



Regulatory Newsflash

EIOPA publishes final reports on technical advice and draft implementing technical standards concerning the implementation of the Insurance Distribution Directive

On 1 February 2017, EIOPA published its [final report](#) on technical advice on possible delegated acts concerning the implementation of the Insurance Distribution Directive (IDD). The report was followed by a [consultation paper](#) that was published by EIOPA on 2 February 2017, on complex insurance-based investment products (IBIPs).

A key take-away of the technical advice is EIOPA's view on the term inducement. In line with that view, inducements would equally include payments to tied insurance intermediaries. The interpretation is based on the fact that these intermediaries are legally independent persons and no separate rules for tied intermediaries are foreseen under IDD. See below for more details.

On 07 February 2017, EIOPA also published its [final report](#) on draft implementing technical standards (ITS) concerning a standardised presentation format for the Insurance Product Information Document (IPID) of the IDD. EIOPA will submit the report on the ITS to the European Commission by 23 February 2017.

Technical advice on the implementation of IDD

EIOPA's advice follows a formal request from the European Commission concerning the following elements of the IDD which need to be specified in delegated acts:

- Product oversight and governance [Art. 25(2)]
- Conflicts of interest [Art. 27 and 28(4)]

- Inducements [Art. 29(4)]
- Suitability or appropriateness of IBIPs, including reporting to customers [Art.30 (6)]

The Commission invited EIOPA to achieve as much consistency as possible in the conduct of business standards for IBIPs where there is no fundamental working difference in the corresponding IDD and MiFID II provisions.

In what follows, we highlight the main changes of the final technical advice versus the consultation paper published on July 4, 2016:

Key changes: Product oversight and governance

- EIOPA clearly states that it does not intend to introduce a price control, however, arrangements should be in place to ensure that the interests of customers are taken into consideration throughout the life cycle of a product.
- Clarification of the criteria to determine when an insurance intermediary can be considered to be manufacturing insurance products, and the level of granularity expected from manufacturers in defining the target market.
- Further specification of the information exchange between manufacturers and distributors.

Key changes: Conflicts of interest

- EIOPA insists on the level playing field with the investment sector, and hence has slightly amended the policy proposal. Insurance intermediaries or undertakings should take into account, by way of minimum criteria (legal presumption has been removed), a specified list of situations where conflicts of interest typically arise.
- Clarification of cases where conflicts of interest arise whenever the intermediary is involved in the management or development of a product.
- EIOPA stated that the disclosure of any conflict of interest should be regarded a step of last resort, to be used only in cases where organisational and administrative measures are not sufficient to prevent or manage conflicts of interest.

Key changes: Inducements

- In EIOPA's view, the term inducement includes payments to insurance intermediaries, which are contractually obliged to conduct distribution activities exclusively with one or more insurance undertakings (***such as tied agents***). The arguments to include tied agents are based on the fact that these intermediaries are legally independent persons and there are no separate rules for tied intermediaries under IDD.
- EIOPA has stressed that the intention of proposing a list of criteria for assessing whether an inducement increases the risk of detrimental impact, is not to introduce a ban on inducements through the backdoor.
- Despite the large number comments received on the non-exhaustive list of criteria for the assessment of detrimental impact, no fundamental amendments have been made.

Key changes: Suitability or appropriateness of IBIPs

- EIOPA clearly states that when necessary information is missing, customers should not falsely obtain the impression of receiving a personal recommendation (no advice).
- EIOPA is of the opinion that when customers switch underlying investment options within an existing contract on their own, no suitability assessment is triggered (as no advice is given).
- EIOPA also suppressed the obligation to check if a customer has accessed an online platform in order to provide the periodic statement through that medium.

Key changes: Execution-only sales / other non-complex

IBIPs

- EIOPA's approach and the vast majority of criteria for "other non-complex IBIPs" is consistent with that taken in MiFID II. EIOPA acknowledges, however, that some of the criteria have not been appropriately adapted to the insurance sector, and hence, a number of amendments have been made.
- It is clarified that the suitability assessments do not need to be carried out when a non-complex IBIP is sold on an execution-only basis.

Consultation paper on guidelines on complex IBIPs

- On 2 February EIOPA launched a consultation paper on the Proposal for Guidelines under the IDD on complex IBIPs.
- EIOPA developed the guidelines in the consultation paper in line with Articles 30(7) and (8) of the IDD to cover the assessment of all types of IBIPs and addresses when an IBIP will be classed as non-complex and, therefore, allowed to be sold as execution only.
- The consultation will end on 28 April 2017.

Draft implementing technical standards concerning a standardised presentation format for IPID

In what follows, we highlight the main changes of the draft implementing technical standards versus the consultation paper published in August 2016:

- EIOPA has amended the ITS to require that the "disclaimer" is placed immediately below the title of the policy and the name of the product manufacturer.
- All section headings have been reworded in a question format as this is believed to be less technical and more engaging for readers.
- EIOPA confirms that there is a freedom to provide relevant characteristics of any policy within the IPID and added permission to include information on the authorisation status of the manufacturer.
- During the consultation, large concerns were raised about the usage of general or specific icons; to address these concerns the ITS are drafted to allow some flexibility in design which should also address the matter of copyright.
- Regarding the length of the IPID, the standard length remains two sides of A4, allowing a maximum of three sides in cases where manufacturers can demonstrate the necessity.
- In order to support digital formats, EIOPA proposed for IPIDs presented in media other than paper some more flexibility concerning the size and layout.

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