

Stand out for the right reasons

Financial Services Risk and Regulation

Hot topic

The IDD implementation taking a clearer shape: latest EIOPA publications.

Highlights

The Insurance Distribution Directive was published in the Official Journal of the European Union in February 2016.

It will be transposed into law of the EU Member states by 23 February 2018.

The IDD applies to a wide group of insurance and reinsurance distributors and introduces a set of extended and new requirements around the oversight, governance and distribution of insurance products. Affected firms will need to be compliant with the requirements from that date.

Background

The Insurance Distribution Directive (Directive 2016/97/EU) (IDD) was published in the Official Journal of the European Union (the Official Journal) on 2 February 2016. The IDD replaces the 2002 Insurance Mediation Directive (Directive 2002/92/EC) (IMD). It must be transposed into the law of the EU member states by 23 February 2018.

Following the request for advice from the European Commission, as well as the obligations under Art 20(9) of the IDD, in February 2017 EIOPA published Technical Advice on possible delegated acts concerning the IDD, Draft Implementing Technical Standards (ITS) relating to the standardized Insurance Product Information Document (IPID) and a Consultation paper addressing investment-based insurance products (IBIPs). An overview of these documents and the main areas affected is provided below.

EIOPA Technical Advice to the European Commission on possible Delegated Acts

The advice specifies the requirements for designing and launching all types of insurance products, the circumstances under which commissions or other types of incentives could be detrimental to the customer's interests and the criteria to assess whether insurance based investment products are suitable and appropriate.

The main areas affected are as follows:

- **Product Oversight and Governance (POG):** In line with the proportionality principle, manufacturers of all types of insurance products should establish processes to ensure that all phases of the production cycle are undertaken having the consumer's needs in mind. Based on its Preparatory Guidelines on POG, EIOPA further clarifies the criteria for insurance intermediaries acting as manufacturers and the level of granularity expected from manufacturers in defining the target market.
- **Conflicts of Interest:** EIOPA details some potential situations in which conflicts of interests may arise between distributors and their customers in the course of the distribution IBIPs requiring distributors to take appropriate measures to prevent, manage and, as a measure of last resort, to disclose conflicts of interest to avoid any harm to customers.
- **Inducements:** EIOPA specifies the criteria to assess whether inducements have a detrimental impact on the quality of services to customers. The purpose of these criteria is to provide guidance to market participants on when detrimental impact might occur. The proposed criteria do not amount, in any way, to a de facto prohibition on the receipt or payment of inducement.

EIOPA also clarifies that detrimental impact has to be assessed by taking into account all factors which may increase or decrease the risk of customer detriment.

- **Suitability or appropriateness of IBIPs:** Insurance intermediaries or undertakings should gather the appropriate information from their customers for the conduct of appropriateness or suitability assessments of IBIPs. Only where it is non-complex is it possible for an IBIP to be sold without such assessments being carried out. EIOPA specifies the criteria to identify non-complex IBIP.

EIOPA Implementing Technical Standards (ITS) on the Insurance Product Information Document (IPID)

Under article 20 of the IDD, the manufacturer of a non-life insurance product is required to draw up a document called the **Insurance Product Information Document (IPID)** and provide this document to the customer prior to the conclusion of the insurance contract. Please note that the IPID will not replace the contractual documentation that is provided with an insurance policy and it will not include any customer personalization as it must be done via the policy terms and conditions, not by the IPID. The objective of the IPID is to provide relevant information about the product to allow the customer to take an informed decision.

EIOPA proposes a standardised presentation format for the IPID for all non-life insurance products, which provides consumers across the European Union for the first time with concise, simple, and comparable information about such products. The proposed design is based on extensive consumer testing and on the input from different stakeholders obtained via public consultation.

This standardised presentation format of the IPID, which is in the form of draft Implementing Technical Standards (ITS), is being submitted to the European Commission for endorsement. Once endorsed, the draft ITS will be adopted by the European Commission as an Implementing Regulation, directly applicable in all European Union Member States.

EIOPA Consultation Paper on Guidelines on complex Insurance-Based Investment Products

Under the Insurance Distribution Directive (IDD), normally an assessment of the suitability or appropriateness of an Insurance-Based Investment Products (IBIPs) for the customer should be carried out by the insurance intermediary or undertaking as part of the sales process. However, the IDD allows Member States to derogate from these obligations and not require either a suitability or appropriateness test to be conducted during the distribution of an insurance based investment product, where various conditions are satisfied. This type of sale is often referred to as execution only, however, in accordance with the IDD it is still necessary for the insurance distributor to specify the demands and needs of the customer.

EIOPA is issuing Guidelines both on the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risk involved and for the assessment of insurance-based investment products being classified as non-complex for the purpose the IDD.

During the development of the Guidelines, EIOPA has taken into account other relevant regulatory requirements in the area of conduct of business standards. Specifically, EIOPA has considered the work by ESMA on the assessment of financial instruments incorporating a structure which makes it difficult for the client to understand the risks involved. This reflects the importance of avoiding regulatory arbitrage, whilst at the same time also taking into consideration the specific nature of insurance contracts.

The Guidelines cover the assessment of all types of IBIPs and are addressed to national competent authorities. They include criteria to identify product features, which may be difficult for the customer to understand. They address, for example, the nature of the charges paid by the customer and ability for the customer to surrender the product before maturity. IBIPs which include such features will be deemed complex and therefore not eligible for sale via execution-only.

Stakeholders can comment on this Consultation Paper. The consultation period will end on 28 April 2017.

Implications of the latest developments

The publications of these documents provides more clarity around EIOPA's understanding of the IDD and guidance on how it should be applied in practice. Companies subject to the IDD can now take a closer look at their existing product oversight, governance and distribution processes, and can consider any required changes as they take the next step on their way to adopting the IDD regulations.

What do I need to do?

Insurance and reinsurance firms in Switzerland need to assess how they are affected by the IDD to ensure that they can comply with the IDD obligations.

PwC can help you turn evolving regulation into opportunities.

We support you in the following key areas:

- Understanding the scope of the regulation and its impact on your business
- Preparing and conducting targeted and tailored regulatory trainings
- Analysing your existing policies and procedures for gaps against the regulatory requirements
- Enabling the cultural change through assessing and developing compliant behaviours
- Designing the necessary policies and processes to ensure compliance
- Implementing the required processes, controls and monitoring activities



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