GDV German Insurance Association

COMMENT

Comment

of the German Insurance Association (GDV)
ID-number 6437280268-55

on the trilogue negotiations to the Retail Investment Strategy

GDV

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1. Executive summary

German insurers support the objective of the Retail Investment Strategy (RIS) to increase participation in capital markets. To achieve this the new framework needs to provide easy access to regulated advice, streamline the advice process, make customer information easier to understand and ensure that supervisory authorities can identify outliers that do not provide value for money.

Although the current proposals by the European Parliament (hereinafter 'the Parliament') and the Council of the EU (hereinafter 'the Council') provide good approaches, they also contain provisions that run against the objective of increasing the participation of retail investors in capital markets. In particular they run the risk of increasing the length and complexity of the individual decision-making process while at the same time increasing the bureaucratic burden on product manufacturers and intermediaries.

The objective of the RIS can only be achieved if the co-legislators take a pragmatic and balanced approach, particularly in terms of administrative, documentation and reporting burdens. Given the European Commission (hereinafter 'the Commission') commitment to reduce reporting obligations for companies and administrations by at least 25%, we call on the co-legislators to take a realistic and nuanced approach that weighs up the costs and benefits of such requirements. In general, the new regulations introduced by the RIS should be simplified, and the complexity of the rules should be reduced. Clear rules are to be defined at level 1 and additional regulations at level 2 to be kept to a minimum. Member states need sufficient time to transpose the new requirements into national law. Manufacturers also need adequate time to apply the new rules. The start of all transposition and implementation deadlines should therefore be linked to the publication of the level 2 measures in the Official Journal.

In the trilogue it is essential to carefully examine where the proposed texts line up with the stated objective of the RIS and where they don't. This is particularly important for the design of the conditions under which products can be offered and the conditions which inducement schemes should obey. Furthermore, German insurers would like to encourage a discussion on key issues, such as the avoidance of new bureaucracy/ reduction of existing bureaucracy and information overload. This is particularly important when discussing disclosure requirements.

The German insurance industry will strive to ensure that the further debate will be dedicated to the chances that are presented by the RIS. For this purpose, we would like to make the following suggestions.

2. Bureaucracy

2.1 Reporting and Documentation

It is key to avoid additional bureaucracy in order to reduce costs borne by consumers.

Regulation sets minimum standards, ensures fair competition, and promotes mutual trust among market participants. At the same time, from the perspective of the insurance industry, inadequate regulation is an obstacle to retail investment. Therefore, we welcome the consensus in the Commission, the Parliament and Member States that existing bureaucracy should be reassessed, and new bureaucracy should be avoided. In the following, we identify areas where we see the potential for cutting red tape without lowering the level of consumer protection:

Topic	Reference
Explanation on the compliance with inducement regulation	Chapter 3.1
Internal list of all inducements	Chapter 3.2
Keep records of the inducements test performed	Chapter 3.2
Annual reports to the management body on the use of marketing communications and strategies	Chapter 8
Records of marketing communications	Chapter 8
Annual Statement for existing contracts	Chapter 5.1
Data reporting to supervisory authorities within POG	Chapter 4.4

2.2 Redundancies and overlapping regulations

In the following, we identify areas where we see redundancies or overlaps in the proposals of the Parliament and the Council. In these areas we see further potential for streamlining the legislation:

Topic	Reference
POG-requirements for manufacturers and intermediaries	Chapter 4.5
PRIIP-KID to be provided twice, by the intermediary and manufacturer	Chapter 5.2
Duplication of demands and needs assessment, in Art. 20(1) IDD and 29a IDD-new	Chapter 3.3
Overlapping reporting on the scale of cross-border business	Chapter 9
Doubling consideration of inducements, by considering within POG, transparency requirements and “inducement-test”	Chapter 3.2 criterion b), e) and f)
Overlapping of Art.17(3) IDD with “overarching principles” in Art. 29a IDD-new	Chapter 3.1
New standard for the report on the information from the suitability and appropriateness assessment if the GDPR already sets the standard.	Chapter 6
Acceptance of training measures under IDD and MiFID II	Chapter 10

3. Inducements

German insurers welcome that co-legislators have decided against a general inducement ban and in favour of maintaining the co-existence of remuneration systems in the distribution of insurance-based investment products (IBIPs). Beyond that, it is encouraging that both, the Parliament as well as the Council, suggest deleting the partial bans on inducements for sales without advice and execution-only. Any ban on inducements reduces access to financial advice especially for less affluent consumers. Nonetheless, the ban of inducements for independent advice is retained in the proposals of all three institutions. It is positive and important, that the co-legislators expressed the need for a clarification for insurance intermediaries whose legal status qualifies them as independent but that are remunerated with commissions.

The Commission's stated intention to gradually move towards a general ban on inducements represents a significant cause for concern, particularly considering the far-reaching level 2 empowerments and the review clause on inducements.

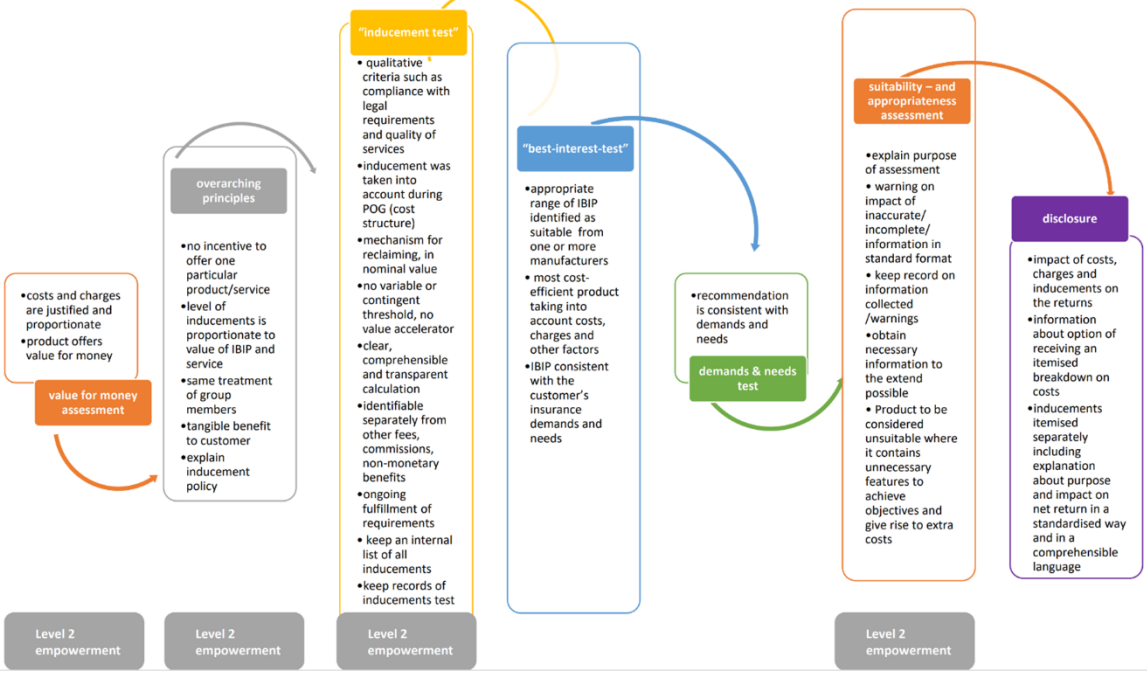
Moreover, all co-legislators' proposals represent a stricter regulation of inducements by creating a series of requirements. They all agree that the existing system of "quality enhancement" (under MiFID II) and "non-detrimental-impact test" (under IDD) should be replaced and standardized within a new "best-interest-test".

The Council includes "overarching principles" and an "inducement-test" in addition to the "best-interest-test". Adding two additional sets of criteria, reporting requirements etc. drastically increases the bureaucratic burden in the sales process (see illustration below). It is evident that this results in increased compliance costs for product manufacturers and distributors, which subsequently leads to an increase in product prices.

Nevertheless, we support the Council's approach, as more granularity at level 1 would justify the deletion of all level 2 empowerments on inducements. However, two things are important in this regard:

- The details of these new requirements would still need to be modified. In their current wording do not fit to the commission-based renumeration system. We provide suggestions for rewordings on the "overarching principles" (chapters 3.1) and the "inducement-test" (chapter 3.2).
- Duplications, overlaps and additional reporting should be avoided, aiming the reduction of bureaucracy. We take up this point in the following chapters 3.1 to 3.3. as well as in chapter 2.

Illustration: Council Position on inducements for advised sales



The co-legislators can develop a feasible and less bureaucratic regulation of inducements in two different ways.

Option 1: Using less granularity at level 1 by waiving the "overarching principles" and the "inducement-test" and providing for more granularity at level 2 (delegated act). However, the empowerment for a delegated regulation should be designed in such a way that it does not de facto prohibit inducements. The proposed empowerment "to specify how to comply with the regulation" seems to be too far-reaching.

Option 2: Increasing the granularity of level 1 by introducing "overarching principles", an additional "inducement-test". Ideally, the criteria proposed in these two texts would be transferred to the "best-interest-test" and supplemented by the criteria set out in Article 8 of Delegated Regulation (EU) 2017/2359. Any level 2 empowerments relating to inducements could then be omitted.

Option 2 clearly is the preferred choice because it provides more legal certainty. Level 2 empowerments always mean that the legal framework is only established later, which delays the effectiveness of the measures. There is a significant and inherent risk that companies implement the new rules in several stages, often not being able to use their preparatory work, resulting in additional costs and effort. Furthermore, Option 2 allows those applying the law to start implementation immediately, with fewer outstanding issues. Finally, level 2 empowerments give the Commission the final say on whether inducements are admissible. The Council and Parliament could only raise objections during the scrutiny period, but their scope for action to shape the requirements would remain limited.

To guarantee legal certainty the level 1 text should precisely describe the conditions under which inducements are allowed. Level 2 empowerments in relation to inducements should be deleted in order to streamline the legislation and prevent a de facto ban on inducements.

Regardless of whether the co-legislators opt for one of the proposed options or a combination thereof, we respectfully recommend that they give due consideration to the suggestions set forth in the following chapters 3.1 to 3.5.

3.1 Overarching principles

The Council proposed to introduce four general "overarching principles" to be respected at all times and an additional "inducements-test" within Art. 29a No. 1 IDD-new. Both are aimed at complying with the insurance distributor's duty to act honestly, fairly and professionally in the best interests of the consumer.

Principle a) – incentive to recommend a particular IBIP

We suggest amending principle a) to prevent legal uncertainty when it is read together with Art. 17(3) IDD.

Legal uncertainty arises from the fact that it is not clear how the new Art. 29a (1) principle a) relates to the already applicable Art. 17(3) IDD. The intention of both requirements seems to be the same, but the wording is slightly different. The last half sentence of Art. 17(3) IDD is missing in Art. 29a (1) IDD-new. It clarifies that the insurance distributor …", *could offer a different insurance product which would better meet the customer's needs."* This issue could be solved easily. Either by deleting criterion a) from Art. 29a IDD-new, or by aligning Art. 29a IDD-new with the wording of Art. 17(3) IDD by simply adding an "in accordance with Art. 17(3) IDD".

Principle b) & d) – benefits to consumers

We propose modifying Principles b) and d), to ensure compatibility with the prevailing commission-based renumeration system.

The commission-based remuneration model has a number of significant systemic advantages that the fee-based model does not offer. We therefore strongly support the coexistence of both forms of remuneration and welcome the fact that the Council and the Parliament have voted against a general ban on inducements.

Benefits of the commission-based remuneration system include, among others:

- easy access to advice for all consumers without the financial burden of a direct fee to be paid for each individual advice session.
- advice is available regardless of the conclusion of a contract,
- multiple consultations are possible without having to pay for each individual consultation,

- advice and support are provided for the whole term of the contract,
- economically efficient provision of advisory infrastructure, bearing of costs according to economic capacity.

That's why the commission-based remuneration system is an important option especially for consumers with limited financial resources. Unlike other systems, it eliminates direct charges for advisory costs, providing greater access to financial advice for those who need it most.

Principle b) postulates that the level of inducements should be proportional to the value of the product and service provided to the relevant consumer. Principle d) states that inducements should not directly benefit the insurance intermediary or insurance undertaking, its shareholders or employees without tangible benefit to the customer. However, the commission-based distribution system provides value to the collective of consumers. It is against the inherent logic of this system to break down the systemic benefits of the commission-based advice system to the level of one individual consumer. If costs were calculated in proportion to the service provided to the relevant customer, that advantage would be lost. The same is also true of criterion d), which is linked to a specific customer's tangible benefit. The legal text must make it unambiguously clear that the commission-system is still permissible, even if it is not possible to quantify its benefits in relation to a single individual customer or prospective customer.

The incompatibility of the wording proposed by the Council could easily be remedied by using a plural "s" in criteria b) and d) of the "overarching principles" and by removing the word "tangible":
b) "proportional to the ... product and ... service provided to the ~~relevant~~ consumer**s**"
d) "~~tangible~~ benefit to the consumer**s**".

Furthermore, we believe there is an opportunity to streamline legislation in this area without reducing the granularity of Level 1 requirements. This is because, both criteria must be considered in the POG-process (Art. 25 IDD). Costs and charges must be justified, and the product must offer value for money. This makes the two criteria within Art. 29a IDD-new redundant, as these considerations can be ensured during the POG-process.

Principle c) – entities belonging to the same group

We see major overlaps between the Council's proposal on the overarching principle c) in Art. 29a IDD-new and the already applicable Art. 17(3) IDD. The latter already prohibits insurance distributors to make any arrangement that could provide an incentive to recommend a particular insurance product to a consumer when the insurance distributor could offer a different insurance product which would better meet the consumers' needs.

Since it is duplicating existing law, it is dispensable deleting principle c) from Art. 29a IDD-new would help to streamline legislation. Alternatively, the case described in principal c) could be added to criterion a) of the overarching principals as an example if principal a) is maintained.

Explanation of compliance with “overarching principles”

The obligation to explain how intermediaries and undertakings comply with “overarching principles” is a bureaucratic burden without any benefit. Therefore, we suggest removing this obligation.

The Council’s proposal states that intermediaries and undertakings must explain how they comply with the overarching principles (Art. 29a No. 1 IDD-new). This article does not specify to whom such explanation is addressed. Recital 6a indicates that this might be competent authorities, but there is no certainty. In any case, it is not the role of consumers to check compliance.

As any business inside the EU must comply with applicable laws there is no need for an explicit explanation. Art. 28(2) IDD and Art. 7 of Delegated Regulation (EU) 2017/2359 require insurance intermediaries and insurance undertakings to keep a record of situations, which could result in compliance issues.

There is no added value in an explanation about compliance but added bureaucracy. We therefore recommend removing this obligation.

3.2 Inducement-test

The “inducement-test”, as proposed by the Council in Art. 29a No. 2a IDD-new, represents a considerable increase in granularity of the requirements at level 1. The introduction of such details at level 1 allows for the omission of further level 2 empowerments. In light of this approach, we would like to provide comments and suggestions on the following criteria in the “inducement-test”:

Criterion c) – mechanism to reclaim inducement in nominal value

We recommend clarifying criterion c) to ensure that established reclaiming systems are considered suitable to fulfil criterion c). Three issues would have to be addressed: the undefined time of "early stage", the full nominal value instead of a proportional value based on the duration the contract has already been running, the sanction of non-compliance with reclaiming all inducements indifferent of the status of the contracts.

Reclaiming mechanisms are already commonplace in the insurance sector. In Germany cancellation liability periods of five years are legally required for IBIPs with ongoing premium. However, there is a major difference between this established system and the Council's proposals. Commission must be repaid pro rata depending on when the contract is cancelled. For example, with a liability period of five years and cancellation after 2.5 years, half of the commission would have to be repaid. The reason for the limitation is obvious: customers often cancel due to changes in their life circumstances, such as unemployment or divorce. This is not the intermediary's responsibility.

The German system has proven an effective. At least we recommend clarifying criterion c) to ensure that established reclaiming systems, such as the German system, are considered suitable to fulfil criterion c).

Criterion d) – volume-based sales targets

Given the existing requirements set out in the IDD, as well as voluntary industry initiatives such as the Code of Conduct for distribution of the GDV and the proposed introduction of new rules on value for money and a new "best-interest-test" there is no need to prohibit the use of sales targets. Such targets do not inherently create detrimental conflicts of interest. Rather, it depends on the overall rules governing the advice process whether or not a conflict of interest may arise from them. Therefore, an overall assessment of all risk-increasing and decreasing factors must currently be carried out in accordance with Art. 8 of Delegated Regulation (EU)2017/2359. This requirement has proven its worth.

Higher sales remuneration can be justified from an economic point of view. Intermediaries who process certain transactions more frequently or deal with higher volumes have a higher level of professionalism and offer a greater range of services than those who only occasionally arrange transactions. Experienced intermediaries take work off the insurer's hands, which the insurer in turn remunerates. Conversely, intermediaries who sell a product less frequently will need more support from the insurer. It must remain possible, to remunerate the services accordingly. That’s why volume- or value-based sales targets are common practice in many industries. A prohibition would represent a serious infringement of the freedom to design employment and remuneration contracts. Criterion d) should therefore be deleted.

If the co-legislators nonetheless decide to introduce this criterion, it should be made clear that volume-based sales targets and value accelerators remain permissible as long as they are not aimed at pushing a specific product or a specific tariff. Sales targets within a remuneration system that take into account qualitative and quantitative factors should remain permissible.

Criterion b) – overlapping obligations to demonstrate that the inducement was taken into account during the POG-process

This criterion is overlapping with the existing obligations under Art. 25 IDD, especially with the distributor’s obligation to identify and quantify any further costs and charges, in particular distribution costs, that are not already taken into account in the calculation of total costs and charges by the manufacturer. Moreover, all costs need to be justified and proportional according to Art. 25(5) IDD-new. We would assume that the wording “all costs” would include inducements. After all, inducements must be considered under Art. 25 within the POG-process. This criterion should be removed from Art. 29a (1) IDD-new to streamline regulation.

Criterion e) and f) – overlapping with disclosure requirements and POG

Criterion e) states that the inducement is based on a clear, comprehensible and transparent calculation method. Criterion f) states that the inducement can be identified separately from other fees, commissions, or non-monetary benefits (such as fees relating to services for other customers) and payments or benefits which are necessary for the provision of services.

Both criteria overlap with the requirements of Art. 25 and Art. 29(1) IDD, which deal with product calculation and disclosure requirements. Criterion f) has been included threefold within the Council's proposals as the same is required under Art. 29(1), Art. 29a (2a.) lit. (f) and Art. 29a (2b) IDD-new.

The criteria for admissibility or prohibition of an inducement should be separated from the inducement's disclosure. Art. 29a (2a.) lit. (f) and Art. 29a (2b) IDD-new should therefore be deleted. The disclosure of inducements is and should be regulated in Art. 29(1) IDD-new. We will make specific proposals on this in section 3.5.

At the same time the already applicable POG regulation (Art. 25 IDD) provide for the products offering value for money. This includes the costs of inducements. Linking the admissibility of inducements to the pre-condition of itemising them separately does not add value.

Inducements, and any potential conflicts of interest that may arise from them, are to be disclosed in accordance with Art. 29(1) IDD. The issue of appropriate costs is addressed within Art. 25 IDD on POG.

Addressing the same within the provisions on inducements is duplicative, hence Art. 29a (2a.) lit. (f) and Art 29a (2b) IDD-new should be deleted.

Internal list of all inducements and record keeping of the results of the "inducement-test"

The Council proposes (in Art. 29a IDD-new) to require insurance intermediaries and undertakings to keep an internal list of all inducements paid or accepted and retained as well as keeping records of the results of the "inducement-test" performed on each individual inducement or inducement scheme. This is an administrative burden without any benefit to consumers. It clearly contradicts the aim of reducing bureaucracy. Furthermore, the requirement to keep an internal list of inducements creates redundancies with Art. 28(2) IDD and Art. 7 of Delegated Regulation 2017/2359.

Accounting regulations stipulate that payments must be traceable. If necessary, concrete information on any payment can be looked up. Supervisors have right and the tools for further investigations. Upon their request all kinds of lists can be created for any purpose at any time. A general obligation to keep lists and records seems excessive. It causes costs and does not benefit consumers.

3.3 Best-interest-test

Criterion a) – offering an appropriate range of products

We suggest considering the following aspects of the Parliament's and Council position on criterion a) "appropriate range":
- refer to investment products "or" underlying investment "options";
- reflect the business model of the insurance undertaking or insurance intermediary;
- allow criteria to be met by offering products from one or more manufacturers including tied agents offering one single IBIP with multiple underlying investment options.

We consider the amendments proposed by the Parliament to be important, namely that criterion a) concerns insurance-based investment products *"**or**"* underlying investment *"**options**"*.

The same applies to the addition, that the business model (for instance of tied-agents within exclusive partnerships) shall be reflected when considering the appropriate range of products. A section of the Commission's Q&As published by the Commission together with the legislative proposal also addresses this issue. It states:
"The appropriate range of products can also be met by tied agents, if the advice on an appropriate range of products is ensured through products from one manufacturer. In such a case, clients need to be informed in line with applicable requirements."

The Council's wording clearly intends to allow that requirement a) can be met by offering one single insurance-based investment product if it provides multiple underlying investment options (MOP). Hence, we would assume that co-legislators agree on this point. The best compromise would be a wording that takes into account all the specifics on criterion a) mentioned above.

Criterion b) – recommending the most "cost efficient" vs most "efficient" product

We suggest following the approach taken by the Parliament, to consider products holistically and avoid a one-sided focus only on costs.

Focusing mainly on the costs bears the risk that competition will be based exclusively on price. This would mean that other aspects that are inherent to insurance products and that are important to consumers are being neglected. These aspects include safety, quality of business processes, financial strength of the product provider as well as sustainability issues. It is therefore important that criterion b) does not focus exclusively on costs. After all, more factors than only costs are important for good decisions. Both the Parliament and the Council recognize this and propose improvements to the Commission's wording. We support this.

The Parliament's proposal addresses this issue best by deleting the word "cost" from "cost-efficiency". This expresses that the aim is to find products that effectively meet the demands and needs of consumers. That includes cost aspects. The Council's proposal has a clarifying half-sentence, which is inserted to indicate that also "other factors" should be considered when assessing "cost-efficiency". We consider the Parliament's proposal to better reflect the concerns expressed by both co-legislators.

Criterion c) – recommending a product without "additional features"

We support the deletion of Criterion c) as proposed by both, the Parliament and the Council.

We very much appreciate that both the Parliament and the Council suggest the deletion of the criterion c) initially proposed by the Commission.

This requirement would be inconsistent with the principle set out in Art. 20(1) IDD requiring that any contract proposed shall be consistent with the customer's insurance demands and needs. In addition, the criterion entails the risk of systematically discriminating insurance products, especially if core elements of the insurance product (e.g. biometric cover, contractual guarantees) are seen as "additional features".

Criterion d) – assessment of demands and needs

We recommend deleting Criterion d) as it is generally appropriate but duplicates Art. 20(1) IDD. Thus, it would be dispensable within the "best-interest-test".

We consider it to be right and sensible that the consumer's demands and needs must be obtained. Only products that meet the demands and needs of consumers are allowed to be recommended. However, it is sufficient to anchor this once in the legal text. Art 29a (1) lit. d) IDD-new is dispensable because of redundancy with Art. 20(1) IDD and should thus be deleted.

We believe that an exemption for cases in which inducements are already prohibited seems appropriate.

We consider the exemption for cases in which inducements are prohibited, as proposed by the Parliament (Art. 26a No.1c), to be a useful one.

3.4 Review-clause

We agree with the co-legislators that the deadline for the evaluation should be extended. The most apt proposal is an extension to 5 years from the publication of all level 2 measures. We believe that it would be beneficial to provide more detailed guidelines on the indicators and methods that the Commission may consider to determine whether additional measures are necessary.

We support the co-legislators' suggestions to extend the deadline for the evaluation to 5 years. A logical improvement would be to refer to the completion of the legal framework – the publication of all level 2 measures – rather than the entry into force of the amending directive. This approach is taken in the Parliament's proposal (see recital 9). It was also proposed by the Parliament and the Commission about the application deadline. Experience shows, a dynamic deadline would be better than a fixed one. A legal framework can only unfold its effect once level 1 and 2 measures have been fully implemented. EIOPA stated in its IDD application Report that there were still "*limitations in terms of evidence and experience on the application of the IDD*" (see executive summary, page 3). The level 2 measures on IDD were implemented in the end of 2017. 5 years passed between this EIOPA report and the publication of the Delegated Regulations under IDD.

The Parliament proposes to extend the scope of the review clause (Art. 16a No. 13 IDD-new). We support this idea and recommend considering the following subjects: POG-requirements, inducements, evolution of costs, level of retail investments, consumer protection and implementation of financial literacy measures.

Furthermore, in Art. 29a (1c) the Parliament proposes a mandatory peer review performed by EIOPA regarding the implementation of the "best-interest-test". This peer-review is dispensable if all obligations on inducements are reviewed by the Commission. EIOPA would be consulted within this review, anyway.
However, it remains unclear which indicators and methods the Commission will use to decide whether further measures – up to a full ban on inducements – should be introduced. This remains a cause for major concern because of the Commission's stated intention to gradually move towards a general ban on inducements.

3.5 Disclosure of inducements / third-party-payment

For legal clarity and to streamline the requirements, co-legislators should consider to only oblige one party to disclose third-party payments (or inducements) instead of obliging both, payer and receiver. We propose to oblige the receiving party as this is where potential conflicts of interests could arise.

German insurers support transparency. Art. 28 IDD requires insurance intermediaries and insurance undertakings to disclose any potential conflicts of interest. The additional value of the disclosure of all inducements is therefore limited and should be evaluated carefully. Experience shows that the information relevant to the customer's decision is, in particular, the price and performance of the product. When it comes to clarifying inducements, these could be presented in the PRIIPs KID as a 'breakdown' of entry costs and ongoing costs (see chapter 4.5). Distributors could rely on the manufacturers' PRIIP disclosures where no additional costs, charges, or other fees are added, and all costs are already included in the product calculation (which is the most common case). A different cost disclosure would only be necessary if additional costs are incurred or if the costs are unknown ex ante. Notwithstanding this, consumers should be made aware of their right to request a more granular itemised breakdown of the cost information, as proposed by the Council and the Parliament [within Art. 29(1) IDD-new]. A positive and important aspect is that both, the Parliament and the Council, proposed a clarification

for cases where costs cannot be ascertained at the pre-contractual stage, providing for the possibility to disclose the method of calculating. We suggest using the Council's wording.

The Parliament, Council and Commission agree on the need of the disclosure of inducements. To avoid redundancies and reduce compliance costs, the legal text should specify who is obliged to disclose third-party payments/inducements. The apparent inconsistency in the designation of the obligated party is a problem with the current proposals. The legal text seems to switch randomly between the categories of "intermediary", "insurer" and "insurance undertaking distributing insurance products". It would make sense to impose the obligation on those who receive such payments, as potential conflicts of interest may arise there. This could also counteract information overload and possible irritation on the part of consumers. As they would only receive the information once and not twice.

4. Value for Money

German insurers support the explicit clarification at level 1 that insurance-based investment products should offer value for money and that supervisory authorities are encouraged to use their powers to identify and investigate potential outliers. However, the extent to which this succeeds depends not only on what additional regulation is created, but also on how the supervisory authority uses its existing respectively expanded powers in practice. A lack of supervisory action cannot be replaced by more and more detailed regulation; both aspects must be in balance. The Parliament and the Council broadly agree on the principles of such a system. Both include the clarification that costs must be justified and proportionate. Furthermore, both include the concepts of supervisory benchmarks and peer grouping. This approach supports an efficient supervisory system. Nonetheless, the co-legislators' proposals differ in key details which merit careful consideration. We believe that the trilogue should be used to streamline the proposed Value for Money system in four key aspects:

- Clear rejection of price regulation at level 2.
- Only products that deviate significantly from the average should be considered outliers.
- National supervisory benchmarks for purely national products / European benchmarks only for cross-border products.
- Practical peer-grouping concept with a possibility to apply benchmarks instead.

4.1 Clear rejection of price regulation at level 2

To avoid detailed regulation of pricing processes and price control at level 2, we suggest to follow the Parliament's proposal to delete such empowerments.

We welcome the consensus between the Parliament and the Council that the new provisions are not intended as price regulation [Recitals 13a IDD-new (Council), 13aa IDD-new (Parliament)]. The setting of prices should be left to the market. Most importantly however, this notion should be reflected in the new provisions themselves.

The abstract legal terms of “justified” and “proportionate” could potentially be used at level 2 to regulate pricing processes in extreme detail. The Council and the Parliament have recognised this point and have suggested remedies. The Parliament suggests deleting the mandate for level 2 on this point altogether and replace it with a call for EIOPA Guidelines. The Council only proposes to delete the explicit call on the Commission to develop criteria on “justified and proportionate cost” [Art. 25(9) IDD-new]. This, however, would not be sufficient since the general empowerment for level 2 would remain. Therefore, we support the Parliament’s proposal on Art. 25(9) IDD-new to delete mandate for level 2 on this.

In this context, we also support the Parliament’s proposal to further clarify the notion of “justified costs” at level 1 by relating them to the costs actually incurred in manufacturing, administering, and distributing the product [Art. 25(1) IDD-new]. This clarification will increase legal certainty and reduce the need for further guidance. The amending Directive should also clarify that the justification of costs must also consider the requirements of the Solvency II Directive (Art. 209). It requires life insurers to charge premiums that are sufficient to ensure that all commitments can be met for the entire pool of insureds. Insurers must therefore perform a prudent prospective calculation of the risks and costs of their products over the lifetime of products. Insurance contracts have pre-agreed costs that must be set with sufficient robustness to remain valid for years or decades. Customers will later benefit from the cost surpluses of the insurer. This is a crucial difference between insurance and pure investment products. The latter can adjust costs over the holding period and do not provide reimbursement of surpluses to customers.

4.2 Identification of outliers

We support the Council’s notion to consider only products that deviate significantly from the average as outliers.

We welcome the agreement of the Council and the Parliament on the purpose of the benchmarks, which is to identify outliers.

In this respect, we support the clear statement in the Council’s proposal that both benchmarks and peer groups should allow for the identification of products that are at a ‘significant distance’ from the average of the respective cluster [Art. 25(7) of the Council proposal]. This provides a clear definition of outliers and prevents a perpetual downward spiral. We also welcome the clarification in the Council proposal that IBIPs should be compared with other IBIPs with similar characteristics including, where relevant, the product type, similar levels of risk, guarantees, strategy, objectives, range of recommended holding periods, sustainability features, premium frequency and biometric risk coverage [see Art. 25(1) IDD-new].

4.3 Supervisory Benchmarks

We welcome the co-legislator's inclusion of National Benchmarks. These are essential for purely national products.

We strongly support the idea put forward by both, the Council and of the Parliament on the need for national benchmarks to supplement or in some cases replace the common EU benchmarks. In case of IBIPs this is crucial because of the heterogeneity of the various markets. IBIPs are much more diverse in the design than pure investment products. While the Council and the Parliament agree on the concept of national benchmarks, the details of the two proposals differ. In the interests of practicability and of legal certainty, we suggest the following key considerations for a possible compromise:

- While we agree that national benchmarks should only be envisaged in cases without cross-border context, the restrictions should not impede their use altogether. Therefore, we support the criterion proposed by the Parliament, to limit the use of national benchmarks to cases where the product is manufactured and distributed in just one Member State [Art. 12a (1) IDD-new of the Parliament proposal]. Such benchmarks could be needed to ensure the protection of consumers. However, to avoid legal uncertainty, the wording should clarify that the applicability refers to a specific product and not to a product type. Limiting the applicability to cases where a type of product is only manufactured and distributed in one Member State would bring about unnecessary practical obstacles. It would be almost impossible for national supervisory authorities to reliably judge whether there may be products of a similar type in other Member States.
- Furthermore, restricting the use of national benchmarks to cases where national specificities can be demonstrated, as proposed by the Council, would severely limit their practicability [Art. 25(8b) IDD-new of the Council´s proposal]. In order to avoid legal uncertainty relating to the term "national specificities", this requirement should be deleted.
- The possibility to resort to national benchmarks should not be limited to jurisdictions where such benchmarks have been developed before 1 July 2024. The Council's proposal on this point should be deleted [Art. 25(8b) IDD-new of the Council proposal]. In many cases, the necessity of national benchmarks as an alternative to EU benchmarks will probably become apparent only after EU benchmarks have been developed. Similarly, the continued use of national benchmarks should not depend on the continued proof that national specificities remain.

If, despite the suggestions above, the co-legislators decide that national benchmarks will be applicable only in exceptional cases and that EU benchmarks will be decisive also in purely national contexts, the following suggestions should be considered: EU benchmarks should be general at European level – based on available data – and complemented by more specific national parameters. The IBIPs landscape is too diverse to allow for a one-size-fits-all approach at EU level. In Germany alone one would at least have to differentiate between different risk categories, terms, sustainability criteria, guarantee levels, inclusion of the protection of

biometric data, and the existence of a decumulation phase. Therefore, national supervisors should be allowed to refine EU benchmarks if they consider it relevant to ensure better consumer protection through tailored benchmarks.

4.4 Peer Grouping

We caution against overly detailed regulation of peer-grouping as it would curtail peer grouping's very own objective. Moreover, it would be beneficial if manufacturers would have the possibility to opt for benchmarks.

We support the general idea underlying the notion of peer-grouping, which is that the manufacturer is best-placed to perform the market comparison for a particular product in a product development process. By contrast, benchmarks as a means of market comparison – especially benchmarks at EU level – will always remain relatively crude since they cannot take account of the individual product and its characteristics. However, the Councils' proposal for a mandatory EIOPA database for the purpose of peer-grouping is curtailing the whole peer-grouping concept. The idea behind the peer-grouping concept is, to enable manufacturers to perform their own comparisons. The mandatory use of an EIOPA database in conjunction with detailed specifications on the methodology of the peer-grouping at level 2 would run counter to that. Thia might result in a situation where the peer-grouping and the benchmarks are de facto identical. Therefore, we support the Parliament's proposal, which provides the more flexible approach, according to which the manufacturers develop their own relevant peer-groups, assisted by EIOPA Guidelines.

Without prejudice to the above comments, we support the Council's proposal to allow manufacturers to opt for a comparison with the relevant benchmark in order to save the costs and effort of the peer-grouping. This may be relevant especially for smaller or medium sized insurers. It should be furthermore clarified that if national benchmarks apply for a certain product, national and not EU benchmarks are allowed to be used instead of peer grouping.

Furthermore, it is important to clarify that the peer-grouping is performed at a purely national level for products which are only distributed in one Member State. In this case, EU-wide peer-grouping would be futile due to the heterogeneity of the different markets.

4.5 Data reporting to supervisory authorities within POG

Rather than introducing new reporting requirements, we suggest the use of existing information wherever possible.

It is important that the new provisions on value for money are in line with the declared objective of all parties to the trilogue to reduce reporting and bureaucracy as much as possible. In this respect we welcome the consensus between the Council and the Parliament that EIOPA should primarily use data sources which are already available for the purposes of establishing EU benchmarks. The data required to produce benchmarks is largely available in the European Single Access Point (ESAP). It can also be supplemented with data from reporting required under

Solvency II. By way of example the template of S.14.01 contains product level information e.g. total amount of commissions paid during the year (C0071 – S.14.01) or surrender value (C0200 – S.14.01) etc.

However, both the Council´s proposal and Parliament's proposal omit the fact that the database which is currently created in accordance with Regulation (EU) 2023/2859 (ESAP) will precisely serve this purpose. The ESAP will include nearly all information compiled in the PRIIP-KID of all products. A reference to ESAP would be preferable to the introduction of new reporting requirements for the following reasons:

- The PRIIP-KID which will be available in the ESAP contain extensive data on performance, costs and "additional features" of the products. In particular, the PRIIP-KID includes all costs of the product including distribution costs.
- If a particular point of information which is essential for establishing the benchmark is not yet included in the KID, the ESA have the mandate under the PRIIPs Regulation to amend the PRIIP RTS accordingly in order to include them and propose a more granular breakdown of costs. This might be the case for a further breakdown of distribution costs including inducements.
- The information in the PRIIP-KID is standardised and designed to facilitate comparisons between products. In this point the PRIIP-KID differs from the information under Art. 29 IDD which is put forward by the Parliament's proposal as basis for reporting. The information provided under Art. 29 IDD is personalized for a particular consumer and, therefore, less suitable for comparison at an abstract product level.
- All information in the PRIIP-KID will be publicly available in electronically readable format under Regulation (EU) 2023/2859 (ESAP).
- The benchmarks will be developed based on a methodology which is consistent with the information received by the consumers themselves.
- No additional reporting requirements would be necessary. Nor would EIOPA need to establish a whole new database at significant extra costs for manufacturers or the public purse. Furthermore, no level 2 or 3 would be required. Substantial bureaucracy would be avoided.

In view of the shared objective of reducing the reporting burden and avoiding new bureaucracy, we suggest including a reference to ESAP in Art. 25 IDD, instead of new reporting requirements.

It would be beneficial to avoid unnecessary duplicative POG assessments by intermediaries where there is no clear necessity for them. We therefore recommend limiting these to where additional costs are charged at the point of sale, which have not already been taken into account by the manufacturer.

We appreciate the efforts made by the Council and the Parliament to avoid a situation where intermediaries must perform the same assessment which has already been performed by the manufacturer [Art. 25(5) of the Council's proposal and Art. 25(5a) of the Parliament's proposal]. However, neither the Parliament's nor the Council's texts are unambiguous. Therefore, we propose adding a clarification, which clearly states that intermediaries are only required to duplicate POG-processes already performed

by the manufacturer, if additional costs are charged at the point of sale which have not already been taken into account by the manufacturer [within Art. 25(5) lit. (c) Council's proposal or Art. 25(5a) lit. (c) Parliament's proposal].

With regard to the requirements on peer-grouping, we welcome the consensus between the Council and the Parliament to avoid identical requirements on both, manufacturers and intermediaries. But while the Council's approach is straightforward in requiring only manufacturers to perform the peer-grouping, the Parliament's approach is more complicated. The Parliament proposes that both manufacturers and intermediaries should be required to perform the peer-grouping, but intermediaries should be allowed to rely on the assessment of the manufacturer. Of the two approaches, we are in favour of the Council's proposal since it avoids the legal uncertainties of the Parliament's approach while achieving the same objective. Obliging intermediaries to conduct peer-grouping should be an exceptional case. This should explicitly be limited to cases where additional costs are charged at the point of sale, which have not already been taken into account by the manufacturer.

We suggest to streamline requirements on POG by avoiding requirements without added benefit.

The Parliament proposes that the procedures under Art. 25 IDD-new should include inter alia an assessment 'whether the product allows the target market to (a) smoothly manage short-term finances to meet short-term needs; (b) absorb economic shocks; or (c) reach future long-term goals' (paragraph 1). This requirement is highly unclear and therefore would present legal questions without actually offering added value to consumers. Art. 25(1) (b) and (c) IDD already require a clear identification of the target market's objectives and needs and an assessment of whether the insurance product is designed appropriately to meet the target market's objectives and needs.

The requirement merely duplicates the assessments made in accordance with Art. 25 IDD. Under Art. 25 IDD, the manufacturer must identify the needs and objectives of the target market. These needs and objectives must then be met by the product. E.g., if the target market wishes for the product to reach long-term goals, then this is the basis for the assessment under POG. The amendment proposed by the Parliament would require manufacturers to additionally classify all customers into one of the three artificial categories. This exercise has no apparent added benefit. We would, therefore, suggest rejecting this amendment.

But if the requirement is maintained in the final text, it should at least be limited to IBIPs since it is clearly unsuitable for other types of insurance products. This would also be in line with the origin of the provision which was derived from the MiFID II framework.

5. Information provided to consumers

5.1 Annual Statement

To ensure clarity for consumers with long-term contracts and to reduce the bureaucratic burden, we propose that new provisions on the annual statement should only be applied to new contracts.

As part of the legislative process to implement the EU's retail investment strategy, customers will receive a new annual statement. We welcome the clarification in the Parliament's proposal that where sufficient information is not available to draw up the new annual statement, this requirement shall not apply [see Art. 29(3) IDD-new at the end].

More important than the availability of data for the manufacturers, however, is the continuity of annual information for existing customers. Approximately 42 million German customers currently receive the annual statement under Art. 185(5) of the Solvency II Directive. The purpose of the annual information is twofold:

First, the annual information should enable customers to compare the development with the information and projections provided pre-contractually. For this purpose, the annual information currently provided under Solvency II is aligned with the pre-contractual information provided under Solvency II under the respective national regimes.

Second, the annual information should allow customers to monitor the development of their contract and their benefits over the years by comparing the annual statements. Both objectives would be disrupted by the introduction of completely new annual information for existing contracts. Therefore, it should be ensured that existing customers continue to receive their familiar annual information instead of the new one. Consistency for customers in this case, outweighs possible benefits of the new annual information.

As regards the shared objective of the co-legislators to avoid unnecessary bureaucratic burden, the implications of introducing a detailed annual statement for millions of existing contracts should be considered. In many points, the necessary data would have to be reconstructed manually for decades into the past. Insurance contracts in Germany often have terms of 30 years or more. They originate from a time when storage in IT was still very expensive, and data were stored very sparingly. Considering that existing policyholders already receive annual information in accordance with Art. 185(5) Solvency II Directive, such a far-reaching requirement would be disproportionate.

The co-legislators should keep in mind that one of the objectives of the Retail investment strategy is to provide retail investors with cost-effective products. Additional requirements which provide little benefit to retail investors at high costs should be avoided.

If the proposal by the Parliament is not followed, it would be necessary to at least establish a clear approach at level 1 for the event that a provider does not have the historic data of a contract. In addition, longer implementation periods of at least 36 months would be required since the implementation would be very complex.

5.2 PRIIPs Regulation

The Parliament and the Council made different additions to the PRIIP-KID. It should be kept in mind that PRIIPs should remain a short concise key document that enables retail investors to compare different products. The PRIIP-KID is not meant to be an all-round tool, since consumers are provided with personalised information within the scope of the pre-contractual IDD information. In addition, it needs to be ensured that the content of the PRIIP-KID does not contradict the customer information according to the IDD.

Performance scenarios

Our view is that Forward-looking performance scenarios are a better indicator than Past Performance.

In Art. 8(3) lit. d) PRIIPs Regulation a proposal for performance information is provided. The Parliament has proposed that forward-looking performance scenarios should be used as standard for the majority of the products. However, in limited cases where forward-looking performance scenarios are misleading, past performance should be used. On the same point the Council has proposed that forward-looking performance scenarios should be used for all PRIIPs and should only be combined with past performance where relevant.

Forward-looking performance scenarios should be used for all products. They show consumers that the returns depend on the market developments and indicate a range of possible returns. Moreover, using forward-looking performance scenarios for all PRIIPs will ensure that comparability of different PRIIP-KIDs is maintained.

Real-time calculations in the PRIIPs KID

We suggest avoiding technical problems arising from real-time calculations in the PRIIPs KID by following the Parliament's proposals such as to introduce a static tool to compare investment options.

We explicitly welcome the decision of the Commission to refrain from including past performance in the PRIIP-KID. It is widely acknowledged that this information is misleading for the purpose of understanding the future evolution and risks of investment products. The wording proposal of the Council is more suitable than the wording by the Parliament since it includes forward-looking performance scenarios for all products.

German Insurers welcome that the co-legislators have spoken out in favour of retaining the possibility to provide a generic KID for Multi-Option Products (MOPs) in

Art. 6(3) PRIIPs Regulation. However, both co-legislators foresee that MOPs manufacturers must also provide a tool to facilitate the comparison of the underlying investment options.

The Council proposed that this tool should allow for calculations of costs, risks, and performance for a PRIIP given a specific combination of investment options. This would entail extensive and mathematically highly complex real-time calculations on the website of the manufacturers to create a PRIIP-KID (running up to 10.000 simulations). These take some time and cannot be performed in real time. The current PRIIPs RTS require the performance scenarios in the PRIIP-KID to be calculated in this way. The costs of the products as well as the risk indicator are also derived from these calculations. Requiring the manufacturer to create a tool that allows comparing different investment options in real-time pursuant to Art. 6(2) lit. a) draft PRIIPs Regulation would inevitably result in a customisation of the PRIIP-KID and a massive increase of effort. This also contradicts the core aim of the PRIIP-KID to provide a comparison of highly standardised product settings that do not reflect individual choices.

Problems arising from these technical constraints can be avoided by following the Parliament's suggestion as this proposal allows for a generic PRIIP-KID for MOPs and a static tool to compare the investment options that does not entail real-time calculations on the website of the manufacturers. Additionally, the total costs for a choice of underlying investment options could be provided if the costs can be calculated using a simplified approach. As a minimum, significant simplifications of the provisions on calculation methods for the tool would be a necessary precondition.

Finally, a clear warning is necessary to highlight the approximate nature of such calculations.

Sustainability information

We recommend to modify the text so that sustainability information can be provided in accordance with IDD.

The Parliament´s and Council's proposals add a new section on sustainability [Art. 8(3) PRIIPs Regulation]. Unfortunately, both proposals contain technical errors.

The Parliament proposes as title of the section *"How environmentally sustainable is this product?".* It is misleading to reduce an entire product's sustainability ambition to the minimum proportion of environmentally sustainable investments. It also creates inconsistencies between the PRIIP-KID and the SFDR disclosures. For example: The Parliament proposed to disclose information, that is not mandatory under the SFDR such as the greenhouse gas emission intensity on product-level [Art. 8(3) point (ca) of the PRIIPs Regulation].

The Council's proposal contains a similar error. Although the title has been adapted, the only disclosure required is the share of taxonomy alignment [Art. 8(3) lit. (ga) PRIIPs Regulation]. Just like the Parliament's proposal, this wording also

reduces the sustainability of a product to a single characteristic, namely its taxonomy alignment. Currently, the disclosed average share of Taxonomy-alignment of IBIPs and pension products is only between 0% and 6 % and is therefore in its singularity not suitable to reflect the sustainability ambition of the product (see EIOPA Report from 4 June 2024, page 26; EIOPA-BoS-24-159).

The information in the PRIIP-KID should be consistent with the criteria on the consumer's sustainability preferences under the IDD and MiFID II, which would also be consistent with the SFDR. Care must be taken to ensure that the information under the SFDR and the PRIIPs Regulation do not duplicate or overlap. We therefore see merit in requiring the information that is already described in detail in the SFDR-Template, i.e. (i) the minimum proportion of environmentally sustainable investments, (ii) the minimum proportion of sustainable investments and (iii) consideration of PAI, perhaps with a hyperlink to the pre-contractual SFDR template for detailed information.

However, we support the Council's approach, which is more concise as it respects the nature of the KID as a short key information document.

PRIIPs online EU comparator

A PRIIPs online EU comparator would not add value to consumers. Therefore, we recommend waiving this proposal.

The Parliament proposes to introduce a PRIIPs online comparator to be developed by the European Supervisory Authorities [Art. 8(3) lit. b PRIIPs Regulation].

Any EU-wide online comparator would face serious methodological problems in achieving true comparability between products and all their features. While we can understand the initial appeal of such an idea, it is simply not feasible. This is particularly the case for IBIPs which differ substantially between Member States and offer a wide range of features (such as scope and level of insurance cover etc.) which are difficult to compare using only quantitative information. Moreover, the majority of the IBIPs would not be available on the national markets of the customers who would consult the comparator. Such comparator would ignore other important factors such as consumers' individual demands and needs, product/service values, options, insurance cover and guarantees and would lead consumers to focus on a single selection criterion: the product costs. This is the wrong approach as it neglects all other factors to be considered when choosing a product. The comparator could thus be misinterpreted by the wider public – including social media as a ranking of "good" and "bad" products. There is always a trade-off between cost and quality/value of the product. This phenomenon is well-known in other industries. It is possible to produce cheap products, but at the expense of quality. Cost and value are two sides of the same coin. A comparison tool would focus solely on the cost side, which in turn could lead to a reduction in product quality.
Thus, we call on co-legislators to refrain from including such a comparator within the PRIIPs Regulation.

Obligation to publish the PRIIPs KID on websites

We propose that only manufacturers are obliged to publish the PRIIPs KID on their website.

In Art. 14(6) of the PRIIPs Regulation the Parliament and the Commission proposed that both, the manufacturer as well as the distributor, should make the PRIIP-KID accessible on their website. We suggest that only the manufacturer of products, and not the distributor, should be obliged to provide the PRIIP-KID. Intermediaries should be allowed to refer consumers to the product manufacturer's website, as it is unnecessary to provide the same information to consumers via two different channels. Consequently, the manufacturer of products – and not the distributor – should be obliged to provide the PRIIP-KID. To oblige both manufacturers and distributors imposes a significant additional burden on individual intermediary who would have to keep their websites up to date and need to ensure that the latest versions of product information is available. Especially for intermediaries who work with several insurers, this would lead to significant costs without adding value for the consumers, who can get the information from the manufacturer's website anyway.

Four pages for a consumer-friendly PRIIP-KID

Given the extended content of the KID, we suggest considering four pages for a consumer-friendly PRIIP-KID.

The proposals from the Parliament and the Council would lead to addition of new sections like "Product at glance" dashboard and sustainability information. The Parliament suggests extending the three-page limit to four-page limit for PRIIP-KID to accommodate the new sections. The Council on the other hand prefers to maintain the three-page limit.

The KID is meant to be a concise document, which should remain clear and easy to read. The PRIIP-KID should therefore remain a brief document. As a first step, the content and presentation of KID should be streamlined to avoid redundant or non-essential information.

This can be achieved through the RTS and the ESAs should be explicitly asked to check for redundancies and unnecessary information. Many redundancies can also be found in the pre-set text modules, such as the table header and the introductory text on performance scenarios. The possibilities for consumers to file a complaint are already elaborated in the information to be provided under Art. 18 IDD and under Art. 13 of the Directive on consumer ADR and can be cut in the PRIIP-KID.

However, provided new items were added at level 1, we fear that a strict three-page limit will severely compromise readability. Consequently, it will become necessary to extend the page limit of the PRIIP-KID to four pages.

Deletion of warnings for complex products

We welcome the deletion of the warning for complex products. Warnings for particularly risky products might be included instead.

The Council and the Commission have proposed to delete the warnings for complex products in both the PRIIPs and the IDD regulation, which is welcomed. Experience with the PRIIP-KID shows that the comprehension alert for complex products does not work in practice. This is mainly because it is practically impossible to define suitable criteria that clearly differentiate well between complexity that helps consumers (such as risk mitigation techniques) and complexity that is detrimental for consumers.

Proposals from both the Council and the Parliament in Art. 29(5) IDD-new have included the warning for particularly risky products in the IDD text, while the Parliament also keeps the warning for complex products. We believe that the warning for particularly risky products rather than for complex products makes sense. Regardless of the product structure, financial decisions are challenging for retail investors: not only different products and concepts existing on the market must be evaluated but also questions of social and tax law. Many retail investors not only lack the basic knowledge of the financial context but also the time and motivation to acquire it.

Moreover, a simple product is not per se associated with less unexpected losses than a sophisticated one. A share, for example, is a relatively simple product and easy to understand compared to a life insurance policy. However, most consumers do not understand and misjudge the risks inherent in a share.

As a minimum, a consistent approach should be taken in the PRIIPs Regulation and in the IDD texts.

Other topics of the PRIIPs Regulation

We welcome the Parliament's proposal to include financial guarantees within the product at a glance dashboard as financial guarantees are an important aspect for consumers when they evaluate IBIPs.

Moreover, we support the deletion of the interactive tool in Art. 14 PRIIPs Regulation as proposed by the Council. The suggestion by the Commission to introduce such a tool neglects the nature of the PRIIP-KID as a standardised information document. Such a tool would lead to the personalisation of KID. But the KID (calculation methods etc.) has not been designed as a dynamic customisable document that should be used to display personal preferences. The aim of the PRIIP-KID is to provide a first product comparison of highly standardised product settings that do not reflect individual choices.

5.3 Pre-contractual information on IBIPs

We support the inclusion of information on the right of withdrawal in pre-contractual information as suggested by the Council.

We support the amendment proposed by the Council, adding a mandatory information on the cancellation right within Art. 29(1) lit. g) IDD-new. It is important that consumers of IBIPs receive information on the cancellation right.

5.4 Digital by default

We support switching from paper by default to digital by default as it is an important improvement.

The general switch from paper by default to digital by default within Art. 23(1) IDD, which is proposed by the Commission and both co-legislators, is an important improvement and highly appreciated by the German insurers. This approach should be followed consistently also in future legislation.

For existing contracts, however, we believe that an automatic switch would not always be in the consumer's interest. Many policyholders are used to receiving their information on paper. We are therefore in favour of the Council's proposal in Art. 23(3) IDD-new. More on this in the chapter 5.1 "annual statement".

5.5 Term "cumulative costs"

We recommend using the term "cumulative costs" instead of "compounded costs".

We welcome the clarification in the Council's proposal in Art. 29(3) IDD-new that "cumulative" and not" compounded costs" are to be shown. "Cumulative costs" is the term used in the PRIIPs methodology mentioned in PRIIPs RTS. Thereby, we support maintaining the consistency between IDD and PRIIPs Regulation.

6. Suitability and appropriateness assessment

Assessment of existing portfolios

We support deleting the requirement to assess the composition of any existing portfolios.

We appreciate the deletion of the obligation to obtain information regarding "the composition of any existing portfolios" as suggested by the Parliament [Art. 30(1) IDD-new]. The Council also proposed a clarification that the portfolio composition can only be considered "to the extent possible" and where the consumer is willing to provide information on existing portfolios held with third parties. Overall, we favour the Parliament's proposal over the Council's, as the term "options" is better suited to IBIPs than "assets".

Consideration of additional features within the suitability assessment

We propose deleting the requirement that intermediaries or undertakings cannot consider a product as suitable where it contains unnecessary features and give rise to extra costs.

With great concerns we see the Council's proposal, that Member States shall ensure that insurance intermediary or insurance undertaking do not consider a product to be suitable where it contains features which are not necessary to the achievement of the consumer's objectives and that give rise to extra costs [Art. 30(1) IDD-new].

Introducing the wording *"additional features"* into the legal framework would be a new and vague legal term. It is evident that this will have a significant impact. In fact, a product sales ban would depend on how the undefined legal term is interpreted. We are deeply concerned that this provision might put IBIPs at disadvantage compared to pure investments. There is no doubt that core elements of insurance contracts were incorrectly deemed as *"additional features"* at times during the past political discussion. What appears necessary or desirable to the consumer is a subjective judgement and must rest with the consumer, who decides based on a recommendation. We consider this requirement to be dispensable because in any case recommendations have to be in line with the consumers demands and needs [Art. 20(1) IDD].

Within the "best-interest-test" (Art. 29b IDD-new) both, the Parliament and the Council, proposed to delete the criterion c) on "*additional features*" for good reasons. This deletion is supported by the German insurers. The criterion should not be anchored within the suitability assessment instead.

Standardised format and content for the suitability report

We support the deletion of the empowerment to develop a standard regarding the report on the information collected during the suitability or appropriateness assessment.

Pursuant to Art. 30(1) IDD-new, customers shall be provided with a report on the information collected for the purpose of the suitability or appropriateness assessment upon their request. In addition, EIOPA shall develop a standardised format and content for this report.

This provision also seems to duplicate already existing legislation. Pursuant to Art. 15 GDPR, in particular, a right to information already exists according to which, amongst others, information on the processed data and the purpose of the processing has to be provided upon request of the customer. Furthermore, Art. 20(1) GDPR enables customers to receive data, which they have provided, in a structured, commonly used and machine-readable format in order to make the data available to a third party (e.g. another provider). So, the standardisation of content and format by EIOPA is not necessary. Efforts would be duplicated if information pursuant to Art. 15 GDPR and Art. 30 IDD-new must be provided in parallel.

We recommend following the Parliament's and Council's proposals, deleting the respective delegation of power to EIOPA.

Information to be assessed by independent advisors

In order to maintain a level playing field between distribution channels we support the Parliament's suggestion to remove the privileged status of independent advisors.

The Commission's and Councils proposal states that when advice is given on an independent basis it is not necessary to obtain information from clients about their product-specific knowledge and experience or the existing portfolio composition when advising on diversified and non-complex products [Art. 30(5c) IDD-new].

It is encouraging that the Parliament is in favour of deleting this one-sided privilege, as it is objectively incomprehensible why this information should not be necessary for fee-based advice. The necessity of such information is not dependent on the form of remuneration, but rather on the clients and their needs. A level playing field between different distribution channels should be maintained because it is essential for consumers, to be able to rely on the same standards when being advised regardless of the advisors business model.

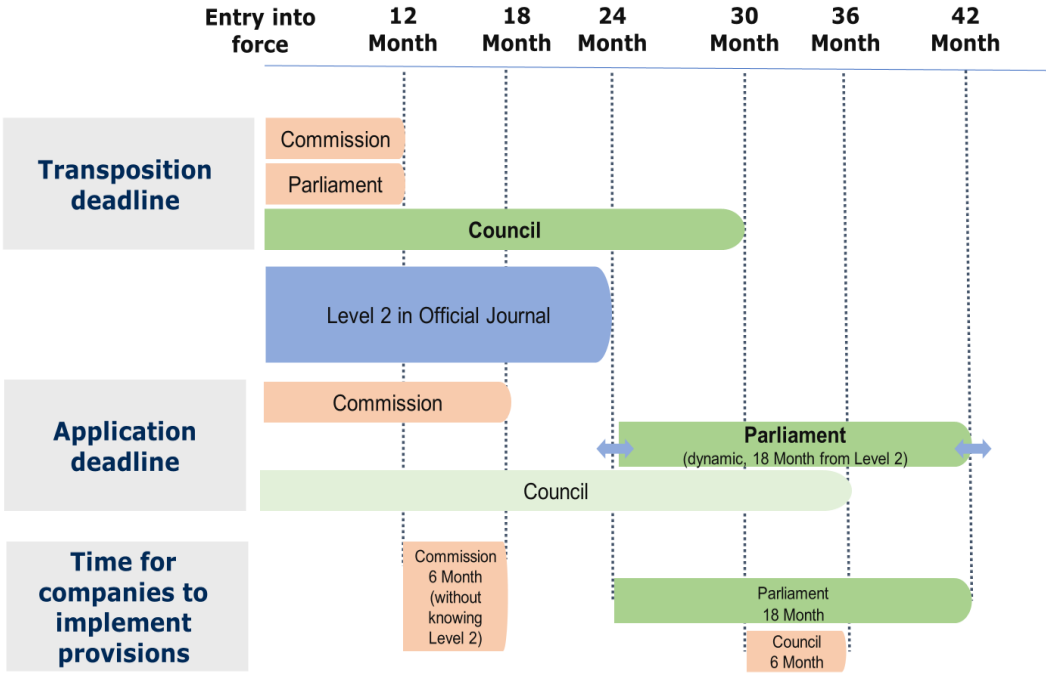
7. Transposition- and Application deadlines

A transposition period of 30 months for the Member States would be appropriate in view of the scope of the RIS. For the same reason, the period of application might start from the publication of the complete legal framework and last at least 18 months.

The transposition deadline for Member States proposed by the Commission and the Parliament (12 Month) seems to be too ambitious. The Council proposed a transposition deadline of 30 Month after entry into force, which seems to be more realistic. This becomes obvious when looking at the history of IDD implementation. Within IDD implementation about half of all Member States were faced with infringement procedures due to late IDD transposition. We therefore support the Council's proposal regarding the transposition deadline.

It is positive that the Parliament and the Council proposed extensions of the application timeline. We support both the Council's and Parliament's proposals. The Parliament's approach of a dynamic application deadline es very reasonable and therefore supported by the German insurers. It extends the application to 18 months after the publication of the level 2 measures.

Co-Legislators proposals on IDD implementation and application timeline



We also see the need to align the application deadlines within IDD and PRIIPs Regulation. Both relate to each other and should therefore be applicable at the same time. To do so, we support the Parliament's suggestion for an PRIIP application 18 months after the publication of level 2 in the Official Journal of the European Union. This would be in line with the IDD application proposed by the Parliament. The Council's proposal for PRIIP implementation is not practicable, as both deadlines – the one for the publication of level 2 and the one for the application of the PRIIP – are 24 months. Entities would effectively not be granted any implementation period.

8. Records of marketing communications

We suggest reconsidering the concept of record keeping for all marketing communication.

Notwithstanding already existing rules, the Commission's and the Parliament's proposals oblige insurance companies in Art. 26a IDD-new to keep records of all marketing communications for a minimum of 5 (and a maximum of 7) years – every social media post, every flyer, every exhibition display, simply everything. The Parliament even aims to extend the storage obligation to the term of the contracts. In the case of retirement savings products and insurance policies with long contract terms, storage obligations would apply for up to 50 or even 60 years. When considering the sheer amount of storage space and IT-capacity needed, to store all the marketing communications throughout the lifetime of each insurance contract, it becomes clear how irrational and expensive such regulation would be. The costs of such data storage and the potential benefits for consumers are extremely disproportionate. In addition to the unjustified costs, which would ultimately be reflected in higher product costs, sustainability considerations should also be

mentioned. Despite the positive impact of cloud data storage and technical innovation on reducing CO2 emissions, the significant energy consumption of data storage centres that would store this amount of data cannot be ignored.

We share the key objective of Art. 26a IDD-new, which is to prevent misleading marketing communications. But the obligation to keep all marketing communications for a long period is cost-intensive and therefore questionable. The result of an advisory process is always documented anyway. This is useful and helps consumers to file a complaint, if necessary.

As in Art. 17(2) of the current IDD, a reference to the principles regulated in the Unfair Commercial Practices Directive is sufficient. If the co-legislators decide to retain this approach in general, the retention period should be limited to a maximum of five years.

Annual reporting to the management body

To reduce unnecessary reporting, we propose to delete the new annual reports to the management body on the use of marketing communications and strategies.

It is proposed by all co-legislators in Art. 26a IDD-new that annual reports have to be made to the management body on the use of marketing communications and strategies, on compliance with relevant obligations and on any signalled irregularities.

Product manufacturers regularly evaluate the distribution strategy as part of the POG-process. Furthermore, it is the managements duty to always ensure compliance with the legal framework. There is no added value in this new reporting obligation. We are firmly convinced that the proposed reporting would only result in additional bureaucracy and consequently additional costs without increasing value to the in consumers.

9. Annual reporting on the scale of cross-border business

It would be beneficial to keep reporting obligations as limited as possible, including for cross-border business.

Art. 4 and Art. 6 of the already applicable IDD provide that any insurance, reinsurance or ancillary insurance intermediary who intend to carry out business within the territory of another Member State for the first time, shall communicate this intention together with further information to the competent authority of its home Member State. Insurance undertakings must provide statistical information on cross-border activities as required by Art. 159 Solvency II.

The Art. 9a IDD-new supplements this obligation by annual reporting's about the scale of cross-border business. We doubt the value for consumers arising from this annual reporting.

Of course, NCAs should be aware of distributors acting cross-border and need to be able to supervise them properly. Therefore, they are entitled to obtain any information they ask for. The annual reporting might ease the statistical work for EIOPA. But EIOPA already has extensive information on cross-border business from the Solvency II templates S.04.01, S.05.02, S.12.02 and S.17.02. The additional bureaucratic burden of the new rules is therefore not justified. On the contrary, it leads to additional costs, which in turn must be borne by consumers, which is ultimately against the original objectives of the RIS, namely, to reduce product costs and enhance value for money. Art. 9a IDD-new is dispensable.

Furthermore, referring to "distribution activities" [see definition of "insurance distribution" in Art. 2(1) No. 1. IDD] includes services for policyholders, who change their place of residence after the conclusion of a contract. This is no deliberate decision of the intermediary or of the insurance undertaking for a cross-border activity.

As a minimum the reference to "insurance distribution activities" should be replaced by "cross-border activities under the freedom of services or freedom of establishment" as proposed by the Parliament. Additionally, the threshold of 500 consumers as proposed by the Council is adequate.

10. Professional development and training

Member States should determine how to prove professional training.

We support the amendments of the Parliament and the Council, which clarify, that "any other document" or an "equivalent" to a certificate may be appropriate to proof the completion of training.

We believe it would be beneficial to ensure that the number of hours dedicated to professional training and development is consistent throughout Europe.

The 15-hour training requirement has proved its worth. Both the Council and the Commission maintained the minimum level of 15 hours, the Parliament should follow this approach. Giving national competent authorities the power to require for any number of hours for additional training beyond 15 hours per year – as proposed by the Parliament – contradicts the intention of harmonization.

Training that is considered eligible under both the IDD and MiFID II should be accepted in both systems.

Trainings that are eligible for the IDD or the MiFID II overlap significantly in terms of content. Consequently, they should also be accepted for the respective other regime. This would mean that the mandatory educational training for financial intermediaries who offer investment products – including insurance-based products – would cover the mandatory scope of 15 hours per year without accumulating to 30 hours.

We would like to point out that under the Commission's proposal intermediaries that are subject to both the provisions set out in IDD and MiFID II probably must complete a total of 30 hours of further professional training each year, even though the training contents correspond with each other. This cumulative requirement should be avoided. On order to make the verification easier for supervisory authorities and reducing the administrative burden of documentation, further training which is eligible under IDD and MiFID II shall be recognised in both regimes.

11. Other Topics

The use of the term "consumer" or "end customer" instead of "customer" corresponds better to the objectives of the RIS than the term "customer".

The Council proposes using the term "customer" and deleting the "retail". Against the background of the RIS, this is incomprehensible. The RIS is about retail customers, it is not about professional customers or even commercial or industrial customers. We therefore strongly recommend using the term "consumer" consistently in the IDD or at least to stick to the term "retail customer" within the context of the retail investment strategy.

In the current version of IDD, the terms "customer" and "consumer" are sometimes used synonymously, which leads to inconsistencies and difficulties in the transposition into national law. The very first recital clearly states that the focus of the retail investment strategy is consumer protection.

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