

BVI's comments regarding the upcoming trilogue on IMD II

BVI¹ calls upon the EU legislators to live up to their commitment to create a regulatory level playing field at the point of sale in the further negotiations on IMD II. Taking into regard the general approach agreed upon by the Council on 7 November 2014 and the position of the EU Parliament adopted on 26 February 2014, we see the need for further intervention especially in the following areas:

- **Legitimacy of inducements, especially commission payments**

Provisions governing the legitimacy of sales commission are core elements of an effective investor protection framework. Therefore, standards for commission payments and other inducements relating to the distribution of insurance-based investment products must be aligned with the inducements rules under MiFID II.

In particular, it is necessary to ensure by way of an explicit provision under IMD II that inducements must be designed to enhance the quality of the service provided to a client. Such full alignment with the MiFID II standards is requisite in order to avoid distortions of competition at the point of sale and different levels of protection for European investors. Under the current Council position, inducements are only required not to have a detrimental impact on the quality of the service. This retreat from the high level of investor protection applicable under MiFID II might create an undesired incentive for intermediaries to favour insurance products over other investments regardless of whether such products better suit their clients' needs.

- **Distinction between independent and non-independent advice**

BVI supports the EP's position to introduce a distinction between independent and non-independent advice in the distribution of insurance-based investment products. In line with the MiFID II standards, independent advisers should be banned from receiving commission payments or other inducements from third parties.

Financial advisers often sell a wide range of investment products to retail clients, including products from both the insurance and the financial sector. It is hence important that advisers obey a consistent set of rules concerning their services and the respective information to be provided to clients. Especially, uniform EU rules should be in place concerning the conditions under which advisers are entitled to market their services as "independent". A different treatment of independent advisers under IMD II compared to the MiFID regime would create distortions of competition, confuse retail investors and could ultimately undermine the investors' confidence in the soundness of the EU investor protection framework.

The structure of insurance distribution involving many individual distributors or SMEs cannot be perceived as an argument in favour of a different treatment under IMD II. Similar structures are present in the financial sector and indeed, many intermediaries distribute both types of PRIIPs. Essentially, however, the potential weaknesses of distribution structures cannot be used as a justification for lowering the level of protection owed to European retail investors.

¹ BVI represents the interests of the German investment fund and asset management industry. Its 84 members manage assets in excess of EUR 2.4 trillion in UCITS, AIFs and assets outside investment funds. As such, BVI is committed to promoting a level playing field for all investors. BVI members manage, directly or indirectly, the assets of 50 million private clients over 21 million households. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de.



- **Further harmonisation at Level 2**

BVI backs the EP’s proposal to ensure further harmonisation of conduct of business rules under Art. 24 and 25 IMD II by way of delegated acts. Consistent standards of investor protection cannot be achieved without detailed provisions at Level 2 in correspondence to the MiFID II regime.

Appropriate implementing measures are essential in order to ensure the necessary extent of harmonisation at EU level and to effectively align the distribution standards for all PRIIPs. The MiFID regime already comprises extensive provisions at Level 2 which are currently being refined in the course of the MiFID II reform. Without corresponding delegated acts under IMD II, consistency of distribution regulation for all PRIIPs cannot be achieved. In particular, it is indispensable to further specify the conditions for proper conduct of business under Article 24 IMD II in line with the relating provisions under Art. 24 MiFID II.

Legislative background

The recently adopted PRIIPs Regulation² clarifies the nature and range of investment products which are substitutable from the retail client’s perspective. These so-called “packaged retail and insurance-based investment products” comprise indirect investments involving fluctuations in the repayable amount insofar such investments are sold to retail clients. They make take the form of investment funds, structured products, insurance-based investments such as life insurance products or similar vehicles.

While the PRIIPs Regulation pertains to the product information and introduces a common information standard for all PRIIPs, it has been very clear throughout the legislative debates on the investor protection package³ that the same investor protection standards shall apply to all PRIIPs also at the point of sale. Retail clients in the EU shall benefit from the same high level of investor protection and conduct of business standards regardless of the legal form of a product or its sectoral affiliation. Hence, it can be considered a fundamental premise of the PRIIPs initiative that the sector-specific distribution frameworks laid down in MiFID and IMD shall be substantially aligned regarding the PRIIPs distribution. This commitment by the EU legislators has been enshrined very clearly in the Level 1 text of MiFID II:

“Investments that involve contracts of insurance are often made available to customers as potential alternatives or substitutes to financial instruments subject to this Directive. To deliver consistent protection for retail clients and ensure a level playing field between similar products, it is important that insurance-based investment products are subject to appropriate requirements. Whereas the investor protection requirements in this Directive should therefore be applied equally to those investments packaged under insurance contracts, their different market structures and product characteristics make it more appropriate that detailed requirements are set out in the ongoing review of Directive 2002/92/EC rather than setting them in this Directive. Future Union law regulating the activities of insurance intermediaries and insurance undertakings should thus appropriately ensure a consistent regulatory approach concerning the distribution of different financial products which satisfy similar investor need and therefore raise comparable investor protection challenges. [...] Those new requirements for insurance-based investment products should be laid down in Directive 2002/92/EC.”⁴

This approach implies the introduction of MiFID standards on investor protection to insurance-based investment products, but does not pertain to other insurance contracts without integrated investment elements. Thus, non-life insurance products and pure protection life insurances should be not affected by this concerted line of action.

² Regulation (EU) No 1286/2014 of 26 November 2014.

³ Cf. Commission’s press release from 3 July 2012 accompanying publication of the proposals for PRIIPs, IMD II and UCITS V.

⁴ Cf. recital 87 of Directive 2014/65/EU (MiFID II Level 1 Directive).