

# Q&A

QUESTION ID:

1778

REGULATION REFERENCE:

(EU) 2016/2341 - IORP II Directive (EU) No 2016/97 - Insurance Distribution Directive

TOPIC:

IBIPs - Information to customers (Art. 29 para. 1 IDD)

ARTICLE:

29

STATUS:

Final

DATE OF SUBMISSION

20 Aug 2021

BACKGROUND OF THE QUESTION:

The meaning/context/application of 'occupational pension scheme' as set out in art 2(1)(17)(d) is not entirely clear in the UK.

## Question

Does EIOPA consider that a life-wrapped fund constitutes an IBIP when advising trustees (or, in other Member States, a Board of Directors) of an IORP (as defined under EC/2016/2341) on investment into such a 'life-wrapped' fund?

## Background of the question

The meaning/context/application of 'occupational pension scheme' as set out in art 2(1)(17)(d) is not entirely clear in the UK.

## EIOPA answer

In accordance with recital 3 of the IDD, the IDD is a minimum harmonisation directive, and regulates the activity of insurance distribution (including the provision of advice) relating to “contracts of insurance” (Article 2(1)(1)).

Therefore, the decisive factor is whether the activity of “insurance distribution” is being carried out in relation to a contract of insurance, as opposed to the customer to whom the advice is being provided to (with the exception of specific national options in the IDD regarding “professional clients”). There is also both a general conduct of business regime that applies to advice (personal recommendations) on “contracts of insurance” (Chapter V of IDD) and an additional conduct of business regime for the distribution of IBIPs (i.e. excluding

the distribution of IORPs) where the distribution/advice is provided by an insurance intermediary or an insurer (Chapter VI).

The notion of “contract of insurance” is generally left to be determined by national law, but would include investments packaged with insurance where the wrapper is a contract of insurance. Given that the IDD is a minimum harmonising directive, Member States can choose to apply aspects of the IDD regime to certain products such as pensions which are considered as “contracts of insurance” at national level to enhance protection for consumers.

The IDD also allows Member States to provide that some of the disclosures and advice in relation to IBIPs (Articles 29 and 30) do not need to be made when made to a professional client under MiFID II. In this case, it would be necessary to assess whether a Board of Directors could be considered a professional client under MiFID II. Even where a Member State has used this option, the general conduct regime in Chapter V would still apply and also the conflicts of interest rules for IBIPs (Articles 27/28).