product manufactures from offering ESG products.

At the same time, insurance distributors and insurance customers will continue to face confusion while the sales and advice process is based on overly complex terminology and definitions.

During the event, some participants were of the view that the content on sustainable finance in training courses for intermediaries should improve in order to ensure a higher quality of advice provided by intermediaries. The IDD already ensures high standards of continuous professional development (CPD) and the IDD minimum harmonisation approach needs to be respected. If EIOPA intends to consider a specification in the IDD Annex that ESG should be part of the minimum professional requirements, the following caveats must be considered:

- The ESG features should not be prioritised over all the other aspects to be considered in the advice process.
- Training requirements must remain relevant and proportionate to the products sold.
- A flexible, minimum harmonisation approach needs to be maintained in order to accommodate existing education systems, different national requirements etc.
- Burdensome or rigid requirements would become another barrier to the uptake of ESG products, discouraging distributors from offering this kind of products.
- There is no merit in developing a new EU certification for financial advisors. Requirements on professional knowledge and skills are better developed at national level. A proliferation of labels should be avoided.

Issues related to the practical application of the IDD

During the event, this discussion focused on some specific issues: however, there are additional points the industry wishes to raise, also in response to some comments raised by other participants.

Ancillary insurance

There is a huge hype around embedded insurance, but the industry does not see specific consumer risks if existing regulation is applied correctly, as these kinds of services are regulated under the IDD rules for ancillary insurance. So far, where specific problems arise, EIOPA and NCAs have appropriate powers to address this.

Application of Article 10 of the IDD

There are differences in how Article 10 professional requirements are applied. Where certain (re)insurers have branches in multiple countries, they must apply this aspect of the Directive in varying ways. In some cases, there are also difficulties in establishing whether 'home' or 'host' requirements apply. In particular, this relates to aspects of the distribution process, such as claims handling (see comment above), or underwriting, where personnel may be situated in one country but processing claims/sales or undertaking underwriting activities related to another, or the knowledge and continuing professional training and development requirements to be applied to employees of branches of insurance companies, which are considered as insurance distributors in some countries under the current IDD (eg underwriters employed by a branch).

'Waiting periods'

The "deferred sales model" introduced in Australia was mentioned during the event. This is understood as a mandatory four-day pause between the sale of a principal product or service and the sale of add-on insurance for consumers to reflect. This kind of requirement is not well future-proofed and is likely to be increasingly difficult to implement in a digital environment. Mandatory waiting periods will not be practical and will slow down the sales process, while the speed and ease of entering into a contract and receiving immediate insurance protection is essential for consumers. Consumers want new products and services that respond to their needs and the added convenience of interacting with their insurers when, how and where they want, making it a more regular experience. They likewise expect to be able to conclude insurance contracts when they need them — for example immediately — without unnecessary restrictions, delays or obstacles.

Compliance burdens

Insurers face high compliance burdens and costs. It would be very useful if EIOPA could make its guidance accessible in all official languages, and easier to retrieve and navigate on EIOPA's website. This simple action would be incredibly helpful, especially for smaller players in the market.

The industry also appreciates it when editable templates in all official languages are made available by EIOPA to help insurers comply with new disclosure requirements.

Complexity

Insurers can provide investment products with insurance-specific features to smooth investment returns and protect against different types of risks. These protection elements are attractive and appropriate for risk-adverse consumers. The existence of financial guarantees can also make it easier for consumers to understand the level of risk of the product. Therefore, the industry does not agree with the view of some participants at the recent event that offering insurance and investment in the same product should be regarded as an element of complexity.

Analysis going forward

Insurance Europe would like to point out that any future analysis must bear in mind that there are differences in the respective markets (life and non-life) and that this does not automatically imply that the common IDD rules need to be changed. The flexibility of the IDD in relation to different markets and countries is in fact one of its advantages.

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