

## **EIOPA Survey to external stakeholders on the application of the IDD**

As a first step towards the preparation of the report on the application of the IDD, EIOPA is launching an initial survey addressed to external stakeholders, such as consumer associations, academics, trade associations, insurance undertakings and insurance intermediaries. External stakeholders are invited to complete the survey by **1 February 2021**.

**Note:** This feedback is provided by BETTER FINANCE together with its German (BdV-Bund der Versicherten e.V.) and French members.

### **1) Improvement of quality of advice and selling methods**

*Provide in the box below any qualitative or quantitative data/evidence you have which could be used to assess whether the quality of advice and selling methods have improved, deteriorated or remained the same following the implementation of the IDD:*

- For Germany besides the statistics provided by BaFin, the annual reports of the insurance ombudsmen are crucial. There are two ombudsmen, both located in Berlin:
  - Ombudsman for life and non-life insurances („Versicherungsbund“).
  - Ombudsman especially for private health insurances („PKV-Ombudsman“).
- In their annual reports there is always a statistical part on the total number of complaints, their distribution on different insurance classes, whether addressed to insurers or intermediaries, and how many complaints or arbitration procedures were successful for the policyholders. In 2019 there were about 13000 admitted complaints related to life and non-life insurance and about 5000 admitted complaints related to private health insurances (in total: more than 18000 admitted complaints).
- This figure has been compared with the total number of complaints reported by BaFin (in 2019: 7.850), in order to fully understand its relevance (no double-counting between BaFin and Ombudsmen). Related to life-insurances complaints about run-offs and the right of withdrawal were particularly relevant.
- In France, even if it is difficult to clearly verify that improvements effectively happened, we observed some general improvements in the behaviour of some retail distributors concerning the provision of advice. The directive is giving more importance in regard to conflict of interests and remuneration compared to the past. However, a clear difference between "independent" advice and "tied agent" sales is still missing. More worryingly, we do not see any material development or any "independent" advice in the life insurance market.

### **2) Functioning of the demands and needs concept**

*Indicate by ticking "Yes" or "No" whether, in your view, the demands and needs concept is well functioning being mandatory for all distribution models in relation to non-advised sales of any insurance product. Please provide evidence for your answer in the box below.*

- YES, unfortunately we do not have any empirical research results on the impact of the demands and needs test on the quality of the sales practices by intermediaries. But a recent judicial study has shown that there is a contradiction between the article 20 (1) IDD fixing the demands and needs test and German national insurance contract law (articles 6 (3) and 61 (2) VVG), which allow for a “renouncement of advice” (“Beratungsverzicht“) by the customer. This “renouncement” may include the demands and needs test following to the study by *Angela Regina Stöbener* (Beratungspflichten des Versicherers. Von der Anlassrechtsprechung zur IDD, Karlsruhe 2017, pages 416-436)<sup>1</sup>. Therefore, we recommend EIOPA to make an empirical research on the issue, if this possible “renouncement of advice” does in practices entail a “renouncement” of the demands and needs test by intermediaries as well. Maybe in other EU member states there are similar contradictory provisions on the national level as well.

### **3) Functioning of “execution-only” sales**

*Indicate by ticking "Yes" or "No" whether, in your view, "execution-only" sales are functioning well in those Member State that do not require the assessment of appropriateness for the sales of insurance-based investment products if certain conditions are met. Please provide evidence for your answer in the box below:*

- NO, As already pointed out in our previous comments on the IDD implementation for EIOPA, we continue to stress that this supplementary distinction of “executive-only” sales does not make any sense for life-insurances /IBIPs. All IBIPs are “complex” products in themselves because of their inherent combination of insurance risk coverage and investment part, which from a consumer’s perspective should be avoided in any case due to non-transparent cost charging and profit sharing. So even if there are no options for the customer with regard to the investment part, this does not change the main character of the IBIP as a strongly layered product. In consequence there should not be any change of pre-contractual information duties of the distributor.

### **4) Impact of the IDD on insurance intermediaries which are SMEs**

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

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<sup>1</sup> [https://www.jura.fu-berlin.de/fachbereich/einrichtungen/zivilrecht/lehrende/armbruesterc/1\\_Aktuelles/DissStoebener.html](https://www.jura.fu-berlin.de/fachbereich/einrichtungen/zivilrecht/lehrende/armbruesterc/1_Aktuelles/DissStoebener.html)

- Following to national register of insurance intermediaries there is a slow, but constant reduction of registered intermediaries for at least ten years in Germany (from more than 250.000 in 2012 to about 198.000 in 2019). Not surprisingly this “dying of intermediaries” („Vermittlersterben“) is interpreted by one of the biggest organisations of intermediaries in Germany as a direct impact by “overregulation” (cf. Helge Lach: Evaluierung – Hält die IDD, was sie versprochen hat?, in: Zeitschrift für Versicherungswesen, Heft 1/2021, S. 12-20)<sup>2</sup>. This distribution organisation DVAG (central office in Frankfurt / Main) represents more than 17.000 intermediaries and a total volumen of contributions of 214,2b Euro in 2019 (life and non-life insurances, investment funds, home savings etc.).
- We clearly reject this interpretation. Quite on the contrary from a consumer’s perspective this development can be understood as an enhancement of professionalism amongst intermediaries, because before the number of part-time intermediaries was very high. This reduction of the number of insurance intermediaries therefore constitutes a positive structural market consolidation. Additionally, it must be stressed that the total amount of distribution remuneration only for life-insurances in Germany has even increased from 7,0 b Euro in 2018 to 7,5 b Euro in 2019, i.e. 4,4% of total sum of gross premiums earned (cf. Association of German Insurers (GDV): Lebensversicherung in Zahlen 2020, page 32).

## **5) Enhancing IDD framework related to digitalisation and new business models**

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

- Following to the research on IDD evaluation published by intermediaries (cf. our comment on Q 4), 90% of intermediaries claim that legal regulations hinder either strongly (50%) or at least somehow (40%) their own efforts for digitalisation of business and communication with customers (cf. ZfV, 2021-1, page18). These “hindering” provisions include as well as those of data protection as those of IDD on the legal status of the intermediary for example.
- From a consumer’s perspective these conclusions are rather surprising or simply mis-leading. Data protection is an overall societal concern, and in consequence it does not only hit insurance intermediaries. Information duties on the legal status of an intermediary (tied agent, broker, fee-based advisors etc.) existed already before IDD and are nothing new. The provision to provide any kind of information documents (KIDs, PBS, terms and conditions of a contract etc.) either as a printed paper or as a digital document (PDF-format) is a well established feature for more than twenty years, since online distribution

<sup>2</sup> <https://www.allgemeiner-fachverlag.de/evaluierung-haelt-die-idd-was-sie-versprochen-hat/>

procedures had their first take-off. These counterarguments are simply nonsense. From a consumer's perspective we continue to stress that any information document should be provided either in paper or in digital format following to the wishes of the individual customer. This offer should not constitute any major problem neither for insurers nor for intermediaries.

## **6) Difficulties in the application of the IDD due to the lack of clarity in the IDD provisions**

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

- *Treatment of group insurance policies / third party contracts, including in an online environment (e.g. the insurer is only obliged to provide information to the policyholder, but often the consumer, who is the insured person, thereby does not receive important information).*
- *Different definition of "complex product" under IDD compared to EU legislation regulating other financial products.*

*Specify in the box below any other provisions of the IDD which are difficult to apply for insurance distributors, given the lack of clarity in these provisions:*

- First, we stress that we do not agree with the outlined statement that due to a lack of clarity in the IDD provisions there might occur enhanced difficulties in the application of IDD. As most definitions of IDD (following to article 2 of IDD) are consistent with or even have the same wording as the definitions of Solvency II, MIFID II, PRIIPs KID and PEPP regulations, there cannot be any "lack of clarity" only in IDD (for ex. definitions of article 2 (1) no. 6, 7, 13, 16, 17 (a) and (d) IDD refer directly to Directive 2009/138/EC).
- Consequently, either there is NO lack of clarity of provisions in IDD, or there is a severe lack of clarity in all the other insurance / financial services regulations of the last years as well. If the second of our conclusions should be considered as correct, this would constitute a major failure of the entire EU legislative procedures (including the various stakeholders being involved like the associations of insurers and intermediaries).
- Therefore, it must be differentiated between "undetermined judicial notions" (like timely, promptly, appropriate, necessary etc.) and inconsistent regulation. The former is already or will be specified by ongoing jurisdiction, but the latter is simply a mistake.
- Here one example: we stress the necessity that from a consumer's perspective the definition of "advice" (following to article 2 (1) no. 15 IDD) should be amended. "Advice" should not only be linked to a "personal recommendation" by the intermediary to the customer. It should be linked as well to article 20 (3) IDD by which advice shall be given "on the basis of an analysis of a sufficiently large number of insurance contracts available on the market". Only under this condition advice is well founded "on the basis of a fair and personal analysis" and "adequate to meet the customer's needs". Only by adding this requirement

there would emerge the clear distinction between “advice” given by an independent financial advisor or broker and “product sale” by a tied agent. Additionally, this amendment would be consistent with article 24 (4) (a) (i) of MIFID II (directive 2014/65/EU), asking “whether or not the advice is provided on an independent basis”.

## **7) Challenges in applying the POG requirements**

*Please specify in the box below what challenges manufacturers and insurance distributors face in applying the POG requirements and if, and how, existing POG requirements of the IDD need to be amended or what new rules need to be introduced to meet these challenges.*

- Since the first EIOPA consultations on IDD and POG (in 2014 / 2015) BdV has always strongly supported the proposed regulations on product testing and monitoring and the obligatory identification of relevant target markets. At least for the German insurance market these regulations constituted a real innovation for enhanced consumer protection. And of course, we repeat that “nothing in these Guidelines, neither in the scope of product intervention powers, can be seen as a product pre-approval capacity by the competent authorities”, as EIOPA had pointed out in 2014.
- Unfortunately, it is impossible for us to give any details on challenges which manufacturers and distributors might face in applying the POG requirements. This is mainly due to the fact that the results of product testings and monitorings are not subject to general publication. These results are treated like “in house” business secrets by the insurers, about which they may inform only the NCA on demand. We do not even know, if there are any requests from NCAs addressed to insurers related to POG.
- That is why we stress the necessity that the results of product testings and monitorings, especially if new insurance products are launched, shall obligatorily be published either by the NCA or the insurers themselves.

## **8) Challenges in carrying out cross-border business within the EU**

*Please specify in the box below what challenges insurance distributors face in carrying out crossborder business within the EU and if, and how, existing provisions of the IDD need to be amended or what new rules need to be introduced to meet these challenges.*

- Cf. our comment on Q 11.

## **9) Other major challenges in applying the IDD**

*Please explain in the box below what other major challenges insurance distributors face in applying the IDD and if, and how, existing provisions of the IDD need to be amended or what new rules need to be introduced to meet these challenges.*



- Enhanced online distribution channels: if there is an enhanced change of traditional towards online distribution procedures or a combination of them, how pre-contractual information duties are fulfilled by distributors under these changing conditions? Does the change towards enhanced online distribution procedures imply more distribution practices like “spam” mailings and “cold calls” (still enforced by the current pandemic)?
- Professional and organisational requirements (following to article 10 IDD): One of most important “additional issues” in the context of IDD is the obligation for constant professional training and knowledge for all intermediaries. Therefore, insurers as product providers and their distributors should give evidence on these questions: did the intermediaries follow these obligatory professional trainings and how was the quality of these trainings controlled? Is there any kind of institutionally independent control of the content and methods of these trainings?
- Information duties (pre-contractual): The demands and needs test was already introduced by IMD, but IDD embedded it in the comprehensive procedure of personal recommendation and possible larger advice (cf. article 20 (1) to (4)). So, a crucial challenge is: does any control of the quality of the demands and needs test exist? Is each company free to use any kind of template or are there any recommended or even mandatory templates from the NCA for ex.? We urge EIOPA and NCAs to introduce strict rules on quality and mandatory templates related to the demands and needs test.
- Information duties (PBS): We stress that with regard to Pension Benefit Statements (PBS) there is a gap of regulation on the EU level, because minimum requirements are stipulated only by IORPS II directive and PEPP regulation. The PRIIPs regulation is only related to KIDs but not to PBS. A EU minimum regulation for PBS could be based on the requirements for ongoing annual information following to article 155 of the German Insurance Contract Law (VVG) or any other similar provision of national contract law.
- Additionally, we consider the conclusions drawn by the intermediaries representative (cf. our comment on Q4) on the application of the demands and needs test and on the suitability and appropriateness assessment as mis-leading. Most “Financial Analysis” used by these distribution organisations are aimed at detecting any possible additional sales opportunities. This is clearly opposite to IDD’s objective of “best meeting the customer’s demands and needs”, which does not imply to sell as many contracts as possible but only the adequate ones.

## **10) Challenges consumers face when purchasing insurance products**

*Indicate in the box below what challenges consumers face when purchasing insurance and if, and how, existing provisions of the IDD need to be amended or what new rules need to be introduced to meet these challenges:*

- A relevant example is the question of “information overload” which is always wrongly stressed by the financial industry and their distributors. If obligatory information documents like IPID or KID for IBIPs are presented to the customer in a very negative way (e.g “this is just another useless paper invented by the bureaucrats in Brussels”), customers will not read them as they do not read the entire terms and conditions of the contract or the data protection provisions. In consequence an supervisory action should include these questions: do the professional trainings and conduct of business/POG guidelines lead the distributors to present and handle the pre-contractual information documents in a way in which there are really useful for the customers to make “informed decisions”? Or are they presented in a way to enhance information overload which in this case is just another “self-fulfilling prophecy”?
- Another example of information overload caused by the insurers themselves are less understandable terms and conditions of contracts which include redundant articles (for example the calculation of surrender values for life-insurance contracts which are not IBIPs but pure risk life-insurances).
- As already pointed out in our comment on Q6, one of the most important issues is the differentiation between “advice” and “sale”. The definition of “advice” given in article 2 (15) reduces “advice” to the “personalised recommendation”. A personalised recommendation for a product should be given following to article 20 (1) IDD. In consequence advice including a personalised recommendation can be given as well by a tied agent as by an independent broker.
- But this consequence is mis-leading for the customer. Advice by its definition should be “independent” from any product provider and should be given “on the basis of an analysis of a sufficiently large number of insurance contracts available on the market”. If this is not the case, the distribution procedure is a “sale” - as it is made by any tied agent. This difference between “advice” and “sale” should clearly be part of the obligatory documentation of the distribution process.

## **11) Challenges consumers face when purchasing insurance products from distributors pursuing crossborder Activities**

*Indicate in the box below what challenges consumers face when purchasing insurance from insurance undertakings or insurance intermediaries conducting cross-border business within the EU and if, and how, existing provisions of the IDD need to be amended or what new rules need to be introduced to meet these challenges:*

- Following to BaFin’s Statistical Yearbook on 2019, published in December 2020, the proportion of cross-border business by EEA insurers in Germany was very low (4,8% in life and 5,2% in non-life of total gross premiums earned). These figures include any business made by local branches of these insurers in Germany, which represents more than 50% of these figures, so direct cross-border business is even much less (cf. 2019 Statistik der BaFin. Erstversicherungsunternehmen und Pensionsfonds, S. 10, Tabelle 2, Bonn / Frankfurt am Main 2020).

- Due to Brexit, the proportion of business by British life-insurers will still be reduced. BdV had continuously updated its recommendations for policyholders with regard to possible impacts by Brexit, but – fortunately – there were no major complaints.

## 12) IDD rules particularly useful for consumers

*Specify in the box below what consumer protection rules in the IDD are particularly useful for consumers:*

Particularly useful for consumers are the following rules:

- Professional and organisational requirements (Article 10)
- Advice rules, and standards for sales where no advice is given (Article 20)
- Cross-selling requirements (Article 24)
- Product oversight and governance requirements (Article 25)
- Conflicts of interest and remuneration rules for sales of IBIPs (Articles 27-29)
- Assessment of suitability and appropriateness and reporting to customers (Article 30)

## 13. Supervisory activities carried out to assess the application of the IDD rules

*In particular, specify in the box below whether intrusive supervisory activities have been carried out to assess the application of IDD rules:*

- For the German insurance market, we stress the following supervisory activities by BaFin with regard to IDD issues in the last years:
  - Research on Payment Protection Insurances („Restschuldversicherungen“) and enhanced commissions expenditures in 2017 and in 2020.
  - Questionnaire on payments to insurance intermediaries in 2018 and 2019.
  - Research on motor insurance tariffs and possible discrimination of senior car drivers in 2020.
  - **EIOPA 1st Annual Report on Administrative Sanctions and other measures under the Insurance Distributions Directive (IDD) of 14 December 2020:** Of course, we welcome that the German NCA BaFin has strongly contributed to this new report (about 80% of all sanctions and other measures in the EU in this report proceeded by BaFin). But we clearly criticize that BaFin was not able to publish the „total value of fines“, which would have been considerably higher as now published (less than 1m Euro, cf. p. 9).
  - Additionally, most of the sanctions were only related to professional and organisational requirements and not to those issues by which consumers are directly concerned (information duties, conduct of business, special requirements for IBIPs etc; cf. p. 10-11). No information on the use of Product Intervention Powers is given in the Report. We clearly ask



EIOPA (and BaFin for the German insurance market) for effectively strengthening the supervisory activities related to these issues. Otherwise, the general impression of “teethless tigers” remains.

**14. NCAs’ approach during supervision**

*In particular, specify in the box below whether supervisory activities have been carried out to ensure IDD application or whether supervisory activities have looked at whether the desired outcomes have been achieved.*

BETTER FINANCE and its members do not sell any insurance products. We only give independent advice to the individual members of our association. In consequence there was not, and there had never been before, any visit of BaFin supervisors in our office in Hamburg. For a general assessment of supervisory activities with regard to IDD, cf. our comment on Q 13.