

BVI's comments on the draft Delegated Regulation on conduct of business rules for the distribution of insurance-based investment products

As the representatives of the German fund and asset management industry, BVI has been following the IDD negotiations from the onset for reasons of level playing field and therefore, welcomes the opportunity to comment on the Commission's draft Delegated Regulation.

In this context, however, we struggle to understand the conclusion provided in the explanatory memorandum to the draft Delegated Regulation where the Commission already anticipates "a broad consensus on the main content of this Delegated Regulation". We very much hope that this pre-emption will not prevent the Commission to take due account of the comments received from stakeholders in the course of the consultation process at hand.

As regards the draft rules on conduct of business for the distribution of insurance-based investment products, we fully agree with the general regulatory approach that alignment with the MiFID II regime should be sought in every area in which there is no fundamental difference in the wording of the provisions in the IDD and MiFID II respectively. As explained by the Commission, such alignment helps to avoid regulatory arbitrage across sectors and in addition contributes to effective investor protection at the point of sale. However, judged against this principle and after having considered the differences between the Level 1 rules of MiFID II and IDD, we still see room for further convergence in the following areas:

- 1. Disclosure of conflicts of interest (Art. 6 of the draft Delegated Regulation):** The current draft does not include specific rules on the disclosure of inducements to clients, even though such rules are foreseen under MiFID II¹. However, receipt of inducements in relation to a distribution service is generally recognised as a potential source of conflicts of interest. Therefore, it could be derived from the provisions governing conflict of interest disclosure in Article 28(2) IDD that insurance intermediaries and insurance undertakings are under the obligation to specifically inform clients about inducements.

We suggest adding a new paragraph 3 to Art. 6 of the draft Delegated Regulation in order to transpose the disclosure obligations under Art. 11(5) of the MiFID II Delegated Directive to the distribution of insurance-based investment products

- 2. Suitability assessment (Art. 9 of the draft Delegated Regulation):** Under MiFID II, standards for investment advice have been enhanced i.e. by requiring financial intermediaries to assess on the basis of internal processes and procedures whether equivalent financial instruments can meet their client's profile with regard to costs and complexity². This means that the criteria "costs" and "complexity" have been assigned with particular importance when it comes to recommending suitable investment products or other financial instruments to investors. Neither the technical advice provided by EIOPA nor the current text of the draft Delegated Regulation seek to implement equivalent requirements under the IDD regime, even though costs and complexity are certainly of

¹ Cf. Art. 11(5) of the Commission Delegated Directive (EU) 2017/593 (MiFID II Delegated Directive).

² Cf. Art. 54(9) of the Commission Delegated Regulation (EU) 2017/565 (MiFID II Delegated Regulation).



similar relevance for the distribution of insurance-based investment products. This deficit in investor protection is surprising, since the Level 1 wording in terms of suitability assessment is nearly identical under MiFID II and IDD as is the scope of the corresponding Commission's mandate for Level 2 measures.

Our suggestion is to supplement Art. 9 of the draft Delegated Regulation by a new paragraph transposing the requirements under Art. 54(9) of MiFID II Delegated Regulation to the distribution of insurance-based investment products.