

Report on the application of the Insurance Distribution Directive (IDD)

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EXECUTIVE SUMMARY

The Insurance Distribution Directive (IDD) has been in application since 1 October 2018, but in some cases, transposition of the Directive only occurred over the course of the past year. Given the short period of application of the IDD and the fact that the impact of legislative change takes time to bed in, it is too early to draw robust conclusions about the application of the IDD, especially with regard to Member States where there has been a delay in application. In addition, a number of other factors, such as COVID-19 and digitalisation, have been affecting the market, making it challenging to distinguish the impact of the IDD from other factors. It will therefore be important to reassess the application of the IDD at later stage, prior to proposing any major changes to the legal framework. EIOPA plans to publish a further report on the application of the IDD in two years' time, to help prepare the Commission in their future review of the Directive.

Despite the limitations in terms of evidence and experience on the application of the IDD, this report is intended to provide a preliminary picture of the impact of the IDD on consumers, insurance distributors and supervisory activities. EIOPA ran a survey on the application of the IDD and these responses, along with input from national competent authorities (NCAs), were used in helping to prepare this report.

Changes in the EU insurance distribution market

The IDD has sought to harmonise how insurance is distributed to consumers, yet the insurance distribution market in the EU remains diverse and widely fragmented. There is a wide variety of national distribution channels, registration requirements and reporting frameworks across the EU. This makes 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. EIOPA has sought to gather as much data as possible from NCAs to examine the changes in the EU insurance distribution market. While the data comparability is better than in the Report on the Structure of Insurance Intermediaries Markets in Europe published in 2018, significant gaps exist. Despite the gaps and specific limitations, the following general trends can be observed:

- The decrease in the number of registered intermediaries continued over the period 2016-2020. Possible reasons for the decrease are diverse, ranging from consolidation in the sector, the increasing age of intermediaries, reorganisation in distribution models, stricter professional requirements at national level and deletion of inactive intermediaries from national registers.
- The decline in the number of insurance intermediaries is reflected in a sharp drop in the number of intermediaries registered as natural persons over the period 2016-2020. In

contrast, the number of intermediaries registered as legal persons increased slightly. There could be different reasons for these developments, such as the further professionalisation of the sector and digitalisation.

- While there is significant diversity in terms of national categories of insurance intermediaries, in 2020, the average European insurance intermediary was a natural person, acted on behalf of one or more insurance undertakings, exclusively sold insurance and was 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, it can be noticed that, in 2020, bancassurers played a significant role in the distribution of life insurance while other intermediaries such as agents were very relevant for the distribution of non-life insurance. The amount of online sales, although currently relatively low based on available data, seems to be increasing on a yearly basis, a trend that was further enhanced by the COVID-19 pandemic as intermediaries were operating remotely.
- Despite the decrease in the number of registered insurance intermediaries over the period 2016-2020, the number of insurance intermediaries with a passport has increased in most Member States over the same period. However, no indication can be made on the evolution of the amount of business being written on a cross-border basis as there is currently no European framework for reporting such data.

Impact of the new regulatory framework

Impact on the quality of advice and selling methods

While some trade associations have indicated that the IDD generally had a positive impact on how insurance is distributed to consumers, consumer associations highlighted, in particular, problematic practices in relation to the sale of unit-linked life insurance products and mortgage and consumer credit protection policies.

NCA's have painted a mixed picture, arguing that, in most Member States, the way insurance is distributed has improved, while, in some Member States, there have been concerns that the demands-and-needs test is sometimes too formalistic or even non-existent and that customers are sometimes nudged into ticking a box confirming that the contract chosen is in line with their demands and needs, in particular in online sales.

Level of professionalism and competence of insurance distributors

EIOPA's oversight experience to date indicates that instances of lack of training of insurance distributors need to be considered, especially with regard to certain type of insurance-based investment products (IBIPs) which are not easily understandable to consumers.

In addition, 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.

Digitalisation and growth of new distribution models

Based on the input provided by NCAs and other stakeholders, 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. For instance, the Directive's default-paper based regime for communicating information to customer has not been able to adequately address digital developments. In addition, some challenges were identified in applying the IDD in relation to digital platforms and artificial intelligence (AI). For example, the scope of the IDD definition of "insurance distribution" in an online environment indicated the need for further guidance.

Overlapping information requirements in EU legislation

EIOPA's analysis of legislation adopted at the EU level and input from some trade associations made clear that EU legislation, whilst seeking to promote good consumer outcomes, has also had the effect of increasing the quantity and diversity of information that consumers receive when purchasing insurance. This can lead to an overload of communication and confusion of the customer. Overlapping information requirements across EU legislative frameworks have demonstrated the need to achieve greater coherence and improve the understanding of information disclosures by consumers and this can only be achieved through coordinated changes to different pieces of EU legislation.

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. In EIOPA's view, there is a need to provide further clarifications as to the correct interpretation of the IDD to facilitate supervisory convergence and provide clarity for insurance distributors.

Impact on the supervisory framework

Resources and powers of NCAs and EIOPA devoted to conduct of business supervision

The number of NCAs' resources dedicated to conduct of business supervision has increased moderately between 2018 and 2021, given that NCAs have received additional responsibilities following the implementation of the IDD, such as an explicit mandate to conduct market monitoring.

Nevertheless, EIOPA's oversight work has illustrated that not all NCAs have sufficient tools to carry out effective conduct of business supervision. In particular, it has been observed that both home

and host NCAs have identified difficulties in enforcing key requirements in the IDD where supervisory judgement is required. This resulted in some NCAs needing to take more extreme measures such as product intervention rather than enforcing requirements related to product oversight and governance (POG).

In addition, even though NCAs and EIOPA are able to react to significant consumer protection concerns or a threat to the functioning of financial markets or to the stability of the whole or part of the financial system in the Union and have done so when needed (e.g. Polish KNF's product intervention and cooperation platform work), EIOPA's oversight experience indicates that the use of such product intervention powers entails a lengthy process. Moreover, in EIOPA's view, some NCAs may lack "intermediate powers" between taking adequate remedial measures and banning products.

Apart from that, in EIOPA's view, some NCAs either do not have systematic reporting of data which would allow them to monitor key risks which can arise at the point of sale or are not sufficiently empowered to require the information that is necessary for the purposes of appropriate conduct of business supervision, unless this is done in the context of specific supervisory activities – i.e. this may limit their market monitoring activities. For example, in the process of developing this report, it became evident that many NCAs are not able to provide relevant data, including in relation to aspects where conduct risks emerge (e.g. remuneration). Moreover, in EIOPA's oversight work, it has become evident that some NCAs consider that they are subject to significant limitations on the specific product information they can request from market participants.

Finally, some national limitations exist with regard to the usage of tools (e.g. mystery shopping) which can allow to more concrete measure outcomes rather than simple compliance with regulatory requirements.

Cross-selling of financial products

There are some concerns about the cross-selling of unit-linked products and cross-selling practices by ancillary insurance intermediaries. For example, consumer associations highlighted that credit protection insurance policies are often aggressively sold to consumers and that bundling practices frequently impede the ability of consumers to shop around or carefully study the characteristics and costs associated with credit protection insurance policies.

Level of cross-border business and cooperation between home and host NCAs

Although the number of intermediaries with a passport has increased steadily over the past years, there is room to further enhance cross-border trade. Some stakeholders mentioned that the main obstacles in conducting cross-border business are related to the lack of a harmonised European insurance contract law, social security law and tax law – an issue which also shows the possible disparate outcomes which consumer face in light of the pandemic.

In addition, although they are introduced to better protect consumers, the quantity and diversity of national rules can pose challenges for distributors seeking to expand their activities to other Member States. Apart from that, some trade associations mentioned that there is also a lack of clarity as to when intermediaries are considered to be operating under Freedom to provide services (FoS) or Freedom of establishment (FoE) which can have an adverse impact on cross-border business.

The IDD introduced a new division of competences between home and host NCAs, which was complemented by EIOPA's Decision on the Cooperation of Competent Authorities under the IDD. Nevertheless, EIOPA's experience to date has shown some deficiencies in clearly applying the roles of home and host NCAs in the context of cross-border business. For example, some NCAs experienced challenges with regard to the question whether host NCAs are competent for the supervision of fulfilment of POG requirements for branches, emphasising the need for a clearer division of competences amongst NCAs both for distribution and product manufacturing aspects.

While EIOPA's cooperation platforms have proven beneficial in addressing some cross-border issues in the short term, the application of the IDD over the past three years has nevertheless illustrated the current limitations of cross-border supervision – both in terms of the ability for host NCAs to intervene when they have evidence of mis-selling in their market (based on the existing IDD provisions providing for such intervention) and in terms of the powers for EIOPA to exercise more of a co-ordinating role. NCAs also highlighted that the notification procedure could be carried out in a more consistent and easy manner, for example by using an online form for notifications published on EIOPA's website.

INTERVIEW WITH PROF. DR. PIERPAOLO MARANO



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1. The IDD aims to increase consumer protection and promote a true internal market for life and non-life insurance products and services. To what extent has the IDD achieved a higher level of consumer protection, what were the main barriers to cross-border business, and where do you see changes in the growth of the cross-border business?

It is challenging to assess to what extent the IDD has achieved all its goals given that it has been in application for only about three years.

My feeling is that the IDD generally has had a positive impact on how insurance is distributed to consumers. IDD requires insurance distributors to act in the best interests of their customers. The rules on product oversight and governance anticipate customers' protection to the manufacturing of insurance products. The introduction of the IPID has enabled the customer to make more informed decisions. There are more definite rules in place on remuneration and preventing or managing risks of conflicts of interest. The additional rules on IBIPs should avoid regulatory arbitrage with the ones for financial products, while both rules increase customer protection.

The IDD, instead, does not seem able to achieve its goal of increasing cross-border business. There is a need for further guidance as to when intermediaries are considered operating under FoS/FoE. The spread of Managing General Agents (MGAs) is an emerging trend favouring the cross-border business of insurance companies, but I feel that the current rules do not capture the peculiarities of the MGAs' activities.

The certainty of the rules, however, is only a prerequisite to having an effective cross-border activity. Most intermediaries are individuals rather than organisations. Individuals typically work domestically and often do not have the language skills nor organisation to do cross-border business.

Also, medium-sized or specialised domestic intermediaries purchase foreign intermediaries to acquire the existing insurance book, staff, and network and, therefore, expertise in the new market. These numbers, however, are not captured by the number of intermediaries with a passport.

2. EIOPA's report indicates that the ongoing decreasing trend of total registered intermediaries continued over 2016-2020. What do you see as the reason for this decreasing trend, and how has in your view COVID-19 impacted the structure of insurance intermediaries/markets?

The report has shown that removing inactive intermediaries from the national registers can significantly impact the total number of registered intermediaries. Therefore, NCAs should regularly identify and delete inactive intermediaries from their records to have a more precise market overview. The decreasing number of registered intermediaries is not new but a phenomenon we have observed for many years, including years before the pandemic.

The main reason for the continued decrease in the number of intermediaries is likely the increasing age of intermediaries. The average age of insurance intermediaries in many Member States is around 50 years, so many will retire within the next 15 years. In addition, profit margins also shrink due to competitive pressure and rising compliance costs, thus expelling various intermediaries from the market and raising the entry threshold for new ones.

At the same time, the industry is facing a struggle to attract young talent to replace retirees. Few higher education courses are focused on insurance, making it difficult for the industry to intercept most talents. In addition, the profession has become increasingly complex and demanding, which is also reflected by the stricter professional requirements stipulated by the IDD.

COVID-19 has indicated the need to facilitate digitalisation in the sector further as intermediaries were forced to operate remotely and increase their online presence. Furthermore, the trend towards more online sales will likely continue in the coming years, and the pandemic has strengthened this development. Therefore, intermediaries will need to continue adapting to this development to recover or keep profitability and efficiency.

3. The IDD introduced several new requirements aimed at improving the quality of advice and selling methods. However, EIOPA's work shows that there is limited data available to assess the impact of the IDD on the quality of advice and selling methods. Based on your experience, to what extent did the IDD positively impact the quality of advice and selling methods?

The IDD generally had a positive impact on the quality of advice and selling methods. The directive pursues consumer protection at the point of sale and the product manufacturing/designing stage. The more these protections are integrated, the more they are of benefit to policyholders and industry. Stricter rules concerning POG rules have ensured that potential consumer detriment at the point of sale is mitigated at an early stage, i.e. during the product development phase. Moreover, insurance distributors are always required to specify the demands and needs of their

customers (“the demands-and-needs test”). Therefore, the offer is consistent with their real expectations and needs. At the same time, the products are sold to the target market for which they are manufactured.

Nevertheless, there are some concerns about the quality of advice given to customers in the distribution of IBIPs. Experience with MiFID II has shown that stricter inducement rules pushed distributors to sell products with ongoing advice to obtain commissions which they would otherwise not receive as, under MiFID II, commissions must be designed to enhance the quality of the relevant service to the client. Although the IDD does not require commissions to enhance the quality but to ensure they do not have a detrimental impact on the quality of the relevant service to the customer, we could see a similar development regarding IBIPs.

In addition, there is a lack of clarity on the difference between “generic advice” or “financial guidance”, which is outside the scope of the IDD, “advice” according to Article 2(1)(15) of the IDD and “advice on the basis of a fair and personal analysis” according to Article 20(3) of the IDD.

4. EIOPA's report highlights that the IDD is not fit enough for the digital age and the growth of new distribution models. What are your three main recommendations to make the IDD fit for the digital age?

I believe that the three main recommendations are the following.

1. To adjust the IDD’s default-paper based regime for communication information to the customer to reflect digital developments, including to adjust pre-contractual information requirements to smartphones and other digital devices.
2. To adjust the IDD to address the opportunities and risks arising from the use of AI (robo-advice, fairness in pricing practices, supervision of AI).
3. Monitoring the new digital distribution channels, such as peer-to-peer insurance, to avoid regulatory arbitrages, and address concerns arising from the growth of insurance intermediaries, which take over substantial parts of the activities from insurance undertakings.

5. The evidence gathered by EIOPA has shown challenges both for industry in applying some aspects of the IDD and for NCAs to supervise those provisions. For example, in EIOPA’s view, it could be beneficial to give additional guidance concerning the exemption of ancillary insurance intermediaries from the IDD. How do you think this exemption affects the management of distribution risks in online distribution?

The exemptions from the IDD need to be better specified, as well as adapted to online distribution. More clarity is needed to ensure uniformity across the Member States in the application of the IDD. For example, it lacks a definition of “travel” and, therefore, it is unclear when the related exemption applies: Is the cable car ride, the access and descent on the ski slopes, travel? The 600€ threshold is

not clear how it applies to multi-year contracts. Is it the total cap regardless of the duration? Is it the cap for each year of duration? The amount of the premium refers to the "insurance product". If an insurance coverage includes more than one item (e.g. ten photocopiers), the insurance product means the coverage? Each item? If ten insurance coverage (one for each item) are issued, and the premium is below 600€ for each of them, is the exemption rule respected?

Moreover, the interplay between IDD and Package Travel Directive should be clarified. The IDD sets forth that, where an insurance product is ancillary to a good or a service which is not insurance, as part of a package or the same agreement, the insurance distributor shall offer the customer the possibility of buying the good or service separately. However, the Package Travel Directive provides that the pre-contractual information before any package travel contract binds the traveller includes information on optional or compulsory insurance to cover some costs/risks. Which directive applies to the insurance distribution by the exempted ancillary insurance intermediaries, i.e., the travel agents?

Regarding the online distribution, the criteria used to exempt from the IDD rules are the premium paid and the risk covered by each insurance contract. These criteria do not consider the number of contracts that each ancillary insurance intermediary can distribute. Nature (risk) and size (premium) of the individual economic relationship (insurance contract) are deemed adequate to balance the need for protection and the burden for distributors. In contrast, considering the overall number (scale) of these economic relationships is deemed irrelevant. However, online distribution makes it possible to reach an indefinite number of people and facilitate cross-border activities of insurers, and some exempted firms generate an enormous amount of premiums to collect. Therefore, the exemption from the IDD rules is likely to increase distribution risks for insurers and be detrimental to costumers to a greater extent for online activities than face-to-face activities that the EU legislator has mainly considered.

Also, standardising and automating the relationship between distributors and customers allows for repeating the same mistake indefinitely if corrective action is not activated. However, the lack of insurance expertise of the exempt ancillary intermediaries is likely to postpone discovering the systematic error that depends on the automation of this relationship. Moreover, the exemption threshold may also constitute an incentive for regulatory arbitrage. The higher the compliance costs required of distributors by the IDD, the greater the incentive for intermediaries to evade these costs. Thus, they might prefer distributing products that allow them to stay within the exemption threshold regardless products meet the interests and needs of the target market.

6. 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 2023?

I expect that the 2023 report can provide more evidence of the impact of IDD.

Data on the quality of advice and selling methods would be appreciated, for example, by providing information on the outcome of mystery shopping activities. The latter can be a useful supervisory tool to check the quality of the business practices because it allows focusing on the substance of these practices rather than the compliance with the forms. The outcomes of the mystery shopping can support, in the first instance, soft law interventions by supervisors to persuade the market to increase the quality of the relationship with customers and provide valuable tips about behaviour to be avoided. In contrast, regulatory interventions should only be a last resort remedy.

The outcomes from monitoring the developments of Insurtech and the ability of the IDD to regulate these developments, including new digital distribution channels, would be in line with my expectations too.

Finally, I would like to highlight how Solvency II states that the main objective of insurance regulation and supervision is the protection of policyholders. The IDD has several rules to achieve this and has taken a forward-looking approach. The POG rules call on supervisors to prevent the distribution of harmful products. NCAs should increase the quality and quantity of staff dedicated to overseeing business practices, including cross-border activities that are currently the subject of cooperation between authorities limited to solvency profiles. EIOPA must contribute to strengthening client protection and supervisory convergence in the internal market. Therefore, I expect the next report to indicate that EIOPA can examine, and indeed has examined in further detail, the powers and resources of NCAs to carry out proper conduct of business supervision, also taking into account the experience and qualifications of employees.

INTRODUCTION

Under Article 41(4) of the IDD, “EIOPA shall prepare a report on the application of this Directive” and has to deliver such a report every two years. EIOPA postponed the delivery of this report from 23 February 2020 to December 2021, taking into account the delayed transposition and application date of the IDD, data needs and existing reporting frameworks at the national level, and also in the light of delayed reporting requirements because of the COVID-19 pandemic.

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.¹

This report is intended primarily to be backward-looking and to consider how the IDD has been applied in the different EU Member States. Its focus is, therefore, not on how the IDD could be improved (which will be the subject of a more thorough review at a later date by the Commission envisaged under Article 41(2), IDD).

¹ There are other initiatives under way or due for completion at the EU level related to this report:

- In March 2020, the European Commission launched a [retail investor study](#) covering disclosure, inducements and suitability rules
- In September 2020, the European Commission published a [Digital Finance Strategy](#) which indicates that it will propose “the necessary adaptations to the existing financial services legislative framework with respect to consumer protection and prudential rules, in order to protect end-users of digital finance, safeguard financial stability, protect the integrity of the EU financial sector and ensure a level playing field.”
- In September 2020, the European Commission published a [Capital Markets Union \(CMU\) Action Plan](#) which indicates that it will, amongst others, assess “the applicable rules in the area of inducements and disclosure” and “the feasibility of setting up a pan-EU label for financial advisors.”
- In July 2021, the European Commission sent a [call for advice](#) to EIOPA regarding certain aspects relating to retail investor protection. The European Commission requests EIOPA to deliver the report to the Commission services by 30 April 2022. The call for advice covers IBIPs regulated by the IDD.

In order to gather data and evidence on the application of the IDD, EIOPA launched several surveys addressed to NCAs, insurance intermediaries, insurance undertakings, trade and consumer associations. Annex I provides an overview of the different data sources of the report.

In particular, in November 2020, EIOPA launched an online survey addressed to stakeholders to gather feedback on the experience with the application of the IDD.² Annex II includes a summary of the input provided by stakeholders.

² https://www.eiopa.europa.eu/document-library/survey/survey-application-of-insurance-distribution-directive-idd_en

1. CHANGES IN THE EU INSURANCE DISTRIBUTION MARKET

In 2018, EIOPA published a report on the Structure of Insurance Intermediaries Markets in Europe³ in accordance with Article 41(5) of the IDD. The evaluation indicated that “the European insurance intermediation market is characterised by a very wide diversity of local distribution channels and different definitions adopted at the national level. Registration practices and reporting frameworks also vary amongst Member States, contributing to the diversity in terms of size of European intermediaries markets”.

In 2021, EIOPA launched a survey addressed to NCAs, BIPAR (European Federation of Insurance Intermediaries) and Insurance Europe to gather information on the structure of the insurance distribution market, patterns of cross-border activity and impact on SME intermediaries in order to provide an updated picture of the EU insurance distribution market.

Sections 1.1, 1.2 and 1.3 highlight the main conclusions from the survey. Annex III provides additional information on the outcome of the survey and Annex IX indicates country-specific information.

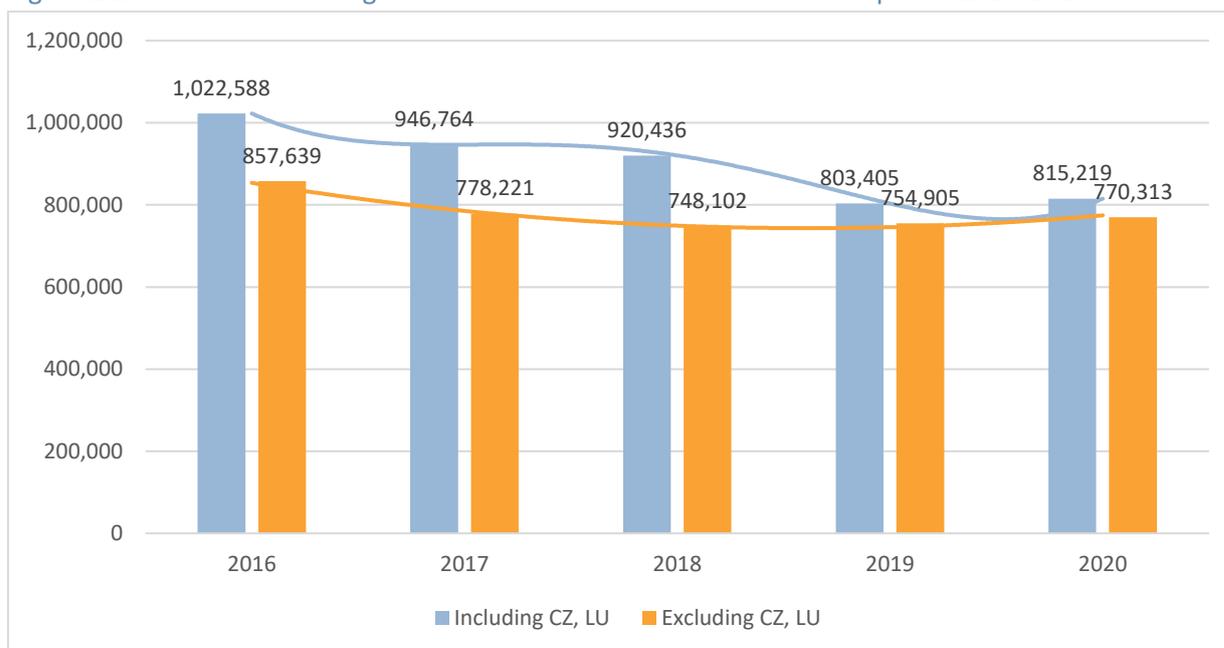
1.1 THE STRUCTURE OF THE INSURANCE DISTRIBUTION MARKET

Under Article 3 of the IDD, “*Insurance, reinsurance, and ancillary insurance intermediaries shall be registered with a competent authority in their home Member State*”. There are differences as to how intermediaries are registered in their home Member State, in the national categories of insurance intermediaries and in the approaches by NCAs to collect data. This is also linked to the fact that Article 3(2) of the IDD provides that “*Member States may establish more than one register for insurance, reinsurance, and ancillary insurance intermediaries provided that they lay down the criteria according to which intermediaries are to be registered*”. EIOPA, therefore, encountered some challenges in providing an accurate picture of the number of registered insurance intermediaries in the EU and at national level.

³ https://www.eiopa.europa.eu/media/news/eiopa-evaluates-european-insurance-intermediaries-markets_en

25 NCAs⁴ have provided EIOPA with information on the number of registered insurance intermediaries over the period 2016-2020.⁵ Based on the data from those 25 NCAs, there were 815,219 registered insurance intermediaries⁶ in these markets at the end of 2020.

Figure 1.1: Total number of registered insurance intermediaries over the period 2016-2020



Decrease in number of registered intermediaries from 2016-2020

In terms of the level of change in the number of registered intermediaries, the blue trend line of figure 1.1 shows that the total number of registered insurance intermediaries decreased significantly from 2016 to 2020, a trend which has been going on for several years⁷. It is important to note that, following the deletion of inactive insurance intermediaries from the national registers, the number of registered insurance intermediaries in CZ decreased sharply from 162,791 to 38,481 in 2018/2019 and in LU from 10,019 to 6,905 in 2019/2020. This has had a significant impact on the overall decrease in the number of insurance intermediaries.

In order to have a better comparison across Member States of the data over the period from 2016-2020, the amber columns of figure 1.1 exclude the number of CZ and LU insurance intermediaries.

⁴ Please note that hereinafter where it is referred to a number of NCAs, this refers to the number of Member States (i.e. NCAs from 25 Member States have provided EIOPA with information on the number of registered intermediaries over the period 2016-2020)

⁵ GR, HU, IE and NL have provided information on the number of insurance intermediaries for 2019 and 2020 only. LT has provided only limited information for 2016-2019

⁶ This includes registered ancillary insurance intermediaries and excludes ancillary insurance intermediaries exempt from the IDD

⁷ See EIOPA's report on the Structure of Insurance Intermediaries Markets in Europe: https://www.eiopa.europa.eu/media/news/eiopa-evaluates-european-insurance-intermediaries-markets_en

As illustrated in the chart, there was a significant decrease in the number of registered insurance intermediaries from 2016 to 2018, followed by an increase since 2018 which can be explained by an increase in the number of insurance intermediaries registered in RO from 40,402 to 69,932 over the period from 2018 to 2020. The Romanian ASF mentioned that the increase is a result of a large variety of distribution channels (e.g. all kind of shops, financial institutions, dealers, real estate agencies) and mandatory registration of insurance intermediaries into the national register.

It proved challenging for EIOPA to identify specific factors leading to these market developments as different markets experienced different trends. For example, in six Member States (CY, DK, FR, HR, SE, SI), the total number of registered intermediaries increased from 2016 to 2020, whereas in 14 other Member States (AT, BE, BG, CZ, DE, ES, LI, LU, LV, MT, PL, PT, RO, SK), the number decreased over the same period. In five Member States (EE, FI, IS, IT, NO), the total number of registered intermediaries remained relatively stable.

Some NCAs have provided explanations for the decrease in the number of insurance intermediaries. For example, BE highlighted that the main reasons why intermediaries have ceased their activities are consolidation in the sector, the increasing age of intermediaries and reorganisation in distribution models. The Czech National Bank and Portuguese ASF mentioned that the decrease in the number of insurance intermediaries could be a result of additional requirements included in national legislation transposing the IDD (e.g. stricter professional requirements).

Most intermediaries act on behalf of one or more insurance undertakings

The IDD (like its predecessor, the Insurance Mediation Directive) does not provide a definition of the different types of insurance intermediaries, such as agents, subagents, underwriting agents, brokers and bancassurance operators, but takes an activity-based approach. This resulted in the fact that from a nomenclature perspective, intermediaries are categorised in many different ways in different Member States, despite the fact that they may carry out similar activities.

For the report on the Structure of Insurance Intermediaries Markets in Europe, EIOPA took an approach based on a basic set of categories of intermediaries. However, the fact that they may be categorised differently in different Member States, made it difficult to compare data at a European level.

Taking into account the lessons learnt from the previous report and the fact that notwithstanding differences in the nomenclature adopted for national categories, activities carried out by insurance intermediaries – at least in terms of services provided to customers – are similar, for this report, EIOPA has revised the approach.

To promote more comparability of data, EIOPA has gathered information on the number of registered insurance intermediaries acting on behalf of:

- 1 one or more insurance undertakings⁸;
- 2 one or more insurance intermediaries⁹; or
- 3 the customer¹⁰.

Despite this new approach aimed at increasing the comparability of data across Member States, 11 NCAs indicated that they are not able to provide data on the number of insurance intermediaries split by the categories above for 2020.¹¹

19 NCAs were able to provide the relevant data. Based on the data from those 19 NCAs, figure 1.2 shows that, during 2020, in 13 out of the 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, IT 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 FR, LI and NO¹². The chart should be interpreted carefully as there are limits to the data quality and level of comparability across Member States.¹³

⁸ 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).

⁹ For example, sub-agents or sub-brokers generally act on behalf of one or more insurance intermediaries.

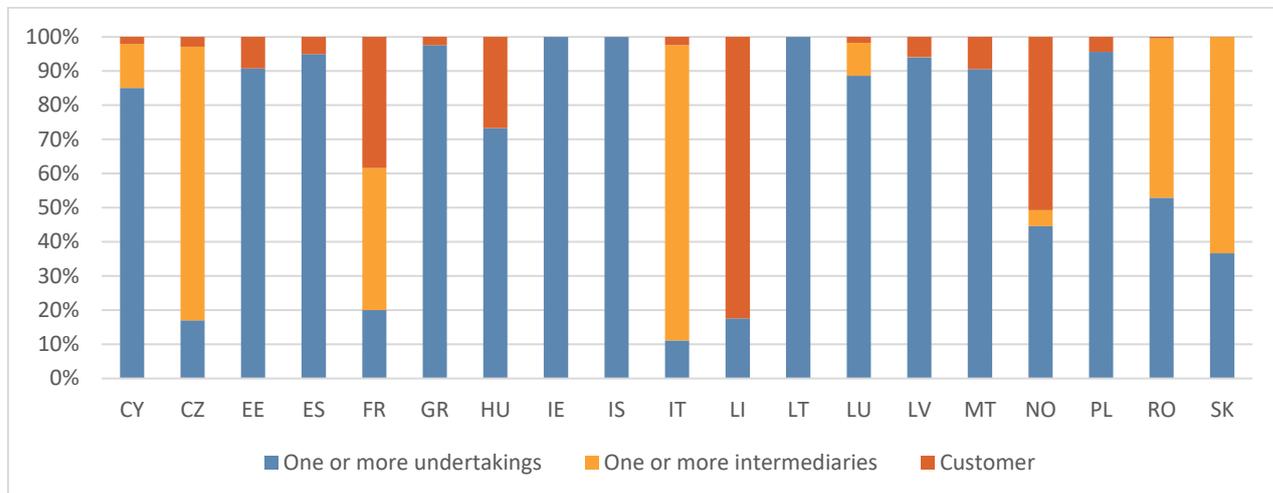
¹⁰ For example, insurance brokers generally act on behalf of the customer and work with several insurance undertakings to help the customer to cover his/her insurance needs. Unlike insurance agents, insurance brokers do not have a direct contractual relationship with one or more insurance undertakings to place business on an exclusive basis.

¹¹ The 11 NCAs indicated that, for 2020, they are not able to provide information on the number of intermediaries acting on behalf of one or more undertakings (DK, FI, NL, SE, SI), one or more intermediaries (AT, BG, DE, DK, FI, NL, PT, SE, SI) or the customer (BE, BG, FI, HR, NL, PT, SE, SI).

¹² In NO, domestic insurance undertakings maintain and keep a registry of their own insurance and ancillary insurance agents, according to law, while Finanstilsynet only registers in its registry insurance agent undertakings which represent foreign insurance undertakings. The number of brokers compared to insurance agents in the Norwegian market therefore seems prevalent.

¹³ 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 two Member States, intermediaries cannot act on behalf of another intermediary (PL) or on behalf of more than one intermediary (HU). 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 2020



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

Most NCAs provided very limited data on the type of remuneration of insurance intermediaries. Nevertheless, it is clear from the responses received that the commission-based model remains the prevailing practice in most Member States.¹⁴

It should be noted that six Member States (DK, FI, HR, NL, RO, SK) have limited or prohibited the acceptance or receipt of fees, commissions or other monetary or non-monetary benefits in relation to the distribution of any insurance product (Article 22(3) of the IDD). Nine Member States (CZ, FI, HR, IE, IT, NL, RO, SE, SK) have prohibited or further restricted 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) of the IDD).

Most intermediaries only sell insurance

For the purpose of its report, EIOPA gathered information on the number of insurance 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)

¹⁴ AT, BE, BG, CZ, DE, EE, ES, FI, FR, IE, IT, LT, LV, MT, PL, PT, RO, SE, SI, SK

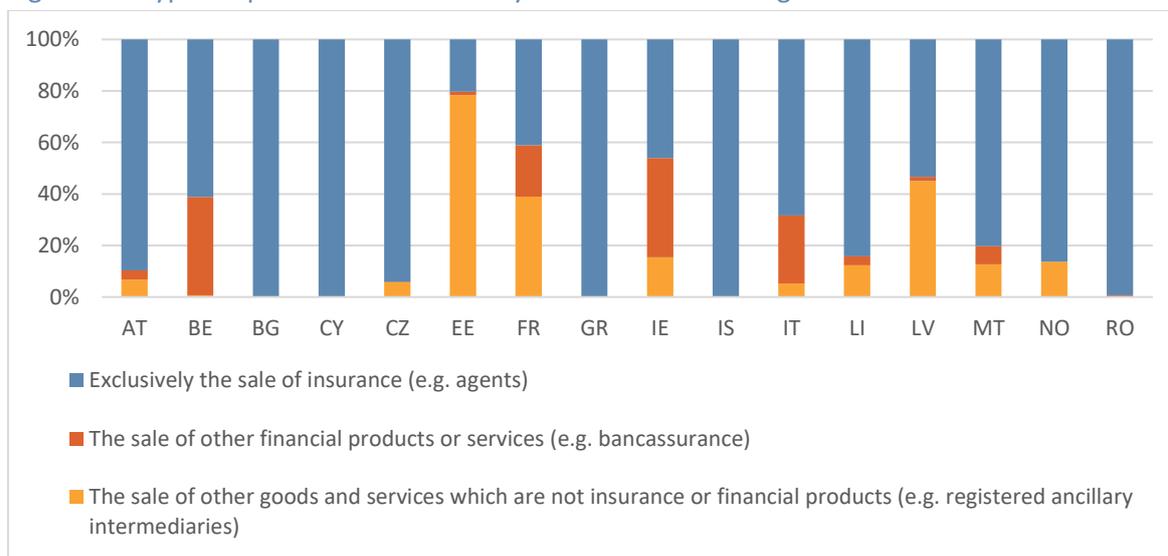
16 NCAs were able to provide data on the number of intermediaries classified into the three categories above for 2020¹⁵. Based on the data from those 16 NCAs, figure 1.3 shows that in 13 out of the 16 Member States, during 2020, the majority of insurance intermediaries distributed only insurance products 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. It is interesting to note that in BG, CY, GR, IS and RO 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 BE, FR, IE and IT, 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 EE, FR and LV, there was a relatively high number of intermediaries selling other goods and services which are not insurance or financial products compared to other markets.

The chart should be interpreted carefully as there are limits to the data quality and level of comparability across Member States.¹⁶

Figure 1.3: Types of products distributed by intermediaries during the course of 2020



¹⁵ 14 NCAs indicated that, for 2020, they are not able to provide information on the number of intermediaries which distribute insurance products as part of the sale of other financial products or services (DE, DK, FI, HR, HU, LU, NL, PL, PT, SE, SI, SK), the sale of other goods and services which are not insurance or financial products (DE, ES, FI, HR, LT, LU, NL, PT, SE) or exclusively the sale of insurance (DE, DK, ES, FI, HR, LU, PT, SE)

¹⁶ For example, in CZ, the sale of insurance along with other financial products/services or other goods/services which are not insurance or financial products is often done via group insurance policies, which are outside the scope of their data set on insurance intermediaries. In IE, 2019 ancillary intermediary data has been used for 2020 as 2020 return data was not available. For NO, the figures only relate to insurance agent undertakings and ancillary insurance undertakings which are registered in Finanstilsynet's registry. Finanstilsynet only keeps registry of insurance agent undertakings and ancillary insurance agent undertakings which represent foreign insurance undertakings.

Bancassurers remain dominant in life sector with other intermediaries such as agents being prevalent in non-life sector

For the purpose of its report, EIOPA has 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
- Insurance intermediaries other than credit institutions

15 NCAs were able to provide data on the total volume of GWP (split in life and non-life) by the three distribution channels indicated above for 2020¹⁷. Based on the data provided by those 15 NCAs and some industry bodies, the figures 1.4 and 1.5 indicate that credit institutions acting as insurance intermediaries played a significant role in the distribution of life insurance products in terms of GWP generated (in particular, in ES, FR, GR, HR, IT, LU, LV, MT, PT) during 2020, while they were not so prevalent in the distribution of non-life products.

Insurance intermediaries other than credit institutions were very relevant for the distribution of non-life insurance as they accounted for over 50% of the GWP in all Member States. Direct sales were popular in EE (in particular for life insurance).

In IS, the total volume of GWP was generated by insurance intermediaries other than credit institutions in 2020.

The charts should be interpreted carefully as there are limits to the data quality and level of comparability across Member States.¹⁸

¹⁷ 15 NCAs indicated that, for 2020, they are not able to provide data on the GWP by intermediaries other than credit institutions (AT, BE, DE, DK, FI, FR, IE, NL, NO, RO, SE, SK), credit institutions acting as insurance intermediaries (AT, BE, DE, DK, FI, FR, IE, MT, NL, SE) or direct business (AT, BE, DE, DK, FI, FR, IE, LI, NL, RO, SE), split by life and non-life (CZ).

¹⁸ For example, for FR and MT, 2019 data from the [French Insurance Federation](#) and [Insurance Europe](#) was used. For CY, it was assumed that direct business represents 10% and credit institutions 5% of the total gross premiums. For EE, with regard to data concerning insurance intermediaries other than credit institutions, the graph shows the GWP written via insurance brokers and insurance agents (including bancassurance). With regard to PL and "credit institutions acting as an insurance intermediary", the graph shows only data for Banks and Credit Unions acting as an insurance intermediaries. "Insurance intermediaries other than credit institutions" includes total GWP - (direct business GWP + Banks and credit unions GWP) in order to present true "total" values

Figure 1.4: GWP per distribution channel, Life (2019/2020)

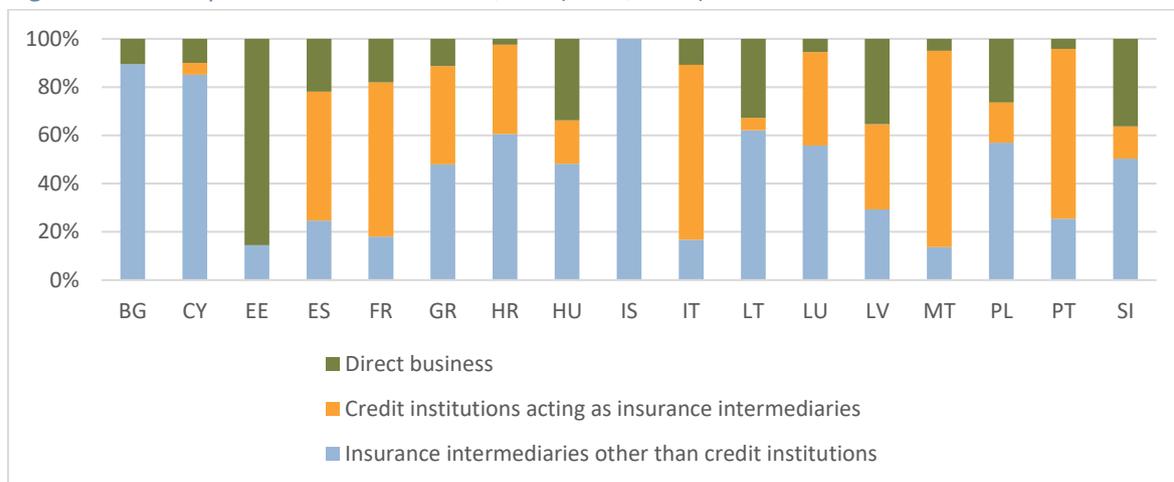
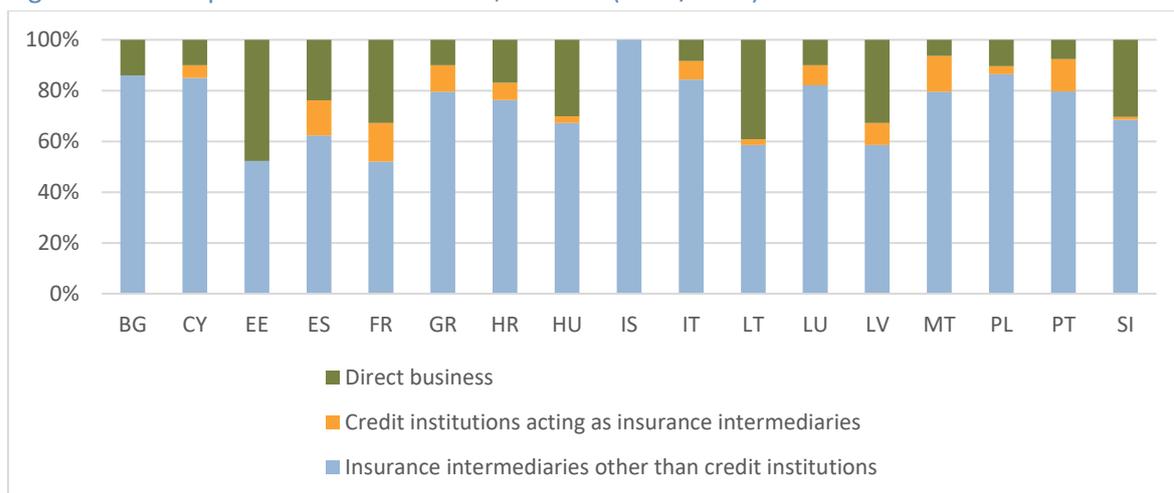


Figure 1.5: GWP per distribution channel, Non-life (2019/2020)



Amount of online sales is increasing

EIOPA asked NCAs and trade associations to provide an approximate indication of the proportion of online intermediation/sales (e.g. directly via websites, mobile applications, e-mails) in their market in terms of the total volume of GWP.

Based on the data for 13 Member States¹⁹ provided by NCAs and some trade associations, the proportion of online sales in terms of total volume of GWP remains relatively low in many Member States, ranging mostly from 0.2% to 2%. It is interesting to note that for DK and EE, it is estimated that online sales account for 80% of the total volume of GWP and the proportion of online sales in LV is relatively high as well (70% for non-life insurance). Online sales seem to be increasing on a

¹⁹ BE, CY, CZ, DK, EE, ES, HR, IT, LT, LV, PT, RO, SI

yearly basis and it is likely that this trend will continue as this trend is being further enhanced by the COVID-19 pandemic and social distancing measures.

1.2 PATTERNS OF CROSS-BORDER ACTIVITY AMONGST INSURANCE DISTRIBUTORS

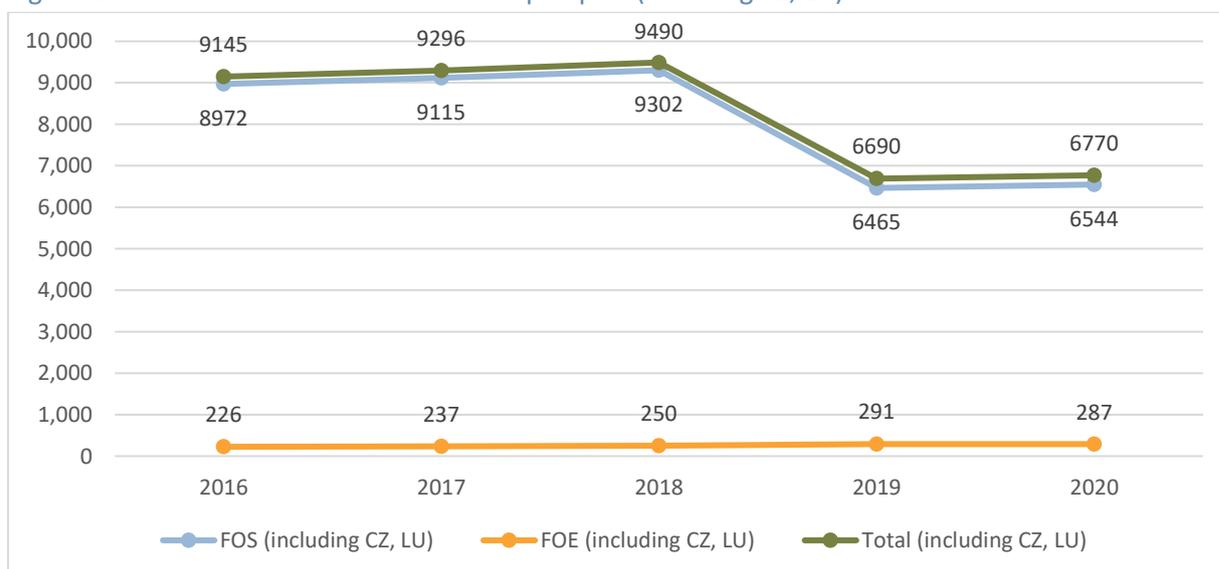
Increasing number of insurance intermediaries operating with a passport

EIOPA gathered data from 19 NCAs in order to assess the patterns of cross-border activity amongst insurance intermediaries over the period 2016-2020.²⁰

Based on the data provided by those 19 NCAs, figure 1.6 shows the number of insurance intermediaries with a passport FoS and FoE over the period 2016-2020. In 2020, there were 6,770 insurance intermediaries with a passport to operate in another Member State and most 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. Therefore, no indication can be made about the actual amount of business being written on a cross-border basis.

Figure 1.6: Insurance intermediaries with a passport (including CZ, LU)

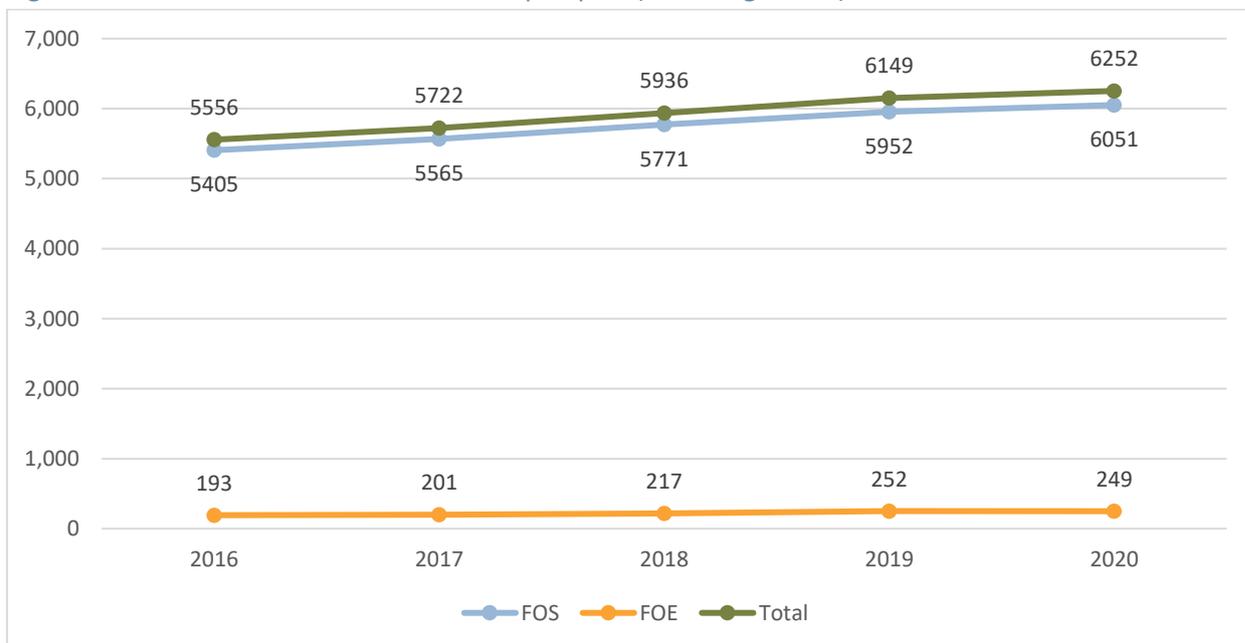


²⁰ DK provided data for 2018-2020 only. FI provided data only for 2016, 2017 and 2020. GR provided data only for 2019 and 2020. In addition, HU, IE, MT, and PL provided data only for 2020. DE provided data only for 2021. NL only provided information on the total number of passporting insurance intermediaries. SE only provided data with regard to FoE. SK provided data split by FoS/FoE only for 2020

Figure 1.6 shows that the number of domestic insurance intermediaries with a passport first increased from 2016-2018, but then decreased sharply from 2018 to 2019. It is important to note that the decrease in the total number of domestic insurance intermediaries with a passport from 2018 to 2019 can be explained by a decrease in the number of the Czech insurance intermediaries with a passport from 3,378 in 2018 to 351 in 2019. The Czech National Bank indicated that the sizeable drop in the number of passporting insurance intermediaries is due to a decrease in the number of registered insurance intermediaries, brought about by the deletion of inactive insurance intermediaries from the national register (see Section 1.1). In LU, where inactive intermediaries were deleted from the national register as well, the number of passporting intermediaries dropped from 190 in 2019 to 183 in 2020.

In order to have a better comparison across Member States of the data, figure 1.7 excludes the data from the Czech National Bank and the Luxembourg CAA. It is clear from figure 1.7 that the total number of insurance intermediaries with a passport has increased steadily over the period from 2016-2020²¹ despite the fact that over the same period, the overall number of insurance intermediaries has decreased. In 15 Member States (BE, BG, CY, EE, ES, FI, FR, IT, LT, NL, NO, PT, RO, SI, SK), the number of domestic insurance intermediaries with a passport have increased over the period 2016-2020. Only in 6 Member States (AT, CZ, HR, LI, LU, LV), a decrease in the number of passporting intermediaries can be observed.

Figure 1.7: Insurance intermediaries with a passport (excluding CZ, LU)



²¹ Figure 1.7 excludes the figures of CZ and LU

1.3 IMPACT OF THE IDD ON INSURANCE INTERMEDIARIES WHICH ARE SMES

Concerns raised over the application of the IDD to some smaller intermediaries

EIOPA is required under the IDD in preparing this report to “*examine the impact of the Directive on insurance intermediaries which are small and medium-sized enterprises*”. A concern which is, from time to time, raised by trade associations and individual insurance distributors is that the administrative burden stemming from the IDD may not, in their view, be proportionate with regards to the need to ensure an appropriate level of protection for consumers, in particular for smaller or medium-sized insurance intermediaries. This was also reflected in the responses to EIOPA’s online survey.²²

For example, some trade associations²³ indicated that the IDD implementation and other regulation may be perceived as burdensome for smaller intermediaries, both in terms of resources and financial burden. In addition, some trade associations²⁴ expressed the view that smaller intermediaries may not be able to afford staff dedicated only to managing regulatory compliance issues and that the use of external service providers for this has a significant cost and impact on their operations.

The IDD introduced the proportionality principle in order to address these concerns and ensure that the directive is not “*too burdensome for small and medium-sized insurance and reinsurance distributors*” (Recital 72). The proportionality principle applies in relation to a variety of areas in the IDD, for example:

- Continuous professional development requirements (“*taking into account the nature of the products sold, the type of distributor, the role they perform, and the activity carried out within the insurance or reinsurance distributor*” – Article 10(2), subparagraph 2);
- Conflicts of interest (“*arrangements shall be proportionate to the activities performed, the insurance products sold and the type of the distributor*” – Article 27).

Exercising the proportionality principle does not mean, however, there is a need to apply exemptions or waivers based on the size of the intermediary or activity performed.

²² https://www.eiopa.europa.eu/document-library/survey/survey-application-of-insurance-distribution-directive-idd_en

²³ Insurance Europe’s contribution to EIOPA’s [IDD Application Report survey](#)

²⁴ BIPAR

Some trade associations highlighted in EIOPA's survey²⁵ that the potential regulatory burden on intermediaries could be mitigated through a more effective application of the proportionality principle. For example, some trade associations²⁶ saw the need for simplification of the POG process for simple products (without, at the same time, implying any circumvention of basic POG requirements) to ensure that the proportionality principle is respected. In addition, some trade associations²⁷ have perceived the need to include a general principle of proportionality in the IDD, as is the case already in Solvency II²⁸, to allow more flexible rules in Levels 2 and 3 without changing the IDD and adapting the administrative burden to the type of product and size and activity of the distributor.

Recital 72 indicates that the proportionality principle should not only apply to the requirements imposed on the insurance distributors, but also to the exercise of supervisory powers. Recital 23 clarifies that, "in order to ensure the effectiveness of supervision, all actions taken by the competent authorities should be proportionate to the nature, scale and complexity of the risks inherent in the business of a particular distributor, regardless of the importance of the distributor concerned for the overall financial stability of the market." Furthermore, Article 31(1) states that administrative sanctions and other measures should be "effective, proportionate and dissuasive".

In December 2020, EIOPA published its first annual report on administrative sanctions and other measures under the IDD. The report concluded that, in 8 Member States, NCAs imposed a total of 1,923 sanctions from 2018 until the end of 2019²⁹. However, over 95% of these sanctions were imposed by three Member States only. Approximately 75% of the 1,923 sanctions were for breaches of the professional and organisational requirements (Article 10) and around 20% of sanctions were imposed for breaches of the registration requirements (Article 3).

Some trade associations³⁰ mentioned in EIOPA's survey that, in most Member States, supervisory activity has been proportionate, effective and consistently applied across the EU and that supervisors have intensively controlled the activities of intermediaries.

²⁵ BIPAR, Insurance Europe

²⁶ Insurance Europe

²⁷ Insurance Europe

²⁸ Article 29(3), Solvency II: 3. "Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking"

²⁹ https://www.eiopa.europa.eu/document-library/report/annual-report-administrative-sanctions-and-other-measures-under-insurance_en – See pages 8 and 9 for an overview of number of sanctions per Member State

³⁰ Insurance Europe, BIPAR

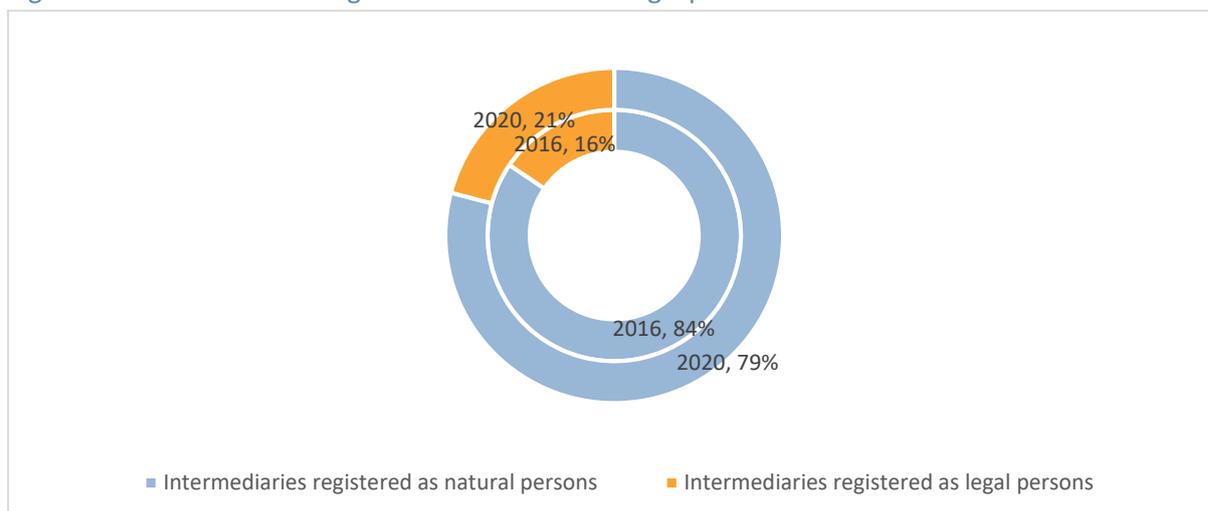
Decreasing number of intermediaries registered as natural persons

In order to assess the impact of the IDD on smaller insurance intermediaries, EIOPA sought to collect information from NCAs on the number of registered insurance intermediaries which are SMEs. However, given that there is no single definition of “SME” applied by all NCAs³¹, EIOPA gathered information on the number of registered intermediaries split between natural and legal persons.

24 NCAs³² provided information on the number of registered insurance intermediaries split between natural and legal person for 2016 and 2020. Figure 1.8 shows that, in 2020, insurance intermediaries registered as natural person represented 79% of the total number of insurance intermediaries, 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 669,670 (2016) to 466,942 (2020).

Over the same period, the number of intermediaries registered as legal persons increased from 123,007 (2016) to 123,278 (2020). There could be different reasons for these developments, such as the further professionalisation of the sector and digitalisation. Some trade associations indicated that for SME intermediaries, in a growing number of markets, they see an increase in the number of sales or consolidation of business/business closures which they perceive to be the result of regulatory burden (but could also be due to other causes) that could, in their view, lead to a situation where, over the long term, consumers may receive fewer services.³³

Figure 1.8: Intermediaries registered as natural and legal persons in 2020 and 2016



³¹ EU recommendation 2003/361: https://ec.europa.eu/growth/smes/sme-definition_en. The Commission is currently evaluating the existing definition for a possible revision.

³² AT, BE, BG, CY, CZ, DK, ES, FI, FR, HR, IS, IT, LI, LT, LU, LV, MT, NO, PL, PT, RO, SE, SI, SK

³³ BIPAR

Intermediaries operating remotely in the context of COVID-19

Given that there are other ongoing developments, such as the COVID-19 pandemic, it is difficult to clearly isolate the impact of the IDD on insurance intermediaries which are SMEs. As a result of the COVID-19 related restrictions, more interaction between insurance intermediaries and customers has been carried out digitally. In several Member States, such as BG and IT, most intermediaries have implemented new methods to sell products remotely – payment and communication methods, including mobile apps, chat boxes – and to handle claims – online consultations and other online tools such video-appraisals, digital signatures, etc.³⁴

Article 10(2), subparagraph 2 of the IDD foresees that insurance intermediaries and their employees complete at least 15 hours of professional training or development per year, but at the same time, the level of professional training or development per year could also be longer bearing in mind the need to “take into account the nature of the products sold, the type of distributor, the role they perform, and the activity carried out within the insurance or reinsurance distributor”. During the COVID-19 pandemic, insurance intermediaries have complied with this requirement by completing webinars, e-learning and online courses as national legislation allows for the provision continuing professional development (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.

³⁴ See EIOPA’s Consumer Trends Report 2020: https://www.eiopa.europa.eu/document-library/consumer-trends-report/consumer-trends-report-2020_en

2. IMPACT OF THE NEW REGULATORY FRAMEWORK

In November 2020, EIOPA launched a survey on the application of the IDD. The aim of the survey was to gather feedback from stakeholders on the experience with the application of the IDD, in particular on the improvement of quality of advice and selling methods and possible further improvements identified after the application of the IDD. Annex II includes a summary of the input provided by stakeholders.

In addition, during the course of 2020-2021, EIOPA launched several questionnaires addressed to NCAs to gather input that is available at national level that could be used for this report.

Sections 2.1 to 2.5 highlight the main conclusions from the surveys. Annex IV complements Section 2.1 and provides additional information on the new requirements concerning advised and non-advised sales brought in by the IDD. Annex V complements Section 2.2 and includes a detailed summary of the main findings of EIOPA's survey addressed to NCAs on IDD requirements concerning knowledge and competence of advisors distributing IBIPs. Annex VI complements Section 2.4 and provides more detailed information on overlapping information requirements in EU legislation. Annex VII complements Section 2.5 and provides additional examples of IDD provisions for which there is a need to provide additional guidance.

2.1 IMPACT ON THE QUALITY OF ADVICE AND SELLING METHODS

IDD has introduced new rules aimed at improving the quality of advice and selling methods

The IDD introduced a broader notion of “insurance distribution” (compared to its predecessor legislation, the Insurance Mediation Directive), covering a broader scope of providers of insurance (including direct sales by insurance undertakings). In addition, it introduced a number of new requirements regarding sales practices for insurance products, in particular, including a definition of “advice” and the inclusion of the activity of advising in the definition of insurance. Annex IV provides more details on the new requirements brought in by the IDD.

Since the IDD is aimed at minimum harmonisation, several Member States have introduced national provisions governing advised or non-advised sales in addition to those set out in the IDD with the aim of providing additional protection for consumers purchasing insurance. For example:³⁵

- AT, BG, EE, EL, HU, LU, RO and SK have made the provision of advice mandatory for the sale of any insurance product, or for certain types of insurance products; and

³⁵ See EIOPA's report analysing national general good rules:
https://www.eiopa.europa.eu/sites/default/files/working_groups/reports/eiopa_idd-general_good_july2019_0.pdf

- CZ, EL, HU, IT, LU, PL, RO and SK have made the provision of advice mandatory for the sales of any IBIPs, or for certain types of them. Some Member States have made the provision of advice on IBIPs not mandatory, but have adopted stricter provisions on the assessment of suitability or appropriateness. For example, in FR, the assessment of appropriateness has to take into account the financial situation and the investment objectives of the client.³⁶

Limited data available to assess quality of advice and selling methods

EIOPA has sought to gather evidence to assess whether the quality of advice and selling methods have improved following the implementation of the IDD. However, there is, unfortunately at present, limited data available to make this assessment as 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. In addition, a number of other factors, such as COVID-19 and digitalisation, have been affecting the market, making it difficult to separate the impact of the IDD from other factors.

For example, it might take some time for any clear evidence of mis-selling of specific insurance products to emerge. Most IBIPs are sold for longer term (e.g. over 10 years) and generally mis-selling issues emerge when consumers surrender their policies, which makes it hard to understand whether advice has improved. Similar complaints data takes two to three years to consolidate before specific issues can be identified. Supervisory activities which are generally risk-based may not yet look into IDD-specific issues, but rather they may aim at addressing risks which have already materialised and NCAs could not be in a position to apply supervisory tools such as for example requiring the tape recording of telephone conversations between insurance intermediaries and customers as these tools are not currently provided for under the IDD. Finally, COVID-19 has had an impact on how insurance is sold to customers as well (see Section 1.3).

The Dutch AFM indicated that they have not carried out investigations or reviews focused on the quality of advice *per se*, as these are resource intensive in relation to the risks identified. However, they indicated that a set of measures – inducement ban, general duty of care, POG norms, among others - that were implemented in NL in 2013-14 in reaction to mis-selling of interest rate derivatives and IBIPs has proved to be effective in preventing unsuitable products from entering the market and preventing consumer detriment more generally.

More and more NCAs are exploring new tools, such a mystery shopping, which, in the future, will be able to provide more data and information on trends on the quality of advice.

³⁶ Article 30(2) of the IDD only requires taking into account the knowledge and experience of the customer in the investment field

Different views amongst stakeholders and NCAs concerning the impact of the IDD

Despite limitations concerning data quality and based on the survey input EIOPA received, trade associations, consumer associations and NCAs have provided a preliminary picture of the impact on the IDD on the quality of advice and selling methods with differing views:

Trade associations highlighted that they perceive there to be an overall decrease in the number of complaints.³⁷

Trade associations also point to the fact that, based on EIOPA's latest annual report on sanctions imposed under the IDD³⁸, very few sanctions imposed under the IDD, if any, are related to advice, suggesting that the quality of advice is at a high level.³⁹ However, this inference does not seem appropriate at this stage, given *inter alia* the considerable time that enforcement proceedings can take e.g. up to 3 years in some cases so enforcement proceedings may have only been initiated under the previous regime of the IMD, which did not fully regulate the provision of advice or have the enhanced conduct of business obligations contained in the IDD.

In addition, some supervisory activities or action may have been taken by NCAs in relation to the provision of advice by insurance distributors, which did not culminate in enforcement action and was therefore not referenced in EIOPA's latest annual report. Further context and information on sanctions can be found in EIOPA's annual report. It is expected that future annual reports will refer to a higher level of sanctions imposed in relation to breaches of conduct of business obligations as the IDD sanctions regime begins to take more effect.

Consumer associations highlighted, in particular, problematic practices in relation to the sale of unit-linked life insurance products and mortgage and consumer credit protection policies.⁴⁰ Although the evidence provided relate to studies conducted before the implementation of the IDD, problems with the sale of mortgage life and unit-linked products have been reported year after year in EIOPA's Consumer Trends Report, including in the 2019⁴¹ and 2020⁴² report which are post IDD reports.

The 2019 Consumer Trends Report highlighted that the issues concerning unit-linked contracts relate to lack of transparency, lack of consumers' understanding of products, product complexity,

³⁷ Insurance Europe

³⁸ https://www.eiopa.europa.eu/content/annual-report-administrative-sanctions-and-other-measures-under-insurance-distribution_en

³⁹ BIPAR

⁴⁰ BEUC

⁴¹ https://www.eiopa.europa.eu/document-library/consumer-trends-report/consumer-trends-report-2019%E2%80%8B_en

⁴² https://www.eiopa.europa.eu/document-library/consumer-trends-report/consumer-trends-report-2020_en

conflicts of interests, lack of adequate returns, and an increase in the sale of unit-linked policies to vulnerable consumer groups. As mentioned in the 2020 Consumer Trends Report, the risks in the unit-linked market have been heightened as a result of the COVID-19 crisis.

In response to concerns with regard to some issues in the European unit-linked market, in April 2021, EIOPA launched a consultation on a framework to address value for money risk in the European unit-linked market (see also Section 3.2.1)⁴³. Moreover, EIOPA's cooperation platform work has an important focus on unit-linked products with issues which continue to emerge.

Some trade associations⁴⁴ expressed the view that the demands-and-needs test generally works well. Nevertheless, they highlighted some room for improvement. For example, they perceive the need that the demands and needs test should be simplified in the context of compulsory and non-life insurance as well as standardised (less risky) products.

Consumer associations highlighted that the demands-and-needs test is important given mis-selling incidents in the past.⁴⁵ One consumer association⁴⁶ cited a case in which the national implementation of the IDD is said to have significantly limited the demands-and-needs-test to the detriment of the consumer by allowing consumers to dispense insurance companies (or intermediaries as well) from providing advice and documenting advice.

NCA's highlighted that there is room to provide additional clarifications as to the correct interpretation of the provisions on the demands-and-needs-test in order to facilitate supervisory convergence and effective supervision of insurance distributors and provide clarity for insurance distributors that need to apply these provisions in practice. Some trade associations⁴⁷ indicated that there is a need for additional clarification as to how the demands-and-needs-test should be complied with by digital platforms or in the case of pure "robo-advice".

Apart from that, discussions with NCA's have shown that the demands-and-needs test in online sales processes has shown some deficiencies. In some cases, at the end of the online sales process, consumers are nudged into ticking a box confirming that the contract chosen is in line with their demands and needs, shifting the responsibility for conducting the demands-and-needs test from the insurance distributor to the customer.

⁴³ https://www.eiopa.europa.eu/document-library/consultation/consultation-framework-address-value-money-risk-european-unit-linked_en

⁴⁴ Insurance Europe

⁴⁵ BEUC

⁴⁶ Better Finance, Prof. Dr. Matthias Beenken

⁴⁷ BIPAR

In its annual reports 2019⁴⁸ and 2020⁴⁹, the Belgian FSMA reported that the demands-and-needs test is sometimes too formal or even non-existent. This shortcoming was identified during on-site and off-site inspections and was followed-up by the FSMA in meetings with the sector. In general, work programs dedicated to conduct rules in the insurance sector were developed.⁵⁰

With regard to the suitability assessment, inspections in HU of complaints show that insurers only use standardised templates for the suitability statement, instead of gathering personalised information. In addition, there is an increased number of customer declarations and disclosures which are not read by customers and do not protect consumers against mis-selling because customers sign a form indicating that products were correctly sold. There is also a problem with insurers claiming they cannot verify the intermediaries' verbal communications and so it is not possible to control what promises and information the product was actually sold with or what information was not properly disclosed.

With regard to "execution-only" sales, in the 13 Member States⁵¹ where execution-only sales are allowed, some trade associations⁵² indicated that this tool serves as fall-back option if the consumer is unwilling/unable to provide even basic information on their knowledge and experience necessary for the appropriateness assessment.

Consumer associations⁵³ mentioned that the supplementary distinction of "executive-only" sales does not make any sense for term life insurance products or IBIPs. In their view, all IBIPs are "complex" products because of their inherent combination of insurance risk coverage and embedded investment element, which from a consumer's perspective should be avoided in any case due to non-transparent cost-charging and profit-sharing. Even if there are no options for the customer with regard to the investment element, this does not change the main character of the IBIP as a strongly layered product. As a consequence, there should not be any reduction in pre-contractual information duties for the distributor.

⁴⁸ See page 52: https://www.fsma.be/sites/default/files/legacy/content/FR/jvra/fsma_ra2019_fr.pdf

⁴⁹ See page 56: https://issuu.com/blue4yoube/docs/fsma_ra2020_fr/58?ff

⁵⁰ See "outils de surveillance": <https://www.fsma.be/fr/regles-de-conduite-assurmifididd>

According to Article 17(1), Member States shall ensure that, when carrying out insurance distribution, insurance distributors always act honestly, fairly and professionally in accordance with the best interests of their customers.

⁵¹ BG, CY, DE, EE, HR, IE, LI, LU, LV, MT, RO, SE, SI

⁵² Insurance Europe

⁵³ Better Finance

2.2 LEVEL OF PROFESSIONALISM AND COMPETENCE OF INSURANCE DISTRIBUTORS

In line with Recital 28 of the IDD, the directive aims at “ensuring a high level of professionalism and competence among insurance distributors”. In order to achieve this goal, the professional knowledge of insurance distributors needs to match the level of complexity of those activities. In addition, they need to ensure CPD based on at least 15 hours of professional training or development per year, taking into account the nature of the products sold, the type of distributor, the role they perform, and the activity carried out within the insurance or reinsurance distributor. The latter proportionality requirement is important given that the 15 hours CPD requirement should not be always considered as a universal minimum requirement to be complied but will be contingent on, for example, the complexity of the products which the insurance intermediary typically sells.

Lack of training of insurance distributors on IBIPs

Notwithstanding the existence of such a proportionality requirement, EIOPA's oversight experience to date indicates that instances of lack of training of insurance distributors need to be considered, especially with regard to certain type of insurance-based investment products which are not easily understandable to consumers. EIOPA's oversight cases, as well as discussions and work on mystery shopping show that, in such instances, distributors are either not well-trained to provide advice on more complex IBIPs and/or they do not often match product features with consumers' needs and characteristics which could indicate either conflicts of interests or limited understanding of products.

In addition, 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.

European Commission to assess feasibility of pan-EU label for financial advisors

Action 8 of the CMU Action Plan⁵⁴ indicates that “*subject to a positive impact assessment carried out in the context of the reviews of the IDD by Q1 2023 and MiFID II by Q4 2021, the Commission will introduce a requirement for advisors to obtain a certificate that proves that their level of knowledge and qualifications is sufficient to access the profession, and shows that they take part in an adequate level of continuous education. This aims to maintain a satisfactory level of advisor performance. In addition, by Q1 2022 the Commission will assess the feasibility of setting up a pan-*

⁵⁴ <https://eur-lex.europa.eu/legal-content/en/TXT/HTML/?uri=CELEX:52020DC0591&from=EN>

EU label for financial advisors, which can be used to comply with the requirement to obtain a certificate.”

For the purpose of the preparation of the CMU-related actions, EIOPA carried out a survey addressed to NCAs on IDD requirements concerning knowledge and competence of advisors distributing IBIPs. Annex V provides a detailed summary of the main findings of the survey. The main findings from EIOPA’s survey are mentioned in the following. From the 24 NCAs⁵⁵ that responded to the survey:

- Almost every Member State requires natural persons providing advice on IBIPs to have certain qualifications and/or experience before accessing the profession. Qualifications which are required range from advanced secondary education to university degrees.
- Half of the Member States have an examination procedure. It is conducted by public bodies/supervisory authorities or by educational/accredited bodies, universities, trade associations, banking institutes, insurance institutes, insurers or intermediaries.
- More than half of the Member States stated that exams are organised in order to be able to access the profession. Most Member States accept online assessments (trainings/exams).
- In more than a half of the Member States, (re)insurance undertakings, brokers, trade associations and accredited/educational bodies, universities or a combination thereof are able to provide CPD training.
- In case the body providing training for CPD is a body other than a public body (e.g. trade associations, insurance associations, private bodies, universities), there is no accreditation procedure for these bodies in many Member States.
- The type of assessment that is conducted in order to verify the knowledge and competence of natural persons is both training and exams, only exam or only training. There are some Member States which require confirmation of attendance/certificate/document.

2.3 DIGITALISATION AND GROWTH OF NEW DISTRIBUTION MODELS

Need to make IDD more fit for the digital age and growth of new distribution models

Based on the input provided by NCAs and other stakeholders, EIOPA has identified two areas where the opportunities presented by digitalisation and new distribution models over the past three years could not be fully reaped due to the lack of additional guidance through, for example, Level 2 measures, while at the same time ensuring a consistent level of consumer protection and

⁵⁵ BE, BG, CZ, DE, DK, EE, FI, IE, EL, ES, FR, HR, IT, MT, LI, LV, LT, LU, HU, PL, PT, SE, SI, SK

maintaining a level playing field between all distribution models, keeping in mind the "same activities, same risks, same rules" principle:

1. The legal framework has not been able to sufficiently adapt the form and timing of disclosures to reflect the digital environment
2. The legal framework has not been able to sufficiently address the opportunities and risks presented by digital platforms and AI.

2.3.1 FORM AND TIMING OF DISCLOSURES

IDD's default-paper based regime for communicating information to customer does not sufficiently reflect digital developments⁵⁶

Article 23 of the IDD requires information to the customer to be provided on paper or, if the consumer has consented, in a durable medium other than paper or by means of a website. Since under Article 23(3), the insurance distributor always has to be in a position to provide a paper copy to the customer upon request and free of charge, it is essentially a "paper by default" requirement. There are some exceptions to the "paper by default" requirement, namely the disclosure of the general nature or sources of a conflicts of interest in relation to IBIPs which must be made on a durable medium and include sufficient detail (Article 28(3)) as well as the periodic reporting and suitability statement (Article 30)).

The default-paper based regime is intended to improve consumer protection by ensuring that customers have access to information that enables them to make informed decisions and that the format of information is appropriate for the channel by which a service or product is being transacted. Indeed, some segments of the population (e.g. often this is the case of elderly people or persons with disabilities) may not be as IT literate as other segments and/or may prefer to receive the information on paper. The COVID-19 outbreak has shown that while, on the one hand, digital technologies have promoted financial inclusion by helping to address barriers arising from social distancing rules; on the other hand, there are also vulnerable populations (e.g. low income or elderly consumers) which cannot easily access digital technologies or the internet.⁵⁷

Moreover, insurance intermediaries may still operate through traditional face-to-face sales models and consumers may make their decisions based on their face-to-face contact with the intermediary, rather than on the basis of the actual disclosures. Indeed, in a face-to-face advisory process,

⁵⁶ See EIOPA's response to the European Commission's Digital Finance Strategy consultation: https://www.eiopa.europa.eu/content/eiopa-response-european-commission-digital-finance-strategy-consultation_en

⁵⁷ See Eurostat statistics on Internet penetration in European households: https://ec.europa.eu/eurostat/statistics-explained/index.php/Digital_economy_and_society_statistics_-_households_and_individuals

providing important information via email could significantly reduce the impact of that information in the customer's decision making process, while the policy objective is that the information is provided in such a way as to inform that decision making process.

However, the requirement of 'paper by default' can be burdensome in certain cases such as online sales. Those who are fully embracing digital services and wish to conduct their business online can face some challenges. The hurdles for providing the information digitally may not be efficiently met in some cases, while, since the information requirements have been designed first for paper, they may not be well enough adapted for digital delivery. Some cost-efficiencies arising from technological innovations reportedly depend on the possibility to process data digitally throughout the entire process. Any disruption of the processes such as the need to use paper can lead to less efficient digital processes. In addition, new more interactive communication possibilities will not be possible.

Experience of the application of the IDD over the past 3 years has illustrated the lack of a well-balanced regulatory solution, allowing the provision of digital financial services through quick, effective and efficient compliance requirements, while at the same time ensuring a consistent level of consumer protection and clear communications of important information. The pandemic has underlined the lack of legislation facilitating digital transactions, whilst ensuring that concerns relating financial exclusion are adequately addressed and mitigated.

Need to adjust pre-contractual information requirements to smartphones and other digital devices

The pre-contractual information requirements of the IDD have not been able to reflect the growing use of smartphones and other digital devices. The distribution of insurance can be challenging given the limited space on the screen to provide all the required information and a lack of possibility to present the structure of the information in different layers of relevance. For example, information that is essential for all audiences could be presented "at a glance", and more detailed information could be readily available in a subsequent layer for those interested, and so forth.

Apart from that, there are new risks for consumers arising from the use of digital devices. For example, some research by the University of Stavanger indicates that like-for-like comprehension of information via a computer screen is lower than via paper.⁵⁸ In addition, consumer biases may be more easily exploited online. For example, websites often pre-select or highlight in green their preferred selection, e.g. "accept all". Experience over the past three years has demonstrated the lack of sufficient consideration of insights from consumer behaviour when designing effective consumer disclosure regulations in a digital environment and the need for the choice architecture

⁵⁸ Reading linear texts on paper versus computer screen: Effects on reading comprehension: <https://www.researchgate.net/publication/256563189> Reading linear texts on paper versus computer screen Effects on reading comprehension

and context in which information is provided to be taken into account more, and be designed in such a way that they serve the customer's interest first and foremost.

The need to adapt pre-contractual information requirements to the digital environment and the growing use of digital devices (tablets, smartphones) has also been addressed in the European Commission's Inception Impact Assessments concerning the reviews of the Directive on Distance Marketing of Consumer Financial Services⁵⁹ and the Consumer Credit Directive⁶⁰.

Need for additional guidance on the timing of disclosures of (digital) contractual information to consumers

Article 18 of the IDD provides that disclosures shall be made *"in good time before the conclusion of an insurance contract"* and does not indicate what exactly *"good time"* means, i.e. how much time customers have to study pre-contractual information before concluding a contract (although recital 33 indicates that *"employees should be given adequate time and resources to be able to provide all relevant information to customers about the products that they provide"*).

Given the formulation of Article 18, in absence of further guidance, there is a risk that customers do not have enough time to make an informed decision, especially in relation to unit-linked life insurance contracts and for sales processes that are not initiated at the customer request (*"canvassing"*).

2.3.2 DIGITAL PLATFORMS AND AI

Lack of definition of insurance distributors impeding digital platforms⁶¹

According to Article 2(1), number 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*

⁵⁹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13048-Distance-marketing-of-consumer-financial-services-review-of-EU-rules_en

⁶⁰ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12465-Consumer-credit-agreements-review-of-EU-rules_en

⁶¹ [EIOPA Discussion Paper on the \(Re\)insurance value chain and new business models arising from digitalisation:](#)

"A platform is the technical infrastructure necessary for multiple participants to connect and interact with each other, and create and exchange value."

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.”

The scope of the IDD definition of "insurance distribution" in an online environment can deserve further guidance. For example, with regards to price comparison websites, experience over the past three years has exemplified the lack of guidance as to what an indirect conclusion of a contract entails in the context of Article 2(1), number 1 of the IDD, e.g. how many clicks need to be made or moved to another website or data re-entered so that the contract is not “indirectly concluded”. Apart from that, a lack of clarification of “insurance distribution” in an online context can make it difficult to determine whether or not a participant involved in the setting up and running of digital distribution carries out insurance distribution activities.

Opportunities and risks arising from the use of AI

AI is increasingly used in the area of insurance distribution, for example to provide advice to customers in whole or in part through an automated or semi-automated system (“robo-advice”)⁶² or use AI-powered price optimisation techniques to charge different prices based on consumers’ behavioural characteristics. The challenge for regulators and supervisors alike exist in allowing the European insurance sector to take advantage of the innovation offered by AI, whilst at the same time protecting the interests of consumers.

Relevant work in the area of AI include the Regulation laying down harmonised rules on AI and amending certain Union legislative acts published in April 2021 by the European Commission⁶³ as well as EIOPA’s report on AI governance principles published in June 2021.⁶⁴

Robo-advice

It is important to differentiate between robo-advisors which are used to provide advice to consumers about insurance products and basic chatbots powered by AI which are typically used in non-critical areas such as to guide the consumers through the websites or respond to non-complex Q&As.

Based on EIOPA’s thematic review on the use of Big Data Analytics in motor and health insurance⁶⁵, the level of adoption of robo-advice was still very low as only 2% of the firms that participated in

⁶² Robo-advisory solutions may be based on AI systems, but in most cases they are based on simple algorithms such as decision trees which not necessarily imply the use AI systems

⁶³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>

⁶⁴ https://www.eiopa.europa.eu/media/news/eiopa-publishes-report-artificial-intelligence-governance-principles_en

⁶⁵ https://register.eiopa.europa.eu/Publications/EIOPA_BigDataAnalytics_ThematicReview_April2019.pdf

EIOPA's survey was already using them in 2019. On the other hand, up to 25% of the firms expected to use them within the next 3 years (i.e. by 2022).

Robo-advice can be a cost-effective solution for consumers seeking advice on insurance, in particular for those consumers who cannot afford potentially more expensive advice provided by other insurance intermediaries. However, there is a risk that consumers make unsuitable decisions as a result of lack of information or reduced opportunities to fill the gaps or seek clarifications when they interact with robo-advisors; or because of errors and/or functional limitations in the tool.⁶⁶

Although there is a provision on the use of automated and semi-automated systems to provide advice on IBIPs in the Delegated Regulation on IBIPs⁶⁷, the legal framework does generally not make a distinction between physical advice and robo-advice, i.e. does not foresee any specific rules for robo-advice and no further guidance is provided as to how the provisions of the IDD should be complied with by robo-advisors. For example, experience over the past three years has demonstrated the challenges faced by national supervisors without having further guidance on how the demands-and-needs test should be applied by robo-advisors⁶⁸, but, at the same time, assessing the issue from a technology-neutral perspective and ensuring a same level of consumer protection for all distribution channels.

Apart from that, 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. Under Article 18 of the IDD, insurance distributors only need to inform customers about their identity and address and whether they provide advice about the insurance product sold.

Need for fairness in pricing practices

1. Non-risk based price optimisation practices

As highlighted in EIOPA's thematic review on the use of Big Data Analytics in motor and health insurance and the AI Governance Principles report, insurers are increasingly relying on non-risk based price optimisation practices, often with the use of AI systems, to charge customers different prices based on their behavioural characteristics, such as their willingness to pay or the consumer's

⁶⁶ <https://esas-joint-committee.europa.eu/Publications/Reports/JC%202018%2029%20-%20JC%20Report%20on%20automation%20in%20financial%20advice.pdf>

⁶⁷ See Article 12 of [Commission Delegated Regulation \(EU\) 2017/2359](#):

"The insurance intermediary's or insurance undertaking's responsibility to perform the suitability assessment in accordance with Article 30(1) of Directive (EU) 2016/97 shall not be reduced due to the fact that advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system."

⁶⁸ BIPAR

propensity to shop around for insurance products. Price optimisation practices include churn models⁶⁹, customer life time value estimation models⁷⁰ and price elasticity models⁷¹.

Insurers are able to calculate prices based on the optimum amount of margin that they could earn from individual consumers, rather than the actual risk and/or the cost of the individual policyholder.⁷² These practices can negatively affect vulnerable consumers which because of different personal life circumstances are less propense to shop around, such as the elderly populations or those with a low level of financial literacy; in 2018, a consumer association⁷³ found evidence in several markets that loyal consumers pay higher prices for services compared to new consumers that regularly switch insurers.

In IE, the supervisor has opened an investigation analysing such practices.⁷⁴ In the UK, the Financial Conduct Authority carried out a market investigation⁷⁵ into the pricing practices of insurance firms, after it found evidence that firms often deliberately targeted price increases on consumers who were perceived as less likely to switch and has recently adopted decisive measures to prevent such practices. The Dutch AFM has also recently published a report on this topic.⁷⁶ Moreover, in the United States, the National Association of Insurance Commissioners published a White Paper⁷⁷ on price optimisation practices by insurance firms and a number of states subsequently prohibited or restricted the use of price optimisation techniques based on consumers' willingness to pay and/or their propensity to shop around at the point of renewal.

2. Risk-based underwriting practices

As far as risk-based practices are concerned, increasingly personalised premiums pose both opportunities and risks for consumers. The opportunities include a lower claims cost in behavioural

⁶⁹ Using mathematical methods including AI systems to identify customers under risk of churn. Consumers with a high propensity to shop around at the renewal stage can be given a discount from a commercial and actuarial point of view.

⁷⁰ Using mathematical models including AI systems to estimate claims expenses and premium income for customers over their whole customer relationship with the company, including possible up-selling and cross-selling of other products. This can then be used to decide on corresponding commercial discounts for certain customers or customer groups.

⁷¹ Using mathematical methods including AI systems to determine the customers' willingness to pay; the estimate of the customer's price elasticity then is used to adapt his price in the sense of the "highest possible premium", and this may be done both at the on-boarding stage as well as at the contract renewal stage.

⁷² BEUC

⁷³ <https://www.citizensadvice.org.uk/about-us/our-work/our-campaigns/all-our-current-campaigns/citizens-advice-super-complaint-on-the-loyalty-penalty/>

⁷⁴ <https://www.centralbank.ie/news/article/press-release-interim-report-of-differential-pricing-review-14-december-2020>

⁷⁵ <https://www.fca.org.uk/publication/market-studies/ms18-1-3.pdf>

⁷⁶ <https://www.afm.nl/en/nieuws/2021/juni/aandachtspunten-gepersonaliseerde-beprijzing>

⁷⁷ https://www.naic.org/documents/committees_c_catf_related_price_optimization_white_paper.pdf

pricing (when risk averse behaviour is rewarded) and the perception of a fairer market because risk-averse consumers 'pay a lower share of the costs' of the risk-taking behaviour of others.⁷⁸

The risks inherent in personalised premiums include a greater risk of uninsurability which could compromise the financial inclusion of high-risk consumers (e.g. those with pre-existing medical conditions), the use of data as a means of acceptance or payment, and a less transparent market for comparing insurance products. Certain rating factors such as credit scores, occupation, ZIP code, income or level of education can also negatively affect vulnerable populations and protected classes if there are no adequate governance measure in place, in particular when they are combined with new datasets (e.g. replacing of traditional ZIP codes by more granular "micro-zoning") and when processed by complex (opaque) AI systems which can identify complex non-linear correlations between the different variables. These developments can quickly gain momentum, while consumer awareness and resistance are limited and the competitive pressure can be strong to adopt personalised premiums to increase profitability.

Apart from that, the application of the IDD has illustrated the need for further clarification on the transparency rules with regard to changes in premiums at the renewal stage, as well as on the rating factors that influence the premium paid by consumers which can damage the trust of consumers in financial services and limit their ability to make informed decisions.

While EIOPA's intention is not to regulate prices of insurance products and services, experience of the application of the IDD has indicated the need to conduct further analysis to identify to what extent current pricing practices restrict competition and lead to unfair consumer outcomes and introduce appropriate remedial measures, where necessary.

Challenges concerning the supervision of AI

The increased use of AI in the area of insurance distribution can present a challenge for authorities supervising the use of AI, such as governance of algorithms, the metrics for evaluating their performance, the existence of biases in their results and the "explicability" of these results. Indeed, in addition to the increasing use of new data sources (internal and external), types of data (e.g. Internet of Things, social media, mobile phone data etc.) and data enrichment techniques, certain AI systems such as Neural Networks or Deep Learning can provide very accurate predictions but they can also be considered as a "black-box"⁷⁹ because the rationale of the outcome/prediction of the system is difficult to explain in a causal or deterministic manner.

⁷⁸ <https://www.afm.nl/en/nieuws/2021/juni/aandachtspunten-gepersonaliseerde-beprijzing>

⁷⁹ Already some complex models using more traditional techniques like Generalised Linear Model and Gradient Boosting Machine can also be black boxes with their transparency and "explicability" challenges.

2.4 OVERLAPPING INFORMATION REQUIREMENTS IN EU LEGISLATION

Need to achieve greater coherence and improve the understanding of information disclosures by consumers

The number of regulations adopted at EU level (IDD, PRIIPs Regulation, General Data Protection Regulation (GDPR), Solvency II, Directive 2002/65/EC on distance marketing of financial services (DMD), Directive 2000/31/EC on electronic commerce (ECD), Sustainable Finance Disclosure Regulation (SFDR) have increased the quantity of pre-contractual information which consumers receive when purchasing insurance. The quantity and diversity of information requirements contained in different pieces of EU legislation can lead to an overload of communication and confusion of the customer.

Overlapping information requirements across EU legislative frameworks have demonstrated the need to achieve greater coherence and improve the understanding of information disclosures by consumers and it has become clear that these overlapping information requirements across EU legislation could not be fully resolved by adjusting the IDD only, but by coordinated changes to a number of different pieces of EU legislation.

The need to assess information requirements across all legislation to identify and reduce regulatory overlaps was also highlighted by some trade associations.⁸⁰

It is important to note that there are other concurrent initiatives under way at the EU level which aim at identifying overlapping information requirements in EU legislation:

- In March 2020, the European Commission launched a retail investor study⁸¹ and the study aims to *“identify potential redundancies, inconsistencies, overlaps and gaps in the regulatory disclosure, suitability assessment and inducements-related rules in scope, using a mapping of the relevant rules as a basis”*. The report for the study is due to be finalised in November 2021.
- In July 2021, the European Commission sent two separate calls for advice to EIOPA and ESMA regarding certain aspects relating to retail investor protection. These calls for advice require EIOPA/ESMA to identify *“any significant overlaps, gaps, redundancies and inconsistencies across investor protection-related legislation that might have a detrimental effect on (retail) investors.”* The European Commission requests EIOPA and ESMA to deliver

⁸⁰ Insurance Europe

⁸¹ <https://etendering.ted.europa.eu/cft/cft-display.html?cftId=5959>

their advice to the Commission services by 30 April 2022. The call for advice covers IBIPs regulated by the IDD.

EIOPA identified some overlaps with regard to the disclosure requirements in the IDD, DMD, ECD, Solvency II and PRIIPs Regulation concerning the identity and address of the insurance intermediary and insurance undertaking, out-of-court complaint and redress procedures, register of insurance intermediaries, insurance product information document and cross-selling.

In addition, some overlaps were identified in the IDD and PRIIPs Regulation with regard to the disclosure of costs and charges concerning the distribution of IBIPs.

See Annex VI for a table with more detailed information on the overlapping information requirements in EU legislation.

2.5 NEED TO PROVIDE ADDITIONAL GUIDANCE ON THE REGULATORY FRAMEWORK

Additional guidance as to the correct implementation of the IDD could have substantially facilitated supervisory convergence and provided clarity for insurance distributors

The evidence gathered in EIOPA's conduct oversight country visits, its IDD Q&As which EIOPA has received from external parties and *ad hoc* exchanges between EIOPA and external stakeholders, has shown challenges both for industry in applying some aspects of the Level 1 text and for NCAs to supervise those provisions, caused by a lack of additional guidance with regard to some provisions of the IDD.

Some trade associations⁸² have indicated in EIOPA's online survey that the industry and NCAs have reached a common understanding of how IDD provisions should be applied and that there is no benefit in revisiting these issues at this stage. The focus should instead be on facilitating distribution activity by reducing regulatory obstacles, notably in terms of information requirements and regulatory overlaps.

In addition, some trade associations⁸³ expressed the view that 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. The lack of clarity in relation to some issues would now be more a national issue than a European one.

⁸² Insurance Europe

⁸³ BIPAR

Despite the concerns expressed by trade associations, in EIOPA's view, additional guidance as to the correct implementation of the IDD could have substantially facilitated supervisory convergence and provided clarity for insurance distributors.

The box below highlights an example of IDD provisions for which the lack of additional guidance through Level 2 or Level 3 measures has presented particular challenges for some insurance distributors and NCAs. Annex VII includes additional examples.

Disclosure of costs and charges in relation to the distribution of IBIPs

According to Article 29(1) of the Insurance Distribution Directive (IDD), insurance undertakings and intermediaries have to provide customers with appropriate information with regard to the distribution of IBIPs, and with regard to all costs and related charges, in good time prior to the conclusion of a contract.

Recital 42 and Article 30(5) of the IDD as well as Article 18 of the Delegated Regulation on IBIPs further specify the requirement to disclose information on costs and charges to the customers foreseen under Article 29(1).

Unlike MiFID II, no empowerment for Delegated Acts specifically on costs and charges disclosure was envisaged in IDD. In addition, EIOPA has not received any IDD Q&As specifically covering Article 29(1)(c), IDD so far.

Therefore, EIOPA is of the view that the lack of further guidance in the insurance sector as to how the obligation to inform the customer on the costs and charges should be implemented by insurance undertakings and intermediaries, has presented significant challenges to NCAs.

In order to assess how Article 29(1)(c) has been implemented at national level, EIOPA has conducted a questionnaire addressed to NCAs. 21 NCAs provided their responses to the survey.

The responses to EIOPA's survey show that Member States have implemented the IDD requirements on the disclosure of costs and charges in different ways. In particular:

- Many Member States have interpreted Article 29(1) in a way that insurance distributors should disclose to the customer the commission received from the insurance undertaking in relation to the distribution of the IBIP, while in some Member States, the disclosure of commissions is not foreseen.
- According to recital 42, insurance distributors of IBIPs should provide additional information detailing any "cost of distribution" that is not already included in the costs specified in the Key Information Document. There is, however, no common view amongst NCAs as to what "cost of distribution" are as the legislation of most Member States do not prescribe further guidance.

The lack of guidance as to the correct implementation of Article 29(1) has illustrated the risk of supervisory divergence and the potential to hinder effective supervision of insurance distributors.

Therefore, EIOPA will consider the need for further guidance as to how the obligation to inform customers on the costs and charges related to the distribution of IBIPs, should be implemented by insurance undertakings and insurance intermediaries.

3. IMPACT ON THE SUPERVISORY FRAMEWORK

In January 2021, EIOPA launched an online 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 VIII provides additional information on the outcome of the survey.

Sections 3.2-3.4 summarise the conclusions drawn from EIOPA's Consumer Trends Report, Cost and Past Performance Report 2020, report on general good rules, oversight platform work, thematic review on travel insurance, EIOPA's bilateral discussions with NCAs and EIOPA's market monitoring activities and different surveys addressed to NCAs and external stakeholders.

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

EIOPA has gathered information on the resources of NCAs 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.

Based on the data provided by 29 NCAs⁸⁴, figure 3.1 indicates the average number of employees on the basis of full-time equivalents (FTEs) of the NCAs in Europe for the period mid-2018 to mid-2021 for different tasks.

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 Member 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.

⁸⁴ The Danish DFSA has not been able to split the resources dedicated to the supervision of the IDD from the other supervisory tasks in the consumer protection and financial intermediaries division. Therefore, the average number of employees on the basis of FTEs is based on the data provided by only 29 NCAs.

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

Tasks	Average FTEs ⁸⁵ of NCAs in Europe by			
	Mid-2018	Mid-2019	Mid-2020	Mid-2021
1. Registration of insurance intermediaries ⁸⁶	5.7 (25%)	6.1 (25%)	6.1 (25%)	6.0 (24%)
2. Notification procedure	1.2 (5%)	1.2 (5%)	1.2 (5%)	1.2 (5%)
3. Conduct of business supervision of domestic and incoming insurance <u>undertakings</u> , in accordance with the IDD ⁸⁷	4.1 (18%)	4.5 (19%)	5.2 (21%)	5.6 (22%)
4. Conduct of business supervision of domestic and incoming insurance <u>intermediaries</u> , in accordance with the IDD	4.8 (21%)	5.0 (21%)	5.1 (21%)	5.5 (22%)
5. Conduct of business supervision not covered under the tasks 3 and 4 (i.e. activities that are outside the scope of the IDD) ⁸⁸	4.2 (19%)	4.6 (19%)	4.0 (16%)	4.2 (16%)
6. Enforcement of breaches and sanctions	2.4 (11%)	2.6 (11%)	2.8 (12%)	2.9 (12%)
Total	22.5 (100%)	23.9 (100%)	24.5 (100%)	25.4 (100%)

⁸⁵ For example, an employee involved in the enforcement of breaches and sanctions with 20% of his/her working objectives and 80% in other, non-relevant activities, counts 0.2 FTE.

The figures provided do consider management personnel to the extent their management activities relate to the mentioned tasks

The figures provided do not consider (non-exhaustive):

- Supporting functions like HR, IT or legal general advice (excluding supervisors with legal background involved in conduct of business supervision)
- Technical collection of reporting data (excluding the analysis of such data for supervisory actions/measures)
- Development of and providing guidance on insurance policy

The number for mid-2021 can be based on best effort estimation or on authorities' internal multiannual planning.

⁸⁶ Activities related to registration of insurance intermediaries include, for example, the assessment of fitness and probity, professional knowledge and good repute

⁸⁷ Includes activities dedicated to complaints data analysis for market monitoring and supervisory purposes (rather than reacting to and investigating complaints), does not include any activities related to complaints-handling / alternative dispute resolution which are not supervisory tools, but private enforcement tools. This also applies to task number 4.

⁸⁸ 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

The figure indicates almost no change in the figures with regard to the resources dedicated to the registration of insurance intermediaries and notification procedure over the period 2018-2021.⁸⁹ A possible reason for the stable figures is that the registration of insurance intermediaries and the notification procedure are not new features of the IDD, but were already part of the IMD. However, in some Member States, technology and/or tools have been implemented to facilitate registration, thus not requiring a specific increase in personnel.

Apart from that, the number of resources dedicated to conduct of business supervision of insurance intermediaries and insurance undertakings as well as the enforcement of breaches and sanctions appears to have experienced a steady increase over the past 3 years. It is clear that the transposition of the IDD has created new obligations for insurance distributors, particularly in the areas of remunerations and conflicts of interest, but also in relation to product governance. The supervision of these new obligations may have generated a need for additional resources.

Moreover, the context of low interest rates may have exacerbated some of the risks to consumers. In particular, insurers may be encouraged to favour products with higher yields which may be more risky for consumers, like insurance unit-linked policies. Thus, it is important to ensure that the distribution of these products is carried out in compliance with consumer protection rules, in particular new requirements introduced by IDD concerning product governance and prevention of conflict of interest.

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

EIOPA has asked NCAs to indicate which statutory powers they have received to ensure the implementation of the IDD and to what extent they have not been sufficiently empowered to ensure the implementation of the IDD. For example, NCAs have received powers to carry out the following tasks foreseen under the IDD:

- Market monitoring, including the market for ancillary insurance products which are marketed, distributed or sold in, or from, their Member State (Article 1(5));
- Registration of (re)insurance intermediaries and ancillary insurance intermediaries (Article 3);
- Notification procedure for cross-border business (Articles 4 and 6);
- Breach of obligations when exercising the freedom to provide services and the freedom of establishment (Articles 5 and 8);
- Publication of general good rules (Articles 11);
- Identification of breaches and imposition of (administrative) sanctions and other measures, including their publication and reporting (Articles 31, 32, 33, 35 and 36)

⁸⁹ The increase in the average FTEs dedicated to the registration of insurance intermediaries from mid-2018 to mid-2019 is mainly based on the increase in the IE FTEs from 10.5 to 16.2 from mid-2018 to mid-2019

NCA's have expressed the view that they have been sufficiently empowered to ensure the implementation of the minimum standards set down in the IDD. However, in the context of work of the supervisory cooperation platforms, it has been observed that both home and host NCA's have identified difficulties in ensuring enforcement of key requirements included in the IDD because they are "too principles-based". This resulted in some NCA's needing to take more extreme measures (e.g. product intervention) rather than enforcing requirements related to POG.

While principles-based requirements are key in ensuring outcomes-focused supervision and good consumer outcomes, given the different national context, some NCA's consider it difficult to act upon principles-based requirements. Moreover, whilst legislative efforts have moved towards ensuring NCA's have a broad set of tools⁹⁰, some national limitations exist with regard to the usage of tools (e.g. mystery shopping) which can allow to more concrete measure outcomes rather than simple compliance with regulatory requirements.

EIOPA's conduct oversight work has highlighted that, even though NCA's and EIOPA are able to react to significant consumer protection concerns or a threat to the functioning of financial markets or to the stability of the whole or part of the financial system in the Union and have done so when needed (e.g. Polish KNF's product intervention and cooperation platform work), the use of such product intervention powers entails a lengthy process. Moreover, in EIOPA's view, some NCA's may lack "intermediate powers" between taking adequate remedial measures and banning products.

Apart from that, in EIOPA's view, NCA's are not sufficiently empowered to require insurance distributors to submit to them the information which is necessary for the purposes of appropriate conduct of business supervision. For example, in the process of developing this report, it became evident that many NCA's are not able to provide relevant data, including in relation to aspects where conduct risks emerge (e.g. remuneration).

Several NCA's would like to adopt mystery shopping activities, but are not empowered to do such activities

EIOPA has asked NCA's to indicate which supervisory tools they adopted before the IDD implementation, adopted following the implementation of the IDD, are planning to adopt this or next year and would like to adopt, but are not empowered to adopt to ensure the adequate implementation of the IDD. Based on the responses provided by 30 NCA's, figure 3.2 summarises NCA's' responses to this question.

⁹⁰ See Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws:

<https://eur-lex.europa.eu/eli/reg/2017/2394/oj>

Disclaimer: 11 NCAs⁹¹ indicated that they adopted some supervisory tools before and after the implementation of the IDD. This means that the respective NCAs have adopted the respective supervisory tool before the IDD implementation, but increased the activities related to the supervisory tool or broadened/adjusted its scope following the IDD implementation. Because of that, the sum of the number of NCAs that have adopted the supervisory tool before and following the IDD implementation may be greater than the total number of NCAs (see for example off-site monitoring).

Figure 3.2: Supervisory tools adopted by NCAs

Tool	Adopted before IDD implementation (number of NCAs)	Adopted following IDD implementation (number of NCAs)	Is planning to adopt this or next year (number of NCAs)	Would like to adopt but is not empowered to adopt (number of NCAs)
Market monitoring	18	14	3	0
Data-driven market monitoring, beyond complaints data analysis	18	12	5	0
Thematic reviews	22	11	2	0
Mystery shopping	8	5	4	5
On-site inspections	26	12	1	0
Off-site monitoring	25	13	2	0
Product oversight activities	12	19	7	0
Consumer focus groups	8	4	5	0
Consumer research	9	7	4	0
Investigations stemming out of complaints	26	12	1	0
Other <i>a priori</i> supervisory activities (e.g., fit & proper assessments) – indicate below	18	10	1	0

According to the input provided, NCAs adopted on-site inspections (26 NCAs), off-site monitoring (25 NCAs) and investigations stemming out of complaints (26 NCAs) before the implementation of the IDD.

⁹¹ AT, CY, DE, HR, IT, LU, MT, PL, RO, SE, SI

NCAAs mentioned that they have adopted product oversight activities (19 NCAAs), market monitoring (14 NCAAs) and off-site monitoring (13 NCAAs) following the implementation of the IDD.

7 NCAAs (CY, DK, ES, FI, HU, LV, SK) are planning to conduct product oversight activities this or next year. For example, the Spanish DGSFP intends to implement a new product-based reporting system in 2022 aimed at collecting on an annual basis, product-related data such as volume of premiums in the portfolio, new premiums written, number of policies, number of insurers and data on insurance distribution.

5 NCAAs (EE, IS, IT, PL, SE) would like to adopt mystery shopping activities, but are not empowered to do such activities. The Italian IVASS conducted a project, in collaboration with the COM, to develop a mystery shopping methodology. The Polish KNF indicated it is not very likely that they will be granted powers to carry out mystery shopping, as this is granted to the Office of Competition and Consumer Protection.

With regard to "other *a priori* supervisory activities", for example, NCAAs mentioned that they have adopted the following supervisory tools in the course of the implementation of the IDD:

- Assessment of professional knowledge and continuing professional training and development, extension of fitness and probity requirements to the management and owners of insurance intermediaries
- Supervisory letters addressed to insurance distributors
- Supervision of compliance with the IPID
- Meeting with stakeholders

Most common supervisory tools used by NCAAs to monitor the implementation of the IDD are on-site inspections, off-site monitoring and other *a priori* supervisory activities

EIOPA asked NCAAs to indicate on a scale from 1 to 5 which are the most common supervisory tools to monitor the adequate implementation of the IDD by insurance undertakings – acting as either manufacturers or distributors – and by insurance intermediaries.

Based on the responses provided by 30 NCAAs, figure 3.3 outlines the most common supervisory tools used by NCAAs to monitor the implementation of the IDD in terms of average points (1=least common; 5=most common) awarded by NCAAs:

Figure 3.3: Most common supervisory tools used by NCAs to monitor the implementation of the IDD

Tool	Insurance undertakings	Insurance intermediaries
Market monitoring	3.2	2.5
Data-driven market monitoring, beyond complaints data analysis	3.0	2.5
Thematic reviews	3.4	2.6
Mystery shopping	0.8	0.7
On-site inspections	4.0	3.9
Off-site monitoring	4.3	3.9
Consumer focus groups	0.6	0.6
Product oversight activities	2.8	1.8
Consumer research	0.9	0.7
Investigations stemming out of complaints	3.5	3.5
Other <i>a priori</i> supervisory activities (e.g., fit and proper assessments)	2.6	3.1

According to the information provided by NCAs, the most common supervisory tools used by NCAs (as highlighted in bold) to monitor the implementation of the IDD are on-site inspections (average points of 4.0 and 3.9 for undertakings/intermediaries) and off-site monitoring (average points of 4.3 and 3.9 for undertakings/intermediaries).

In particular, with regard to thematic reviews and product oversight activities, it is interesting to note that these tools are more commonly used for monitoring insurance undertakings than for monitoring insurance intermediaries. In fact, EIOPA's supervisory work showed that supervisory work related to intermediaries in many instances is not focused on conduct aspects but rather covers several issues, including anti money laundering and combating financing of terrorism.

Although mystery shopping can be a helpful additional tool to detect conduct of business deficiencies and its usage has been enshrined in EU legislation⁹², it is not widely used by NCAs to monitor the implementation of the IDD (average points of 0.8 and 0.7 for undertakings/intermediaries). While the use of mystery shopping can be demanding in terms of time and resources, it allows to identify outcomes and in many instances it could be more resource efficient than multiple on-site visits.

With regard to "other *a priori* supervisory activities", for example, NCAs mentioned the following tools:

- Registration of insurance intermediaries, including assessment of fitness and probity, professional knowledge and good repute – however, the degrees and depth of such activities differ with some NCAs assessing customer-centricity-mindset and others assessing simply the lack of prior criminal records;
- Approval of training providers for continuous education and compliance officers;
- Market research, including market trends analysis and market surveys – this even though consumer research to ensure outcome-focused supervision is limited;
- Cooperation with NCAs, including forward-looking supervision with home NCAs and technical panels;
- Analysis of the insurance undertakings' periodic reports on the monitoring of the sales network and their received complaints;
- Analysis of the outcome emerging from the Retail Risks Indicators tool, based on the information flows provided by EIOPA for EU undertakings; and
- Life and non-life insurance products analysis.

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

3.2.1 APPLICATION OF POG REQUIREMENTS

The IDD introduced new rules which require manufacturers of insurance products to adopt a process for the approval of insurance products (Article 25 of the IDD). As part of this process, manufacturers have to specify an identified target market for each product, ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is

⁹² See Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws:

<https://eur-lex.europa.eu/eli/reg/2017/2394/oj>

consistent with the identified target market, and take reasonable steps to ensure that the insurance product is distributed to the identified target market. Apart from that, insurance distributors which do not manufacture need to be able to understand the characteristics and identified target market of those products. Delegated Regulation (EU) 2358/2017⁹³ sets out in detail how these requirements have to be complied with.

Concerns with regard to value for money in the European unit-linked market

EIOPA's Consumer Trends Report 2019 and 2020, Cost and Past Performance Report 2020, EIOPA's oversight cooperation platform work, EIOPA's bilateral discussions with NCAs and EIOPA's market monitoring activities highlight concerns that, while unit-linked products can and often do offer important benefits for policyholders, costs for some unit-linked products continue to remain too high. Existing concerns have been heightened by the COVID-19 crisis. The low interest rate environment coupled to market shocks and the risk that households will need increased access to liquidity, underline how important it is that unit-linked products always offer value to consumers.

In order to address value for money risks, with the view of supporting NCAs in assessing and manufacturers in carrying out POG product testing and monitoring and review activities, a framework has been formulated to ensure that value for money aspects are duly taken into account when product testing activities are performed. In April 2021, EIOPA launched a consultation on this framework.⁹⁴

The POG framework clearly highlights that products' characteristics – which include costs – need to be tested to ensure they are aligned to the target market's needs, objectives and characteristics, which also includes the target market's ability to pay and bear losses. In EIOPA's view, there is a clear need to enhance the consistency in the implementation of the POG requirements and in addressing consumer detriment arising from products where the costs and charges are not proportionate to the benefits and hence where products do not offer value to the target market. It is important to note that it is likely that there are also concerns with regard to (the lack of) value for money in relation to insurance products other than IBIPs.

Different views amongst stakeholders and NCAs concerning the application of POG requirements

The Italian IVASS has carried out a series of visits looking at POG processes. These visits showed that insurance undertakings have improved and formalised their procedures trying to guide distributors in the selling process. However, national associations of intermediaries reported difficulties for

⁹³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R2358>

⁹⁴ https://www.eiopa.europa.eu/media/news/eiopa-consults-framework-address-value-money-risk-european-unit-linked-market_en

intermediaries in obtaining from manufacturers product information as required by IDD and, more generally, difficulties in participating in the product design and review process under POG rules.

Some trade associations⁹⁵ praised the POG framework as a strong consumer protection tool, but perceive the need for improvements in the following areas:

- In markets with a compulsory suitability test, the relevance of a granular target market has not been fully proven
- The simplification of the POG process for simple / non-life products is necessary to ensure that the proportionality principle is respected
- Ongoing supervision of the POG rules should respect the proportionality principle

The German Association of the Insureds (BdV) proposed that the results of product testing and monitoring, especially if new insurance products are launched, should obligatorily be published either by the NCA or the insurers themselves. In that case, they stated that the results of product testing and monitoring would be treated as a business secret by the insurer, about which they may inform only the NCA on request. In EIOPA's view, the publication of the results of product testing and monitoring would naturally only be done if this is in compliance with the applicable legislation concerning data protection and business secrecy.

3.2.2 CONFLICTS OF INTEREST AND REMUNERATION

The IDD has introduced general rules on conflicts of interest and transparency for all insurance products (Article 19). These rules require insurance distributors to provide the customer with certain information, such as the nature of the remuneration received in relation to the insurance contract. In addition, Article 17(3) of the IDD prohibits insurance distributors to make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs.

Apart from that, the IDD introduced specific rules regarding the distribution of IBIPs. Article 28 stipulates that insurance distributors need to identify, manage and, under certain circumstances, disclose conflicts of interest. In addition, Article 29(2) indicates that the payment or receipt of inducements should not have a detrimental impact on the quality of the relevant service to the customer.

⁹⁵ Insurance Europe, BIPAR

Concerns about possible detrimental impact of payment/receipt of commissions on consumers

EIOPA's thematic review on travel insurance⁹⁶ has shown that some business models entail heightened conduct risks, including remuneration structures based on very high commissions and extremely low claims ratios. There are insurers that pay extremely high commissions to distributors, in some cases significantly more than 50% of the premium. Apart from that, some insurers have claims ratios below 20% of the GWP. These are a strong indicator of potential low value for consumers. EIOPA has no evidence that the issues identified in the thematic review on travel insurance have been solved since the implementation of the IDD.

Consumer associations⁹⁷ raised concerns about the payment of inducements to insurance intermediaries and undertakings, which can negatively affect the quality and objectivity of advice that is given to consumers. In their view, inducements can incentivise insurance distributors to recommend investment products that earn them a higher fee or commission, but which may not be the most appropriate product for the consumers and can be a driver of unsuitable recommendations to customers.

In the Netherlands, an inducement ban was implemented into national legislation in 2013. An independent evaluation, commissioned by the Ministry of Finance and published in 2018, reached the conclusion that the ban was effective in taking away incentives for intermediaries to provide advice to consumers on unsuitable products, helped to reduce conflicts of interests and contributed to putting the client's interest front and centre, without restricting access to financial advice for those consumers who wanted it. The ban made consumers more conscious of the cost of financial advice and in some instances were unwilling to pay for it.

A ban of inducements is not foreseen in the IDD, but 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))⁹⁸; 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)⁹⁹.

⁹⁶ https://www.eiopa.europa.eu/content/eiopa-identifies-consumer-protection-issues-travel-insurance-and-issues-warning-travel_en

⁹⁷ BEUC

⁹⁸ DK, FI, HR, NL, PL, RO and SK have exercised this option

⁹⁹ CZ, FI, HR, IE, IT, NL, RO, SE and SK have exercised this option

3.2.3 CROSS-SELLING OF FINANCIAL PRODUCTS

Cross-selling practices are widely used by insurance distributors operating in the EU and can provide benefits to customers seeking for a one-stop-shop for all their financial needs. These practices can be beneficial for customers but often the interests of customers are not adequately considered.

In order to ensure that cross-selling practices do not adversely impact the interests of the customer, the IDD introduced a provision requiring insurance distributors to inform the customer whether it is possible to buy different components of an insurance product offered with an ancillary non-insurance product and, if so, to provide a descriptions of the different components. In addition, where an insurance product is ancillary to a non-insurance good, the insurance distributor has to offer the customer the possibility of buying the good separately.

Concerns about cross-selling of unit-linked products and cross-selling practices by ancillary insurance intermediaries

EIOPA's Consumer Trends Report 2020 highlighted that unit-linked products are increasingly cross-sold with add-ons, increasing contract complexity. This increases the risk resulting from the limited oversight which insurance manufacturers have over distribution channels and/or lack of intermediaries' knowledge / understanding of complex unit-linked products, raising concerns about the quality of advice and risks of mis-selling.

Consumer associations¹⁰⁰ raised concerns about cross-selling practices related to credit protection insurance policies sold alongside mortgage and consumer loans. Consumer associations referred to studies conducted before the implementation of the IDD showing that credit protection insurance policies are often aggressively sold to consumers and that bundling practices frequently impede the ability of consumers to shop around or carefully study the characteristics and costs associated with credit protection insurance policies. EIOPA has no evidence that the issues identified in these studies have been solved since the implementation of the IDD. EIOPA is currently conducting a thematic review on mortgage protection insurance and other credit protection insurance sold via banks to investigate consumer protection issues, including those reported by consumer associations.

With regard to non-life insurance, EIOPA's Consumer Trends Report 2020 indicated concerns about cross-selling practices by ancillary insurance intermediaries. The sale of ancillary products is often accompanied by aggressive sales techniques, limited information given to customers, broad target markets and simplified demands-and-needs tests.

¹⁰⁰ BEUC

Discussions with NCAs also highlight concerns that tying and bundling of financial products and associated aggressive sales practices may be increasing with bank channels exploring different avenues to generate fees (i.e., by also selling non-life products).

EIOPA's report on AI governance principles¹⁰¹ indicated that sophisticated techniques such as the use of AI are increasingly being used to facilitate the bundling of products, with associated risks for consumers. For example, robo-advisors can be designed to cross-sell or up-sell more or less appropriate insurance products they may not otherwise have considered.

3.3 LEVEL OF CROSS-BORDER BUSINESS AND COOPERATION BETWEEN HOME AND HOST NCAS

Barriers to cross-border business

The IDD introduced a number of provisions in order to enhance and facilitate cross-border business of insurance distributors. For example, Member States have to ensure appropriate publication by their NCAs of the relevant national legal provisions protecting the general good so that insurance distributors know the provisions they have to comply with when they conduct business in another Member States (Article 11(1)).

Although the number of insurance intermediaries with a passport has increased steadily over the period from 2016-2020 as indicated in Section 1.3, there is still room for more cross-border business in the EU as the vast majority of insurance distributors still operate within the limits of their own national legislative borders.

National provisions in addition to those foreseen by the IDD are introduced with the aim of seeking to achieve specific benefits such as better protecting consumers or preventing regulatory arbitrage, and can cover a broad area of issues, including tax requirements. However, the quantity and diversity of national rules can pose challenges for insurance distributors seeking to expand their activities to other Member States.¹⁰² Apart from that, they can lead to divergences in the level/intensity of consumer protection/conduct of business supervision in cross-border cases.

Some trade associations¹⁰³ underlined that differences in national rules should not be viewed as a barrier to cross-border business and it is important to have minimum harmonisation standards to

¹⁰¹ https://www.eiopa.europa.eu/media/news/eiopa-publishes-report-artificial-intelligence-governance-principles_en

¹⁰² https://www.eiopa.europa.eu/media/news/eiopa-examines-national-general-good-rules_en

¹⁰³ Insurance Europe, BIPAR

respect national differences in market structure and consumer expectations. The cross-border aspect should not be used as an excuse to “over-harmonise”.

Some stakeholders¹⁰⁴ mentioned that the main obstacles in conducting cross-border business are related to the lack of a harmonised European insurance contract law, social security law and tax law. Apart from that, some trade associations¹⁰⁵ mentioned that there is a lack of clarity as to when intermediaries are considered operating under FoS/FoE.

Lack of clarity with regard to the division of competences between home and host NCAs

The IDD introduced a new division of competences between home and host NCAs. This was complemented by EIOPA's Decision on the Cooperation of Competent Authorities under the IDD.¹⁰⁶ Nevertheless, EIOPA's experience to date has shown some deficiencies in clearly applying the roles of home and host NCAs in the context of cross-border business.¹⁰⁷

Apart from that, some NCAs experienced challenges in applying Articles 7(2) and 9 of the IDD, namely in knowing whether the division of competence relates to conduct rules for insurance intermediaries only or whether this also covers insurance undertakings. This is particularly relevant with regard to the question whether host NCAs are competent for the supervision of fulfilment of POG requirements of branches.

Challenges in ensuring efficient exchange of information and supervisory co-operation between home and host NCAs

While EIOPA's cooperation platforms have proven beneficial in addressing cross-border issues in the short-term, the application of the IDD over the past three years has nevertheless illustrated the current limitations of cross-border supervision – both in terms of the ability for host NCAs to intervene when they have evidence of mis-selling in their market (based on the existing IDD provisions providing for such intervention) and in terms of the powers for EIOPA to exercise more of a co-ordinating role.

Apart from that, NCAs have highlighted that the notification procedure could be carried out in a more consistent and easy manner, for example by using an online form for notifications which could be published on EIOPA's website. At the moment, it is not always clear where to send notifications, by which method they are meant to be sent, and the answers from the host NCAs do not always

¹⁰⁴ Prof. Dr. Matthias Beenken

¹⁰⁵ BIPAR

¹⁰⁶ https://www.eiopa.europa.eu/document-library/decision/decision-cooperation-of-competent-authorities-under-idd_en

¹⁰⁷ See EIOPA's report on general good rules:

https://www.eiopa.europa.eu/media/news/eiopa-examines-national-general-good-rules_en

come in time. In addition, several notifications containing different information on one single insurance intermediary may lead to a duplication of registrations; another issue is the possible lack of information from the home NCA to the host NCA in case of withdrawal from the national register of notified intermediaries.

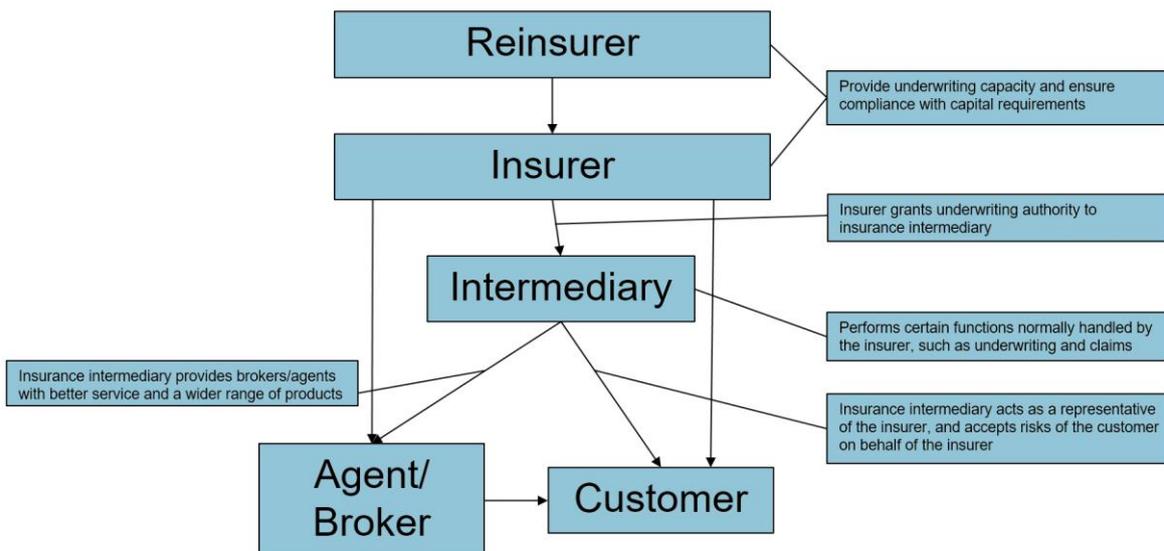
Supervisory concerns arising from insurance intermediaries which take over substantial parts of the activities from insurance undertakings in the context of cross-border business

EIOPA has seen that an increasing number of insurance undertakings outsource substantial parts of their activities to insurance intermediaries. The activities outsourced are related to different areas, such as claims and underwriting (including defining a target market) as well as pricing and digitalisation (e.g. development of parametric insurance cover).

Insurance intermediaries which take over substantial parts of the activities from insurance undertakings are sometimes referred to as "Managing General Agents", "virtual insurers" or "insurers-light". They are described this way because they underwrite risks in the name and on behalf the insurance undertaking which offers a vehicle with a license and ensures compliance with capital requirements. However, the balance sheets of the insurance intermediaries are not involved as they do not carry risks themselves.

Figure 3.4 illustrates the relationship between (re)insurer, intermediary, customers and agent/broker in the context of an outsourcing arrangement between an insurance undertaking and insurance intermediary. This chart should not be seen as exhaustive or as the only outsourcing scenario that exists.

Figure 3.4: Relationship between different parties in the context of an outsourcing arrangement



As highlighted in the Joint Committee's report on cross-border supervision of retail financial services¹⁰⁸, with regard to the use of third party agents, some NCAs note difficulties experienced by host NCAs in relation to engagement with home NCAs in cases where local insurance intermediaries are appointed by an insurance undertaking authorised in another jurisdiction to provide services in the host MS.

The Italian IVASS highlighted that there can also be challenges in reaching supervisory cooperation between home and host NCAs in cases of foreign companies outsourcing all activities and control processes to the host country appointed distributor, using an insurance intermediary/coverholder to which companies has given wide powers: the undertaking monitoring procedures, structures and methods on the distribution network are not often thoroughly conducted.

In addition, challenges in terms of supervisory cooperation can occur in situations in which EU-registered undertakings and intermediaries use the services of non-EU branches of EU intermediaries, and where those branches are subject to dual supervision (both by the EU NCA and the third-country NCA).

Apart from that, many insurance intermediaries which take over substantial parts of the activities from insurance undertakings are acting as an agent (on behalf of the insurer) and as a broker (on behalf of the consumer) at the same time. However, in some Member States, national legislation does not allow insurance intermediaries to act both as an agent and as a broker in order to mitigate conflicts of interest.

¹⁰⁸ https://www.eiopa.europa.eu/document-library/publication/report-c%E2%80%8Bross-border-supervision-of-retail-financial-services_en

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