

## Insurance Europe response to the IDD DA consultation

### Delegated Regulation on product oversight and governance (POG)

#### ■ Sales outside of the target market:

Insurance Europe welcomes the acknowledgement in recital 9 that it is possible for distributors to sell products outside of the intended target market, where it is justified in a particular situation. It is important that consumers remain free to purchase insurance products that meet their individual demands and needs, even where they may fall outside of the pre-set target market.

However, given the importance of this provision, Insurance Europe would propose also inserting an appropriate recognition in the articles themselves (ie Article 5 of the delegated Regulation). The following wording, from paragraph 100 on page 25 of EIOPA's [technical advice](#) on the IDD delegated acts, would help to clarify the objectives of the target market provision and the role of the demands and needs analysis:

*"The target market identified by the manufacturer specifies the group of customers to whom the insurance products should generally be distributed. The insurance distributor may distribute insurance products to a customer that does not belong to the identified target market provided that the insurance distributor can prove that the respective insurance product meets the demands and needs of the individual customer, and, in the case of insurance-based investment products, is appropriate or suitable for the customer."*

Alternatively, the wording of the relevant part of recital 9 could be included in Article 5.

#### ■ Negative target market:

Insurance Europe welcomes the decision by the Commission not to include any explicit requirement in the delegated Regulation to specify a 'negative' target market. Insurance Europe welcomes instead the way in which this issue is treated in recital 7 and Article 5(2), by confirming that manufacturers should have the possibility to identify specific groups of customers for which the insurance product is generally not compatible or appropriate.

The focus of the IDD Level 1 text in Article 25 is to ensure that the POG arrangements specify an identified target market for each insurance product. This sets out the group of potential customers to whom the insurance products should generally be distributed. This requirement, together with the other Level 1 requirement in Article 20(1)(2) to ensure that any contract proposed is consistent with the customer's demands and needs, makes it unnecessary to introduce a new obligation regarding the specification of a 'negative' target market.

As a consequence, and in order to ensure consistency with Article 5(2), Article 8(3)(c) should be amended as follows: "**where relevant**, identify any customers for whom the insurance product is **generally** not compatible with their needs, characteristics and objectives."

#### ■ Retroactive application:

Insurance Europe welcomes the acknowledgement in Recital 1 and Articles 1 & 4 of the delegated Regulation that the POG arrangements are intended only to apply to newly developed insurance products and for significant adaptations of existing insurance products before those products are brought to the market or distributed to customers. This provides greater legal certainty and ensures consistency with Article 25 of the IDD.

#### ■ **Monitoring distribution channels:**

Article 8(4) of the delegated Regulation requires manufacturers to take appropriate steps to monitor that distributors act in conformity with the objectives of the product approval process. Insurance Europe welcomes, however, the clarification that this “monitoring obligation shall not extend to the general regulatory requirements with which insurance distributors have to comply when carrying out insurance distribution activities for individual customers. The monitoring activities shall be reasonable, taking into consideration the characteristics and the legal framework of the respective distribution channels.”

This is in line with Article 25(1)(3) of the IDD, which requires manufacturers to take *reasonable* steps to ensure that the insurance product is distributed to the identified target market. It is also acknowledged by EIOPA in paragraph 79 on page 22 of EIOPA’s technical advice.

We would also welcome a further clarification that it is the distributor, and not the manufacturer, that is responsible (and liable) towards the customer in the case of independent advice.

#### ■ **Proportionality**

Despite brief references in the wording of certain articles, Insurance Europe would call on the Commission to ensure greater recognition of the principle of proportionality in the final delegated acts. This is a key principle, particularly as many distributors of insurance products are small and medium sized enterprises and, in some cases, are run by one self-employed individual, and its practical implementation needs to be carefully considered and reflected in the delegated acts.

In the context of conflicts of interests, Articles 4(3) and 10(2) specify that the product approval process should ensure that the design of products “support a proper management of conflicts of interests”. However, this is linked to Article 28 of the IDD, which applies to IBIPs, while the POG arrangements apply to all insurance products. Moreover, management of conflicts of interests addresses the risk of detriment for the customer, which is already addressed in Article 4(3)(a)(iii) and Article 10(2)(a) with the requirement that the design of the product or the distribution arrangements will “prevent or mitigate customer detriment”. For these reasons, we suggest deleting this reference to the management of conflicts of interests under the POG arrangements, or to at least limit the reference to the case of IBIPs, ie “support a proper management of conflicts of interests **where relevant**”.

#### ■ **Basic principles in insurance**

Insurance Europe calls on the Commission to include in the final delegated acts a reference to the need to take into account the basic principles in insurance, in particular the principles of solidarity, mathematical methods and risk pooling. As an overarching principle laid down in its technical advice, EIOPA acknowledged that any provisions that are introduced should be without prejudice to these basic principles in insurance. The interests of customers that need to be taken into account comprise individual and collective policyholder interests, which need to be duly balanced. This will also ensure a safe and sound functioning of the risk community which is essential to insurance markets.

For example, this specific reference is included in paragraph 16 on page 13 of the technical advice in the context of the product oversight and governance arrangements. In addition, recognition of the need to take into account the basic principles of insurance (solidarity, risk pooling and mathematical methods) is referred to in paragraph 7 on page 36 of the technical advice, this time in the context of the management of conflicts of interest for IBIPs. Insurance Europe would therefore propose the inclusion of such an acknowledgement in the final delegated acts.



## **Delegated Regulation on insurance-based investment products (IBIPs)**

### **■ Inducements:**

Insurance Europe welcomes the reference in Article 8 of the delegated Regulation that the assessment of inducements should be based on an "overall analysis taking into account all relevant factors which may increase or decrease the risk of detrimental impact on the quality of the relevant service to the customer, and any organisational measures taken by the insurance intermediary or insurance undertaking carrying out distribution activities to prevent the risk of detrimental impact".

In order to evaluate whether or not an inducement can be considered to have a detrimental impact on the quality of the service, it is necessary to take a holistic approach and to look at the context of the overall situation. Insurance Europe therefore welcomes therefore the approach taken by the Commission on this issue.

Insurance Europe also welcomes the clarification given by the Commission in the explanatory memorandum of the delegated Regulation for where it deviates from the technical advice provided by EIOPA. We welcome the acknowledgement by the Commission of the limitation of the empowerment in Article 29(4) of the IDD which covers only the specification of "the criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the customer". This contributes to ensuring that the drafts of the two delegated regulations are more closely aligned with the empowerments set out under the IDD.

### **■ Non-complex insurance-based investment products**

With regard to the criteria for non-complex IBIPs, Insurance Europe welcomes the fact that the Commission has not fully adopted in Article 16 the criterion proposed by EIOPA in its technical advice, and refers only to the contractually guaranteed minimum **maturity value** and not the surrender value.

The criterion of a guarantee at both surrender and maturity, as had been proposed by EIOPA, would mean that almost all IBIPs are classed as complex products. As a result, they would not be eligible for execution-only sales under the IDD. This approach, which would lead to a de facto ban on execution-only sales, would seriously undermine the explicit member state option in the IDD to allow for the execution-only sales of non-complex IBIPs. It would also interfere with the consumer's decision on whether or not to seek advice.

In addition, all of these IBIPs would automatically be assigned a comprehension alert under the PRIIPs Regulation. This would defeat the objective of a comprehension alert, as consumers will be less likely to pay attention to it and use it as a tool for comparison of different IBIPs if they all carry it.

Such a criterion would also risk creating an uneven playing field: unit-linked products which invest at the customer's risk exclusively in UCITS funds and meet all of the other relevant criteria would not be considered complex, whereas, if the customer wishes to protect themselves against negative market developments at maturity at the insurer's risk, a comparable product would be considered complex if the minimum guarantee in case of surrender is not met.

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Recognition of the need to take into account the basic principles of insurance (solidarity, risk pooling and mathematical methods) is referred to in paragraph 7 on page 36 of the technical advice, in the context of the management of conflicts of interest for IBIPs. Insurance Europe would therefore propose the inclusion of such an acknowledgement in the final delegated acts, in order to respect the interests of the community of insured, which is automatically joined by each new customer by purchasing an insurance product. This will ensure the long-term functioning of the insurance product.