

# 2nd Report on the application of the Insurance Distribution Directive (IDD)

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## EXECUTIVE SUMMARY

The Insurance Distribution Directive (IDD) has now been in application in the majority of Member States for over five years since 1 October 2018 meaning that NCAs have acquired considerably more experience in supervising and insurance distributors in applying the IDD.

This second report takes into account this additional experience acquired and provides an overview of the impact of the IDD on consumers, insurance distributors and supervisory activities over the past two years with respect to the structure of the EU insurance distribution market and the regulatory and supervisory framework.

In order to prepare this report, EIOPA ran two surveys on the application of the IDD with NCAs. Their responses, along with input from external stakeholders, provided during and as a follow-up to a public online event on the IDD in March 2023, were used to help prepare this report. EIOPA has also sought to improve the data quality and comparability particularly of quantitative data in this report, taking into account specific challenges identified in its first report.

Based on its analysis, EIOPA notes the following developments:

### Changes in the structure of the EU insurance distribution market

EIOPA has observed a further decrease in the number of registered intermediaries, reflected in a significant drop in the number of intermediaries registered as natural persons over the past two years, a trend already outlined in the previous report. Possible reasons for the decrease range from consolidation in the sector, the increasing age of intermediaries and stricter professional requirements at national level to deletion of inactive intermediaries from national registers and difficulties in attracting young talent. In contrast, the number of intermediaries registered as legal persons increased slightly, potentially due to the further professionalisation of the sector and digitalisation.

While there is significant diversity in terms of national categories of insurance intermediaries, the average European insurance intermediary continues to be a natural person, acting on behalf of one or more insurance undertakings, exclusively selling insurance and is paid in relation to the insurance contract on the basis of a commission.

With regard to the relative importance of different distribution channels in terms of business written, bancassurers continue to play an important role in the distribution of life insurance, with other intermediaries such as agents remaining prevalent in the non-life sector. The amount of online sales remains low in most Member States, but is increasing on a yearly basis.

While the number of insurance intermediaries with a passport has increased in most Member States over the past two years, the total number of passporting intermediaries experienced a slight decrease over the past year.

Inflation and rising interest rates have had a significant impact on the insurance market and customers over the past two years, for example in the form of higher cost of claims faced by insurance undertakings and reduced purchasing power of consumers.

### Impact of the new regulatory framework

#### *Level of professionalism and competence of insurance distributors*

A mixed picture emerges in terms of the level of professionalism and competence of insurance distributors. Some NCAs have observed an improvement in the level of professionalism and competence in some Member States, for example through continuous professional training or development (CPD) by insurance distributors, but others have identified shortcomings, for example in relation to CPD content on Product Oversight and Governance (POG) and sustainability aspects.

#### *Digitalisation and growth of new distribution models*

Digitalisation and the growth of new distribution models continue to present risks, but also opportunities. Insurance distributors faced challenges, for example, in applying and NCAs in supervising the IDD rules on the form and timing of disclosures in a digital context and in applying the IDD in relation to new technologies, such as digital platforms and artificial intelligence (AI).

#### *Impact on the quality of advice and selling methods*

A mixed picture also appears on advice and selling methods: According to NCAs, the quality of advice and selling methods have improved in some Member States, for example as a result of corrective measures imposed by NCAs. However, in others, mystery shopping activities have revealed significant shortcomings related to advice and selling methods, resulting, in one case, in legislative changes prohibiting the payment/receipt of commissions or making advice mandatory.

Consumer associations raised concerns about lack of telephone recording requirements in the IDD as customers are sometimes pushed into concluding a contract and customers have no access to the recordings in case of dispute. Trade associations mentioned that it was too early to draw conclusions on this aspect and referred to low complaints rates against insurance intermediaries in some Member States.

#### *Integration of sustainability factors, risks and preferences into the IDD*

Initial evidence from NCAs about the application of the new sustainability rules illustrate challenges for consumers to understand the disclosures and complex concepts introduced by the new rules and for insurance distributors to find appropriate training courses to acquire the necessary knowledge to understand the framework and provide suitable advice to customers.

#### *Need to provide additional guidance on the regulatory framework*

The evidence gathered by EIOPA from NCAs and other stakeholders has shown challenges both for industry in applying some aspects of the IDD and for NCAs to supervise those provisions, caused by a lack of additional guidance. For example, following an ECJ judgment in relation to group insurance,

there is a need to provide further clarifications under which conditions a policyholder of a group insurance contract acts as an insurance intermediary and on the split of responsibilities between home/host NCAs for ensuring compliance with the obligation concerning group insurance. The European Commission is currently working on a set of Q&As related to group insurance.

### Impact on the supervisory framework

#### *Conflicts of interest and remuneration*

Supervisory activities by NCAs have revealed shortcomings in the application of the rules on remuneration and conflicts of interest, for example in relation to retrocessions conducive to conflicts of interest. In order to address the possible detrimental impact of commissions on consumers, several NCAs have adopted measures at national level to further restrict the payment/receipt of commissions such as commission caps or enhanced disclosure rules.

#### *Cross-selling of financial products*

Both EIOPA's thematic review on bancassurance and supervisory activities undertaken by NCAs have revealed cross-selling practices potentially causing detriment to consumers. This includes, for example, the sale of mobile phone insurance together with a mobile phone whereby the customer does not receive sufficient advice, is not aware about the possibility to purchase the phone without the insurance or is required to return the phone if the insurance is cancelled.

#### *POG requirements*

Over the past two years, EIOPA carried out a number of initiatives to address value for money risks in the unit-linked market and exclusions in insurance products related to risks arising from systemic events. However, there is a need for more guidance on the application of the POG framework as well as adequate resources/powers of NCAs to ensure effective supervision of the POG framework.

#### *Supervisory cooperation between home and host NCAs*

While most NCAs do not see significant challenges in ensuring efficient exchange of information and supervisory co-operation between home and host NCAs, some concerns were raised, for example, in relation to supervisory fees imposed by host NCAs on insurance distributors operating on an FoS/FoE basis and passporting insurance distributors relying disproportionately on the operations of third country branches.

#### *Resources and powers of NCAs devoted to conduct of business supervision*

While the average number of NCA resources dedicated to conduct of business supervision has experienced a slight increase over the past two years, most NCAs have not received any new statutory powers, given that the additional responsibilities foreseen by the IDD had already been implemented between 2018 and 2021. Nevertheless, some NCAs have incorporated or plan to incorporate mystery shopping into their statutory powers to improve their conduct of business supervision.

## INTERVIEW WITH DR BOHDAN PRETKIEL



*Dr Bohdan Pretkiel graduated summa cum laude from the Faculty of Law and Administration at the University of Warsaw. He received his PhD degree with honors in the field of legal sciences from the same university in 2018. He was also educated at the Vilnius University. Since February 2020, he was an assistant professor at the Faculty of Law and Administration of the University of Warsaw, where he has been teaching legal logic since 2012. Author of papers, scientific articles and monographs.*

*Barrister and lawyer with many years of experience. He worked, among others, in law firms, where inter alia he dealt with financial law, and served as Chief Executive Officer of a capital group. Member of the Supervisory Board of the Polish Investment and Trade Agency from August 2018 to February 2021. In 2021, he was appointed as the Polish Financial Ombudsman.*

### **1. What is the role of Polish Financial Ombudsman, his powers and main tasks in comparison with other public insurance bodies in Poland?**

Briefly, the Financial Ombudsman's role is to act as the voice of customers of financial entities. The Polish Financial Ombudsman takes two main kinds of action that provide an opportunity to resolve disputes with the financial institution. These are the so-called intervention activities, in which the Ombudsman asks for explanations and presents arguments for a benefit of a customer, as well as conducting amicable, out-of-court proceedings. Both procedures can be initiated after the rejection of complaint by financial institution.

At the level of court proceedings, the Financial Ombudsman may present to the court the so-called important view. This specialist legal opinion is not binding on the court, but may greatly help both the customer and the court. In practice, the court very often shares our view.

We can also file a lawsuit on behalf of a customer and become a party to ongoing court cases. Moreover, the Financial Ombudsman has the power to impose financial penalties for non-compliance with complaints regulations, such as delayed responses or failure to provide information about a possibility of legal action. However, the Ombudsman is not authorised to assess the response to the complaint itself.

The Financial Ombudsman may have an influence on legislation, providing opinions on legal acts and may apply to proper authorities for a legislative initiative. Finally, education is also an important function of the Financial Ombudsman. We provide legal advice, organise and take part in many educational events, raising awareness of consumer rights.

The institutions of the Polish insurance market besides the Financial Ombudsman include the following: the Supervision Authority (Komisja Nadzoru Finansowego – KNF), the Insurance Guarantee Fund, the Polish Motor Insurers' Bureau, and the Polish Chamber of Insurance.

The Financial Ombudsman is focused on individual perspective, but by enacting our competences, we also try to protect broadly understood collective interests of customers. The Financial Ombudsman's goal is to ensure the reliability and honesty of financial products and services.

**Impact of COVID-19, inflation and rising interest rates on insurance distribution**

**2. EIOPA's report highlights that COVID-19 pandemic and social distancing measures have contributed to the trend towards online sales. Do you think that COVID-19 has had a lasting impact on how insurance is sold to customers in Poland ?**

The COVID-19 pandemic and social distancing measures forced the market to accelerate its development towards online sales. However, the insurance sector turned out to be quite flexible. I agree with EIOPA's assessment made in Consumer Trends Report 2021 that it has shown great resilience and efficiently continued serving customers.

Our observations show that after the pandemic, customers are eager to return to traditional ways of concluding contracts. There is still a large group of people who want to deal with a real person who has experience in insurance, knows the products, the customer, their specificity, past experience, and claims history. Customers appreciate this. However, we see that more and more sales are made through traditional intermediaries who use remote sales tools. For example – distant contact with an insurance agent with whom we have been in contact for years.

I think that COVID-19 has made us think that such events may have an impact on the development of insurance. What I mean here is that customers need simpler insurance products for their life or health, but also for their property.

However, it cannot be said that it has permanently influenced the way insurance is sold in Poland. Sales took place normally, intermediaries perhaps started to use distance selling instruments more than before.

The only problems related to the pandemic noted by the Financial Ombudsman concerned difficulties in concluding insurance contracts for people who were isolated or hospitalized.

**3. Over the past two years, inflation and interest rates have risen in the EU, impacting insurance undertakings and customers. Do you see any evidence of inflation and rising interest rates, heavily impacting insurance undertakings and customers in Poland?**

High inflation may harm customers in several ways. It raises the cost of insurance and reduces the real value of compensation, making it insufficient to cover the expenses of restoring damaged property to its pre-damage condition. It may also impact customers' financial ability to afford insurance and affect the scope of coverage, including the risks covered and exclusions in a given product. In order to maintain the premium, insurers might tend to limit their liability, or customers might choose narrower insurance coverage.

The office I manage is concerned about the risk of underinsurance due to high inflation, especially in real estate insurance. Underinsurance might happen in particular when an insurance contract is continued in subsequent years. The customer may not be aware of how much the costs of repair have increased, and what is the real replacement value of the property. Therefore, great responsibility rests with the intermediaries and the insurance company who conclude the insurance contract or renew it.

Based on customer complaints submitted to the Office of the Financial Ombudsman, at this point, in October 2023, it cannot yet be said that rising costs due to inflation had already a general, significant negative impact on the customers' situation. Premium costs do not appear to have increased very rapidly in most common insurance products that customers complain about. It seems that insurers compete strongly on price, because it is one of the most important factors that a customer takes into account. However, such an increase is very likely in the future, and if it occurs, it will have a negative impact on the ability of some people to conclude insurance contracts. I think that in such a case people will first give up voluntary contracts.

### **Complaints**

#### **4. What are the most common complaints related to distribution of insurance you receive? Do you see any change in the type and frequency of complaints related to insurance distribution since the transposition date of the IDD in Poland and what are the reasons for the change?**

In most cases, the Financial Ombudsman Office receives complaints that relate to an insurer's refusal to pay compensation and their decision. Many complaints about payment denials stem from incorrect distribution, although this is not always explicitly stated in the complaint. There are also complaints related to the failure to adapt the contract to the client's needs.

It looks like the number of complaints where distribution issues arise is growing. It does not seem to be the result of more mis-selling cases but rather of growing customer awareness. Since the implementation of IDD, we have not had any clear examples of mass mis-selling, as was the case in the past. In my opinion, customers are more aware of their rights and obligations of a distributor and are therefore more likely to make complaints about these issues when their claim is rejected.

On the other hand, we have not noticed many lawsuits related to poor distribution. Pursuing liability in this regard is difficult. Insurers and distributors at the time of conclusion of the insurance contract require customers to declare that the contract meets their demands and needs. This statement is often obligatory to conclude an insurance contract, both when contract is proposed by the insurer directly or by an intermediary within or outside the scope of the IDD.

Distribution-related complaints we receive often stem from inadequate verification of demands and needs, unsuitable contract proposals, and insufficient information provided to our customers. This includes, for instance, failure to add appropriate insurance clause in travel insurance, or the lack of explanation or no clear information on exclusions from coverage. The problem of inadequate protection is crucial in insurances where insurers consider pre-existing medical conditions.

#### **5. Have you received complaints related to insurance distributors operating cross-border?**

There are complaints about foreign insurers but, as far as I know, none concern EU-intermediaries operating in Poland on a cross-border basis (in the scope of IDD). This is due to the fact that insurers from other EU countries operate in Poland mostly by domestic intermediaries, domestic intermediaries exempted from the scope of the IDD, or by the branch office. The main types of products offered by cross-border insurers are motor third-party liability insurance – often sold by



domestic intermediaries, consumer electronics insurance sold by chain stores, or travel and trip cancellation insurance sold by travel agencies or airplane ticket sales platforms.

**Impact of the regulatory framework**

**6. EIOPA's report identifies some challenges in applying the IDD in relation to new technologies, such as AI and digital platforms. How should the provisions of the IDD be adjusted to address the opportunities and challenges presented by digitalisation and new distribution models?**

The Financial Ombudsman recognises that digital tools and automation are becoming more and more widely used technological solutions in many areas, including insurance.

Artificial intelligence can be used to a wider or narrower extent in insurance distribution. Currently, attempts are being made to regulate the use of AI systems on a broader scale. It is expected that such solutions will be introduced, including the field of automated analysis of customer needs and requirements. Therefore, this issue should be monitored in the context of IDD. It is worth considering whether an effective demands and needs analysis is possible in such a case and whether it could be applied to all products.

In the case of automated advice, in addition to documentation showing the collected information, appropriate technical documentation will be important.

Because of the dynamic character of digitalisation process, the regulations must be flexible and provide supervisory authorities with the opportunity to act quickly and intervene in such matters.

**7. EIOPA's report highlights that the quality of advice/selling methods have improved in some Member States but, in others, mystery shopping activities have revealed shortcomings. Has the quality of advice/selling methods improved in Poland, for life/non-life products?**

In Poland, it is difficult to talk about a significant change in the quality of selling methods. As far as advice or selling method and Polish insurance intermediaries are concerned, it has improved significantly thanks to the implementation of the Insurance Intermediation Directive (Directive 2002/92/EC). IDD has undoubtedly influenced the organisation of sales in the bancassurance market and helped to eliminate the most painful pathologies for customers in the provision of investment products. However, often online distribution networks still lag behind the products offered by intermediaries. Customer awareness has increased significantly.

IDD has equalised the entities' liabilities, hence some improvement can be seen on the bancassurance market. Banks are no longer remunerated as policyholders but act as insurance intermediaries. However, the quality of products sold by banks remains unsatisfactory, with a narrow scope of protection and a high use of pre-existing conditions. The method of assessing the customer's demands and needs is also questionable.

**8. Initial evidence about the application of the new IDD rules on sustainability illustrate challenges for consumers to understand the disclosures and complex concepts introduced by the new rules. Is this an issue also relevant for the Polish market? If so, do you have any initial observations concerning the application of the new IDD-related sustainability rules?**

To date, we have not received any complaints about the new distribution requirements relating to sustainability preferences. Based on our experience, we can say that customers generally do not complain about distribution immediately after the contract is signed. Issues of distribution and information quality emerge only after some time. In the case of non-life insurance or traditional life insurance, it is usually the time when an event occurs and a consumer is dissatisfied with an insurer's decision. In the case of unit-linked contracts, there exists a period in the past when the customer has realised that an investment is making a huge loss and it has been mis-sold. New obligations about the process of verification of sustainability preferences are in force for over a year. Customer complaints in this regard might come up when a larger greenwashing case in financial sector was to occur, especially if this would be connected to a loss in investment.

However, I agree that the current disclosures are difficult for the average consumer to understand. The assessment of sustainability depends largely on the classification made by the manufacturer of the product. Even legally required ESG information documents sometimes include photos or pictograms suggesting an ecological approach. Customers' decisions may therefore be driven more by the impression of the product given by the seller or by marketing materials than by a better understanding of an ESG feature.

**Impact on the supervisory framework**

**9. EIOPA carried out initiatives to address value for money risks in the unit-linked life insurance market and set out supervisory expectations concerning the application of POG rules. The KNF has also taken product intervention measures to improve value for money of unit-linked products. Do you see any changes in consumer behaviour as a result of the measures taken?**

The number of complaints related to unit-linked products sent to our Office is decreasing. At the moment, the Office is mainly dealing with complaints related to unit-linked products sold in the past, much more than 2 years ago. Many factors could have influenced this. It seems that unit-linked insurance has acquired a bad reputation over the years as a result of poor performance and high fees, leading to withdrawals, high levels of complaints, litigation, and lower sales of new products. However, these complaints are inevitably resolved over time.

A lower number of complaints to the Ombudsman could also be a consequence of the fact that insurers are generally reluctant to accept customers' claims in cases where a complaint is made to the Ombudsman. These claims often concern the invalidity of the entire contract, so that insurers would have to return the entire amount they have collected over the years. Insurance companies also do not accept responsibility for past mis-selling by the policyholder or intermediary. One of the banks offering these contracts recently went bankrupt. This may also have an impact on the number of complaints received by our Office.

KNF's product intervention may also have affected the number of new sales and, consequently, the number of new complaints. I believe that KNF's intervention was necessary, it might have affected the market much more than "soft measures", such as supervisory expectations. However, at this

moment it is too early to say what would be the long-term effects on value for money as well as customer's behaviour and trust towards unit-linked insurance.

### **Looking ahead**

#### **10. What are the main challenges customers face in Poland when purchasing insurance and how should the current regulatory framework be amended to meet these challenges?**

Customers are currently complaining about disorder and information overload. It would be useful to rework the information requirements to make them shorter, but we are aware that simple information is not possible when contracts are complicated. Now, many products have very complicated General Terms and Conditions, which are lengthy, have many exclusions and definitions, and are not written in plain language. The current regulatory framework should aim to ensure that the customer not only receives a lot of information, but, above all, that the products are simple, understandable, and free from legal tricks and unnecessary exclusions. Then the information about the products will become more understandable. Of course, it is a challenge not to restrict contractual freedom too much.

The verification of demands and needs is usually only formal and takes place in very different ways, depending on the distribution channel used and the professionalism of the seller. When concluding a contract online, it is often very general and consists of 3-4 questions. The absence of a customized approach to collect the exact and exhaustive demands and needs of the customer is unfortunately widespread in practice.

Regulations should also protect the digitally excluded. In Poland, many people have problems using the internet or certain applications. Digital solutions are becoming more and more widespread, and this also applies to the insurance sector. We should keep in mind that everyone should have access to financial services, not only the person who uses some dedicated applications or agrees to share additional, personal data for the purpose of big data analysis. It is not yet the case that it is impossible to conclude an insurance contract without such an application, but we cannot forget that there might be such a risk in the future.

#### **11. What do you expect to be the key issues in the future that should be covered in the next report on the application of the IDD to be published at the end of 2025?**

As the Financial Ombudsman, I will be looking at key issues for customers, such as customer demands and needs analysis, conflicts of interest, transparency, and it would be useful to have them covered in the next report. It is also important to look at how the implementation of obligations is supervised, especially in case of cross-border insurance, where supervision is much more difficult.

It would also be good to analyse the issue of digital exclusion, and to verify how information presented in digital format works. It would be interesting to examine how much information in such a format is understandable to customers, how much consumers concentrate when reading it and how this affects a customer's decision-making process.

*The Polish Financial Ombudsman also provided detailed written input (including on group insurance) following the public online event about the application of the IDD (see Annex II).*

## INTRODUCTION

Under Article 41(4) of the Insurance Distribution Directive (IDD), “EIOPA shall prepare a report on the application of this Directive” and has to deliver such a report every two years. EIOPA published in January 2022 its first report on the application of the IDD<sup>1</sup>.

In line with Article 41(6) and (7) of the IDD, the report examines:

- whether competent authorities are sufficiently empowered and have adequate resources to carry out their tasks;
- any changes in the insurance intermediaries’ market structure;
- any changes in the patterns of cross-border activity;
- the improvement of quality of advice and selling methods and the impact of the IDD on insurance intermediaries which are small and medium-sized enterprises.

The report also includes a general evaluation of the impact of the Directive as referred to Article 41(8) of the IDD. The evaluation of the impact of the Directive is incorporated into the other sections of the report, in order to avoid overlaps. As Article 41(6), (7) and (8) describe the minimum content of the report only, EIOPA has chosen to report on additional issues, which are considered of relevance when it comes to the implementation, application and practical supervision of IDD.

**The report is intended primarily to be backward-looking and to consider how the IDD has been applied in the different EU Member States.** While EIOPA’s previous report covered the application of the IDD during 2020 and 2021, **this report covers the years 2022 and 2023 and highlights relevant changes in the application of the IDD compared to the previous reporting period.**

EIOPA is cognizant of the fact that there are other initiatives under way or due for completion at the EU level related to this report. In particular, in May 2023, the European Commission published a Retail Investment Strategy which includes legislative proposals amending the IDD covering, amongst others, disclosures, marketing, inducements and value for money.<sup>2</sup> It is important to note that, in addition to this report, the European Commission will carry out a review of the IDD at a later date, in line with Article 41(2) of the IDD.

In order to gather data and evidence on the application of the IDD, EIOPA launched several surveys addressed to NCAs. Furthermore, on 9-10 March 2023, EIOPA held a public online event with over 600 participants to collect input on the application of the IDD<sup>3</sup>. Following the event, participants provided written feedback to EIOPA. Annex I provides an overview of the different data sources of the report. Annex II includes a summary of the written input provided by stakeholders.

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<sup>1</sup> [EIOPA publishes report on the application of the Insurance Distribution Directive \(europa.eu\)](#)

<sup>2</sup> [Retail investment strategy \(europa.eu\)](#)

<sup>3</sup> The following webpage includes a summary of the event: [Five Years of the Insurance Distribution Directive \(IDD\) – Time to Take Stock \(europa.eu\)](#)

# 1. CHANGES IN THE EU INSURANCE DISTRIBUTION MARKET

In its first report on the application of the IDD, EIOPA analysed the structure of the insurance distribution markets in the EU and concluded that the market remains diverse and widely fragmented, as there is a wide variety of national distribution channels, registration requirements and reporting frameworks across the EU, making it challenging to provide conclusive findings at the European level and assess whether consistent outcomes are achieved for consumers purchasing insurance in the single market.

Taking this conclusion as a starting point for its work on this second report, in February 2023, EIOPA launched a survey addressed to NCAs to assess potential evolutions in the structure of the market, taking into account relevant market developments such as rising inflation and interest rates and provide an updated picture. EIOPA also gathered input during and as a follow-up to its public online event on the application of the IDD.

Sections 1.1, 1.2, 1.3 and 1.4 highlight the main conclusions from the survey and input gathered from external stakeholders. Annex III provides additional information on the outcome of the survey and Annex VII indicates country-specific information.

## 1.1 IMPACT OF INFLATION AND RISING INTEREST RATES ON INSURANCE DISTRIBUTION

### Introduction

Over the past two years, inflation and interest rates have risen in the EU, as in many other countries, due to a number of factors, including the Russian invasion of Ukraine that has led to higher energy and commodity prices. As regards insurance business, an example of one of the most immediate impacts of inflation on insurance undertakings, has been the increase in the cost of claims (claims inflation) due to the increase in prices of the services, goods and expenses incurred in servicing insurance obligations.<sup>4</sup> Rising inflation is also having an impact on consumers, as stressed in EIOPA's Annual Consumer Trends report 2023, given that in 2022, insurance and pension real investment returns have been negatively impacted by poor market performance and high inflation. Consumers also faced reduced disposable income which, coupled with increased premiums and deductibles,

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<sup>4</sup> For example, the French association "safety and automotive repair" indicates in its [statistics communication](#) for July 2023 that the average total repair cost increased by 8.42% from 2022 to 2023.

may have led some to deprioritise insurance and voluntary pension contributions, exposing them to future risks.<sup>5</sup>

EIOPA has gathered information from NCAs on their supervisory experience regarding whether insurance distributors and insurance manufacturers adequately consider the effect of the expected inflation and interest rates when manufacturing and distributing insurance products, and was able to draw the following conclusions:

**Not all insurance distributors and manufacturers are sufficiently considering the impact of the expected inflation and rising interest rates in their product governance processes**

While some NCAs highlighted that insurance distributors and manufacturers sufficiently take into account inflation during the POG process, some NCAs provided information suggesting otherwise. For example:

- In BE, in some cases, insurance undertakings' procedures are lacking regarding the timing of the foreseen monitoring and review of their products as well as regarding indicators on whether or not a review is required. The Belgian FSMA issued recommendations to insurance undertakings which highlighted the need to clearly specify (i) the periodicity of the monitoring and review of products and (ii) the indicators allowing insurance undertakings to identify situations requiring a review.
- In CZ, during an on-site visit in connection with a company offering a short-term single premium unit-linked product with an underlying 5-year structured bond with a guarantee of premium paid, the CNB found that no information about inflation risk was included in pre-contractual documentation and inflation risk was not factored into the POG process and in the definition of the target market, despite the fact that high inflation was (and is still) a relevant issue in CZ. The CNB requested that remedial measures are undertaken and the POG process, target market and suitability assessment were properly amended as part of these remedial measures;
- In ES, IE and LV, supervisory activities were conducted in relation to the risk of underinsurance in the home insurance market. While in ES, all surveyed insurance undertakings took measures as part of the product review procedure to adjust the insured sum to inflation so that underinsurance situations did not occur, the LV NCA identified a case of underinsurance where the sum insured did not fully cover the replacement value of the insured object. In IE, it was noted by the Central Bank of Ireland (CBI) that the levels of indexation currently applied to home insurance policies to mitigate the effects of inflation, vary significantly between different firms.

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<sup>5</sup> [To be added].

Apart from the above examples, several NCAs have taken measures aimed at addressing risks resulting from inflation and rising interest rates. For example:

- In DE, a guidance document was published by BaFin, addressed to life insurance undertakings which, among other things, also requires them to consider inflation when creating new products or significantly adapt existing products<sup>6</sup>;
- DK obliges insurance distributors to clearly inform consumers of whether or not projected benefits take expected inflation into account;
- In FR, ACPR has issued a recommendation which lists inflation as one of the indicators that undertakings are supposed to use to determine whether or not a premium or fee increase constitutes a significant adaptation or not in the context of POG rules<sup>7</sup>;
- In IE, the CBI highlighted that they sent “Dear CEO letters”, asking firms to take action and consider the risks to consumers as a result of the more challenging economic outlook, energy-driven inflation, rising interest rates and significantly higher consumer prices and business costs;
- In IT, IVASS published a Consultation Paper of a draft letter to the market containing supervisory expectations on the implementation of the POG process and the assessment of the value for money of the products<sup>8</sup>: among other recommendations, particularly attention is paid to the need that a customer-side profit test play a central role in the product testing phase, jointly considering returns, the costs borne by the customer during the development of the product over time and, where relevant, the impact of inflation.

In addition to the steps taken at national level, EIOPA has also addressed the issue of the impact of inflation risks on insurance-based investment products in its methodology for assessing value for money in the unit-linked market published in October 2022.<sup>9</sup> In November 2021, EIOPA published a Supervisory Statement on the assessment of value for money of unit-linked insurance products under product oversight and governance<sup>10</sup>. The Supervisory Statement highlighted that product manufacturers should regularly monitor the products they brought to the market to identify events – including inflationary events – that may materially affect product characteristics.

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<sup>6</sup> [BaFin - Guidance Notices - Guidance Notice 01/2023 \(VA\) on Aspects of Conduct of Business ...](#)

<sup>7</sup> See point 4.2.1.1 of [Recommandation 2023-R-01 du 17 juillet 2023 sur la mise en œuvre de certaines dispositions issues de la directive \(UE\) 2016/97 sur la distribution d'assurance](#)

<sup>8</sup> [IVASS - Consultation Paper no. 8/2023](#)

<sup>9</sup> [EIOPA issues its methodology for assessing value for money in the unit-linked market \(europa.eu\)](#)

<sup>10</sup> [https://www.eiopa.europa.eu/system/files/2021-11/supervisory\\_statement\\_on\\_assessing\\_value\\_for\\_money\\_in\\_the\\_unit-linked\\_market.pdf](https://www.eiopa.europa.eu/system/files/2021-11/supervisory_statement_on_assessing_value_for_money_in_the_unit-linked_market.pdf)

## 1.2 THE STRUCTURE OF THE EU INSURANCE DISTRIBUTION MARKET

### Introduction

This section of the report sets out EIOPA's conclusions from a survey addressed to NCAs to gather data on the structure of the EU insurance distribution market. EIOPA faced specific challenges in developing its first report with data quality and comparability of data. In order to improve the data quality compared to the previous report, EIOPA asked NCAs to provide data on a best effort basis or estimates where data was not available. Furthermore, for specific areas where the data return for the previous report was particularly poor (e. g. related to remuneration of insurance intermediaries), EIOPA requested NCAs to ask supervised insurance undertakings representing at least 60% of the national market to provide such data for the insurance intermediaries they work with. N.B. NCAs are not currently required under European legislation to collect such data and, hence, not all NCAs have been able to approach insurance undertakings to gather such data.

While the availability of data is better than in the previous report, some challenges still exist, for example related to the comparability of data over time and lack of data on the scale of cross-border activities in the internal market. EIOPA is aware that the European Commission's Retail Investment Strategy includes some legislative proposals<sup>11</sup> which would help, in the future, to address some of these data challenges. The following are EIOPA's main findings regarding changes observed in the structure of the EU insurance distribution market:

### **Decrease in the number of registered intermediaries from 2018-2022**

EIOPA has observed that the total number of registered insurance intermediaries decreased significantly from 2018 to 2022<sup>12</sup>, as shown by the blue trend line of Figure 1.1 below. This trend has been occurring for several years and was also highlighted in the previous report<sup>13</sup>. The number of insurance intermediaries decreased on a yearly basis from 2018 to 2022, except from 2019 to 2020 where a slight increase can be observed.

N.B. In order to have a more reliable comparison across Member States, the amber columns of Figure 1.1 exclude the number of insurance intermediaries from Member States for which figures

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<sup>11</sup> For example, the legislative proposals include a requirement (Article 9a) for passporting insurance distributors with more than 50 customers to report information on cross-border activities annually to the competent authority of their home Member State and for EIOPA to publish an annual report based on this data. The previous IDD application report had highlighted that there is a lack of data on the scale of cross-border activities in the internal market.

[https://finance.ec.europa.eu/publications/retail-investment-strategy\\_en](https://finance.ec.europa.eu/publications/retail-investment-strategy_en)

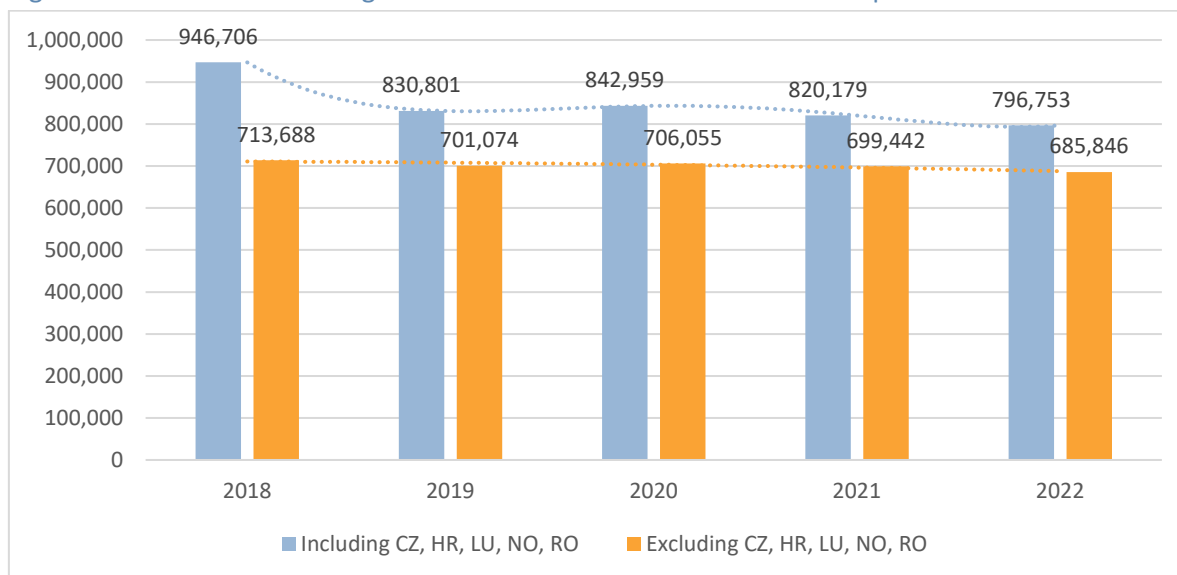
<sup>12</sup> 26 NCAs have provided EIOPA with information on the number of registered insurance intermediaries over the period 2018-2022. GR, HU and IE have provided information on the number of insurance intermediaries for 2019-2022 only. LT has provided only limited information for 2019 and 2021.

<sup>13</sup> [Report on the application of the Insurance Distribution Directive \(europa.eu\)](#)



cannot be compared over time<sup>14</sup>. The amber line shows the same trend in terms of number of intermediaries as the blue line.

Figure 1.1: Total number of registered insurance intermediaries over the period 2018-2022<sup>15</sup>



It has proved challenging for EIOPA to identify specific factors leading to these market developments, as different markets experienced different trends. For example, in 5 Member States<sup>16</sup>, the total number of registered intermediaries increased from 2020 to 2022, whereas in 8 other Member States<sup>17</sup>, the number decreased over the same period. In 10 Member States<sup>18</sup>, the total number of registered intermediaries remained relatively stable (less than 5% change from 2020 to 2022).

The Portuguese ASF mentioned, for example, that the decrease in the number of insurance intermediaries could be a result of stricter professional requirements included in national legislation transposing the IDD. Other possible reasons for the decrease, as indicated in EIOPA's previous report, could be the consolidation in the sector, the increasing age of intermediaries, difficulties in attracting or retaining talent and reorganisation in distribution models.

<sup>14</sup> The figures provided for 5 Member States are not comparable over time because of the deletion of inactive insurance intermediaries from the national registers (CZ, LU), new registration or professional requirements (HR, NO) and multiple registrations of insurance intermediaries (RO).

<sup>15</sup> The total number of registered insurance intermediaries over the period 2018-2022 included in Figure 1.1 is not comparable with the corresponding figures in the previous report given that the former figures are based on data provided by 25 NCAs and the latter figures are based on the data provided by 26 NCAs.

<sup>16</sup> FR, IE, LT, LV, SE

<sup>17</sup> BE, BG, EE, ES, FI, LI, PL, PT

<sup>18</sup> AT, CY, DE, DK, GR, IT, MT, NL, SI, SK

### **Most intermediaries continue to act on behalf of one or more insurance undertakings**

For its previous report, EIOPA gathered information on the number of registered insurance intermediaries acting on behalf of:

- 1 one or more insurance undertakings<sup>19</sup>;
- 2 one or more insurance intermediaries<sup>20</sup>; or
- 3 the customer<sup>21</sup>.

In order to ensure the comparability of data across Member States and years, for this report, EIOPA has adopted the same approach as for the previous report.

In 15 out of 24 Member States<sup>22</sup>, the majority of insurance intermediaries acted on behalf of one or more insurance undertakings, as indicated in Figure 1.2<sup>23</sup>. This confirms the findings of the previous report which concluded that, during 2020, in 13 out of 19 Member States, the majority of insurance intermediaries acted on behalf of one or more insurance undertakings.

It is interesting to note that, in IE, IS and LT, intermediaries acted only on behalf of one or more insurance undertakings. In contrast, in CZ, HR, IT, RO and SK, the majority of insurance intermediaries operated on behalf of one or more intermediaries. Intermediaries acting on behalf of customers were particularly prevalent in BE, LI and NL.

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<sup>19</sup> For example, insurance agents generally act on behalf of one insurance undertaking (single-tied agents) or on behalf of more than one insurance undertaking (multi-tied agents).

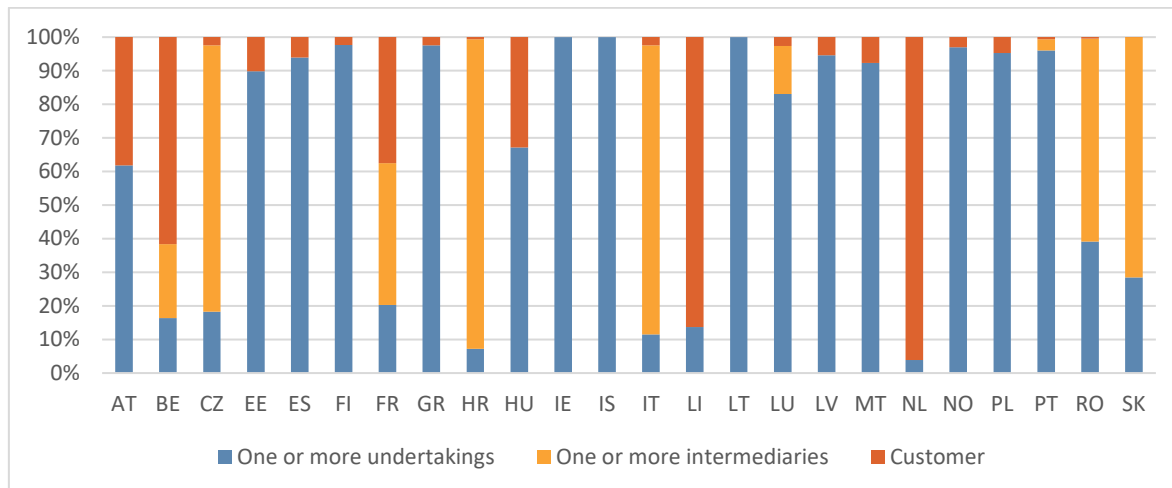
<sup>20</sup> For example, sub-agents or sub-brokers generally act on behalf of one or more insurance intermediaries.

<sup>21</sup> For example, insurance brokers generally act on behalf of the customer and work with several insurance undertakings to help the customer to cover his/her insurance needs. Unlike insurance agents, insurance brokers do not have a direct contractual relationship with one or more insurance undertakings to place business on an exclusive basis.

<sup>22</sup> 6 NCAs indicated that, for 2022, they are not able to provide information on the number of intermediaries acting on behalf of one or more undertakings (CY, DK, SE, SI), one or more intermediaries (BG, CY, DE, DK, SE, SI) or the customer (BG, CY, SE, SI). This is an improvement in terms of data availability compared to the last report for which 11 NCAs were not able to provide relevant data.

<sup>23</sup> The figure should be interpreted carefully as there are limits to the data quality and level of comparability across Member States. For example, in CZ, registered ancillary insurance intermediaries may simultaneously represent insurance undertakings and insurance intermediaries and, therefore, may be included under two categories. In 3 Member States, intermediaries cannot act on behalf of another intermediary (PL) or on behalf of more than one intermediary (BE, HU, PL). See country-by-country analysis for more detailed information on the number of intermediaries by categories.

Figure 1.2: Registered intermediaries acting on behalf of: (i) one or more undertakings; (ii) one or more intermediaries or (iii) the customer during the course of 2022



### Commissions continue to be the predominant remuneration model in the EU insurance distribution market

For its previous report, EIOPA sought to gather detailed information on the remuneration of insurance intermediaries. However, most NCAs provided only very limited data on the remuneration of insurance intermediaries due to a lack of sufficient information on this topic.

For this second report on the application of the IDD, EIOPA simplified its data-gathering request concerning the remuneration of insurance intermediaries to enable NCAs to provide more data or estimates<sup>24</sup>. Taking into account the different types of remuneration set out in Article 19(1)(e)<sup>25</sup>, EIOPA has gathered information on the percentage of insurance intermediaries paid in relation to insurance contracts in 2022:

1. On the basis of a fee, that is the remuneration paid directly by the customer;
2. On the basis of a commission of any kind, that is the remuneration included in the insurance premium; or
3. On the basis of a combination of any type of remuneration set out at points 1 and 2.

<sup>24</sup> 8 NCAs indicated that, for 2022, they are not able to provide data or estimates on the percentage of insurance intermediaries paid in relation to the insurance contract on the basis of a fee (AT, BE, CY, FR, PL), commission (AT, BE, CY, DK, FI, FR, PL) or on the basis of a combination of a fee/commission (AT, BE, CY, DE, DK, FI, FR, PL).

<sup>25</sup> Article 19(1): "Member States shall ensure that in good time before the conclusion of an insurance contract, an insurance intermediary provides the customer with at least the following information:

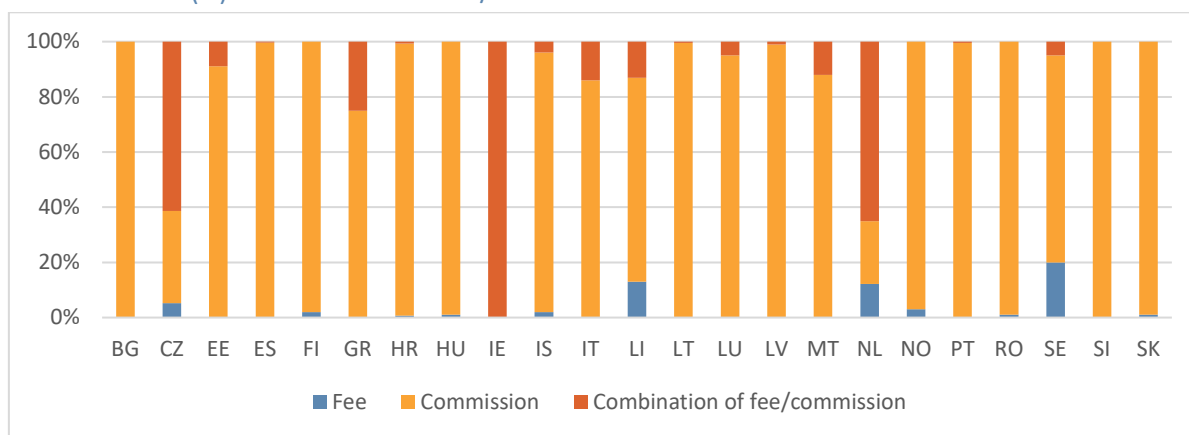
(e) whether in relation to the insurance contract, it works:

- (i) on the basis of a fee, that is the remuneration paid directly by the customer;
- (ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium;
- (iii) on the basis of any other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or
- (iv) on the basis of a combination of any type of remuneration set out at points (i), (ii) and (iii)."

In 20 out of 23 Member States, the commission-based model was the prevailing practice during 2022, as indicated in Figure 1.3<sup>26</sup>. In addition, 5 NCAs<sup>27</sup> that were not able to provide data on each of the types of remuneration highlighted the commission-based model was also prevailing in their markets. These findings are in line with the findings of the previous report.

It is interesting to note that in three Member States, insurance intermediaries operated only (IE) or predominantly (CZ, NL) on the basis of a combination of a fee/commission.

Figure 1.3: Percentage of insurance intermediaries remunerated on the basis of a (i) fee, (ii) commission or (iii) combination of a fee/commission in 2022



### Most intermediaries continue to sell only insurance

For its previous report, EIOPA gathered information on the number of intermediaries classified into the following categories based on whether they distribute insurance products as part of:

- the sale of other financial products or services (e. g. bancassurance);
- the sale of other goods and services which are not insurance or financial products (e. g. registered ancillary intermediaries); or
- exclusively the sale of insurance (e. g. agents and brokers).

In order to ensure the comparability of data across Member States and years, for this report, EIOPA has adopted the same approach as for the previous report.

<sup>26</sup> The chart should be interpreted carefully as there are limits to the data quality and level of comparability across Member States. For example, some NCAs provided an estimation or expert judgment. CZ figures only reflect independent intermediaries, LU figures only reflect brokerage firms and brokers and NL data refers to 2021. It should also be noted that the chart does not provide information about the volume of remuneration by type, only the percentage of insurance intermediaries remunerated in a certain manner.

It should also be noted that the commission ban introduced in some Member States applies to certain types of products only and this is reflected in the chart. For example, the commission ban introduced in the NL applies only to some products, such as unit-linked insurance, payment protection insurance and funeral insurance and, therefore, the column for NL is not entirely amber.

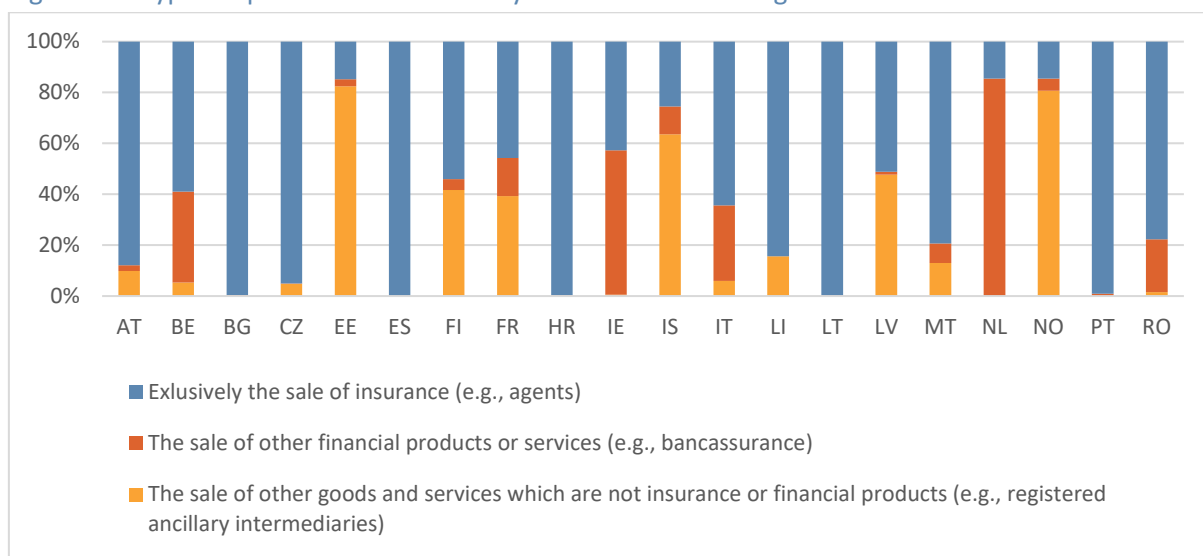
<sup>27</sup> AT, BE, DE, FR, PL

In 14 out of the 20 Member States<sup>28</sup>, during 2022, the majority of intermediaries distributed only insurance products as opposed to distributing insurance as part of the sale of other financial products/services or other goods/services which are not insurance or financial products, as shown in Figure 1.4<sup>29</sup>. This confirms the findings of the previous report which concluded that, during 2020, in 13 out of 16 Member States, the majority of intermediaries distributed only insurance products.

It is interesting to note that in 5 Member States<sup>30</sup>, the number of intermediaries selling other financial products/services or other goods/services which are not insurance or financial products was almost non-existent.

In 6 Member States<sup>31</sup>, there was a relatively high number of insurance intermediaries selling other financial products or services (e. g. bancassurance) in those markets compared to other markets. In 6 Member States<sup>32</sup>, there was a relatively high number of intermediaries selling other goods and services which are not insurance or financial products compared to other markets.

Figure 1.4: Types of products distributed by intermediaries during the course of 2022



<sup>28</sup> 10 NCAs indicated that, for 2022, they are not able to provide information on the number of intermediaries distributing insurance products as part of the sale of other financial products or services (CY, DE, DK, GR, HU, LU, PL, SE, SI, SK), the sale of other goods and services which are not insurance or financial products (CY, DE, GR, LU, PL, SE) or exclusively the sale of insurance (CY, DE, GR, LU, PL, SE). This is an improvement in terms of data availability compared to last report for which 14 NCAs were not able to provide relevant data.

<sup>29</sup> The figure should be interpreted carefully as there are limits to the data quality and level of comparability across Member States. For example, there is no harmonised approach to determine when an insurance intermediary distributes insurance products as part of the sale of other financial products or services. Moreover, in LT, insurance agents and ancillary intermediaries are registered by insurance undertakings and published in one list, so it is not possible to determine the exact number of ancillary intermediaries.

<sup>30</sup> BG, ES, HR, LT and PT

<sup>31</sup> BE, IE, IT, NL and RO

<sup>32</sup> EE, FI, FR, IS, LV and NO

**Bancassurers continue to play an important role in the distribution of life insurance, with other intermediaries such as agents remaining prevalent in the non-life sector**

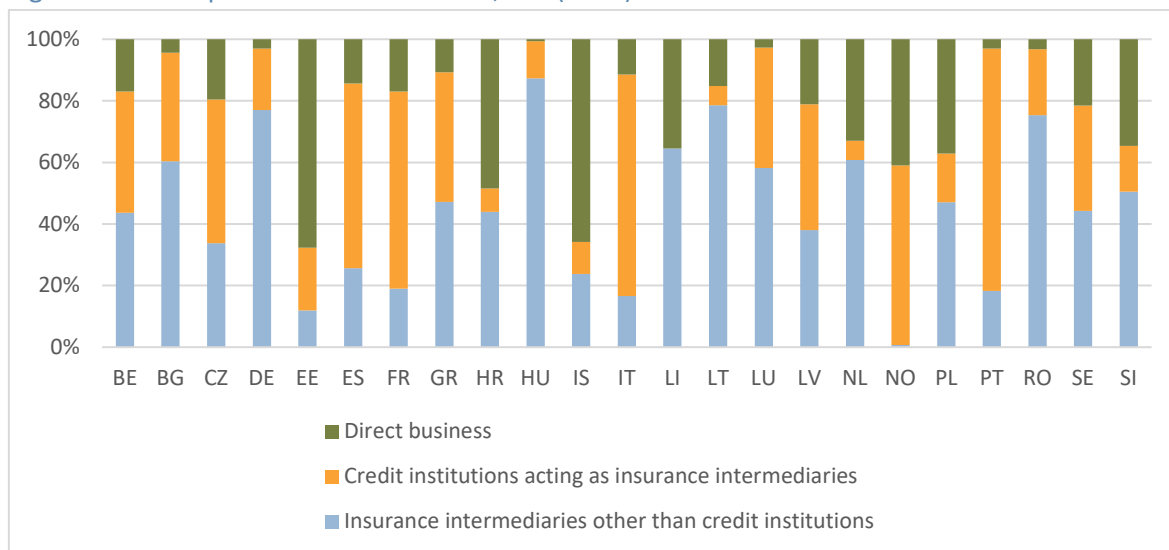
For its previous report, EIOPA gathered information from NCAs and some industry bodies on the total volume of gross written premiums (GWP) by the following distribution channels, split in life and non-life:

- Direct business;
- Credit institutions acting as insurance intermediaries; or
- Insurance intermediaries other than credit institutions

In order to ensure the comparability of data across Member States and years<sup>33</sup>, for this report, EIOPA has adopted the same approach as for the previous report.

Both credit institutions acting as insurance intermediaries and insurance intermediaries other than credit institutions played a significant role in the distribution of life insurance products as they accounted for over 50% of the GWP generated in 6 Member States<sup>34</sup> (credit institutions) and 7 Member States<sup>35</sup> (insurance intermediaries other than credit institutions) in 2022, as indicated in Figure 1.5. Direct sales made up over 50% of the GWP in EE and IS in 2022.

Figure 1.5: GWP per distribution channel, Life (2022)



<sup>33</sup> 7 NCAs indicated that, for 2022, they are not able to provide data on the GWP by intermediaries other than credit institutions (AT, CY, DK, FI, IE), credit institutions acting as insurance intermediaries (AT, CY, DK, FI, IE) or direct business (AT, CY, DK, FI, IE, MT, SK). This is an improvement in terms of data availability compared to the last report for which 15 NCAs were not able to provided relevant data.

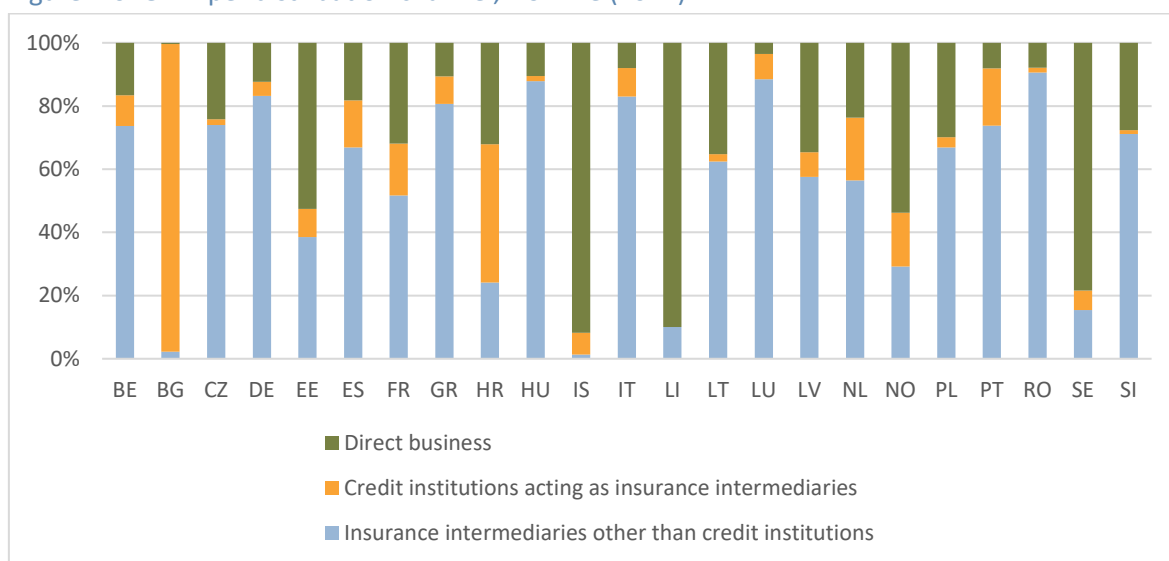
<sup>34</sup> ES, FR, HU, IT, NO, PT

<sup>35</sup> BG, DE, LI, LT, LU, NL, RO

Insurance intermediaries other than credit institutions were also very prevalent in the distribution of non-life insurance as they accounted for over 50% of the GWP in 15 Member States<sup>36</sup> in 2022, as indicated in Figure 1.6<sup>37</sup>. Credit institutions acting as insurance intermediaries were not so prevalent in the distribution of non-life products, except for BG, where they accounted for almost the total GWP in 2022.

Direct sales accounted for over 50% of the GWP in 5 Member States<sup>38</sup> in 2022.

Figure 1.6: GWP per distribution channel, Non-life (2022)



In conclusion, the findings show that there has not been a substantial evolution in the market as the findings on the structure of the market for the distribution of life and non-life insurance are similar to the previous report.

**Amount of online sales remains low in most Member States, but is increasing on a yearly basis**

The proportion of online sales (e. g. directly via websites, mobile applications, e-mails) in terms of total volume of GWP remains relatively low in most reporting Member States, ranging from 0.3% to 2%, as indicated in figure 1.7 below. It is interesting to note that, for LV, HU and NL, it is estimated that online sales account for over 10% of the total volume of GWP.

<sup>36</sup> BE, CZ, DE, ES, GR, HU, IT, LT, LU, LV, NL, PL, PT, RO, SI

<sup>37</sup> The figure should be interpreted carefully as there are limits to the data quality and level of comparability across Member States. For example, DE non-life data does not include health insurance. NL data is derived from the five largest insurance undertakings in NL, accommodating for over 60% of the total market.

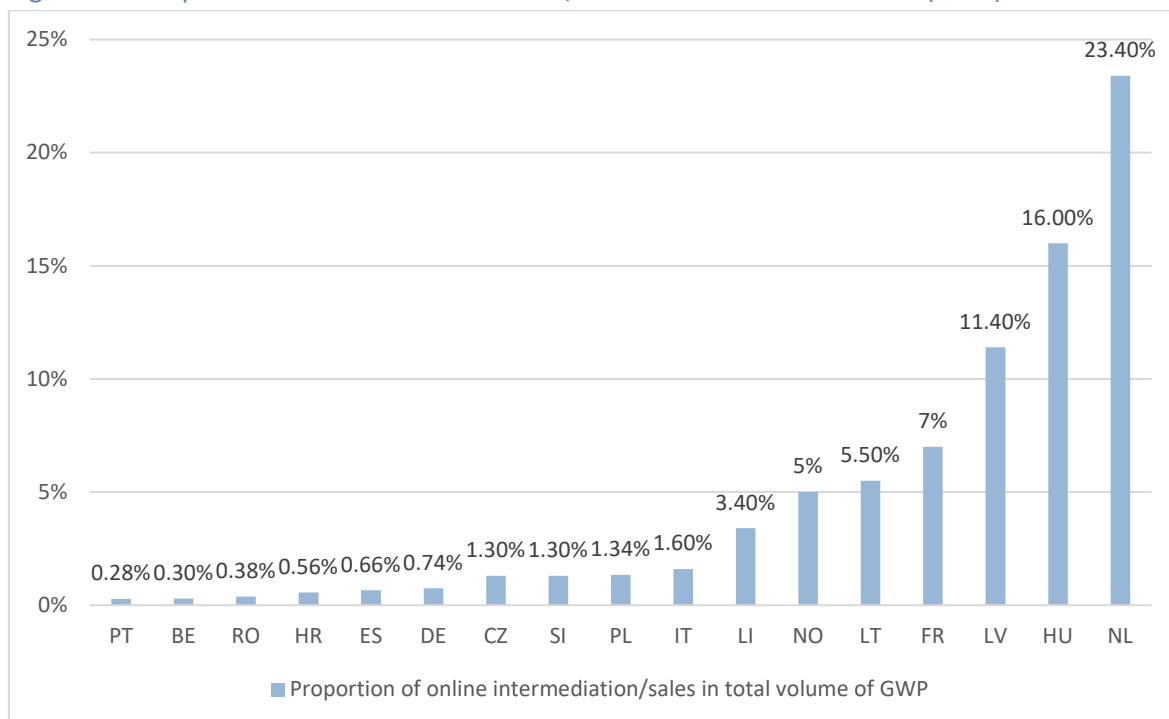
<sup>38</sup> EE, IS, LI, NO and SE

Online sales have been increasing on a yearly basis and this trend was supported by the COVID-19 pandemic and social distancing measures. Trade associations<sup>39</sup> reported that this trend will continue as more of life is conducted online, and as more digitally literate consumers look to buy insurance.

In addition, hybrid consumer journeys are becoming the new normal as insurance distributors are offering digital solutions in addition to traditional face-to-face communication. For example, consumers may search for information online before approaching an insurance intermediary offline and then use digital devices for assistance after entering into a contract.

It should be noted that there is no common definition of “online sales” under the IDD which can make it challenging to gather comparable data on the evolution of online sales across Member States.

Figure 1.7: Proportion of online intermediation/sales in total volume of GWP (2022)



N.B. The above chart should be interpreted carefully as there are limits to the quality of data provided and level of comparability across Member States<sup>40</sup>. For example, BE data relates to 2020 and FR data relates to 2021. Moreover, the data from some Member States, such as CZ and PT, only takes into consideration the information reported by insurance undertakings regarding the proportion of online intermediation/sales via website direct business.

<sup>39</sup> Insurance Europe

<sup>40</sup> See Figure 1.2 of Annex III for details on data limitations and how the figures were calculated.



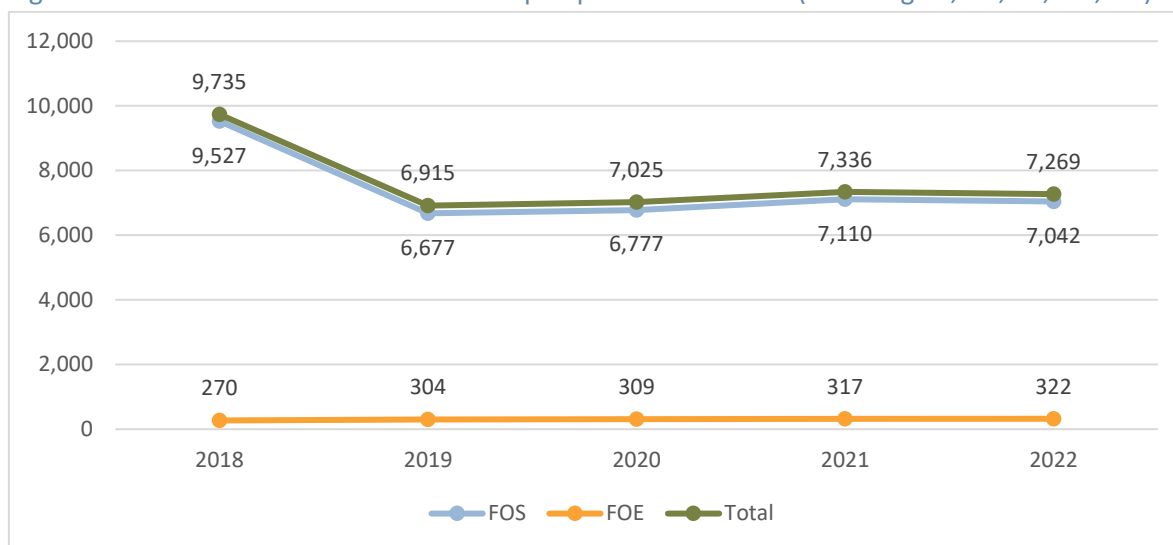
### 1.3 PATTERNS OF CROSS-BORDER ACTIVITY AMONGST INSURANCE DISTRIBUTORS

#### Number of insurance intermediaries with a passport has decreased slightly over the past year

The number of insurance intermediaries with a passport to operate under the freedom to provide services (FoS) or freedom of establishment (FoE) first decreased sharply from 2018 to 2019, but then remained relatively stable from 2019-2022<sup>41</sup>, as indicated in Figure 1.8 below. The figure also shows that the vast majority of them conducted business on a FoS basis.

It should be noted that the passport allows intermediaries to conduct cross-border business, but it is not possible to indicate to what extent they make use of their passport as intermediaries only notify to the competent authority of the home Member State, their “intention” to carry on business within the territory of another Member State. Therefore, no precise indication can be made about the actual amount of business being carried out on a cross-border basis. The Commission’s legislative proposal on the Retail Investment Strategy<sup>42</sup> seeks to address this issue to some extent<sup>42</sup>.

Figure 1.8: Insurance intermediaries with a passport in 2018-2022 (including CZ, HR, LU, NO, RO)<sup>43</sup>



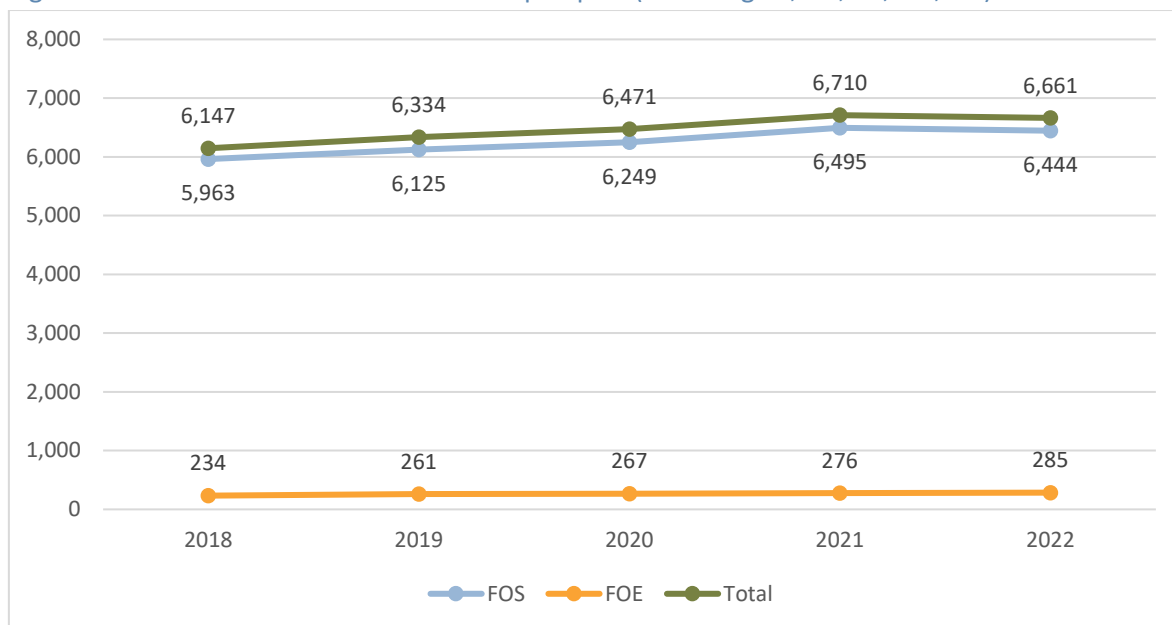
<sup>41</sup> 20 NCAs provided data on the number of insurance intermediaries with a passport to operate under FoS or FoE over the period 2018-2022. DE provided data for 2020 and 2022 only. FI, HU, IE, MT, PL and SK provided data for 2020-2022 only. GR provided data for 2019-2022 only. SE provided data for 2021-2022 only. BG only provided information on the total number of passporting insurance intermediaries.

<sup>42</sup> The [European Commission’s Retail Investment Strategy](#) includes some legislative proposals aimed at addressing the lack of data on the scale of cross-border activities in the internal market. For example, the legislative proposals include a requirement (Article 9a) for passporting insurance distributors with more than 50 customers to report information on cross-border activities annually to the competent authority of their home Member State and for EIOPA to publish an annual report based on this data.

<sup>43</sup> The number of insurance intermediaries with a passport in 2018-2022 included in Figure 1.8 is not comparable with the corresponding figures in the previous report given that the former figures are based on data provided by 20 NCAs and the latter figures are based on the data provided by 19 NCAs.

In order to have a better comparison across Member States of the data, Figure 1.9 below excludes the data from some Member States for which figures cannot be compared over time<sup>44</sup>. It is clear from Figure 1.9 that the total number of insurance intermediaries with a passport has increased steadily over the period from 2018-2021, but then dropped slightly from 2021-2022.

Figure 1.9: Insurance intermediaries with a passport (excluding CZ, HR, LU, NO, RO)



It is not always possible to identify specific factors leading to these market developments as different markets may experience different trends. For example, in 16 Member States<sup>45</sup>, the number of domestic insurance intermediaries with a passport has increased over the period 2020-2022. A decrease in the number of passporting intermediaries can only be observed in 4 Member States<sup>46</sup>. In 4 Member States<sup>47</sup>, the total number of passporting intermediaries remained relatively stable (less than 5% change over the period 2020-2022).

The decrease in the total number of passporting insurance intermediaries over the past year may be attributed to the fact that, during that year, the number of insurance intermediaries has decreased as well.

<sup>44</sup> The figures provided for 5 Member States are not comparable over time because of the deletion of inactive insurance intermediaries from the national registers (CZ and LU), new registration and professional requirements (HR, NO) and multiple registrations of insurance intermediaries (RO).

<sup>45</sup> CY, DE, DK, EE, ES, FI, GR, IS, IT, LT, LV, MT, NL, PL, PT, SI

<sup>46</sup> AT, BG, IE, LI

<sup>47</sup> BE, FR, HU, SK

## 1.4 IMPACT OF THE IDD ON INSURANCE INTERMEDIARIES WHICH ARE SMES AND COMMERCIAL CUSTOMERS

### Introduction

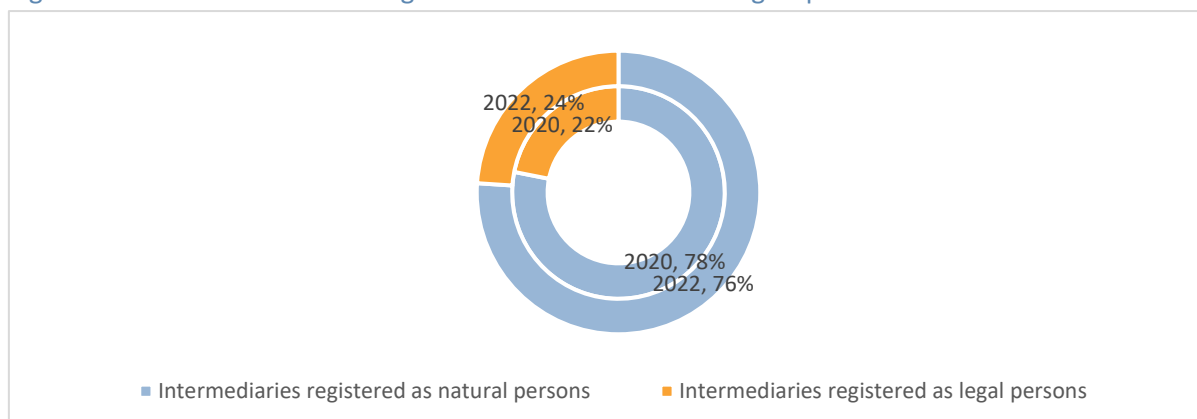
In the absence of a single definition included in the IDD concerning insurance intermediaries which are small and medium-sized enterprises, EIOPA gathered information for its previous report on the number of registered intermediaries split between natural and legal persons. In order to ensure the comparability of data across Member States and years, for this report, EIOPA has adopted the same approach as for the previous report<sup>48</sup>.

### **The number of intermediaries registered as natural persons continues to decrease, while the number of intermediaries registered as legal persons continues to increase**

In 2022, insurance intermediaries registered as natural person represented 76% of the total number of intermediaries (Figure 1.10). Hence small intermediaries represent the majority of market participants. However, it should be noted that the number of intermediaries registered as natural persons decreased from 530,606 (2020) to 508,327 (2022). Over the same period, the number of intermediaries registered as legal persons increased from 148,784 (2020) to 160,117 (2022).

This trend of a decreasing number of intermediaries registered as natural persons and increasing number of intermediaries registered as legal persons could be already observed in the previous report. There could be different reasons for these developments, such as the further professionalisation of the sector and digitalisation.

Figure 1.10: Intermediaries registered as natural and legal persons in 2020 and 2022<sup>49</sup>



<sup>48</sup> 28 NCAs provided information on the number of registered insurance intermediaries split between natural and legal person for 2020 and 2022. DE does not have information about the legal personality of insurance intermediaries. NL provided information only for 2022.

<sup>49</sup> The percentage of insurance intermediaries registered as natural and legal persons in 2020 included in Figure 1.10 is not comparable with the corresponding figures in the previous report given that the former figures are based on data provided by 24 NCAs and the latter figures are based on the data provided by 28 NCAs.

### **Lifting of COVID-19-related restrictions – no further challenges observed for intermediaries to comply with continuing professional development (CPD) requirements**

EIOPA's previous report indicated that, during the COVID-19 pandemic, insurance intermediaries have complied with the CPD requirements by completing webinars, e-learning and online courses, as national legislation allows for the provision of CPD through distance means of communication and for the successful completion of CPD requirements to be proven via digital means (e. g. digital certificate). While most Member States did not see a need to further enhance the flexibility of online training, some of them recognised challenges for insurance intermediaries to comply with the CPD requirements as some training courses had been cancelled due to COVID-19 and some were not offered online.

As COVID-19-related restrictions have been lifted, based on the feedback received from NCAs and trade associations<sup>50</sup>, no specific further challenges for insurance intermediaries to comply with the CPD requirements due to a potential lack of training courses available, have been observed.

The French ACPR observed a switch to online courses due to the COVID-19 crisis, which has, to some extent, led to a deterioration of the quality of training. For instance, some employees only attended a fraction of online training courses. This appears to be due to a prioritisation of tasks during the crisis on the part of the intermediaries rather than an availability issue. ACPR noticed an uptick in 2021 compared to 2020, this phenomenon was hence largely specific to COVID.

### **Trade associations continue to raise concerns about disproportionate application of the IDD to commercial customers, reinsurance and occupational insurance**

According to some trade associations<sup>51</sup>, the IDD is primarily a retail/consumer protection-focused piece of legislation and not focused on regulating insurance distribution to commercial customers. The industry representatives expressed the view that certain conduct of business requirements are not meaningful if applied to the distribution of certain commercial contracts outside the scope of the "large risks" exemption where the end customer is not a retail customer, and should be either disapplied or amended for these contracts to ensure proportionate application of the IDD to commercial customers. This includes:

- (i) the use of the IPID;
- (ii) the performance of the demands-and-needs test;
- (iii) certain disclosures; and

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<sup>50</sup> BIPAR

<sup>51</sup> Insurance Europe

(iv) the full application of the POG regime.

Moreover, industry representatives highlighted that it would be useful to assess whether IDD rules are appropriate with regard to reinsurance and occupational insurance since, in these instances, the customer is not a retail customer, but an expert operating in a professional capacity.

It is important, at the same time, however, to highlight the following based on input from NCAs:

- Some insurance contracts may be a mixture of different types of risks and can involve chains of distribution with different types of customers, both professional and retail;
- Even if the “large risks” exemption is limited to specific marine, aviation and transit risks, this already provides some flexibility in the application of specific conduct of business requirements such as POG requirements and in the Member States that exercised the related IDD option, some information requirements need not be applied to insurance provided to a “professional client” as defined under MiFID II<sup>52</sup>. Moreover, the Commission has now made further proposals<sup>53</sup> in this direction in the legislative proposal on the Retail Investment Strategy to address some of the concerns outlined above;
- Some SMEs, especially in cases of self-employed persons or micro-enterprises, may be much closer to being consumers in terms of information asymmetry based on their behaviour and financial knowledge, than to large companies that have the breadth of human resources and technical expertise to review their insurance contracts and negotiate effectively with other undertakings. This was also a feature arising from the COVID-19 crisis and the non-damage business interruption cases that have been litigated in the national courts. From this perspective, there would need to be very careful reflection as to whether to disapply any protective IDD requirements to such SMEs.

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<sup>52</sup> Article 22(1): The information referred to in Articles 18, 19 and 20 need not be provided when the insurance distributor carries out distribution activities in relation to the insurance of large risks. Member States may provide that the information referred to in Articles 29 and 30 of this Directive need not be provided to a professional client as defined in point (10) of Article 4(1) of Directive 2014/65/EU.

Article 25(4): This Article shall not apply to insurance products which consist of the insurance of large risks.

<sup>53</sup> For example, the legislative proposals seek to replace the first subparagraph of Article 22(1) by the following:

The information referred to in Articles 18, 19 and 20 need not be provided when the insurance distributor carries out distribution activities in relation to the insurance of large risks **or with customers meeting the criteria for professional clients as defined in Article 4(1), point (10), of Directive 2014/65/EU of the European Parliament and of the Council.**

Furthermore, the legislative proposals aim to replace Article 20(5) by the following:

“In relation to the distribution of non-life insurance products as listed in Annex I to Directive 2009/138/EC and to life insurance products as listed in Annex II to Directive 2009/138/EC other than insurance-based investment products, the information referred to in paragraph 4 of this Article shall be provided to **retail customers** by way of a standardised insurance product information document on paper or on another durable medium”

## 2. IMPACT OF THE REGULATORY FRAMEWORK

In February 2023, EIOPA launched a survey addressed to NCAs to gather input on the impact of the regulatory framework. Section 2.1 to 2.5 highlights the main conclusions from this survey. Annex IV complements section 2.5 and provide additional examples of provisions which have been particularly difficult to supervise/apply over the past two years. Annex V provides an overview of the legal options exercised according to Member State. EIOPA has also taken into account the input provided by external stakeholders during and as a follow-up to EIOPA's online event on the IDD.

### 2.1 LEVEL OF PROFESSIONALISM AND COMPETENCE OF INSURANCE DISTRIBUTORS

#### Introduction

In its previous report, EIOPA had stated that instances of lack of training of insurance distributors need to be addressed, especially with regard to certain types of insurance-based investment products which are not easily understandable to consumers. Furthermore, the report indicated that the knowledge and competence of insurance distributors with regard to product innovations and the growing market for sustainable financial products will become more important in the future.

EIOPA has sought to gather data to assess the level of professionalism and competence, based on the experiences as to whether, in 2022 or 2023, the IDD has brought about significant changes and areas where there is scope for further improvements.

#### **Level of professionalism and competence has improved in some Member States**

EIOPA observes that the application of the IDD over the past two years has led to an improvement in the level of professionalism and competence in some Member States. However, in some Member States, no significant change can be observed and in some Member States, supervisory activities were carried out that have identified shortcomings.

The supervisory activities carried out in some Member States have contributed to an improvement in the level of professionalism and competence over the past two years. For example, in HR, as a result of mystery shopping inspections, some insurance distributors started to conduct mystery shopping themselves (internally or by hiring an external agency). Also, pre-contractual information and compliance by insurance distributors with professional requirements became regular topics of insurance undertaking's internal audit reports.

In some Member States, specific indicators/information collected from the market highlight an improvement in the level of professionalism and competence in those markets. For example:

- In IT, the analysis of the annual report on the control of distribution network revealed for 2022 a significant effort in training on ESG and, more in general, specific training courses on insurance-based investment products (IBIPs): in particular, an undertaking organised a

course on the Key Information Document (KID) and the transparency obligations towards customers and others introduced specific checks to assess the quality of services related to the IBIPs and/or sustainable financial products' distribution;

- In PL, data from insurance undertakings participating in a supervisory assessment for 2021 and 2022 shows that the the level of fulfillment of professional training requirements is rising and this tendency has been observed since 2020;
- In PT, the level of professionalism has been improving given:
  - (i) the increase of quantitative and qualitative training, and;
  - (ii) the total decrease of insurance intermediaries operating due to the new legal and regulatory requirements imposed to pursue their activity.

In AT, CZ, DE, DK, EE and ES, the number and quality of complaints and/or experience from supervisory activities suggest there was no significant change to the level of professionalism and competence of insurance distributors over the past two years. In NL, IDD has brought no significant changes due to the fact that there is already a professional regime that is stricter than the IDD rules.

In some Member States, supervisory activities were carried out that have identified shortcomings related to the level of professionalism and competence. For example:

- In FR, in 2021 and 2022, 86 inspections were conducted on the market's compliance with CPD requirements. 79% of the insurance intermediaries selected training programs compliant with the legislation. However, only 37% of the intermediaries were fully compliant with the IDD training requirements, 30% trained some of their employees but not all and 33% did not give the minimum 15 hours of training to any of their employees;
- In LI, in the annual reporting of insurance intermediaries, they must state whether all persons directly involved in the distribution activity have fulfilled the training obligation in the reporting year. A risk-based selection of insurance intermediaries are requested to submit evidence of compliance with the continuing education obligation. In 2022, the FMA had issued 10 warnings for non-compliance with the CPD requirements. In some cases, training courses were attended which are not recognised by the FMA (because they did not fit the intermediary's business model or were not suitable training courses);
- In LT, the mystery shopping of unit-linked insurance sales has revealed shortcomings in determining customer needs, assessing product appropriateness and suitability, and disclosing pre-contractual information. Moreover, the NCA has identified mis-selling cases, therefore, it cannot conclude that the level of professionalism and competence of insurance distributors has improved;
- In LV, supervisory activities have highlighted that the quality of the training and development content could be improved, for example, in relation to POG requirements and implementation and ESG aspects in the advice process for IBIPs.

## 2.2 DIGITALISATION AND GROWTH OF NEW DISTRIBUTION MODELS

### Introduction

For its previous report, EIOPA highlighted that insurance distributors faced some challenges in applying and NCAs in supervising the IDD rules on the form and timing of disclosures in a digital context due to a lack of additional guidance, for example, through Level 2 measures. Furthermore, some challenges were identified in applying the IDD in relation to digital platforms and AI. EIOPA made clear in its previous report that any changes to the legal framework should ensure a consistent level of consumer protection and maintain a level playing field between all distribution models, keeping in mind the “same activities, same risks, same rules” principle.

Some of the concerns raised in EIOPA’s previous report are being addressed by the Commission’s Retail Investment Strategy and the Distance Marketing Directive Review which aim to modernise disclosure rules and adapt them to the digital age, by ensuring electronic format as default, clarifying how product disclosures should be presented in a digital environment and introducing additional safeguards for marketing communications, including via social media and other digital channels.

#### 2.2.1 Form and timing of disclosures

EIOPA’s previous report on the application of the IDD concluded that there is a need to (i) adjust pre-contractual information requirements to smartphones and other digital devices and (ii) provide additional guidance on the timing of disclosures of (digital) contractual information to customers. Based on the input received from NCAs in relation to 2022 and 2023, these findings continue to be relevant, as indicated below.

#### **Need to adapt disclosure rules to the digital age**

Supervisory experience from the past two years have reinforced the need to make information disclosures easy to access, comprehensible and complete. For example, in FR, a multi-year study on the quality of digital advice for life insurance product conducted by ACPR<sup>54</sup> highlighted:

- (i) the lack of clarity and intelligibility of often very dense pre-contractual information;
- (ii) the absence or incompleteness of the information regarding the product’s performance and fees; and

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<sup>54</sup> [L’ACPR et l’AMF encouragent les professionnels à améliorer leurs pratiques de commercialisation de produits d’épargne et d’instruments financiers sur Internet | ACPR \(banque-france.fr\)](#)



(iii) the risk profile associated automatically with the subscriber is often inappropriate due to a poor collection of the customer's demands, needs and financial experience.

Furthermore, in FR, a report on rental contracts for individual self-service means of transport (scooter, car sharing, bicycle, motor scooter) published by the Unfair Terms Commission has observed that the different rental contracts concluded through electronic devices contain some unfair terms related to insurance guarantees (e. g. unclear exclusions) and insufficient information about the exact insurance coverage<sup>55</sup>.

In IT, supervisory actions have been conducted to monitor the evolution of InsurTech in the insurance distribution and assess the way in which pre-contractual and contractual information is presented, as well as the way in which demands and needs and the adequacy of the insurance offer is assessed. In some cases, IVASS required intermediaries to improve transparency and clarity for consumers seeking to purchase insurance via websites.

Moreover, the joint ESA response to the European Commission's Call for advice on digital finance and related issues published in January 2022<sup>56</sup> highlights that digital disclosures may not always be effective in adequately disclosing relevant information due to technological impediments, difficulties in absorbing information via digital means, and certain consumer biases may be also more easily exploited online.<sup>57</sup>

### **Need to provide additional guidance on the timing of disclosures**

Supervisory experience with the application of the IDD over the past two years has highlighted some detrimental practices related to hybrid digital distribution in retail stores. For example, a recent on-site inspection of the French ACPR investigating the sales of mobile phone insurance in stores via tablets showed that the use of the device tends to negatively impact the distribution process as pre-contractual documents were not given in good time before the conclusion of the contract and a single signature was used for the acquisition of the phone, purchase of the phone plan and purchase of the insurance.

While digital devices make the process of concluding an insurance contract and paying for it more convenient, simple and fast, there is a risk that the customer does not have enough time to make an informed decision. Article 18 provides that disclosures shall be made "in good time before the conclusion of an insurance contract". However, since it does not indicate what exactly "good time" means and the only other steering provided in the IDD is in recital 48, which provides that, because the intermediary is obliged to explain to the customer the key features of the insurance products it

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<sup>55</sup> [Press release of the French Consumer Protection Authority about investigations notably based on this report : cp-controle-de-la-location-de-bicyclettes-et-velos.pdf \(economie.gouv.fr\)](#)

<sup>56</sup> [ESA joint advice master file \(EIOPA\) for BOS \(europa.eu\)](#)

<sup>57</sup> For example, providers of financial products and services on their websites often pre-select or highlight their preferred selection, e. g. "accept all".

sells, the staff of that insurance intermediary should, therefore, be given “appropriate resources and time” to do this, there is a need to provide additional guidance.

A mystery shopping exercise on the EU’s retail investor protection framework conducted by Kantar<sup>58</sup> on behalf of the European Commission, concluded that only 54% of mystery shoppers received a KID or were referred to one online when they were simulating the first contact with an advisor. According to Kantar, it is possible that these advisors might have provided the document at a later stage which, in their view, would however be too late to inform the decision-making. Similar to Article 18 of the IDD, Article 13 of the PRIIPs Regulation requires insurance distributors to provide the KID “in good time” before retail investors are bound by any contract or offer relating to a PRIIP.

### 2.2.2 Use of new technologies, such as digital platforms and AI

The previous report on the application of the IDD concluded that the legal framework has not been able to sufficiently address the opportunities and risks presented by digital platforms, AI, robo-advice and price optimisation practices. Based on the input received from NCAs in relation to 2022 and 2023, these findings continue to be relevant, as indicated below.

#### **Lack of clarity of definition of “insurance distribution” continues to be an issue**

EIOPA’s previous report mentioned that the scope of the IDD definition of “insurance distribution” in an online environment could merit further guidance, for example through Level 3 measures or a change in the regulatory framework. Based on the information received from NCAs, this continues to be an issue as NCAs received questions from market participants about the definition of “insurance distribution” in a digital context and whether persons operating digital distribution channels require a registration as an insurance intermediary.

For example, it is not clear if Internet lead generation tools are considered as “work preparatory to the conclusion of contracts of insurance” according to Article 2(1)(1)<sup>59</sup> or as “the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract”, according to Article 2(2)(c)<sup>60</sup>.

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<sup>58</sup> [Commission publishes an external study on the EU’s retail investor protection framework, covering disclosure, inducements and suitability rules \(europa.eu\)](#)

<sup>59</sup> According to Article 2(1)(1), insurance distribution “means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.”

<sup>60</sup> It should also be noted that the concept of “introducing” contracts of insurance, which existed in the definition of “insurance mediation” in Article 2(3) of the Insurance Mediation Directive (Directive 2002/92/EC) was subsequently not included in the “insurance distribution” definition in the IDD.

Another example for the lack of clarity of “insurance distribution” relates to a digital platform that displays a banner that, when clicked upon, leads to the site of a service provider. The platform merely shows the banner, but the service is provided by another entity: for a customer, this distinction may not be sufficiently clear and for the digital platform, it is not clear whether the customer is able to “directly or indirectly concluded an insurance contract using a website or other media” according to Article 2(1)(1).<sup>61</sup>

#### **Lack of guidance on how to conduct demands-and-needs test using AI and Machine Learning (ML)**

According to Article 20(1), “prior to the conclusion of an insurance contract, the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision.”

New technologies allow insurance distributors to obtain information about the customer’s demands and needs not directly from the customer, but from an analysis carried out by AI and ML tools. Since Article 20(1) requires the demands-and-needs test to be carried out on the basis of information obtained from the customer, but the information does not come directly from the customer, but from AI and ML, it is not clear if such information can be used in process of specifying the customer’s demands and needs and how deep could be the interference of AI and ML in this process in order to be in compliance with Article 20(1). This could also be addressed through additional guidance provided by Level 3 measures or a change in the regulatory framework.

#### **Need to tackle unfair price walking practices**

The price customers pay for insurance coverage typically reflects the individual risk profile and the overall costs incurred by insurance undertakings. However, some manufacturers adjust prices based on characteristics that are related neither to the underlying risks nor to the cost of the service. Large data sets and increasingly sophisticated analytical tools and technologies such as AI enable manufacturers to deploy differential pricing practices on a large scale.

EIOPA’s previous report highlighted the need for fairness in pricing practices where premium increases take place repeatedly based on reasons that are not related to the risks or cost of service. These practices unfairly affect vulnerable customers such as the elderly, those with limited access to digital channels and those with limited digital literacy. The report also announced a further analysis to identify to what extent current pricing practices lead to unfair consumer outcomes and introduce appropriate remedial measures, where necessary.

In March 2023, EIOPA published a [Supervisory Statement on differential pricing practices in non-life insurance lines of business](#)<sup>62</sup>, with the aim of eliminating price-setting strategies which lead to the unfair treatment of customers. The statement underlines that providers falling under the scope of

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<sup>61</sup> [Study of the European Parliament on “How to boost retail investors’ participation in financial markets”](#)

<sup>62</sup> [Supervisory statement on differential pricing \(europa.eu\)](#)

the IDD should always act honestly, fairly and professionally in accordance with the best interests of their customers. The statement also underlines that product oversight and governance processes should cover pricing techniques and ensure that these techniques do not adversely affect customers. Moreover, the statement identifies certain ‘price walking’ practices that do not comply with the relevant regulation. Examples include, but are not limited to, repeated premium increases based on the customer’s low propensity to shop around or change provider because of price increases.

### **Lack of transparency on robo-advice and comparison tools**

In its previous report, EIOPA highlighted that, while robo-advice can be a cost-effective solution for consumers seeking advice on insurance, there is a lack of transparency for consumers as to whether they are interacting with a machine and whether emotional recognition or biometric categorisation systems are used.

Consumer associations<sup>63</sup> indicated that experience over the past two years has highlighted that robo-advice and comparison tools often mislead consumers and do not allow for a comprehensive or objective comparison. In order to ensure additional consumer protection safeguards as regards robo-advice and comparison tools, the IDD could take inspiration from other EU legislation. For example:

- the Payment Accounts Directive<sup>64</sup> includes criteria to ensure that comparison tools and robo-advisors act independently and provide accurate, transparent and updated information; and
- Article 6a<sup>65</sup> of the Consumer Rights Directive foresees, for example, the obligation to make general information about the ranking parameters available.

Consumer associations also suggested to introduce a withdrawal and cancellation button which allows consumers to easily terminate/withdraw an insurance contract, in line with proposals made in the context of the review of the Distance Marketing Directive<sup>66</sup>. In August 2022, in FR, a legislation

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<sup>63</sup> BEUC

<sup>64</sup> For example, according to Article 7(3), the comparison websites shall:

- (a) be operationally independent by ensuring that payment service providers are given equal treatment in search results;
- (c) set out clear, objective criteria on which the comparison will be based;
- (e) provide accurate and up-to-date information and state the time of the last update.

<sup>65</sup> Before a consumer is bound by a distance contract, or any corresponding offer, on an online marketplace, the provider of the online marketplace shall, without prejudice to Directive 2005/29/EC, provide the consumer with the following information in a clear and comprehensible manner and in a way appropriate to the means of distance communication:

- (a) general information, made available in a specific section of the online interface that is directly and easily accessible from the page where the offers are presented, on the main parameters determining ranking, as defined in point (m) of Article 2(1) of Directive 2005/29/EC, of offers presented to the consumer as a result of the search query and the relative importance of those parameters as opposed to other parameters;

<sup>66</sup> [See Article 11\(a\) of Proposal for a Directive amending Directive 2011/83/EU concerning financial services contracts concluded at a distance and repealing Directive 2022/65/EC](#)

was adopted to introduce a cancellation button for all consumer contracts, including financial services<sup>67</sup>.

### **Opportunities and concerns presented by embedded insurance**

Embedded insurance refers to an insurance policy that can be purchased within the purchase of another product or service. For example, customers may purchase travel insurance when booking a hotel or a flight.

Embedded insurance is an innovative business model which enables customers to conclude an insurance contract as part of the product or service they are buying, without having to consult an insurance distributor to purchase the insurance separately. Embedded insurance can also increase the accessibility of insurance products that are relatively unknown.

However, the embedded concept may involve a certain degree of product pushing, as noted in a report published by the Dutch AFM<sup>68</sup>. This applies in particular when the techniques to onboard and attract customers and the digital selection environment also encourage them to purchase an insurance product. Customers may also get confused as to what is and is not insured, with the risk of taking out insufficient or double insurance cover.

### **Need to monitor marketing communications by “Finfluencers”**

Finfluencers are people who aim to provide education or advertising on financial products to other people via social media. While finfluencers can help raise interest in insurance of people who may not be using traditional distribution channels, experience over the past two years has shown that the current framework does not sufficiently address concerns presented by the rise of finfluencers.

For example, the French ACPR established a taskforce to monitor finfluencers to ensure they comply with national consumer protection legislation and their marketing communications are always fair, clear and not misleading, in line with Article 17(2) of the IDD. Particular attention is paid to marketing communications related to sustainable products, crypto-assets or concerning structured funds accessible in life insurance contracts. Moreover, the French government passed a bill aimed at regulating commercial influence and combating the excesses of influencers on social network.<sup>69</sup>

In March 2022, the three European Supervisory Authorities (EBA, ESMA and EIOPA) warned consumers that many crypto-assets, which are often aggressively promoted through social media, are highly risky and speculative.<sup>70</sup>

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<sup>67</sup> [LOI n° 2022-1158 du 16 août 2022 portant mesures d'urgence pour la protection du pouvoir d'achat \(1\) - Légifrance \(legifrance.gouv.fr\)](https://legifrance.gouv.fr/LOI/n/2022-1158)

<sup>68</sup> [AFM: Opportunities and risks of the digitalising insurance market over the next decade](#)

<sup>69</sup> [Influenceurs et créateurs de contenus : des mesures pour encadrer et accompagner les professionnels du secteur | economie.gouv.fr](https://economie.gouv.fr/influenceurs-et-createurs-de-contenus)

<sup>70</sup> [Warning to consumers on the risks of crypto-assets \(europa.eu\)](https://europa.eu/warning-to-consumers-on-the-risks-of-crypto-assets).

The legislative proposals introduced by the Retail Investment Strategy include new requirements for marketing communication and practices, which may also include third-party content, design, promotions, branding, campaigning, product placement and reward schemes. Those requirements specify what the requirement to be fair, clear and not misleading entails in the context of marketing communications and practices.<sup>71</sup>

Furthermore, according to consumer associations<sup>72</sup>, there is a lack of clarity in the IDD with regard to the differentiation between advertising, providing information and providing advice. It is not entirely clear whether the activities carried out by Finfluencers are within the scope of the IDD.

Moreover, the joint ESA response to the European Commission's Call for advice on digital finance and related issues published in January 2022<sup>73</sup> indicates that consumer's financial decision-making may be detrimental to consumer protection, if consumers almost blindly follow any recommendations given by the influencer. This may be exacerbated in situations of mass-hype, where a large number of users follow the recommendations, triggering a 'fear of missing out' feeling within individual consumers.

### **Supervisors are testing new technologies to foster the development of InsurTech and reduce the potential for consumer detriment**

As part of the Italian regulatory sandbox<sup>74</sup>, IVASS is testing the provision of pre-contractual information together with a QR code which allows the customer to verify the registration of the insurance intermediary in the Italian register of insurance intermediaries. IVASS is also testing the preparation and completion of pre-contractual documentation through blockchain technology which guarantees that such information is unmodifiable.

The French ACPR has worked on the use of AI in insurance distribution through the development of a robo-advisor, used to advice customers on their investment options within a life insurance contract<sup>75</sup>. The robo-advisor was tested on 256 paid participants. After using the robo-advisor, the participants received a questionnaire to check whether they had understood the investment options recommended by the robot and whether they would accept them. ACPR set up the robo-

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<sup>71</sup> Article 26(a): Member States shall ensure that marketing communications of insurance-based investment products are developed, designed and provided in a manner that is fair, clear, not misleading, balanced in terms of presentation of benefits and risks, and appropriate in terms of content and distribution channels for the target audience and where related to a specific insurance-based investment product to the target market identified pursuant to Article 25(1).

<sup>72</sup> BEUC / Federation of German Consumer Organisations

<sup>73</sup> [ESA joint advice master file \(EIOPA\) for BOS \(europa.eu\)](#)

<sup>74</sup> A regulatory sandbox is a controlled environment in which operators test technologically innovative products and services under a transitional simplified regime, in constant dialogue and confrontation with the NCAs.

<sup>75</sup> [20230706\\_revue\\_acpr\\_robex.pdf \(banque-france.fr\)](#) The full study available in English : [Questioning the ability of feature-based explanations to empower non-experts in robo-advised financial decision-making \(acm.org\)](#)

advisor to give a “good” investment option, that was appropriate for the demands and needs of the consumer and a “bad” investment option.

The study showed that the group who did not receive any explanation justifying its choice from the robo-advisor was better at distinguishing the good from the bad option. Indeed, conversational explanations from the robo-advisor tended to give customers a false sense of trust leading them to accept the bad option. The consumers’ level of education also played an important role as customers with a lower level of education had a higher propensity to accept the “bad” option despite its unsuitability.

The Dutch AFM has published on its website a tool<sup>76</sup> which allows financial services providers distributors to develop comparison cards which are intended to provide more transparency about financial products/services and allow consumers to easily compare products/services and costs so that they can make an informed choice. The comparison cards include, amongst others, information about the products/services offered by the provider, how customers can receive advice from the provider, information on whether the provider offers independent advice and the average costs for the products/services offered.

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<sup>76</sup> [Nog ongeveer 3 maanden om de vergelijkingskaart beschikbaar te hebben \(afm.nl\)](#)

## 2.3 IMPACT OF THE IDD ON THE QUALITY OF ADVICE AND SELLING METHODS

### Introduction

For its previous report, EIOPA highlighted that there is limited data available to make an assessment as to whether the quality of advice and selling methods have improved following the implementation of the IDD, given that the IDD has been in application in the majority of Member States for only three years and the impact of legislative change on the quality of advice and selling methods takes time to bed in.

However, for this second report on the application of the IDD, most NCAs have been able to provide more data on the quality of advice and selling methods as five years have passed since the application of the IDD in most Member States and NCAs have considerable experience in supervising and insurance distributors in applying the IDD. Furthermore, some NCAs have explored new supervisory tools, such as mystery shopping and recording of telephone conversations between customers and insurance distributors.

### **Quality of advice and selling methods have improved in some Member States**

EIOPA observes that the application of the IDD over the past two years has led to an improvement in the quality of advice and selling methods in some Member States. However, in some Member States, no significant change can be observed and in some Member States, mystery shopping activities have revealed significant shortcomings related to advice and selling methods.

The supervisory activities carried out in some Member States have contributed to an improvement in the quality of advice and/or selling methods in those Member States over the past two years. For example, in GR, a thematic review on the digital distribution of insurance distributors resulted in an improvement in digital selling methods mainly due to the corrective measures imposed by the Bank of Greece. In LV, activities to follow-up on supervisory activities to assess the quality of disclosures and advice given to customers have resolved the identified deficiencies and improved the quality of advice and selling methods.

In contrast to the above, in AT, BE, CZ, DE, DK and NL, the number and quality of complaints, data from the Ombudsman and/or experience from on-site and off-site supervision suggest that the quality of advice has not changed significantly over the past two years.

In some Member States, mystery shopping exercises were carried out that have identified significant shortcomings related to advice and selling methods. For example:

- In BG, 13 administrative violations were identified for which administrative criminal liability was committed. The violations relate to the demands-and-needs test (e. g. insurance



distributor does not identify demands and needs before conclusion of a contract) and pre-contractual information (e. g. failure to provide the IPID);

- In HR, insurance distributors were not sufficiently professional in conducting conversations for non-advised sales as they did not take into account demands and needs of customers, explained products in a clear way, conducted appropriateness assessment for IBIPs or provided all pre-contractual documentation;
- In LT, in 39% of cases, unit-linked insurance was offered that did not meet the needs of the customer. As a result, the Bank of Lithuania prepared proposal for new legislation to improve the situation, among them a proposal for mandatory advice for the sales of IBIPs and for prohibiting the payment of commissions for purchasing an IBIP;

It should also be noted that a mystery shopping exercise on the EU's retail investor protection framework conducted in 8 Member States<sup>77</sup> by Kantar<sup>78</sup> on behalf of the European Commission concluded that there are clear instances where the suitability assessment is carried out at the very last stage, shortly before the contract signature. During the mystery shopping, customers were explicitly told that this would only be done later at contractual stage. Such late phasing of the suitability assessment means that, in these instances, the objective of using information about the customer to provide advice is not fulfilled. The IDD does not state that the suitability assessment needs to take place before the advice is given. In order to address this issue, the legislative proposals of the Retail Investment Strategy<sup>79</sup> include a requirement for insurance distributors to assess the suitability of an IBIP "in good time before the customers are bound by an insurance contract or offer".

In January 2020, EIOPA received a new mandate to coordinate mystery shopping activities. EIOPA is currently coordinating its first joint mystery shopping exercise on sales of insurance in 8 Member States, based on a common methodology and criteria.<sup>80</sup> The results of the exercise which will be available in the first half of 2024 will provide some additional evidence on the quality of advice and selling methods in the EU.

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<sup>77</sup> DE, FR, GR, IT, NL, PL, RO, SE

<sup>78</sup> [Commission publishes an external study on the EU's retail investor protection framework, covering disclosure, inducements and suitability rules \(europa.eu\)](#)

<sup>79</sup> Article 30(1) : " Member States shall require that insurance intermediaries and insurance undertakings distributing insurance-based investment products assess the suitability or appropriateness of insurance-based investment products and, where applicable, underlying investment assets to be recommended to or demanded by customers in good time before the customers are bound by an insurance contract or offer. Each of these assessments shall be carried out on the basis of proportionate and necessary information about the customer as obtained by the insurance intermediary or insurance undertaking in accordance with the requirements set out in this Article.(...)"

<sup>80</sup> [EIOPA to undertake the first joint mystery shopping exercise across several EU Member States \(europa.eu\)](#)

### **Consumer associations concerned about lack of telephone recording requirements in the IDD and individuals pretending to be selling insurance on behalf of welfare organisations**

Consumer associations<sup>81</sup> raised a number of issues related to the demands-and-needs test and distance sales observed over the past two years. For example, customers are sometimes pressurised into concluding a contract (in particular, in the case of telephone sales) and, therefore, cannot make an informed decision. Recorded telephone conversations with insurance distributors show that some of them push customers to obtain a formal confirmation of the conclusion of a contract, even though the whole conversation shows that the customer wants to rethink the matter. In this case, it is difficult for customers to check the conversations in case of dispute as the access to the recording is difficult. In order to address this concern, in the absence of such a requirement in the IDD, some Member States still require the tape recording of telephone conversations between insurance intermediaries and customers.<sup>82</sup>

Consumer associations<sup>83</sup> also reported that, in some Member States, there are conflicts of interest between the insurance distributor and the potential customer in the context of pre-contractual information duties. For example, some insurance distributors urge potential customers seeking to purchase health insurance to not disclose all past medical treatments and illnesses in order to not discourage them from purchasing the insurance due to too many exclusions of covered risks or too high premiums. The conflicts of interest arises out of the fact that the insurance distributors will only receive the commission if the contract is concluded. In this example, the insurance distributor is not in compliance with Article 17(3) which indicates that insurance distributors should not be remunerated in a way that conflicts with their duty to act in accordance with the best interests of their customers.

Furthermore, consumer associations<sup>84</sup> highlighted consumer protection concerns related to individuals in some Member States selling insurance from door to door in the name of non-governmental (charity) organisations. Such individuals identify themselves as working “on behalf” of welfare organisations or show self-made identification cards of such organisations to exploit the emotional connection of customers to such organisations and their reputation in order to aggressively sell insurance. These individuals are not compliant with Article 18(a)(i) which requires

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<sup>81</sup> Polish Financial Ombudsman Office

<sup>82</sup> For example, in FR, [national legislation](#) requires insurance distributors to store telephone conversations with potential customers for a period of two years from the signing of the contract. In IT, national regulation requires insurance distributors promoting insurance contracts through commercial communications by means of distance, to record and store telephone conversations as well as the electronic communications which result in the conclusion of insurance contracts. For IBIPs, the obligation is extended also to telephone conversations and electronic communications which did not result in the conclusion of an insurance contract. The storage is requested for the entire duration of the relationship or for a longer period as envisaged by the law and, in any case, for at least five years after the termination of the relationship.

<sup>83</sup> German Association of the Insured / Better Finance

<sup>84</sup> BEUC / Federation of German Consumer Organisations

insurance intermediaries to disclose their identity and address and that they are an insurance intermediary.

Moreover, the Vienna Chamber of Labour raised concerns related to the Insurance Product Information Document (IPID). The consumer association analysed IPIDs for household insurance in Austria and examined the legally required information value of these documents.<sup>85</sup> Two main concerns emerged: On the one hand, the information contained in the IPID is largely unusable for comparing products as intended by the IDD. On the other hand, some IPIDs can even be misleading due to the fact that manufactures are free to select what information to include about the level of cover in the key information points. To address these deficiencies, it is suggested to make the IPID personalised and standardise the main information content, especially the sections “What is insured?”, “What is not insured?” and “Are there any restrictions on cover?”. Furthermore, supervisory authorities should be given greater powers to enable them to more effectively check compliance with pre-contractual obligations in all areas of financial services through activities such as mystery shopping.

While a trade association<sup>86</sup> recognised that it was appropriate (and a requirement) to review the IDD, they expressed the view that the recent application/implementation of IDD and its delegated acts meant it was too early to draw conclusions and to propose substantial changes to IDD. In their view, EU institutions should focus on a correct application of actual requirements, rather than propose new rules that would need costly and time-consuming changes, which are detrimental to EU consumers. Trade associations also referred to low complaints rates against insurance intermediaries in some Member States.

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<sup>85</sup> [Household and life insurance - product information documents - Portal der Arbeiterkammern und des ÖGB Verlags](#)

<sup>86</sup> BIPAR

## 2.4 INTEGRATION OF SUSTAINABILITY FACTORS, RISKS AND PREFERENCES INTO THE IDD

### Introduction

On 2 August 2022, [Delegated Regulation 2021/1257](#)<sup>87</sup> entered into application amending the existing Delegated Regulations concerning rules on POG and IBIPs as regards the integration of sustainability factors, risks and preferences.

According to the new rules, insurance distributors manufacturing insurance products have to consider sustainability factors in the POG arrangements for each insurance product that is intended to be distributed to customers seeking insurance products with a sustainability-related profile.

Furthermore, when identifying the types of conflicts of interest the existence of which may damage the interests of a customer, insurance distributors selling IBIPs, have to take into account those types of conflicts of interest that stem from the integration of a customer's sustainability preferences.

Finally, as part of the suitability assessment, insurance distributors have to ask questions to identify a customer's individual sustainability preferences and any recommendations to customers have to reflect both the financial objectives and any sustainability preference expressed by those customers.

### **Limited quantitative data available to assess the new sustainability rules**

EIOPA has sought to gather concrete evidence with regard to the practical application of Delegated Regulation 2021/1257, based on experience as to whether it has brought about significant changes and the main challenges faced by insurance distributors / manufacturers and NCAs in applying/supervising the new legislation.

However, there is, unfortunately at present, limited quantitative data available to make this assessment as the new rules have been in application for only about a year and the impact of legislative change takes time to bed in. Furthermore, it is challenging to isolate the impact of Delegated Regulation 2021/1257 given that it is part of the broader Sustainable Finance Disclosure Regulation (SFDR) / Taxonomy policy framework.

### **Empirical evidence - Initial challenges identified by NCAs relate to risk of greenwashing, deficient disclosures, lack of understanding by consumers and lack of knowledge of insurance distributors**

Despite limitations concerning data quality and based on the survey input EIOPA received, NCAs have highlighted from empirical evidence, some initial challenges faced by insurance distributors/manufacturers and NCAs concerning the application of the new rules.

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<sup>87</sup> Delegated Regulation 2021/1257 contributes to the goals of the European Commission's Action Plan "Financing Sustainable Growth"  
[EUR-Lex - 52018DC0097 - EN - EUR-Lex \(europa.eu\)](#)

The most frequent issue relates to the challenge for consumers to understand the disclosures and complex concepts introduced by the new rules (e. g. “sustainability preferences”). Given the complexity of the framework, it is difficult for the average customer to understand the choices they are making between products. When disclosing relevant information to customers, many manufacturers find it difficult to disclose information in a simple language which is different from the regulatory language because of liability concerns. As a result, the insurance distributor needs to translate the regulatory language in a simple manner.

The complexity of the rules is also a challenge for insurance distributors who need to find appropriate training courses to enhance their knowledge/training to understand the framework and provide suitable advice to customers. This challenge to understand the complex framework is also evident by the number of activities NCAs are currently carrying out to assist the industry to implement the new rules. In order to ease the implementation of the new rules, EIOPA published guidance on integrating the customer’s sustainability preferences in the suitability assessment.<sup>88</sup>

Furthermore, the unsynchronised entry into force of different pieces of sustainable finance regulation, such as SFDR, SFDR Delegated Regulation, Taxonomy Regulation and Delegated Acts, etc, could lead to the risk of firms committing “unintentional greenwashing” with the financial products they have on the market at one particular moment in time as the legislation is constantly evolving. The fragmented regulatory framework also creates the risk of discouraging some manufacturers from offering ESG products.

From a *supervisory perspective*, challenges raised relate to finding a third-party rating/assessment on actual ESG classification and striking the right balance between the risk-based supervision principle and the risk that the consumer preferences will not be taken into account.

Many NCAs are currently carrying out or plan to carry out activities to examine the impact of new sustainability rules and assist the industry to implement the new rules and these activities will be the basis for a more robust assessment of the rules in the future. For example:

- In CZ, a thematic analysis on the implementation of Delegated Regulation 2021/1257, SFDR and Taxonomy Regulation is being carried out. Initial results highlight some deficiencies, such as missing disclosures by financials advisors, mixed up disclosures (Article 7 of the SFDR with Article 7 of the Taxonomy Regulation) and missing Article 7 and 10 SFDR disclosures, disclosures linking to other webpages in English, limited quality and comprehensibility of disclosures;
- In IT, IVASS launched a survey in order to understand how sustainability aspects are addressed by insurance undertakings in the design and offering of IBIPs, and intercept possible hypotheses of greenwashing. The first results highlighted supervisory challenges

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<sup>88</sup> [EIOPA publishes guidance on integrating the customer’s sustainability preferences in the suitability assessment under the IDD \(europa.eu\)](https://eioipa.europa.eu)

mainly related to the verification of the degree of sustainability of the various underlying assets of the product, putting in evidence the usefulness of making use of a third-party rating system for the certification of ESG assets for supervisory purposes.

**Concerns raised by NCAs are partly shared by the industry**

Some trade associations<sup>89</sup> shared the concerns raised by NCAs concerning overly complicated product information and mis-matched implementation timelines between the various pieces of relevant legislation. In particular, according to trade associations, SFDR templates reporting templates are too long, making the accessibility via digital tools more difficult. The definitions used are also perceived to be problematic as they are not aligned and not understandable by the average consumer.

Trade associations also expressed concerns about the new requirements lengthening and further complicating the already very long suitability process according to the IDD. This, according to trade associations, 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 (e. g. via robo-advice).

According to trade associations, there is also a lack of data availability for manufacturers that limits their ability to offer sustainable products. Insurance distributors are currently being asked to match consumers' often vague and unconfident sustainability preferences to a very limited product offering. This is perceived by industry as an almost impossible task.

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<sup>89</sup> Insurance Europe, BIPAR

## 2.5 NEED TO PROVIDE ADDITIONAL GUIDANCE ON THE REGULATORY FRAMEWORK

### Introduction

Based on the exchanges with NCAs and the IDD questions and answers received from external stakeholders, for its previous report, EIOPA had identified several areas of the IDD which are difficult to apply for insurance distributors and to supervise for NCAs, given the lack of clarity. For example, the lack of guidance as to the correct implementation of Article 29(1) related to the disclosure of costs and charges in relation to the distribution of IBIPs had illustrated the risk of supervisory divergence and the potential to hinder effective supervision of insurance distributors.

EIOPA sought to gather additional challenges related to the application and supervision of specific provisions, given the lack of clarity in these provisions over the past two years.<sup>90</sup> The treatment of group insurance policies and third-party contracts under the IDD is one of the main challenges that was highlighted and this is further outlined below. Annex IV includes additional examples of provisions which have been particularly difficult to supervise/apply over the past two years and which were not already included in Annex VII of the previous report. In order to address the challenges related to these specific provisions, additional guidance could be provided, for example through Level 3 measures or a change in the regulatory framework. The European Commission is currently working on a set of Q&As related to group insurance.

### **Several NCAs are considering to take policy or supervisory measures to comply with the European Court of Justice (ECJ) judgement on group insurance<sup>91</sup>**

On 29 September 2022, the ECJ published a judgment in relation to group insurance. The ruling states, based on Article 2(1)(1), (3) and (8), that:

*“The concept of ‘insurance intermediary’ and, therefore, that of ‘insurance distributor’, within the meaning of those provisions, covers a legal person whose activity consists in offering its customers membership on a voluntary basis, in return for payment which it receives from them, of a group insurance policy to which it has subscribed previously with an insurance company, where that membership entitles those customers to insurance benefits in the event, in particular, of sickness or accident abroad.”*

Therefore, according to the ECJ ruling, different factors have to be taken into account to assess whether a person, whose activity consists in offering its customers membership in a group insurance policy, is considered as an insurance intermediary under the IDD:

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<sup>90</sup> Most responding NCAs have indicated that all relevant provisions are already included in [Annex VII of the previous report](#).

<sup>91</sup> Case C-633/20, TC Medical Air Ambulance Agency: [CURIA - Documents \(europa.eu\)](#)

- whether the membership is offered on a voluntary or compulsory basis;
- whether the membership entitles the customer to insurance benefits; and
- whether the activity is remunerated.

The ECJ ruling gives also an important precision on the remuneration concept. This concept is very broad and not only based on commissions paid by an insurance undertaking (point 42). The judgement also reiterates the fact that consumers should benefit from the same level of protection despite the differences between the distribution channels (point 49).

EIOPA has conducted a survey with NCAs to understand the measures NCAs are taking to comply with the judgement and identify any challenges, also taking into account that there are several pending IDD Q&As on group insurance. The survey concluded that:

- Some NCAs have published specific guidance for their market, for example in the form of FAQs to assist firms with dealing with specific scenarios, such as informal sports club memberships<sup>92</sup>;
- 13 NCAs<sup>93</sup> have been analysing the ECJ ruling and, if need be, would be considering measures to adopt their legislative framework. For example:
  - BE has published a number of non-exhaustive criteria that need to be assessed to determine whether a policyholder of a group insurance contract should (also) be considered an insurance intermediary;
  - ES is considering to publish clarifications on how to consider the policyholder of a group insurance as an insurance intermediary under national legislation;
  - LT has adopted amendments to their national law regulating insurance distribution activities to clarify group insurance topics.
- 7 NCAs<sup>94</sup> are not considering taking any specific measures given that, for example, their national legal framework has considered the policyholder of a group insurance as an insurance intermediary when he/she receives a remuneration and the single insured persons directly or indirectly bear all or part of the economic costs of the premium payment;

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<sup>92</sup> Joint guidance by BaFin and DIHK on the impact of the ECJ judgement: [BaFin - Aktuelles - Auswirkungen von EuGH-Urteil auf Vermittlerstatus \(04.07.2023\)](#)

<sup>93</sup> BE, BG, DE, EE, ES, FR, HU, LT, MT, NL, PL, RO, SE

<sup>94</sup> CZ, DK, IT, LI, LU, PT, SL



- While 13 NCAs<sup>95</sup> do not observe any significant difficulties, 4 NCAs<sup>96</sup> are expecting some challenges concerning increasing numbers of notifications for cross-border business on group insurance, application of Rome 1 Regulation to determine the governing law and supervision of cross-border distribution in relation to group insurance;
- Some NCAs highlighted there is a lack of clarity under which conditions the policyholder of a group insurance contract acts as an insurance intermediary.

Similar to NCAs, the industry has been analysing the impact of the ECJ judgment on the respective markets and waiting for NCAs to decide whether and, if so, how they implement the ruling in their national legislation.

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<sup>95</sup> BE, BG, DK, EE, ES, FR, LI, PL, PT, RO, SE, SK, SL

<sup>96</sup> FI, HR, LT, LU

### 3. IMPACT ON THE SUPERVISORY FRAMEWORK

#### Introduction

As part of this report, EIOPA is required under Article 41(6), IDD to “*examine whether the competent authorities referred to in Article 12(1) are sufficiently empowered and have adequate resources to carry out their tasks*”. In February 2023, EIOPA launched a survey addressed to NCAs to gather input as to whether they have adequate resources and are sufficiently empowered to carry out their tasks. Section 3.1 highlights the main conclusions from this survey. Annex VI provides additional information on the outcome of the survey.

Sections 3.2-3.3 summarise the conclusions drawn from EIOPA’s survey on the application of the IDD addressed to NCAs, its work on addressing value for money risks in the unit-linked insurance market and thematic review on the functioning of the EU market for credit protection insurance products sold with mortgages, consumer credits and credit cards.

#### 3.1 RESOURCES AND POWERS OF NCAS AND EIOPA DEVOTED TO CONDUCT OF BUSINESS SUPERVISION

##### **Moderate increase in the number of NCAs’ resources devoted to conduct of business supervision over the past two years**

EIOPA was able to gather from 26 NCAs<sup>97</sup>, information on resources used to implement the IDD and supervise the conduct of business of insurance undertakings and insurance intermediaries more broadly, taking into account that NCAs are differently structured due to national specificities and/or their mandates.

The average number of NCA employees on the basis of full-time equivalents (FTEs) dedicated to conduct of business supervision in Europe has experienced a moderate increase over the period mid-2021 to mid-2023, as indicated in Figure 3.1 below.

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<sup>97</sup> 26 NCAs were able to provide relevant data on their resources over the period of 2018-2023. BE was not in a position to provide data for mid-2023. DK was not in a position to split the resources dedicated to the supervision of the IDD from the other supervisory tasks in the consumer protection and financial intermediaries division for mid-2018 – mid-2021. HU has not been included because figures are not comparable over time as NCA has changed the way it calculates FTEs. IE was not in a position to provide data for Task 4.

Figure 3.1: Average number of employees on the basis of FTEs of NCAs in Europe

Tasks	FTEs of NCAs					
	Mid-2018	Mid-2019	Mid-2020	Mid-2021	Mid-2022	Mid-2023
1. Registration of intermediaries and notification procedure <sup>98</sup>	6.3 (32%)	6.5 (31%)	6.6 (30%)	6.5 (29%)	5.9 (27%)	5.9 (26%)
2. Conduct of business supervision of domestic and incoming insurance <u>undertakings</u> , in accordance with the IDD <sup>99</sup>	4.0 (20%)	4.3 (20%)	5.1 (23%)	4.5 (20%)	4.7 (22%)	5.0 (22%)
3. Conduct of business supervision of domestic and incoming insurance <u>intermediaries</u> , in accordance with the IDD	4.6 (23%)	4.7 (22%)	5.0 (23%)	5.4 (24%)	5.2 (24%)	5.5 (25%)
4. Conduct of business supervision not covered under the tasks 2 and 3 (i. e. activities that are outside the scope of the IDD) <sup>100</sup>	3.4 (17%)	3.6 (17%)	3.1 (14%)	3.1 (14%)	3.8 (17%)	3.9 (17%)
5. Enforcement of breaches and sanctions	2.4 (12%)	2.6 (12%)	2.9 (13%)	3.0 (13%)	3.0 (14%)	3.1 (14%)
<b>Total</b>	<b>20.7</b>	<b>21.8</b>	<b>22.8</b>	<b>22.4</b>	<b>22.5</b>	<b>23.4</b>

<sup>98</sup> Task 1 includes, for example, activities related to the assessment of fitness and probity, professional knowledge (i. e. entrance examination) and good repute. It does not include the authorisation of insurance undertakings as this falls under Solvency II.

<sup>99</sup> Tasks 2 and 3 include, for example, any IDD-related conduct of business supervision activities dedicated to on-site and off-site supervision of distribution and products, thematic reviews, bancassurance, POG and distribution arrangements, disclosure requirements, continuing professional training and development (including authorisation and supervision of training centres), etc. It also covers IDD-related market surveys and general policy work (with the aim to give guidance to supervisors for the conduct of business supervision of individual insurance distributors and to the industry). It also covers any activities related to complaints data analysis for market monitoring and supervisory purposes (rather than reacting to and investigating complaints), it does not include any activities related to complaints-handling / alternative dispute resolution which are not supervisory tools, but private enforcement tools. It does not include IDD-related conduct of business supervision activities if they are part of the regular reporting work done with EIOPA (e. g. Consumer Trends Report, costs and past performance), but does include IDD-related conduct of business supervision activities related to EIOPA work on thematic reviews, follow-up work to thematic reviews, union-wide strategic supervisory priorities work etc.

<sup>100</sup> Task 4 includes activities related to conduct of business supervision that are outside the scope of the IDD include, for example, checking compliance with claims-handling requirements, analysis of Solvency II data and the liquidity of assets of unit-linked products and checking of the application of the prudent person principle, supervision of ancillary insurance intermediaries exempted from the IDD, supervision of the KID under the PRIIPs Regulation. It does not include conduct of business supervision activities if they are part of the regular reporting work done with EIOPA (e. g. Consumer Trends Report, costs and past performance), it does include conduct of business supervision activities related to EIOPA work on thematic reviews, follow-up work to thematic reviews, union-wide strategic supervisory priorities work etc.

The figure indicates a significant decrease in the average number of resources dedicated to the registration of insurance intermediaries and notification procedure from 2021-2022. This decrease is partially based on a significant drop of FTEs in MT and PL<sup>101</sup> over the same period. Moreover, this may be explained by the overall decrease in the number of insurance intermediaries as indicated in section 1.1.

In contrast, the average number of resources dedicated to conduct of business supervision of insurance undertakings has experienced a significant increase from 2021 to 2023 which can be partially explained by a significant increase in the FTE figures in FR, IE and IT over the same period. Similarly, the average FTE figures in relation to conduct of business supervision not covered under the tasks 2 and 3 also increased significantly over the past two years.

No major change can be observed in the evolution of resources dedicated to the conduct of business supervision of insurance intermediaries and enforcement of breaches and sanctions.

**N.B. The figures should be interpreted with some caution as they may be based to some extent on estimates and some information provided may not be complete.** Moreover, insurance markets – including the number and type of insurance intermediaries operating therein – vary significantly across Members States, as well as the supervisory structure and framework. It is also worth taking into account that some NCAs have highlighted that it was challenging to clearly delineate the activities of individual employees.<sup>102</sup>

**Most NCAs have not received new statutory powers over the past two years, but some NCAs have incorporated or plan to incorporate mystery shopping to their statutory powers**

EIOPA asked NCAs to indicate which new statutory powers they have received since 2022 to ensure the implementation of the IDD and to what extent they have not been sufficiently empowered to ensure the implementation of the IDD. EIOPA's previous report covered the statutory powers received before 2022.

While most NCAs have not received any new statutory powers over the past two years, the following 3 NCAs highlighted that they had received some new powers:

- In CY, an order was issued to give the NCA the power to impose monetary fines in case of non-compliance with CPD requirements;

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<sup>101</sup> The Polish Financial Supervision Authority highlighted that over the period 2021-2022, there was a change in the organisational structure and adaptation of tasks and resources resulting in the FTE decrease. In 2023, the number of FTEs increased in comparison with 2021 and 2022.

<sup>102</sup> The average number of employees on the basis of FTEs of NCAs in Europe for mid-2018 to mid-2021 included in Figure 3.1 is not comparable with the corresponding figures in the previous report given that the former figures are based on data provided by 29 NCAs and the latter figures are based on the data provided by 26 NCAs. Apart from that, some NCAs have adjusted their figures retrospectively.

- In HR, the existing mystery shopping powers of the NCA were upgraded and regulated with more detailed provisions;
- In IT, powers laid down by the CPC Regulation<sup>103</sup> allow for mystery shopping, the power to order a hosting service to remove, disable or restrict access to an online interface, upgraded powers to access any relevant documents, data or information as envisaged by CPC in comparison to those already available according to sectoral legislation.

Moreover, the Bank of Greece indicated they plan to incorporate mystery shopping in their powers.

### **Not all NCAs have sufficient tools to carry out effective conduct of business supervision**

Most NCAs have expressed the view that they have been sufficiently empowered to ensure the implementation of the minimum standards set down in the IDD. However, some NCAs indicated that additional statutory powers could improve the conduct of business supervision. For example:

- In FI, the Financial Supervisory Authority has the powers, but limited personnel for supervision;
- In IS and SI, the NCAs do not have the power to conduct mystery shopping activities. In ES, mystery shopping can only be carried out by NCA staff, but not by an external provider;
- In IT, IVASS substantially lacks the power to suspend or prohibit distribution activities of an intermediary in case of detriment to consumers stemming from the distribution.<sup>104</sup> Similarly, IVASS cannot temporarily suspend the distribution activity of an intermediary as a sanctioning measure<sup>105</sup>. Furthermore, IVASS is not empowered to ask insurance undertakings to adopt redress measures to provide monetary restitution to policyholders for proven detriment to their interests<sup>106</sup> or to seek to obtain or to accept commitments from the insurance undertaking / intermediary responsible for the infringement at national level.

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<sup>103</sup> Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.

<sup>104</sup> Such power is exercisable over intermediaries only in a few cases related to the breach of regulations on i) misleading advertising of insurance products or on ii) inadequate arrangements to obtain from the manufacturer the information on the product features and to understand the characteristics and identified target market of each insurance product

<sup>105</sup> According to the Italian law, the applicable sanctioning measures against intermediaries include reproach, censure and striking-off whilst they do not include temporary striking off (i. e. suspension of enrollment).

<sup>106</sup> The scope of the "cease and desist" order in the Italian framework should be extended since, at the moment, it is just an alternative measure to an administrative sanctioning fee: indeed, IVASS should be able to adopt the order as soon as a relevant infringement causing detriment to policyholders is ascertained.

## 3.2 SUPERVISORY CONCERNS ARISING FROM THE APPLICATION OF CONDUCT OF BUSINESS REQUIREMENTS

### 3.2.1 PRODUCT OVERSIGHT AND GOVERNANCE

#### **EIOPA carried out a number of initiatives to address value for money risks in the unit-linked market and exclusions in insurance products related to risks arising from systemic events**

In November 2021, EIOPA published a Supervisory Statement on the assessment of value for money of unit-linked insurance products under POG. With this statement, EIOPA highlighted that, while value for money is embedded already within POG requirements, more convergence is needed in practical supervisory implementation. So, while the statement introduces no additional regulatory requirements, it clarifies the common principles needed so unit-linked products can offer value for money.<sup>107</sup>

Following the publication of the Supervisory Statement on Value for Money, in October 2022, EIOPA published a methodology<sup>108</sup> to ensure a consistent and convergent approach towards the implementation of said Supervisory Statement. While the methodology is for support and use by NCAs, the methodology aims at providing more clarity for insurance manufacturers and distributors on the supervisory approach to addressing value for money risks when supervising POG requirements.

In September 2022, EIOPA published a Supervisory Statement on exclusions in insurance products related to risks arising from systemic events<sup>109</sup>. The statement aims to promote supervisory convergence in how national competent authorities assess the treatment of exclusions as part of the product design and terms and conditions drafting process. The statement seeks to ensure that the interests of existing and prospective policyholders are duly taken into account when products are developed or revised or when events casting doubt on the scope of the coverage materialise which may lead to revising terms and conditions and/or revising the product.

Furthermore, in July 2023, EIOPA published a peer review report on POG assessing how NCAs are supervising the application of POG requirements by manufacturers.<sup>110</sup> The peer review, which covered the period October 2018 to March 2022, has found that most NCAs have adapted their supervisory approaches and processes to the supervision of POG requirements in line with the provisions introduced by IDD and the POG Delegated Regulation. Based on the peer review, EIOPA

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<sup>107</sup> [EIOPA issues its methodology for assessing value for money in the unit-linked market \(europa.eu\)](#)

<sup>108</sup> [Methodology to assess value for money in the unit-linked market \(europa.eu\)](#)

<sup>109</sup> [Supervisory statement on exclusions in insurance products related to risks arising from systemic events \(europa.eu\)](#)

<sup>110</sup> [Supervisors across Europe continue to strengthen POG supervision \(europa.eu\)](#)

has issued a set of recommended actions to national supervisors with the objective of building on the existing foundations to further strengthen POG supervision.

Moreover, according to EIOPA's 4th Annual Report on administrative sanctions and other measures under the IDD<sup>111</sup>, there has been a rise in the number of sanctions imposed for breaches of POG rules over the past two years. While only one sanction was imposed for breaches of POG requirements in 2021, ten sanctions across five Member States were imposed in this area during 2022. This seems to be in line with the findings of EIOPA's peer review report on POG which indicated that the principle-based nature of POG rules has made it challenging for some NCAs to formulate supervisory expectations on how POG requirements should be operationalised by manufacturers resulting in challenges when performing supervisory activities and, in some cases, in issuing sanctions.

### **Need for clear guidance on POG rules and adequate resources and powers for effective POG supervision**

In addition to the aforementioned POG Peer Review exercise carried out, EIOPA sought to gather information from NCAs as to whether the application of the POG requirements has been well functioning over the past two years or if there are challenges that need to be addressed. The following are EIOPA's main conclusions from the data gathering with NCAs.

NCAs' experience on the application of the POG framework over the past two years has shown a lack of clear benchmarks and methodologies for the supervision of value for money in the European unit-linked market. In order to address this concern, the legislative proposals of the Retail Investment Strategy<sup>112</sup> include a requirement for EIOPA to develop and administer value for money benchmarks and gather and process relevant data received from NCAs.

While EIOPA carried out a number of initiatives aimed at a convergence supervisory approach towards implementation of POG rules in particular with regard to IBIPs, the lack of guidance on the interpretation of the POG rules has hampered the effective application of POG requirements over the past two years. For example, in some markets, manufacturers generally find it difficult to grasp the notion of "significant adaptation"<sup>113</sup>, define the scope of the target market and carry out the

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<sup>111</sup> [Link to be added](#)

<sup>112</sup> Article 25(8): "EIOPA, after having consulted ESMA and the competent authorities, shall, where appropriate, develop and make publicly available common benchmarks for insurance-based investment products that present similar levels of performance, risk, strategy, objectives, or other characteristics to help insurance undertakings and insurance intermediaries manufacturing or distributing insurance-based investment products to perform the comparative assessment of the cost and performance of insurance-based investment products."

<sup>113</sup> Article 25(1): "Insurance undertakings, as well as intermediaries which manufacture any insurance product for sale to customers, shall maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers."

product testing requirements. Also, some NCAs highlighted the need for more guidance on how to address value for money risks related to the non-life insurance market.

Moreover, in some Member States, NCAs lack supervisory experience or competence in this area, especially when working with insurance undertakings regarding complex IBIPs whose value for money is considered questionable.

Furthermore, some NCAs do not have sufficient powers to effectively supervise the application of POG requirements. For example:

- In DE, BaFin could act more efficiently in conduct of business supervision if it was authorised to impose administrative fines on insurance undertakings with sub-optimal standards in their product approval process;
- In SI, the Insurance Supervision Agency lacks an empowerment to set up more detailed legal provisions for issuing supervisory measures under Commission Delegated Regulation (EU) 2017/2358;
- In HR, HANFA finds it challenging to achieve the desirable conduct from insurance undertakings as it is not able to provide regulatory approval for products before their distribution or formally intervene in the pricing/commissions rates of the product as Commission Delegated Regulation (EU) 2017/2358 indicates that the requirement to assess the product performance as part of the product testing process, should not be understood as price control in any form.<sup>114</sup>

### **Supervisory activities highlight need for manufacturers and insurance distributors to improve their compliance with POG rules**

In several Member States, supervisory activities were carried out to verify the compliance of insurance manufacturer and insurance distributors with POG requirements. For example:

- In DK, DFSA released a report<sup>115</sup> following a high-level review of the POG processes of all life and non-life insurance undertakings in DK. The report focused on the POG processes in general, with a particular focus on the undertakings' measures for identifying the target markets of their products. The report contained guidance from the DFSA on analysing and mapping the needs of the target market, identifying target markets, conducting product

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<sup>114</sup> Recital 8: "As part of the product oversight and governance arrangements, manufacturers should also undertake appropriate testing of insurance products, including, where relevant and in particular for insurance-based investment products, scenario analyses, to ensure that the product meets over its whole lifetime, the identified needs, objectives and characteristics of the target market. This should, in particular, include assessments of the product performance and the risk/reward profile. The requirement to assess the product performance should however not be understood as an interference with the manufacturers' freedom to set premiums or as price control in any form."

<sup>115</sup> [Opfølgning på julebrev fra 2021 om POG-reglerne \(finanstilsynet.dk\)](#)



review processes and handling identified discrepancies between product features and target market needs;

- In FR, ACPR conducted in 2021 a broad qualitative study on the implementation of POG requirements on life insurance. The main issues identified relate to the definition of the target market (too broad), the definition of co-manufacturing (insurance undertakings considered themselves to be the sole manufacturer, even when intermediary played a key role) and heterogeneity of the thoroughness of product testing (ranging from a single consumer study to experimental commercialisation to a limited audience);
- In IT, IVASS carried out reviews on implementation of POG processes in terms of concrete results for consumers through off-site and on-site actions particularly with reference to the tests carried out to assess the value for money of the products in relation to the identified target market and the methodologies used in the post-sale monitoring, also in the light of EIOPA work on value for money. In the supervisory dialogue with insurance undertakings, IVASS highlighted the need to improve certain aspects of the POG policy (e. g. product testing activities need to be improved from a consumer perspective, especially with regard to cost levels). As a result, insurance undertakings have stopped marketing or reviewed products highlighted by IVASS and improvements have been or are being made to the POG process implemented by insurance undertakings. As mentioned under section 1.1, IVASS published a Consultation Paper of a draft letter to the market containing supervisory expectations on the implementation of the POG process and the assessment of the value for money of the products<sup>116</sup>;
- In MT, MFSA conducted a cross-sectoral thematic review through which it identified good practices and practices that need to be improved. The main challenges encountered were:
  - compliance with prudential requirements and commercial objectives prevailed over the interests of the clients;
  - entities did not clearly identify each stage of the product development process and did not document the specific steps followed at each stage in sufficient detail;
  - entities had difficulties in the identification of new or significantly changed products and services.
- In PL, KNF (PFSA) conducted a study and carried out reviews on implementation of POG processes in non-life undertakings. The main findings relate to the:
  - too broad definition of target market;
  - too narrow definition of new product;

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<sup>116</sup> [IVASS - Consultation Paper no. 8/2023](#)

- little/no customers' perspective in relation to the essence of significant change in products;
- narrow criteria used in the process of designation of value for money; and
- lack of determination of product' complexity criteria.

### 3.2.2 CONFLICTS OF INTEREST AND REMUNERATION

#### **Several NCAs have adopted national legislation to further restrict the payment/receipt of commissions**

EIOPA sought to gather evidence concerning the application/supervision of the rules on remuneration and conflicts of interest over the past two years to see if the concerns about possible detrimental impact of payment/receipt of commissions on consumers highlighted in the previous report, continue to be valid.

EIOPA notes that, over the past two years, in order to address the possible detrimental impact of commissions on consumers, several Member States have adopted or plan to adopt national legislation to further restrict the payment of commissions<sup>117</sup> or increase transparency about the payment of commissions. For example:

- In DE and HU, new national legislation was introduced to introduce a commission cap. DE legislation specifies that the commission for selling residual debt insurance may not exceed 2.5% of the loan amount or other monetary amount secured by the residual debt insurance. HU legislation prescribes that the commission for property insurance policies may not exceed 20% of the annual premium paid by the customer;
- In IS, new national legislation makes it mandatory for insurance distributors to inform the customer of the amount of the commission the insurance distributor will receive for concluding a contract. Article 19(1)(d) of the IDD requires the insurance intermediary to disclose information on the nature, but not on the amount of remuneration received in relation to the insurance contract;
- In LT, the Bank of Lithuania has made a legislative proposal to limit the payment of commissions to distributors for purchased IBIPs. This is a result of the NCA's mystery shopping activities of unit-linked insurance sales which has revealed significant

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<sup>117</sup> The IDD allows Member States to:

- Limit or prohibit the acceptance or receipt of fees, commissions or other monetary or non-monetary benefits paid or provided to insurance distributors by any third party, or a person acting on behalf of a third party, in relation to the distribution of insurance products (Article 22(3)); and
- Additionally prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice on IBIPs (Article 29(3), subparagraph 1-2).

shortcomings (e. g. mis-selling cases, lack of compliance with demands-and-needs test and assessment of suitability and appropriateness). These shortcomings are mainly caused by the detrimental impact of commissions;

- In NO, Finanstilsynet sent a proposal to the Ministry of Finance regarding a ban on the receipt of inducements. The proposal will, if it comes into effect, have an impact on investment firms, insurance distributors and management companies for mutual funds.

### **Supervisory activities show room for improvement in the application of the rules on remuneration and conflicts of interest**

Moreover, in several Member States, supervisory activities were carried out which have revealed shortcomings in the application of the rules on remuneration and conflicts of interest by insurance distributors during the reporting period. For example:

- In BE, with regard to inducements related to the sale of IBIPs, supervisory activities revealed that insurance undertakings often make an analysis of inducements, but this analysis is standardised and does not examine in sufficient detail whether the interests of the clients could be harmed by such inducements;
- In FR, a study was carried out which showed that a share of the fees of life insurance products (in particular, IBIPs and structured products) are retroceded by insurance undertakings to the insurance distributors. The structure of retrocessions is in most cases conducive to conflicts of interests;
- In IT, IVASS carried out off-site and on-site activities over some insurance undertakings to verify potential behaviours not in line with the customer's best interest (mis-selling), especially concerning IBIPs. The supervisory activity revealed that the remuneration policies are mainly based on quantitative criteria (the more policies sold, the higher the remuneration); only in one case, an undertaking had included qualitative criteria in its remuneration policy but these criteria had not been properly implemented;
- In NO, manufacturers and insurance distributors faced challenges in taking a customer-centric approach to their conflicts of interest identification. Furthermore, they have some difficulties in identifying potential conflict of interests where product manufacturers and distributors are part of the same financial group.

In order to address conflicts of interest that may arise as a result of the payment of inducements, in the context of its Retail Investment Strategy, the European Commission presented legislative proposals<sup>118</sup> aimed at (i) prohibiting the payment/receipt of inducements in non-advised sales and

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<sup>118</sup> For example, the legislative proposals suggest to add the following paragraph to Article 30<sup>5b</sup>. *Member States shall require that, where an insurance intermediary or insurance undertaking distributing insurance-based investment products informs the customer that advice is given on an independent basis, the insurance intermediary or insurance undertaking:*

in the case of “independent advice”, (ii) strengthening the “best interest of the customer” principle applied in IDD and (iii) improving disclosures to the customer regarding the payment of inducements.

### 3.2.3 CROSS-SELLING OF FINANCIAL PRODUCTS

#### **EIOPA’s thematic review on bancassurance revealed cross-selling practices that could cause detriment to consumers**

EIOPA sought to gather evidence concerning the application/supervision of the rules on cross-selling of financial products over the past two years to see if the concerns about cross-selling practices related to credit protection insurance policies, unit-linked products and carried out by ancillary insurance intermediaries highlighted in the previous report, continue to be valid.

In October 2022, EIOPA published a thematic review on the functioning of the EU market for credit protection insurance products sold with mortgages, consumer credits and credit cards<sup>119</sup>. The thematic review revealed a number of practices that could cause detriment to consumers, including:

- (i) limited product choice and barriers to shopping around;
- (ii) difficulties in comparing products;
- (iii) challenges with cancellation and switching;
- (iv) consumer preferences not being factored into product design; and
- (v) issues with sales practices.

In the light of these findings, EIOPA issued a warning aimed at insurance undertakings and banks acting as insurance distributors to ensure that credit protection insurance products offer fair value to consumers. In its warning, EIOPA highlighted that it expects all insurance undertakings and banks acting as insurance distributors to fully comply with the IDD, including the POG requirements, to take action to address issues with high remuneration and prevent detrimental conflicts of interest.

#### **Several NCAs have undertaken supervisory activities which have revealed issues related to cross-selling (e. g. sales of insurance together with mobile phones)**

Moreover, over the past two years, in several Member States, supervisory activities were carried out which have revealed issues related to cross-selling of financial products. For example:

- In BE, an investigation into a number of ancillary insurance intermediaries distributing an insurance product together with the purchase of a multimedia device revealed a number of serious shortcomings regarding information requirements and conduct of business rules.

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*(b)not accept and retain fees, commissions or any monetary or non-monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to customers.”*

<sup>119</sup> [EIOPA calls for better value for money in bancassurance in warning to banks and insurers \(europa.eu\)](https://eio.europa.eu/eioipa-calls-for-better-value-for-money-in-bancassurance-in-warning-to-banks-and-insurers)

Moreover, in those cases, the consumer was often pressured into taking out the insurance contract, attracted by the promise of a variable and increasing premium, starting with (a) free month(s) and then gradually increasing. The customer, however, had no clear view on the ultimate costs. In order to avoid such practices in the future, FSMA issued a regulation prohibiting insurance contracts with variable premiums sold with multimedia devices;<sup>120</sup>

- In AT and DE, problems were reported about cross-selling of insurance with mobile phones. The Austrian Federal Ministry of Labour and Economy has received complaints about insurance conditions being unclear and not in the best interests of the customer and about difficulties of consumers to contact the seller of the product. BaFin highlighted that, when purchasing insurance, consumers do not always receive sufficient advice about the insurance and are not always aware that they are not obliged to take out an insurance contract. Consumer associations<sup>121</sup> indicated that, in some cases, customers concluded contracts which obliged them to return their mobile phone if they cancelled their mobile phone insurance;
- In, FR, on-site inspections on credit protection insurance (CPI) on mortgages concluded that some banks offer cheaper interest rates on the credit to make customers subscribe to CPI from an insurance undertaking belonging to the same financial holding as the bank;
- In IT, following the publication of EIOPA's thematic review on bancassurance, IVASS launched a survey on the pricing of payment protection insurance sold in IT and on the costs incurred by undertakings for the remuneration of the bank distributors and sent letters to the involved insurance undertakings and banks to address the specific issues identified by the thematic review. Furthermore, as per ancillary intermediaries which sell insurance coverage combined with services (e. g. gas/power supply), in 2022, IVASS took a monitoring action over significant players and held meetings in order to improve their selling practices, including insurance information on websites.

Consumer associations<sup>122</sup> suggested, in order to address issues related to cross-selling, a deferred sales model<sup>123</sup> could be introduced, i. e. a mandatory pause between the sale of a principal product or service and the sale of add-on insurance. Another way to tackle cross-selling issues would be to introduce a cooling-off period which allows consumers to withdraw an add-on insurance purchased

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<sup>120</sup> [New FSMA Regulation prohibits various multimedia insurance contracts | FSMA](#)

<sup>121</sup> BEUC / Federation of German Consumer Organisations

<sup>122</sup> Verbraucherzentrale Bundesverband

<sup>123</sup> A deferred sales model, which applies a mandatory four-day pause between the sale of a principal product or service and the sale of add-on insurance, was introduced by the Australian Parliament in December 2020, following a recommendation of the Australian Financial Services Royal Commission (Royal Commission). The Royal Commission found numerous issues in the add-on insurance market, including poor value products, unfair sales practices and outcomes, and worse claims outcomes than in other insurance markets. The Australian Securities and Investments Commission has subsequently issued a regulatory guide and final customer information requirements as part of its work to implement the new deferred sales model for add-on insurance: [Regulatory guide](#)

together with a principal product. Trade associations<sup>124</sup> highlighted that a deferred sales model would be difficult to implement in a digital environment as, in their view, the speed and ease of entering into a contract and immediate insurance protection for consumers is essential.

### 3.3 SUPERVISORY COOPERATION BETWEEN HOME AND HOST NCAS

#### **Most NCAs do not see significant challenges in ensuring efficient exchange of information and supervisory co-operation between home and host NCAs**

EIOPA's previous report concluded that, while EIOPA's cooperation platforms have proven beneficial in addressing cross-border issues in the short-term, there are some challenges in ensuring efficient exchange of information and supervisory co-operation between home and host NCAs, such as the need to carry out the notification procedure in a more consistent and easy manner. EIOPA sought to gather evidence whether these challenges have been overcome and whether new challenges have arisen over the past two years.

The vast majority NCAs have not experienced problems in the exchange of information and supervisory cooperation between home and host NCAs over the past two years. In most cases, cooperation and information exchange between NCAs has been timely and efficient, including exchange of information on supervised insurance distributors via cooperation platforms. When issues have emerged, within the context of existing cooperation platforms, NCAs have also carried out as relevant (joint) inspections of cross-border activities.

Some NCAs experienced challenges where insurance undertakings (in particular, life insurance undertakings) do most of their business in host Member States, rather than in their home Member State. In this case, it can be difficult for the host NCA to ensure compliance with general good rules due to lack of timely responses by the insurance undertaking. As a result, it can be necessary to get into contact with the home NCA of the insurance undertaking to explain specific national legislation. At the same time, it can be challenging for the host NCA to identify irregularities in the design of the products manufactured by the passporting insurance undertaking if such products are uncommon in the host Member State.

Supervisory challenges in a cross-border context can also occur as regard group insurance. For example, in some Member States, policyholders offering cross-border group insurance are not notified because they are not qualified as insurance intermediary under national legislation and therefore outside the scope of the IDD. This can be a particular challenge when insurance is sold cross-border via the internet. While the ECJ judgment on group insurance may provide clarity in this context as it specifies factors to be taken into account to assess whether a person, whose activity

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<sup>124</sup> Insurance Europe

consists in offering its customers membership in a group insurance policy, is considered an insurance intermediary under the IDD (see section 2.5), there may be a lack of clarity as to the split of responsibilities between the home and host NCAs for ensuring compliance with the obligations with regard to group insurance.

Moreover, EIOPA has observed that some host NCAs require, based on a provision of primary national legislation, foreign insurance distributors carrying out cross-border business on an FoS or FoE basis in the host Member State to pay a supervisory fee to the host NCA<sup>125</sup>. Such fees are imposed, for example, to cover the cost for the conduct of business supervision of passporting insurance distributors, in line with an existing approach of charging domestic insurance distributors such a fee as well. EIOPA has asked the European Commission to conduct an assessment of the legal status of national supervisory fees and to take action if a national requirement to pay supervisory fees is incompatible with EU law, in order to prevent further adoption of similar measures in other EU markets that could have a material impact on the smooth functioning of the internal market.

Furthermore, in February 2023, EIOPA published a Supervisory Statement on the use of governance arrangements in third countries.<sup>126</sup> The statement highlights that supervisory challenges can occur where insurance distributors established in the EU who carry out distribution activities targeting EU27 policyholders and coverage of EU27 risks falling under the scope of the IDD are or could become disproportionately dependent on services provided by a branch in a third country which is not regulated by the IDD. The statement underlined the need for insurance undertakings using third country branches to not display the characteristics of an empty shell and for insurance intermediaries using third country branches to have staff that possess appropriate knowledge and ability to complete their tasks and perform their duties adequately.

Other challenges that have been observed over the past two years relate to, for example, home NCAs not providing all information for notifications of incoming insurance distributors, language barriers between home and host NCAs, acting quickly and effectively when it comes to non-compliance with IDD rules and supervisory cooperation on POG and value for money (especially concerning level and clarity of costs).

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<sup>125</sup> 9 Member States apply supervision fees in relation to FoE business and 2 Member States apply supervisory fees in relation to FoS business

<sup>126</sup> [Supervisory Statement on the use of governance arrangements in third countries.pdf.pdf \(europa.eu\)](#)