



The European Federation of Insurance Intermediaries
La Fédération européenne des intermédiaires d'assurances

BIPAR RESPONSE

EIOPA Questionnaire to external stakeholders on the application of the IDD

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BIPAR, the European Federation of Insurance Intermediaries, is a non-profit European organisation grouping professional associations of insurance intermediaries in Europe. It presently has a membership of 50 national associations, established in 30 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people. Founded in Paris in 1937, BIPAR headquarters were moved to Brussels in 1989. It is the single voice of insurance intermediaries with the European Institutions.

I. INTRODUCTION

*BIPAR is the **European Federation of Insurance Intermediaries**. It groups 51 national associations in 32 countries. Through its national associations, BIPAR represents the interests of insurance intermediaries (agents and brokers) and financial intermediaries in Europe.*

Most intermediaries are small or micro enterprises, established near to the consumer in the High Street of each and every city and village. They render personalised services to mostly local private clients and smaller businesses. They are at the cutting edge of the insurance distribution with different type of distributors such as insurtech. Many intermediaries are SME type enterprises servicing SME's in all sectors of the economy at local, regional or national level. These intermediaries follow increasingly their clients abroad when they export or import or set up branches or subsidiaries outside their national borders.

Some of these intermediaries are also large enterprises. They work Europe-wide or even globally, serving a wide range of mainly business clients. Some intermediaries also handle reinsurance business.

Intermediaries usually work for both parties in the insurance contract, insurer and client. Intermediaries are paid by the insurer and/or the client, via the premium or a fee.

Intermediaries play an important role in the insurance process.

*For **clients**, intermediaries :*

- ✓ *identify the risks clients face;*
- ✓ *ensure that clients take informed decisions about the risks they wish to insure;*
- ✓ *design new and innovative solutions;*
- ✓ *reduce the clients' search costs;*
- ✓ *put their knowledge at the service of the clients;*
- ✓ *assist their clients with claims related services and policy administration services.*

*For **insurers**, intermediaries:*

- ✓ *facilitate entry into the market by new insurance companies, by providing them with a wide client base, without having to incur the costs of building a distribution network, which is important in terms of the development of a European Single Market;*
- ✓ *assist insurers with claims-related services and policy administration services;*
- ✓ *are key providers of risk data and advice to underwriters*

BIPAR welcomes the opportunity provided by EIOPA to respond to its **questionnaire to external stakeholders on the IDD application** which objective is to gather input on the improvement of **quality of advice and selling methods**, on the impact of the IDD on insurance intermediaries which **are SMEs** and on **additional issues** which are considered of relevance when it comes to the application of the IDD.

Our method has been as follows: we have invited our 53 national associations to send their answers to us. We then compiled their answers to reflect their main concerns and issues in BIPAR response. Some BIPAR members will also answer separately to EIOPA because they have specific national issues. We regret that the questions are in one language only.

The IDD has applied across the EU since 1 October 2018, but it is only as of last April that ALL Member States have implemented it. Because of this late implementation of the IDD in some member states and because of the Covid-19 crisis – during which, as acknowledged by EIOPA, insurance intermediaries continued in very difficult circumstances to support and assist consumers, in particular those who are particularly vulnerable- **BIPAR believes that it is too early to have a clear view and understanding of the impact of the IDD on the activities of insurance intermediaries and on consumers' protection.**

The new requirements are still being grasped and implemented by all market parties (intermediaries, supervisors, insurers, and clients). Although there is a requirement for EIOPA to develop this consultation, **it is too early to come up with any conclusive answers. The introduction of new requirements by the IDD is still**

too recent to allow for any meaningful conclusions about their application in practice. In this context, **it seems very premature to analyse the real effects of the IDD on market practices.**

Also, **the assessment of the impact of the IDD cannot be seen in isolation** of other market developments and of many new EU rules which came into force into the last years, and also apply to the insurance distribution sector (AMLD, GDPR etc.).

BIPAR believes that **the IDD is a good and balanced text**, that can bring real benefits to consumers and retail investors.

Compared to the IMD, the IDD introduced the following major changes:

- ✓ Wider scope
- ✓ Introduction of the definition of advice
- ✓ Distinction of requirements re IBIP's and nonlife/ Life insurances.
- ✓ Introduction of the IPID for non-life.
- ✓ Enhanced requirements concerning the management of conflicts of interest and transparency.
- ✓ Additional training requirements including continuous training requirements.
- ✓ POG for all insurance products.

There is now a need **for a regulatory stability for insurance intermediaries.** Over recent years, insurance intermediaries have had to comply with other key EU legislation like the GDPR/AML, and this has been quite challenging, in particular for SMEs. At the moment, full use should be made of the legislation as it stands, rather than to introduce new obligations.

Having said that there is room to update some of the IDD provisions, some **outdated requirements for example**, that require pre-contractual information to be provided to consumers on paper by default. However, it does not mean that there is a need to develop new rules for pure digital distribution only, it would potentially give rise to an unlevel playing field between insurance distributors. It is crucial that any revised IDD rules will need to **remain technology neutral.**

The answers that we received and that are reflected in this answer are national answers and thus mainly based upon the national implementation of the IDD, therefore not directly related to the IDD itself. Before deciding to revise the IDD, it should be evaluated if the respective national implementations are in line with the IDD objectives such as level playing field, proportionality and scope. In this context a detailed review should be undertaken of the level of convergence (if any) that has been achieved by the competent authorities in the Member States in the implementation of the legislation. As the IDD is a minimal harmonisation directive it allows/encourages competent authorities to agree/devise strategies/approaches that permits them to build on the framework of the IDD. Further legislative action should be a last resort and only undertaken if no alternative measures are available.

When analysing the answers received from our national associations, we conclude the following:

II. BIPAR DRAFT ANSWERS TO EIOPA QUESTIONNAIRE ON THE APPLICATION OF THE IDD

Question 1 - Provide any qualitative or quantitative data/evidence you have which could be used to assess whether the quality of advice and selling methods have improved, deteriorated or remained the same following the implementation of the IDD.

BIPAR RESPONSE

It is difficult to obtain empirical information on these questions (ex: number of mis-selling incidents) and the short timeframe makes it unlikely that any of the reported cases will be a consequence of an incorrect application of the new requirements.

The important “demands and needs” test was already applicable to insurance intermediaries in the scope of the IMD. The IDD extended this obligation to “other” distributors.

In the evaluation of the answers to this question it is necessary to make a distinction between the answers which refer to “intermediaries” and “other distributors” under IDD.

Advice has not the same “legal” consequences in all Member States. The demands and needs test is now, in principle, compulsory for all insurance products by all insurance distributors. On the basis of the answers of our French member associations, the French system of advice is working well.

Overall, we have no complaints from associations about the systems in place in their national markets.

As mentioned in our introductory remarks, even if in all Member States the market players have made a good start in integrating the new requirements regarding advice and selling methods specifically in IBIP’s, the introduction of these requirements is still too recent to assess their effects and to allow for any meaningful conclusions about their application in practice.

Information overload and formalization of the demands and needs test is in some market an issue about which both customers and intermediaries complain sometimes about...especially for straightforward products the formalities are sometimes considered as being unnecessary.

According to EIOPA, the changes in the number of complaints are data that can be used to assess whether the quality of advice and selling methods have improved, deteriorated or remained the same following the implementation of the IDD.

However as explained in EIOPA first annual report on administrative sanctions and other measures imposed under the Insurance Distribution Directive (IDD) by national competent authorities (NCAs), *“the IDD was applicable in most Member States from 1 October 2018 and therefore IDD sanctions are those that can be imposed for breaches of the national provisions implementing the IDD committed by distributors after 1 October 2018. However, in some Member States, the IDD was only transposed into national legislation during the course of 2019 or 2020”*.

It is therefore very difficult to have significant and meaningful information regarding changes in the number/severity of advice-related complaints. However, it is interesting to note that the vast majority of sanctions was for breaches of the professional and organisational requirements. Very few sanctions, if any, are related to advice.

In Sweden, it is interesting to note for example that the number of complaints in relation to insurance intermediaries have been on a steady decline since 2014 and there are very few major complaints.

In the UK (despite being now a third country, the UK had to implement the IDD), the Ombudsman’s complaints data is also interesting¹: It shows travel & BI insurance complaints as flat until 2020 when they both rise steeply

¹ [Quarterly complaints data \(financial-ombudsman.org.uk\)](https://www.financial-ombudsman.org.uk/quarterly-complaints-data)

due to the Covid-19 crisis. So, one could infer at least that there has been no decline in the quality of advice since IDD.

In Italy, based on data provided by IVASS, the number of insurance claims filed by clients alleging intermediaries' responsibility is negligible. Also, the total of claims submitted to companies operating in Italy in 2019 decreased by approximately 6% compared to the previous year.

In Belgium, it is also interesting to note that the Ombudsman received fewer complaints against insurance intermediaries (2017: 734 complaints, 2018: 678 complaints, 2019: 635 complaints). In 2019, only 9% of the total complaints are against insurance intermediaries (See: <http://www.ombudsman-insurance-annualreport.be/2019-ombudsman-assurances-rapportannuel/>).

In Spain, according to the Spanish annual claims report issued by the Supervisor, in 2019, the sector received 10,325 complaints, of which only 100 were filed against insurance brokers. Just one percent of the total.

In Lithuania, according to a report that has been published recently by the Bank of Lithuania (see attached), the number of complaints/disputes with insurers has been decreasing since 2019 (IDD implementation began in the second half of 2018). However, the amount and percentage of disputes with banks and other financial market players has been increasing and it is associated by the Bank of Lithuania to digitalization and difficulties to adapt to innovation for some consumers.

According to EIOPA, changes in the knowledge and ability of insurance distributors are also data that can be used to assess whether the quality of advice and selling methods have improved, deteriorated or remained the same following the implementation of the IDD.

In Sweden, it is interesting to note that according to InsureSec's annual compliance report, the SFM (Intermediaries' association) body that certifies insurance intermediaries' knowledge, 388 insurance intermediaries have been certified in 2020 in comparison to 324 insurance intermediaries in 2017, which shows an increased number of certified insurance intermediaries.

With regard to selling methods, the "cross selling" of mortgages with insurance has been reported as being an issue in some Member States. In some cases, the mortgage provider offers lower mortgage interest rates or "bundles" the condition for a mortgage to the subscription of an insurance with the mortgage provider. In some cases, this obligation is extended to "all the insurances" of the client and /or the duration of the mortgage contract. This potentially restricts the consumer protection (customer freedom of choice) for insurances and limits the functioning of the free market.

Question 2: Indicate whether, in your view, the demands and needs concept is well functioning being mandatory for all distribution models in relation to non-advised sales of any insurance product. Please provide evidence for your answer

BIPAR RESPONSE

In most of the Member States, based on available information, the demands-and-needs concept seems to be functioning well, including at renewal. Intermediaries adjust the demands-and-needs test according to type of product and type of client in a proper manner.

It appears that this concept does provide a structured process of advice or recommendation without adding additional 'overload' in itself and therefore has had a positive impact. It is by some considered as a trigger for clients and intermediaries to go in dialogue about the risk or the insurance product. In some cases where there is little time or where the risk and the demands and needs are obvious, a too formalized demands and needs test is considered as a burden.

In some markets it is observed that when buying an insurance (or extended warranty) cross sold with another product (mobile phones, travel, mortgages, e-bikes, shared cars) there is no real demands and needs test done by the distributor. Either because the distributor is out of the IDD scope or for other reasons. This possibly needs to be further studied in certain markets before drawing conclusions.

Regarding the demands and needs test in relations to the assessment of appropriateness: A key purpose of assessing appropriateness is to facilitate a more streamlined process where clients who have enough knowledge to manage their own investments, can do so without going through a suitability assessment/advice process.

For some of our members, the assessment of appropriateness has a crucial function for the distribution of new contracts – one need to carefully take into consideration the demands and needs of the client individually, because of the complexity an insurance contract adds to the equation.

Today, in some markets, some financial entities distribute "non-complex IBIPs" and pensions products, conducting a passive assessment in form of "If you fulfill X Y Z, then this transaction/this product is appropriate for you". In doing so, the consumer will have to make the assessment himself/herself. For long term savings this could have a devastating effect for consumers.

We also believe that it would be interesting for EIOPA to assess in its future report on the IDD application, how the demands and test requirements is complied with by digital platforms or in the cases of pure "robo-advice".

Specific national situations

Our French member CSCA welcomes the compulsory level and nature of advice as introduced by law in the French market. They are of the opinion that this is justified by the complexity of the insurance contract in all its risk components (life, non-life, individual, professional, company).

In Italy, it seems that the 'demands and needs' questionnaires prepared by direct insurers do not always take sufficiently into account the actual complexity of products and /or do not always take into account the insurances subscribed with other companies by clients.

There is still quite a lot of uncertainty about the questions that have to be posed to the client in order to evaluate the consistency of the product, especially in the field of non-life insurance products subjected to POG.

In some cases, insurers make the use of their demands and needs questionnaire mandatory for intermediaries. According to our Italian association SNA, this goes against the requirement of the IDD to assess the suitability of the proposed products for the clients (intermediaries must be able to ask their clients the appropriate questions in order to take into consideration the clients' needs and act in their best interests). SNA has asked the opinion of the Italian Parliament on the issue.

Question 3: Indicate whether, in your view, "execution-only" sales are functioning well in those Member State that do not require the assessment of appropriateness for the sales of insurance-based investment products if certain conditions are met -Please provide evidence for your answer

BIPAR RESPONSE

This question refers specifically to IBIP's. Very few intermediaries offer investment products on an execution only basis. In the IDD even in an "execution only" situation, there is always a demands and needs test (contrary to investment products under MIFID for example). Considering that the demands and needs test was already applicable for intermediaries under IMD, it is difficult to assess the impact the IDD had on this.

Overall, it should be taken into consideration that the IDD is implemented in economic circumstances where the return of some IBIP's is low due to the low interest rate environment. Financial education of the consumers is in this respect important.

Some of our members believe that the introduction of different distribution procedures in relation to suitability and appropriateness, leading to either advised or non-advised sales of products in the same categories, runs counter to the objective of simplifying and clarifying the relevant procedures.

National specific situations

Not all Member States allow the "execution -only sales".

In France for example, as mentioned previously, the execution -only sales is not relevant as a level of advice is compulsory in all situations and for all types of products and all distributors. According to one of our French members, CSCA, the advice system in France is satisfactory and contributes in France to the consumer protection.

The Belgian legislator has not implemented the execution-only sales for non-complex IBIPs for consumer protection reasons. An argument our Belgian member FVF agrees with.

Question 4: ‘: Provide below any quantitative or qualitative data/evidence you have which could be used to determine the impact of the IDD on insurance intermediaries which are SMEs:

BIPAR RESPONSE

Most insurance intermediaries are SMEs or micro enterprises (see annex). The compliance with the IDD (and other EU regulations such as the GDPR, the AMLD) – together with other factors – is starting to have an impact on the number of insurance intermediaries that is decreasing in some member states.

The accumulation of rules and the speed with which these rules change – rules which apply directly or indirectly to micro or SME insurance intermediaries - is not in line with the think small first principle anymore. Proportionality is not applied in practice.

Smaller entities:

- Cannot afford specific staff dedicated only to managing regulatory and compliance issues.
- The use of external service providers for this has a significant cost and impact on the operations (bearing in mind that there is not only the IDD, but also GDPR, AMLD etc.)
- Smaller entities are also directly or indirectly under pressure from insurers: many insurers on the market do not apply the principle of proportionality when imposing operational or regulatory. Intermediaries have to face different points of view and requirements on the same issue, which is time-consuming and a source of legal insecurity for intermediaries.

In this context, the impact of the IDD has to be considered as being very significant for intermediaries in some markets, especially for smaller ones (who represent the majority of market players).

The following trend can be observed for micro/SMEs intermediaries in a growing number of markets: Increase in the number of sales or consolidation of business/ business closures due mainly or solely to the regulatory burden. In some cases, this leads to “natural consolidation”, in other cases this could lead to a unnatural and unsound situation where in the longer term the consumer may have fewer services.

Practical proportionality should be better reflected or applied in the various obligations laid down in the implementations of the Directive at all levels.

National example of the lack of proportionality and its impact on insurance intermediaries:

Cost transparency: Article L522-3 3° al. 1 of the Insurance Code in France transposes into French law the obligation to inform subscribers or members of a life insurance contract of all costs and related expenses of the contract. This obligation is the responsibility of the distributor, i.e. the insurer or intermediary. In addition, this information is provided to the subscriber or member on a regular basis, at least annually, during the life of the investment. However, in practice, it is very difficult, if not impossible, for the intermediary to inform its clients of the costs and fees associated with the contract, as the insurer is generally unable to provide this information in a usable digital format. The standard for the transmission of computer data between insurers and intermediaries' IT service providers, does not take into account information on related costs and fees. In most cases, intermediaries only receive slips in PDF format, which cannot be used for automated processing.

Moreover, the Insurance Code obliges insurers to send this information directly to subscribers or members, whether or not the contract has been intermediated (Article L132-22 of the Insurance Code).

Consequently, an application of the principle of proportionality could be here that the annual information on the costs and related expenses of the contract should for example be the sole responsibility of the insurer, who is the only one to have all the relevant information (contract management fees, unit-linked fund management fees /IBIP funds, arbitration fees, etc.). The intermediary should only communicate on the fees it has directly received from the subscriber or member (fees) during the term of the contract (ex post) and on all costs and fees related before subscription or adhesion to the contract (ex ante).

Question 5: Please explain how technological advancements are impacting on the application of the IDD and if, and how, existing provisions of the IDD need to be amended or what new rules need to be introduced to meet the challenges/opportunities presented by digitalisation and new business models from the point of view of insurance distributors.
Please provide evidence supporting your explanation in the box below

BIPAR RESPONSE

Before changing the IDD rules, it should be studied in how far the existing rules can cover the risks that are created or emphasized by digital operations.

For this answer we refer also to our contribution to the EIOPA on its DISCUSSION PAPER ON THE (RE)INSURANCE VALUE CHAIN AND NEW BUSINESS MODELS ARISING FROM DIGITALISATION

Having said that, there is room to update some of the IDD provisions, some **outdated requirements for example**, that require pre-contractual information to be provided to consumers on paper by default². Today, it may only be provided in a different format — such as on a website or in another digital medium — by way of derogation. A more digital-friendly approach could be allowed also for intermediaries who are digital hybrids.

There is however no need to develop new rules for digital distribution only. This could give rise to an unlevel playing field between insurance distributors.

Practice shows that the main line of thought on digitisation should focus on the application of existing standards to the new business models (e.g. distribution of responsibilities between the algorithm and the distributor).

Any new regulatory layer at this stage could also have two adverse effects:

- Risk of contradiction with other more general regulations (GDPR, E privacy) leading to differences in interpretation and difficulties of application, particularly for SMEs
- Risk of impacting the spirit of innovation (also by incumbents/ Hybrid market parties).
- Creating an even stronger position for (potentially Longer terms oligopolistic)digital market places in their contractual relationships with insurance market players

In some markets it is observed that the interconnection between various legislations and their objectives is becoming a potential issue. In this context, as an example, it is observed that in some markets, insurers may require certain non-insurance related data from the consumer (such as a mobile phone number and email address) as a pre-contractual condition of insurability.

² Example: Article 32 of the IDD provides that all information provided to clients is, by default, transmitted on paper and that it may, by way of derogation, be provided on a durable medium other than paper or by means of a website.

Question 6 (1): Please indicate, by ticking one or more boxes, which of the following provisions of the IDD are the most difficult to apply for insurance distributors, given the lack of clarity in these provisions.

- ✓ POG rules (e.g. level of granularity of the target market, concept of "significant adaptation of existing products" and different definition of the target market under the IDD compared to EU legislation regulating other financial products)

BIPAR RESPONSE

POG is probably the most "difficult" or controversial aspect in the practical application of the IDD at national level. This is probably also due to the fact that it is a new concept which at the start was not invented for non-life insurances but comes from the investment world. Therefore, some aspects seemed to be "overly detailed", implemented or applied differently by different insurers, supervisors etc. Sometimes there is discussion between insurers and intermediaries also in the practical interpretation of the POG.

In business insurance and/or tailor-made insurance solutions, POG requirements need some time to be applied in the market in a way that is considered to be legally certain. POG, in its implementation and applications does not always seem to take into consideration the structure and size of the intermediary and/or the complexity or nature of the risks and possible insurance transfer solution. POG is creating potentially legal uncertainty in the longer term.

- ✓ Treatment of group insurance policies / third party contracts, including in an online environment (e.g. the insurer is only obliged to provide information to the policyholder, but often the consumer, who is the insured person, thereby does not receive important information)

BIPAR RESPONSE

Considering the presence on the market of various types of collective agreements, sometimes with compulsory membership for the insured and related disclosure obligations, in some member states more clarity may be needed on the issue. This would however require a broad and wide study before drawing conclusions for the IDD. Social legislation may have an impact on the interpretation.

- ✓ Scope of the definition of "insurance distribution", including in an online environment (e.g. further clarity is required as to what the IDD refers to when referring to assisting in the 'administration' and/or 'performance' of a contract of insurance)

BIPAR RESPONSE

We refer to our contribution to the EIOPA DISCUSSION PAPER ON THE (RE)INSURANCE VALUE CHAIN AND NEW BUSINESS MODELS ARISING FROM DIGITALISATION.

Definition of ancillary intermediaries such as travel agencies (e.g. concept of "complementary" mentioned by Article 2(1), number 4) and of exempted insurance intermediaries)

BIPAR RESPONSE

In some markets, more clarity on the notion of "complementarity" would be useful. In Article 2 (4) for example, for some Member States, it would be useful to clarify that the ancillary insurance distribution activity concerned is **the one linked to the supply of the good or services by the ancillary insurance intermediary**. Otherwise, this provision would allow any profession or digital platform to sell any insurance products not linked to their principal activity with a limited protection for the consumer.

- ✓ Demands-and-needs test / fulfilment of the suitability or appropriateness assessment (e.g. what happens in the situation where the customer does not cooperate with the intermediary and refuses to disclose information relevant for advice (typically data about their financial situation) and at the same time still wants to conclude the insurance contract)

BIPAR RESPONSE

In some Member States (ex: Italy), the law states that in the absence, total or partial, of information it is not possible to conclude the contract. In practice, this could give rise to difficult situations of non-insurability or an unlevel playing field between distributors.

- ✓ Remuneration / conflicts of interest (e.g. lack of clarity as to when a remuneration scheme conflicts with the duty to act in accordance with the best interests of the customer)

The issue of acting in accordance with the best interests of the customer seems to be well dealt with at national level.

According to AGEA, the French association representing insurance agents and member of BIPAR, the IDD implementation in France for example recognizes the model of the "agent general d'assurance": Insurance agents are the exclusive representatives of the insurance undertakings that mandate them. In accordance with the definition conferred by their regulatory status (Decree of 15 October 1996),

- the insurance agent is in charge of the "distribution and management of insurance products and services" on behalf of the mandating insurer;
 - the insurance agent "makes available to his/her mandating insurer(s) his/her professional expertise in order to offer insurance contracts and services to meet customers' needs".
- ✓ Training and continuous professional development requirements (e.g. it is not clear which employees are directly involved in the distribution activity and are therefore required to carry out training)

BIPAR RESPONSE

Overall training is not a new requirement in the IDD.

Only the continuous training requirement is new compared to the IMD. The only comments we received is that in some markets the schemes and practical organisation is not always "practical and sometimes too formal".

Training in a changing world should remain an issue where the sector and or individual intermediaries (in particular SME's) have a high level of flexibility in order to ensure that the requirements can optimally fit the needs of the individual parties to develop their own business model and strategy. An intermediary specialized in or wishing to specialize in for example marine insurance should have the opportunity to focus their training investments into that area for their employees.

- ✓ Definition and interpretation of cross-selling (e.g. distinction between the role of an ancillary insurance intermediary and the activity of cross-selling may not be clear)

BIPAR RESPONSE

See above example of some concerns in relation to cross selling. We also refer to other recent studies of EIOPA in this respect.

- ✓ "Acting honestly, fairly and professionally in accordance with the best interests of their customers" (e.g. more guidance as to how this provision can be complied with when applying price optimisation techniques)

BIPAR RESPONSE

Insurance is about quality and service overall and not about price/ cost alone.

- ✓ Lack of clarity as to the applicability of the IDD to non-retail clients (e.g. no definition of "professional client" under IDD, as compared to EU legislation regulating other financial products)

BIPAR RESPONSE

Regarding POG and IPID requirements, in some national markets the IDD disclosure requirements may be too strict re business clients when the objective of the IDD was rather to protect retail /"private" consumers.

In some markets there is confusion about the obligation to provide an IPID in a B2B situation. Ideally an IPID should not be required for a corporate client in the business insurance market (tailor made products).

- ✓ "Need to provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision" (e.g. more clarity as to how this provision can be complied with when using black box algorithms)

BIPAR RESPONSE

Regarding to the possible issues in relation to black boxes, we refer to our contribution to the EIOPA DISCUSSION PAPER ON THE (RE)INSURANCE VALUE CHAIN AND NEW BUSINESS MODELS ARISING FROM DIGITALISATION.

- ✓ Definition of "close links" mentioned in Article 3(6) (e.g. need for more clarity as to when close links "do not prevent the effective exercise of the supervisory functions of the competent Authority")

BIPAR RESPONSE

A lack of clarity on the links referred to in Article 3 (6) has led some national regulators (ex: Italy) to introduce disproportionate requirements (ex: to provide information on family ties up to the fourth degree).

- ✓ Different definition of "complex product" under IDD compared to EU legislation regulating other financial products

We have not received comments or complaints about this.

Question 6 (2): Specify any other provisions of the IDD which are difficult to apply for insurance distributors, given the lack of clarity in these provisions: Please provide evidence for your answers

BIPAR RESPONSE (in addition to the above comments)

The IDD is a minimum harmonization directive.

It is too early to make any meaningful conclusion about the application of general principles, which will – in most cases - have been further detailed at national level.

Considering the structure and nature of the insurance intermediaries, mostly micro and SME's working at local level, there is not really a need to have "fully" harmonized European answer to all questions in the insurance distribution market.

Insurance and insurance intermediation markets are still very different in terms of history, culture and legislation. "Over harmonisation" would bring for some markets more problems than solutions and for other markets unnecessary burden to adapt "again" to a new set of rules.

On the basis of our discussions with our members, BIPAR considers that the lack of clarity in relation to some issues is now more a national issue than a European one.

Some national issues:

Scope (Article 1.3):

In some markets it is considered that the IDD exemptions are too wide (also in regard to the activities of service providers who sell insurance ancillary to their main products).

In this respect for example, the IDD allows national legislation to reduce the amount of the annual premium under which the IDD does not apply. The current ceiling of 600€ is quite a considerable amount for the average consumer. It allows too many contracts distributed in an ancillary way to fall *outside the scope of the IDD*. In Belgium for example the current ceiling is of € 200 instead of the € 600 in the IDD.

Testing of demands and needs / carrying out the suitability or appropriateness assessment:

In one market there seems to be a problem if the customer does not wish to comply with the distributor's advice or proposal but nevertheless wants to take out an insurance contract.

Training requirements

Italy - Article 10.8: It is clear that Article 10.8 aims at the insurance distribution activities of insurers and their employees. Because insurers are not registered under the IDD but under Solvency II, it was decided to introduce a minimum supervisory mechanism in order to ensure the compliance of insurers (and their employees) with the respective provisions of the IDD that apply to them, and in particular with the requirements of Article 10.1, 2 and 3 referred to in Article 10.8.

However, in Italy, Article 10.8 was implemented as referring to the qualifications of professionalism, continuous training and good repute **of intermediaries**, and not to the ones of insurers' employees who are directly involved in insurance distribution. "Their" internal policies and appropriate internal procedures" in Article 10.8 was implemented as being intermediaries' own internal policies, and not those of insurers.

This has led to an unacceptable interference from insurers, controlling compliance of intermediaries with IDD requirements re knowledge and ability, continuous training and good repute (ex: actions going from collection of certifications to on-site inspections).

Question 7: Please specify what challenges manufacturers and insurance distributors face in applying the POG requirements and if, and how, existing POG requirements of the IDD need to be amended or what new rules need to be introduced to meet these challenges. Please provide evidence for your answers

BIPAR RESPONSE

Our current view is that full use should be made of the legislation as it stands, rather than to introduce new obligations.

The POG provisions have introduced into many national legislations on insurance distribution previously unknown legal concepts. The use of directly applicable acts, with terminology that is sometimes unsuitable for the insurance sector (in particular in non-life), has not facilitated the implementation of the POG requirements at national level.

There is certainly a need for more time to see the full (potentially unwanted or unexpected) consequences of POG. In some markets, there seems to be discussions about the respective roles of the parties involved ex:(manufacturer or co-manufacturer.)

The POG process is a burdensome process for manufacturers. It is not always really helpful for non-life insurance products.

In some markets intermediaries are confronted with the very technical new rules introduced by the POG delegated Regulation without insurers or regulator's clear guidance as regards their role in the POG process. In some cases, obtaining POG documents from manufacturers on their products can be challenging.

Examples of specific issues at national level

In France, one of the main difficulties in the operational implementation of the POG requirements lies in the acceptance of the principle of co-manufacturer, the insurers and the ACPR being very reserved (or even refractory) on the subject, whereas some models lend themselves particularly well to it (wholesalers, "affinitaires" etc...).

Sweden:

The POG requirements are not relevant and burdensome (in particular for SMEs) in quotation procedure (i.e. in a public procurement context). The risk of mis-selling is non-existent in situations where the insurance intermediary is writing the completely tailored tender for his (usually professional) client.

Italy

Lack of clarity regarding the definition of a "de facto" manufacturer (in terms of limits / parameters according to which the intervention of the intermediary on the product can be qualified as a "de facto" producer activity) With regards to product governance and control requirements, these organizational procedures have a deep impact on the activities of insurance distribution and are disproportionate regarding some types of risks and the size of intermediaries.

Question 8: Please specify what challenges insurance distributors face in carrying out cross-border business within the EU and if, and how, existing provisions of the IDD need to be amended or what new rules need to be introduced to meet these challenges. Please provide evidence for your answers:

BIPAR RESPONSE

The large majority of insurance intermediaries work locally within the limits of their own national legislative borders. Such intermediaries when confronted with an occasional cross border aspect of a risk they cooperate with another intermediary in the market that is appropriate. In other words, the cross-border aspect of the IDD is important in terms of clarity but should not be used as an excuse to “over-harmonize”. The EIOPA Decision on cross border has highly contributed to the clarification of cross border situations.

Those intermediaries who work on a regular basis cross border have procedures and systems in place which allow them to work in compliance with all rules in the IDD. IDD rules do not pose major challenges but it needs to be considered that also other legislations applicable to the risk in cross border situations are relevant in such situations. Also, insurers working cross border need to take all national rules into consideration.

A few markets have had unfortunate experiences regarding cross border activities in their respective markets (mainly insurers operating in FOS). Better cooperation between supervisors could help avoid such situations in the future.

We refer to EIOPA’s document on general good. There is a need for a more detailed analysis of general good provisions and transparency and a comparison of those provisions with the requirements in the IDD. EIOPA’s suggestion to examine to what extent general good provisions interfere with the internal market objective and are disproportionate, should also be carried out.

Lastly, BIPAR would like to remind once again that one of the objectives of the IDD was to clarify intermediaries’ FOS/FOE activities. However, the IDD does not clarify **when** intermediaries are considered to be operating abroad on a FOS or FOE basis. The lack of clarity in the IDD on the triggering element of FOS (and, to a lesser extent, FOE) is significant since an intermediary operating under FOS or FOE:

- has to comply with the general good rules of the host Member State, and these may result in stricter information and conduct of business requirements; and
- is exposed to a varying degree of oversight and enforcement by the host Member State competent authority.

A September 2018 Decision of EIOPA’s Board of Supervisors on the cooperation of national competent authorities with regard to the IDD (replacing the “Luxembourg Protocol”) partly clarifies when an intermediary is likely to be pursuing cross-border activities, i.e. the triggering element.

BIPAR regrets that this clarification was not introduced in the IDD.

Question 9: Please explain what other major challenges insurance distributors face in applying the IDD and if, and how, existing provisions of the IDD need to be amended or what new rules need to be introduced to meet these challenges. Please provide evidence supporting your response

BIPAR RESPONSE

(in addition to the above-mentioned comments/suggestions).

In general, it is essential to allow time for professionals to adapt to new requirements and to work in this new context. It would be damaging and expensive for the sector to add additional layers of regulation when existing regulations have not been effectively implemented, applied and assessed.

Scope

It will be important to pay attention to the IDD definition of “insurance distribution” and to ensure that “new” players distributing insurance comply with the legal requirements applicable to insurance distributors. NCAs will have a specific role in this.

National goldplating:

According to our Irish association “Brokers Ireland”, the implementation **in Ireland** of additional remuneration disclosure requirements applying rules around inducements, and conflicts of interests resulted in a generally poor outcome for consumers. The approach taken is disproportionate with the approach taken under IDD. Disclosing remuneration applicable by all insurance providers for each insurance product is overburdensome on the part of the intermediary with little to no benefit to the consumer. Each intermediary could have access to 100s of products which are available from each product provider from which the intermediary holds an appointment, and the intermediary is expected to provide the remuneration level for each product. This far exceeds the requirements of the IDD.

Question 10: Indicate what challenges consumers face when purchasing insurance and if, and how, existing provisions of the IDD need to be amended or what new rules need to be introduced to meet these challenges. Please provide evidence for your response:

BIPAR RESPONSE

Customers taking out unit-linked life insurance (IBIPs) often report a lack of financial literacy and education that can prevent them from making the best decisions for their savings by placing too much emphasis on less risky short-term products with low long-term returns (see, for example, France's ranking in the OECD's PISA ranking of financial literacy: <https://www.oecd.org/france/PISA-2012-results-finlit-france-fre.pdf>).

It should be noted that recent regulations (PRIIPS, GDPR, IDD) considerably increase the amount of pre-contractual information that the consumer receive. The problem then is no longer their clarity taken in isolation, but the confusion arising from the whole.

In Ireland, for a typical IBIP sale, consumers already receive a Terms of Business which runs to 7/8 pages, application form, completed Fact-find, Statement of Suitability, Key Information Document, Life Disclosure Documents, and product information guides etc, all of which can run to 40-50 pages. There is a real worry, members are reporting to Brokers Ireland, that key information is being lost within the vast amount of documentation being issued. Brokers continually report that consumers complain about the quantity of documents received, which is leading to regulation fatigue, with consumers being overwhelmed by the amount of paper they are required to read associated with each product.

A positive feedback from intermediaries (in contact with clients) is to be noted with regard to the IPID in some markets: It is used effectively in the pre-contractual phase to support exchanges between clients and intermediaries/insurers. However, it was noted that in some markets, insurers apply it unevenly, which undermines the original objective. According to some reactions, it would also be advisable to remove any doubts about the legal scope of the document so that the judicial courts do not distort it to increase the liability of the players (insurers and distributors), for example in the event of imprecision of a word, given its synthetic nature. We also refer to the answer re the issue for IPID's in business insurance situations.

In some markets the IDD implementation has led to an increased burden or 'information overload' for consumers. Providing an excess of pre contractual documentation introduces a risk of creating confusion and disinterest in customers who, in the presence of a substantial amount of information, show signs of impatience and distrust towards copious and redundant contractual contents that are difficult to read (In Italy for example, it was calculated that the pre-contractual documentation set is made of 3 documents provided by the intermediary and a number of additional documents that vary from 2 to 5 different papers issued by the companies with an average of 20 to 40 pages to be added to the contract).

Question 11: Indicate below what challenges consumers face when purchasing insurance from insurance undertakings or insurance intermediaries conducting cross-border business within the EU and if, and how, existing provisions of the IDD need to be amended or what new rules need to be introduced to meet these challenges. Please provide evidence for your response:

BIPAR RESPONSE

The lack of cross-border portability of pension insurance products is a potential problem for a limited number of people who have saved over a long period of time in a country where funded pension schemes are predominant. If they change their country of residence, they cannot switch insurers and, in most cases, they can no longer afford to take out these insurances. This is also linked to the tax debate and differences in social security systems in the Member States (see the debate in relation to PEPPs).

Question 12: Specify what consumer protection rules in the IDD are particularly useful for consumers. Please provide evidence for your response

BIPAR RESPONSE

BIPAR is the opinion that the IDD is a balanced piece of legislation that can contribute to better consumer protection. Question 12 however, indicates an issue that was also mentioned before: Is there proportionality in some rules in terms of segment of customers? Should all IDD rules be as strictly implemented and applied in all cases of business customers in the same way as for private consumers?

In our above answers we however refer to situations where administrative burden could lead to situations which are not “comfortable” for consumers.

Question 13: Have intrusive supervisory activities have been carried out to assess the application of IDD rules:

BIPAR RESPONSE

BIPAR is of the opinion that a key component of the successful application of the IDD is the role played by EIOPA and national supervisors in ensuring the IDD rules are applied consistently across the EU.

Some Bipar members would appreciate more dialogue with the NCAs.

We learn from most of our members that supervisors have intensively controlled activities of intermediaries.

Question 14: Specify whether supervisory activities have been carried out to ensure IDD application or whether supervisory activities have looked at whether the desired outcomes have been achieved.

BIPAR RESPONSE

Some BIPAR members believe there is a need to apply the principle of subsidiarity on the supervision. The NCAs are guarantors of this principle to allow a better application of the directives in their jurisdiction. In this way, the particularities of each national market can be better taken into account. Some Members would appreciate more dialogue with NCA's.

KEY MESSAGES

- The IDD is a **good and balanced text**, that can bring real benefits to consumers and retail investors.
- Because of the late implementation of the IDD and also the Covid-19 crisis, it is **too early to have a clear view of the impact of the IDD** on the activities of insurance intermediaries and on consumers' protection.
- It is **too early to come up with any conclusive answers re the IDD**. The introduction of new requirements by the IDD is still **too recent to allow for any meaningful conclusions** about their application in practice.
- Our firm view is that full use should be made of the legislation as it stands, rather than to introduce new obligations. There is now **a need for a regulatory stability for our profession**- It is essential to allow time for professionals to adapt to new requirements and to work in this new context. It would be damaging for the industry to add additional layers of regulation when existing regulations have not been effectively assessed.
- **The (lack of) application of the proportionality principle is a serious issue** – there is a need for proportionality to be reflected in the various obligations laid down by the IDD so that its assessment is not left to the subjective appreciation of the actors of the market.
- **Regulatory convergence** must be a key focus in addressing any issue going forward, in this regard EIOPA has a key role to fulfil.
- The main line of thought on digitalisation will have to focus, not on the creation of new standards, but on the application of existing standards to the new models (e.g. distribution of responsibilities between the algorithm and the distributor).
- Some outdated IDD requirements that require for example pre-contractual information to be provided to consumers on paper by default, should be updated.
- **Financial education starting at secondary school level** is important.
- The IDD implementation has, in some cases, resulted in **an increased “formal administrative burden” or “information overload”**. The IDD has in some cases resulted in an unlevel playing field with insurance distributors who are out of scope of the IDD. Cross-selling creates in some cases situations which are considered as being “unfair”. The reality of the needs of the business insurance market compared to the consumer insurance market and the difference between the IBIP's market and the non-life insurance market should be considered when assessing the quality of the IDD implementation.
- Historical development, structure and maturity of the respective markets should be considered when evaluating IDD implementation.