2023-2024

Annual Report

bipar

European Federation of Insurance Intermediaries

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Annual Report 06-2023/05-2024 (editorial deadline: 24 May 2024)

Foreword

Dear Reader,

This BIPAR Annual Report reflects a broad number of activities and subjects which have been on BIPAR's and its national member associations' agenda over the last year, and in most cases, will continue to be there for a long time to come.

Against the background of an uncertain and sad geopolitical reality, we have continued, in the last year, to participate in the democratic debate, forward looking, about how we, as entrepreneurs, insurance, financial, investment, or credit intermediaries, play our role in the interest of European economic, social and broader human values.

In the coming years, we will see that insurance intermediaries are increasingly within the scope of broader, more inter-sectoral, legislative proposals. We can approach this in two ways: to continue to make ourselves relevant for society by striving to make regulation rational and effective. We believe and indeed are confident that this annual report and the broad set of issues that are addressed therein, will help us to continue to ensure that our role as intermediaries will be recognised and appreciated.

The transition to a sustainable economy and trying to help to close, as much as we can, the protection gaps in cyber, natural catastrophes and pensions will be a major societal challenge for the insurance industry as a whole.

After a particularly busy year at BIPAR, we have come to appreciate, even more than before, the importance of being a member of BIPAR and supporting it. The discussions at the Council's and European Parliament's level on the Retail Investment Strategy (RIS), over the last year, have illustrated that all EU Member States are represented in and by "Brussels", as the EU is often referred to, and each Member State has influence. We thus need every member of BIPAR to be active at national level and at BIPAR level. This is why we would like to thank all BIPAR national associations for their great cooperation and for their active contribution to the promotion of our industry's values over the last year and for their active contribution in the work of the various committees.

Even more than before, working together, speaking with one voice, focusing on the big picture, will be important in the (near) future.

We would also like to thank all Board members and permanent teams of the national associations for their dedication to and input in BIPAR's work. Many thanks also to the members of the BIPAR Directors' Committee, all BIPAR Committees and to BIPAR's Permanent Secretariat team.

Nicolas Bohême
Chair

Paul Carty
Chair of the
EU Committee

Jean-François Mossino
Chair of the
Agents' Committee

Roger van der Linden
Chair of the
Brokers' Committee

Insurance Distribution Directive (IDD)

Why does it matter to intermediaries?

The Insurance Distribution Directive (IDD) regulates how insurance products are designed and distributed in the European Union. It entered into force on 23 February 2016. The IDD is a minimum harmonising Directive, allowing Member States to introduce additional provisions or to bring additional activities into the scope of the regulations. The rules of the IDD apply to the distribution of all insurance products. It has more prescriptive rules for distributors offering insurance-based investment products (IBIPs).

The IDD sets out the information to be given to consumers before they sign an insurance contract. It also imposes conduct of business and transparency rules on distributors, introduces procedures and rules for cross-border business and lays down rules for the supervision and sanctioning of insurance distributors who do not comply with the IDD.

The Directive empowers the European Commission to adopt technical rules (Delegated Acts) in the area of product oversight and governance, conflicts of interests, inducements, and the assessment of suitability and appropriateness and reporting to customers. These Delegated Acts were adopted in 2017.

The Commission also adopted an Implementing Technical Standard (ITS) regarding a standardised format of the IDD Insurance Product Information Document (IPID), and in 2019 a Regulatory Technical Standard (RTS) reviewing the minimum amounts of PII/financial capacity.

State of play

RETAIL INVESTMENT STRATEGY (RIS)

On 24th May 2023 the European Commission published its RIS package. The RIS comes as part of its 2020 Capital Market Union (CMU) Action Plan, the stated aims of which are to improve access for retail investors to financial markets and at the same time ensuring their protection. The RIS consists of a legislative package that will amend a large number of existing EU legal texts (*see also articles on MiFID II and PRIIPs*): it comprises a **proposal for an Omnibus Directive** amending the IDD, MiFID II, Solvency II, AIFMD and UCITS and a **proposal for a Regulation amending the PRIIPs Regulation.**

Focus on some key amendments proposed by the Commission to the IDD in the proposal for an Omnibus Directive

The proposed Omnibus Directive amends the IDD articles dealing with the distribution of IBIPs. However, many of its amendments also amend the IDD articles that apply to the distribution of non-life and/or life products (for example, digital by default disclosure of information, IPID for life products, strengthened cooperation between home and host Member States in cross-border cases etc.).

The IDD new Article 29a (1) introduces a **ban on inducements** paid from manufacturers to distributors in relation to **non-advised sales of IBIPs.**

Where **advice is provided, the IDD revised Article 29** requires insurance intermediaries distributing IBIPs to **inform their clients** whether or not the advice is provided **on an independent basis.**

The IDD revised Article 30.5b states that where advice is presented as independent by intermediaries, they cannot accept inducements for such advice. Intermediaries presenting their advice as independent will also have to assess a sufficiently large number of insurance products available on the market which are sufficiently diversified with regard to their type and product providers and shall not be limited to insurance products issued or provided by entities having close links with the insurance intermediary or insurance undertaking. Before accepting such service, the retail customer shall be duly informed about the possibility and conditions to get access to standard independent advice and the associated benefits and constraints.

The IDD revised Article 29 maintains the **possibility for intermediaries to provide non-independent advice and receive inducements.** If non-independent, the advice can be based on a broad analysis of different types of IBIPs or the advice can be based on a more restricted analysis of different types of IBIPs. **A new "best interest of the clients"** test replacing the "no detrimental impact" test of the IDD is introduced in new Article 29b and in the revised Article 30 IDD. All intermediaries providing advice to their clients will have to comply with it.
Intermediaries will have to:

- provide advice on the basis of an assessment of an appropriate range of IBIPs and,
- recommend "*the most cost-efficient*" IBIP among products identified as suitable to the customer and,
- recommend, among the range of products identified

as suitable for the customer, "*a product or products without additional features that are not necessary to the achievement of the client's investment objectives and that give rise to extra costs*" and,
- recommend IBIPs which insurance cover is consistent with the customer's insurance demands and needs.

Other key issues

- Revised Article 25 on POG rules to ensure undue costs are not charged and that products deliver value for money.
- Revised IDD Article 30*:* obligation for insurance intermediaries distributing IBIPs to explain the purpose of the assessments to clients and customers in a clear and simple way, and to obtain all relevant information from customers which may be necessary and proportionate for the assessments.
- Revised Article 10 and Annex regarding professional and organisational requirements. A certificate is now required for both basic and for continuous training.
- New powers given to EIOPA in the amended IDD.

EP's reading

The EP rapporteur for the proposed Omnibus Directive and revised PRIIPs Regulation is French Liberal MEP ("Renew") Stéphanie Yon-Courtin. The EP Economic and Monetary Affairs Committee (ECON) is the lead committee for the proposals. On 20 March 2024, ECON adopted its report on the RIS. It also gave a mandate to the rapporteur to enter into trilogue discussions with the Commission and the Council.

Some key aspects of the ECON Report
- It does not contain any bans on inducements for non-advised sales.
- It does contain a ban on inducements for IBIPs in case the client is informed that advice is given on an independent basis (as proposed by the Commission in the IDD and as already existing in MiFID II). However, it is clarified that this does not prevent intermediaries whose legal status qualifies them as independent to receive inducements if they present themselves as "not contractually tied to specific insurers".
- According to the amended "best interest of customers test", when providing investment advice (and to receive inducement), intermediaries would have to inform the customer of the range of IBIPs/products assessed. The range of IBIPs/products must reflect the business model of the intermediary. When intermediaries are tied by exclusive partnerships, they may build the appropriate range among products offered by one insurer. To recommend the most efficient IBIP, its performance, level of risk, costs and charges will have to be taken into account.
- The benchmarks provisions in the IDD have been amended and are now intended as a supervisory tool for national competent authorities to facilitate identification of potential outliers: EIOPA is invited to develop common European benchmarks for IBIPs manufactured and distributed cross border.
- The POG provisions in the IDD (Art 25) have also been amended. They include requirements for distributors, such as peer grouping analysis, peer analysis of service costs and others. Intermediaries are also mentioned in the product approval process.
- On training, the text keeps the 15 hours of continuous professional development for the IDD. We note that regarding the need for a certificate, the final text states that Member States shall require a certificate, or any other document recognised by the Union or a Member State. The text adds that "*For small intermediaries which distribute both financial instruments and insurance-based investment products, Member States may provide for specific requirements regarding the number of hours of professional training."*

On 23 April the EP Plenary voted in favour of the mandate given to the Rapporteur by the ECON Committee to open trilogue negotiations.

Council's reading

Over the last twelve months, the Council has been discussing the Omnibus proposed Directive under the Spanish and Belgian presidencies. On 21/22 May the members of the Financial Services Attachés Working Party met to discuss the Council's compromise proposals on the entire RIS package.

Key aspects of the Belgian Presidency's compromise proposal

Inducement
- The partial ban on inducements for non-advised sales in the Commission's proposal has been deleted and is replaced by the introduction of overarching principles and an inducements test for all situations where there is no (partial) ban on inducements.
- This test is different from the best interest of customer's test. The first criteria have been amended as follows: to provide such advice on the basis of an assessment of an appropriate range of IBIPs identified as suitable for the customer pursuant to Article 30(1), from one or more manufacturers which must be sufficiently diversified with regard to their type, characteristics and underlying investment assets to ensure that the customer's investment objectives can be met. This requirement can also be met by offering a single IBIP with an appropriate range of underlying investment assets.

- The Presidency suggests including an additional overarching principle stating that the inducements should not directly benefit the recipient firm, and where applicable, its shareholders or employees without tangible benefit to the relevant clients based on Article 11(2)(b) of the Commission Delegated Directive (EU) 2017/593.
- According to the inducements test, "investment firms, insurance intermediaries and insurance undertakings shall be considered not to comply with their duty to act honestly, fairly and professionally in accordance with the best interest of their clients if their inducements or inducement schemes do not meet at least the different criteria, where applicable". The Presidency explains that this avoids that complying with the specific criteria would mean that firms automatically comply with their duty of best interest. The word "at least" allows some flexibility, while setting a minimum limit. The words "where applicable" is to acknowledge that not all criteria could be relevant in all circumstances. If a criterion is not taken into account, this should be explained.

Value for money

Peer group

- The establishment of a value-for-money assessment through appropriate testing and assessments, taking into account the specificities of the investment product, has been included as a general principle. The testing and assessments should include a peer-group comparison, when data is available.
- In order to increase comparability and objectivity, it is clarified that the peer group comparison should be made on the basis of the data made available by the ESAs and data included in information to be published on the basis of EU law (e.g. key information document).
- The possibility has been included for manufacturers and distributors to opt-in to compare their investment products to the relevant benchmark instead of to a peer group (smaller manufacturers and distributors who may be willing to compare their products to a publicly and freely available benchmark instead of performing a peer-group comparison, can do so).
- With respect to the obligations for distributors of IBIPs, they still have to assess whether the value for money, as evidenced by the manufacturer's assessment, meets the demands and needs of the target market.

Benchmark

More detail in level 1 has been included, notably in relation to product clusters and the purpose of the benchmarks.

Suitability and appropriateness

The Council's draft compromise deletes the reference to the capacity to bear full or partial losses and to risk tolerance in Article 30(2) of the IDD. The Presidency has added a specific requirement for investment firms, insurance undertakings and insurance intermediaries to keep a record of the information collected from the retail client or customer for the purposes of the suitability or appropriateness assessment.

The Presidency also included the following changes to the additional safeguards of the best interest test:

- the best interest test will be applicable for both independent and non-independent advice. A clarification has been added in Recital 6b explaining that investment firms, insurance undertakings and insurance intermediaries providing advice on an independent basis will be considered to automatically comply with the requirement to base their assessment on an appropriate range of products (since they already have an obligation to assess a sufficient range of products).
- The appropriate range consists of suitable products, and in the case of insurance-based investment products also meeting the demands and needs of the customer, within the product offer for advice.
- Financial advisors should recommend the products that offer the best possible result in terms of performance and costs, associated charges and inducements (cost-efficiency) among products identified as suitable and offering similar features.

Reporting of cross-border activities (IDD)

Insurance distributors will have to report specific information annually to the competent authority of their home Member State where they pursue insurance distribution activities with more than 500 customers on a cross-border basis (and not 50 as proposed by the Commission).

Knowledge and competence

Home Member States must have mechanisms in place, and publish all relevant information about these mechanisms, to effectively control and assess the knowledge and competence, as set out in Annex I, of insurance and reinsurance intermediaries, employees of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities, and employees of insurance and reinsurance intermediaries directly involved in (re) insurance distribution activities, by requiring a certificate or comparable form of evidence.

Omnibus transposition / application deadlines

Member States will have to transpose Omnibus into national law 30 months after its entry into force (Commission's proposal said 12 months). For the application of the Omnibus, the Council proposes 36 months after its entry into force (Commission's proposals said 18 months). For Art 29.5 of

the IDD (dealing with particularly risky products and the risk warnings EIOPA and ESMA have to develop), the application shall not happen until 12 months after the Delegated Acts have been published in the Official Journal.

REVIEW OF THE IDD

According to the IDD, the Commission had to review the Directive by 23 February 2021. In this context, it had to publish a report on the application of IDD Article 1 and a general survey of the practical application of IDD rules taking due account of developments in the retail investment products markets. The reports have been postponed and it is unclear if they will ever be published. The IDD chapter on IBIPs will be amended by the proposed Omnibus Directive that was published as part of the RIS package at the end of May 2023. The review of the IDD is expected to be carried out under the next European Commission (2024- 2029).

EIOPA'S IDD APPLICATION REPORT

On 15 January 2024, EIOPA published its second IDD application report. According to Article 41(4) of the IDD, EIOPA is required to prepare a report to assess the application of the IDD at least every two years (the first report was published in January 2022). The second report covers the years 2022 and 2023 and highlights relevant changes (number of registered intermediaries, level of professionalism and competence of insurance distributors, digitalisation and growth of new distribution models, the quality of advice and selling methods, the application of the new sustainability rules and the impact of cross-selling practices) in the application of the IDD compared to the previous reporting period. The report also includes a general evaluation of the impact of the Directive as well as a detailed country-by-country analysis with information on the insurance intermediaries' market structure (see links below). BIPAR participated in the consultation on the report.

EIOPA'S REPORT ON SANCTIONS UNDER THE IDD

On 18 January 2024, EIOPA published its fourth annual report on administrative sanctions and other measures imposed by national competent authorities (NCAs) under the IDD during 2022. This Report is drafted pursuant to Article 36(2), IDD. In total, national supervisors across 21 Member States imposed 2,762 sanctions in 2022. Since the implementation of IDD in 2018, and in particular between 2021 and 2022, there has been a rise in the number of sanctions relating to information and conduct of business requirements, for instance covering selling methods and product design.

PII AND FINANCIAL CAPACITY OF INTERMEDIARIES

On 20 March 2024, the European Commission's Delegated Regulation amending the IDD with regard to RTS adapting the base euro amounts for professional indemnity insurance (PII) and for financial capacity of intermediaries was published in the OJ of the EU (see link below).

Under Article 10 (7) of the IDD, EIOPA is required to review every five years, via RTS, the minimum amounts for PII and financial capacity in order to take account of changes in the European index of consumer prices as published by Eurostat. This is the second time that EIOPA has carried out this exercise (the first time was in 2019). BIPAR participated in the consultation on the report.

The Regulation entered into force on the twentieth day following that of its publication in the Official Journal, i.e. on 9 April 2024. It will apply 6 months after the date of entry into force, i.e. from 9 October 2024. This Regulation is binding in its entirety and directly applicable in all EU Member States.

The changes are as follows:

- The base PII amount applying to each claim is to increase from €1 300 380 to €1 564 610 [+ €264 230]
- The base aggregate PII amount per year is to increase from €1 924 560 to €2 315 610 [+ €391 050]
- The base financial capacity amount is to increase from €19 510 to €23 480 [+ €3 970]

BIPAR's position / key messages

Retail Investment Strategy

BIPAR's position

- BIPAR and its members support the CMU that aims to ensure that retail investors can take full advantage of the capital markets and to put capital markets at the service of people, offering them both increased investment opportunities and strong investor protection. Intermediaries, close to consumers, are key in realising these objectives. The 800,000 insurance and investment intermediaries in all corners of the EU that BIPAR represents, are mainly small locally operating entities. They are highly regulated and supervised. Intermediaries "nudge" people and families to think about their risks related to their patrimony, retirement and longevity. These intermediaries are remunerated for their services via either a fee or a commission system. This remuneration is regulated and transparent.

- BIPAR believes that the **changes to the current regulatory framework** should be limited to the minimum. It is too early to evaluate the effects of the IDD. Changing regulation without allowing existing rules to be embedded in reality is not only expensive for the industry but also for the supervisors and creates legal uncertainty for consumers.
- There should continue to be **choice between remuneration systems**. It is unfortunate that commissions are defined as inducements. Commissions are already highly regulated, and the commission system avoids an advice gap and a solicitation gap. Instead of bans on remuneration, it would be preferable to have better disclosures, for example for all product costs that have an influence on the potential return, to be clearly disclosed.
- The RIS proposal includes many changes to **the general chapter of the IDD** and thus impacts the non-life insurance distribution without impact assessment. In addition, the interaction of the RIS proposal with a (near) future revision of the DDA is very unclear.
- **Too many "crucial" definitions are left to level 2 or 3** which makes it impossible to assess the impact of the proposal. We believe it should be left to Member States to decide about options (subsidiarity).
- The proposal is built on the **assumption that there will be benchmarks based on costs of products**. For intermediaries, the principle is that cost efficiency and value for money are embedded in the existing POG process by manufacturers. In any event, it is impossible for intermediaries to assess cost-efficiency of a product, as only manufacturers know these costs. Cheap products are not always the products that are suitable for consumers.
- It would be regrettable if the RIS were to become an **obstacle to its own objective**: *"to stimulate investment by citizens".*
- The Commission's proposal does not take sufficient account of the **EU subsidiarity and proportionality principles**. In particular, European rules related to remuneration systems and business models are not necessary in the framework of the creation of a Single European market. Rules in this respect should be left to Member States. Professor Karel Van Hulle wrote an article for BIPAR on this (see link below).

Next steps

The RIS legislative proposals fall under the ordinary legislative procedure. They are being examined and amended by both the Council (Member States) and the European Parliament. The proposals are likely to be adopted under the Hungarian (July-December 2024) or Polish (January-June 2025) EU Presidencies. In general, the procedure takes a minimum of 12 months before a final text is adopted. This is slowed down by the election of the EP and the appointment of a new Commission in June 2024. The Strategy will also require the adoption of a number of level 2 texts for the more technical details.

Links

- Insurance Distribution Directive
- Commission's Delegated Acts on Product Oversight and Governance (POG) and Conflicts of interest, Inducements, Assessment of suitability and appropriateness and reporting for IBIPs
- EIOPA's 4th annual report on administrative sanctions
- EIOPA's 2nd report on the IDD application
- Delegated Regulation amending the IDD with regard to RTS adapting the base euro amounts for PII and for financial capacity of intermediaries
- Prof. Karel Van Hulle's article
- Proposal for an Omnibus Directive
- ECON report
- EIOPA's IDD application report: summary of the country-by-country analysis

Capital Markets Union (CMU) and Retail Investment Strategy (RIS)

Why does it matter to intermediaries?

The EU **Capital Markets Union (CMU)** is a plan to create a Single Market for capital. The aim is to get money - investments and savings - flowing across the EU to benefit consumers, investors and companies, regardless of where they are located.

A first **Green Paper** on CMU was published in 2015, followed by various follow-up measures, a key one being the 2020 CMU **Action Plan** setting out 16 legislative and non-legislative measures, including actions of importance for intermediaries, such as increasing the quality of financial advice and an assessment and review of the rules related to inducements, investment advice and information disclosure.

Regarding the latter, the Commission has prepared **a Retail Investment Strategy (RIS)** which should focus on the interests of individual investors:

> *"An individual investor should benefit from: (i) adequate protection, (ii) bias-free advice and fair treatment, (iii) open markets with a variety of competitive and cost-efficient financial services and products, and (iv) transparent, comparable and understandable product information. EU legislation should be forward-looking and should reflect ongoing developments in digitalisation and sustainability, as well as the increasing need for retirement savings."*

The RIS looks in parallel at IDD (IBIPs chapter), MiFID II and PRIIPs *(see also articles on these EU texts).*

State of play

The publication of the RIS was postponed several times. It was finally published on 24 May 2023 and consists of:

- a proposal for an Omnibus Directive amending the IDD, MiFID II, Solvency II, AIFMD and UCITS *(see IDD and MiFID articles for more information on the changes to IDD and MiFID);*
- a proposal for a Regulation amending the PRIIPs Regulation *(see PRIIPs article for details).*

BIPAR published a statement following the publication of the RIS and has been following the discussions in Parliament and the Council closely together with its members. It will continue to do so during the new EP/Commission mandate and during trilogue negotiations.

The European discussions on the CMU have evolved over the past year as well.

Eurogroup (Finance Ministers)

On 11 March 2024, the Eurogroup issued a Statement on the future of the CMU. Preparing for the next European legislative term of 2024-2029, the Statement identifies three priority areas for action, where measures are necessary to improve the functioning of European capital markets:

1) **Architecture**: develop a competitive, streamlined and smart regulatory system, allowing funds to be better channelled into innovative EU businesses, with greater liquidity, risk taking and risk sharing together with higher resilience and financial stability. The proposed measures here include reassessing the regulatory framework to reduce regulatory burden and transaction costs for market participants.
2) **Business**: ensure better access to private funding for EU businesses to invest, innovate and grow in the EU.
3) **Citizens**: create better opportunities for EU citizens to accumulate wealth and improve financial security, by increasing direct and indirect retail participation through access to profitable investment opportunities. The proposed measures here include supporting sufficient complementary income streams for an ageing population through wider use of longer-term savings and investment products, including through occupational and personal pension schemes. Eurogroup leaders invite the Commission to review and consider whether to further develop and improve the pan-European pension product (PEPP) to offer all citizens attractive options for their pension income and to ensure that pension savings are invested productively. Another proposed measure is to develop attractive cost-effective and simple cross-border investment/savings products for retail investors.

The Commission is invited to develop a **pension dashboard,** in collaboration with EIOPA and Member States, to follow the evolution of pension coverage across Member States and to report back to them on developments (see the Statement of the Eurogroup in inclusive format on the future of CMU).

On 13 May 2024, Ministers endorsed a **high-level roadmap on the CMU** which will ensure that the implementation of the March agreement remains on the top of the agenda. This roadmap contains both measures at national and European (initiatives to be brought forward by the European Commission over the course of the next legislative cycle)

level. Ministers also took the opportunity to discuss the recommendations for developing European capital markets put forward by the French task force led by Christian Noyer, who presented his report. They exchanged further on ongoing national initiatives and the Commission shared initial thoughts on aspects of the Eurogroup statement that require initiatives on its part.

ECB Statement

Parallel to the Eurogroup Statement, the European Central Bank (ECB) also issued a Statement on the CMU on 7 March 2024, which calls, amongst others, for **integrated supervision** of EU capital markets, by ensuring the European Supervisory Authorities (especially ESMA and EIOPA) have a European and independent governance, sufficient resources and comprehensive oversight powers, and to **directly supervise** the **most systemic cross-border capital market actors** – in cooperation with their national supervisors.

French "Noyer" Report

On 25 April 2024, the French "Noyer" report was published on: "Developing European capital markets to finance the future - Proposals for a Savings and Investments Union". In January 2024, French Finance Minister Bruno Le Maire had entrusted a committee of experts chaired by Christian Noyer with the mission of formulating concrete proposals to revitalise the CMU. This report proposes four key recommendations:

1) to develop **long-term European savings products** to increase flows into European capital markets;
2) **to relaunch the securitisation market** to strengthen the lending capacity of European banks and create deeper capital markets;
3) **integrated supervision** of capital market activities to build a true European Single Market and guarantee financial stability. This implies reforming the governance of ESMA and extending its supervisory powers on a mandatory basis for the most cross border and systemic market infrastructures and on a voluntary basis for asset managers and their funds;
4) to consider measures to reduce the **fragmentation of settlement of financial transactions** in Europe.

The "Noyer" report was presented to the Eurogroup in April 2024 (see closing remarks by the Eurogroup President at the presentation of the French task force report on the reboot of the CMU).

Letta's report on the Single Market

Another recent interesting report that touches on the CMU is Enrico Letta's report on the Single Market: "*Much more than a market – Speed, Security, Solidarity - Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens*". The report looks at creating an ecosystem for European investments. It proposes, amongst others, creating an **auto-enrolment EU Long-Term Savings Product** and **simplifying and upgrading the PEPP**; and also **strengthening financial literacy** and creating a **harmonised European framework for recognising qualified investors.** Regarding insurance, the report also calls for increasing the coherence between Member States' frameworks (and the existence of such frameworks) for approving internal models to calculate capital requirements for large insurance groups. This could help unlock more insurance company capital by tailoring the risk profile to each undertaking within the group. It could be achieved by enhancing supervisory convergence and fostering collaboration among national authorities, for example, through the establishment of joint supervisory teams with the relevant European national supervisors and EIOPA.

EIOPA's Statement

On 25 April 2024 EIOPA also published a Statement: "*How European insurers and pension funds can contribute to further strengthen the Capital Markets Union".*

In anticipation of the new policy cycle, EIOPA identified the following areas where further attention could enhance the CMU and the Single Market:

- **Better consumer protection** in retail financial services, including cross-border. They explain that this can be achieved via simpler, safer and more accessible savings products, by ensuring investment products offer value for money, by strengthening the quality of financial advice, by enhancing regulatory focus on the governance of conduct risks, and by reinforcing supervision at all stages of the product lifecycle, particularly for cross-border business.
- **Increased cross-border operation** by insurers and pension funds
- Greater use of pension **dashboards and auto-enrolment** in occupational pension schemes to address protection gaps.

EIOPA also calls for **more integrated supervision** for higher consumer protection: moving at a gradual pace towards more centralised supervision in insurance makes sense to ensure consistent protection for consumers across the EU. Similarly, consumers need to be better protected in the event of the **failure of an insurance** company operating **cross border**. Here, further progress to achieve a minimum harmonisation of **Insurance Guarantee Schemes** will help to address fragmentation and trust in the Single Market. Finally, addressing the current fragmentation in the **approval of internal models** for insurance companies will help to increase the competitiveness of large insurance groups.

ESMA's position paper

On 22 May 2024, ESMA published its Position Paper on "*Building more effective and attractive capital markets in the EU*". It organised a webinar to launch the paper, which the BIPAR Secretariat attended. The replay of the 50-minute webinar can be viewed (see link below). The ESMA Paper includes **20 recommendations** for the next legislative period to strengthen EU capital markets and is addressed at ESMA members, EU Member States, the European Commission and EU co-legislators as well as to the financial industry. It focuses on **three dimensions**:

1) EU citizens (broadening their investment options),
2) EU companies (enhancing their financing),
3) and the EU regulatory and supervisory framework (improving regulatory agility, supervisory consistency and global competitiveness).

The 20 recommendations include proposals such as:

- a voluntary **EU-label** for basic and simple investment products,
- a **simple advice category** for basic investment products,
- supporting **digital solutions** for retail investors,
- reviving the **Pan-European Personal Pension product,**
- promoting EU capital markets as a hub for **green finance,** for instance by simplifying the disclosure of sustainability information,
- modernising the EU's regulatory framework for financial services – for example, by using **regulations** rather than directives or by **phased or staggered implementation** of the rules,
- evaluating the **centralisation of supervision** at EU level.

ESMA will continue to engage and collaborate with all stakeholders regarding the implementation of the recommendations outlined in its paper.

BIPAR's position / key messages

BIPAR's overarching key points with respect to the RIS are:

- the existing legislative framework is sufficient,
- insurance is not investment,
- need for regulatory stability, choice regarding remuneration/inducements/advice,
- BIPAR supports improved financial literacy,
- need for a level playing field (open finance / digital innovation),
- need for a broad study of consumer behaviour and influence of disclosures on consumer decision-making,
- regarding sustainable investment, intermediaries are willing to assist retail investors but need information from manufacturers.

Next steps

The RIS proposals were sent to the European Parliament and the Council for their amendments and adoption. The Parliament has voted on the ECON reports and on the mandate to start trilogue discussions. The Council is still discussing the files. Once the Parliament and Council have both adopted their respective positions, the trilogue discussions can start. The whole procedure typically takes a minimum of 12 months before a final text is adopted.

Links

- Green Paper on CMU
- CMU Action Plan
- Statement of the Eurogroup in inclusive format on the future of Capital Markets Union
- High-level roadmap on the CMU
- Statement by the ECB Governing Council on advancing the Capital Markets Union
- French "Noyer" report - Closing remarks by the Eurogroup President
- Enrico Letta's report on the Single Market
- EIOPA's Statement "How European insurers and pension funds can contribute to further strengthen the Capital Markets Union"
- ESMA's position paper "Building more effective and attractive capital markets in the EU"
  Replay of ESMA's 50-minute webinar
- All documents of the Retail Investment Package
- BIPAR's Statement

Sustainable Finance

Why does it matter to intermediaries?

Since 10 March 2021, insurance intermediaries providing advice on IBIPs and investment firms providing investment advice have to comply with some specific sustainability-related disclosure obligations under the **Sustainable Finance Disclosures Regulation (SFDR).**

Since 2 August 2022, the **IDD and MiFID II** (and other sectoral legislation, i.e. AIFMD, UCITS, Solvency II) require insurance intermediaries distributing IBIPs and investment firms providing investment advice and portfolio management to integrate sustainability factors, risks and preferences into their decision-making process. These requirements include the identification of a customer's sustainability preferences during the suitability assessment and the identification of financial products matching these preferences. In order to comply with these requirements, intermediaries need to be able to rely on product information provided by manufacturers. Manufacturers of financial products therefore have to include in the product information document of each financial product, information regarding investment in sustainable economic activities under the SFDR or the Taxonomy Regulation.

In November 2023, BIPAR sent a working memo to its members that covers the main sustainability-related obligations that are relevant to intermediaries when providing advice. The objective of this memo is to provide an overview of relevant rules and some indications on how to comply with them.

State of play

Sustainable Finance Disclosures Regulation (SFDR)

The SFDR became applicable on **10 March 2021**. It introduces new sustainability-related disclosure obligations for insurance intermediaries providing advice on IBIPs and investment firms providing investment advice. Self-employed entities and entities with fewer than three employees are exempted from the scope unless Member States decide to opt-out of the exemption.

The sustainability-related obligations apply to all products under the scope of the SFDR whether or not they are designed as "green" products. There are disclosure obligations at entity and product levels. When acting as manufacturers, intermediaries will have to comply with additional disclosures at entity level, pre-contractual level and periodic levels.

The **Regulatory Technical Standards** (RTS) specifying the content and presentation for sustainability-related disclosures by manufacturers under the SFDR and the Taxonomy Regulation were adopted by the Commission in 2022 and started applying on 1 January 2023. These RTS require product manufacturers to use mandatory templates to make sustainability-related disclosures related to the sustainability features of financial products and to the principal adverse impacts (PAI) of relevant activities.

Taxonomy for sustainable economic activities

The **Regulation on the establishment of a framework to facilitate sustainable investment (the Taxonomy Regulation)** aims at channelling capital towards economic activities that substantially contribute to reaching the objectives of the European Green Deal. It is essentially a "Green list", a classification system for sustainable economic activities. The Taxonomy Regulation started applying on 1 January 2022 as regards environmental objectives (1) and (2) (climate change mitigation and adaptation) and on 1 January 2023 as regards environmental objectives (3) to (6) (water, circular economy, pollution prevention and biodiversity).

A first Delegated Act to the Taxonomy Regulation establishing technical screening criteria on climate change mitigation and adaptation was adopted in 2021 and started applying on 1 January 2022. It was complemented by a Taxonomy complementary climate change Delegated Act covering certain gas and nuclear activities which started applying on 1 January 2023.

On 27 June 2023, the Commission adopted another **Taxonomy Environmental Delegated Act**, including a new set of EU taxonomy criteria for economic activities making a substantial contribution to one or more of the non-climate environmental objectives, namely: sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control and protection and restoration of biodiversity and ecosystems. The adopted texts were published in the Official Journal of the EU on 21 November 2023 and applied as of January 2024.

EU Green Bond Standard

On 5 October 2023, the EP formally adopted the agreement reached during trilogue negotiations on the Regulation on European Green Bonds (EuGB). On 23 October 2023, the Council did the same. The Regulation sets out requirements for EU and non-EU issuers of bonds who wish to use the designation "EuGB" for their environmentally sustainable bonds that are aligned with the Taxonomy and made available to investors in the EU. It establishes a registration system and supervisory framework. It also provides that all proceeds of EuGBs will need to be invested in Taxonomy-aligned economic activities, provided the sectors concerned are already covered by the Taxonomy.

Some of the main features of the Regulation are:

- 100% of the proceeds of EuGB must be invested in economic activities that are Taxonomy-aligned, provided these activities are already covered by the Taxonomy and its screening criteria,
- The Regulation allows for a flexibility pocket of 15% of proceeds invested in activities not yet covered by the Taxonomy screening criteria. This pocket will be reexamined as the Taxonomy continues to develop,
- Bonds issued by non-cooperative tax jurisdictions cannot adopt the denomination,
- External reviews of EuGB will need to register with ESMA and be subjected to a supervisory framework provided for in the Regulation,
- Other bonds marketed as environmentally sustainable or sustainability-linked can decide voluntarily to comply with some disclosure requirements and templates,
- ESMA is given supervisory powers regarding EuGB external reviewers (requests for information, general investigation powers, on-site inspections, etc.),
- The Regulation will be reviewed five years after its entry into force.

Corporate Sustainability Due Diligence Directive (CSDDD)

On 23 February 2022, the European Commission presented a proposal for a Directive on corporate sustainability due diligence (CSDDD). The objective of the proposal is to set a horizontal framework to foster the contribution of businesses operating in the Single Market to the respect of human rights and the environmental by implementing due diligence measures into their own operations, those of their subsidiaries and through their value chains.

The proposal sets out a number of due diligence obligations for "very large" EU and non-EU companies (net turnover of at least EUR 150 million and at least 500 employees) as well as some more limited obligations for certain "large" EU and non-EU companies (net turnover of at least EUR 40 million and at least 250 employees) operating in "high-impact sectors" such as textile manufacturing, agriculture or mineral extraction. SMEs are exempted from the scope of the obligations but might be affected when they are part of the value chain of a company within the scope of the obligations.

The concept of the value chain is important since companies do have due diligence obligations regarding the conduct of business partners within their value chain. The proposal describes it as activities related to the production of goods or provision of services by a company, including the development of the product/service and use or disposal of a product, as well as related activities of established business relationships. It further explains that the notion of "value chain" encompasses upstream and downstream business relationships ranging from the supply, transport or storage of raw materials, to dismantling, recycling or landfilling of the product.

The obligations mostly consist of integrating due diligence into corporate policies and management systems. The proposal requires companies to have processes in place to identify risks of adverse environmental or human rights impacts and to prevent, mitigate or bring to an end actual adverse impacts. It also requires them to set up complaints procedures and to communicate publicly on their due diligence efforts.

The Commission, the EP and the Council entered into interinstitutional negotiations (trilogue) and agreed on a common position in December 2023. The EP approved the text on 24 April 2024. The Council formally adopted the Directive on 24 May 2024. Following the Council's approval of the EP's position, the legislative act has been adopted.

Delegated Act regarding European Sustainability Reporting Standards (ESRS) for companies under the CSRD

On 31 July 2023, the European Commission adopted a Delegated Act regarding European Sustainability Reporting Standards (ESRS) for all companies subject to reporting requirements under the Corporate Sustainability Reporting Directive (CSRD). The objective of the CSRD and the ESRS is to provide investors with information on the sustainability impact of the companies in which they invest by ensuring that companies across the EU report comparable and reliable sustainability information.

The CSRD and ESRS apply to all large companies and to all listed companies (including listed SMEs but excluding microenterprises) including undertakings in the financial

sector. Under the CSRD, large undertakings are undertakings exceeding two of the following criteria: balance sheet total of EUR 4 million, net turnover of EUR 8 million, an average number of 50 employees during the financial year. Intermediaries falling within that definition and listed intermediaries (except for microenterprises) are in scope.

The ESRS provide information on the content of the reporting obligations contained within the CSRD and are mandatory for companies subject to reporting requirements under the CSRD. The ESRS addresses environmental, social and governance issues. Because of their material scope, the CSRD and ESRS reporting requirements cover some of the topics covered by other sectoral legislations. This means, for instance, that some of the information to be disclosed by Financial Market Participants under the SFDR is covered by some data points included in the ESRS Delegated Act. This information can then be used by Financial Market Participants to make their own disclosures under the SFDR.

ESMA's call for evidence on the integration of sustainability preferences in the MiFID II suitability assessment

On 16 June 2023, ESMA published a call for evidence regarding the integration of sustainability preferences in suitability assessments and POG arrangements by investment firms under the MiFID II framework. The call for evidence aimed at gathering input from stakeholders to help ESMA to:

- gain a better understanding of how the MiFID II requirements are being implemented and applied by firms and the challenges firms are facing in their application,
- gain a better understanding of investor experiences and reactions to the integration of sustainability factors in investment advice and portfolio management,
- collect information, views and data on main trends and aspects.

ESMA specified that this call for evidence was not intended as a new consultation on the content of the suitability guidelines or the content of the sustainability requirements altogether. BIPAR responded to the call for evidence and highlighted some of the challenges faced in daily operations by its members.

ESMA published all responses received and continues, along with NCAs, to monitor the application of sustainability requirements by investment firms.

Commission's consultation on the implementation and possible review of the Sustainable Finance Disclosures Regulation (SFDR)

On 14 September 2023, the European Commission launched a consultation on the implementation and possible future review of the SFDR. BIPAR responded to the consultation.

The SFDR became applicable in 2021 and introduced sustainability-related disclosure obligations for financial market participants (FMPs, i.e. product manufacturers such as insurers) **and financial advisers (i.e. distributors such as insurance intermediaries distributing IBIPs and investment firms providing investment advice).** However, self-employed entities and entities with fewer than three employees are exempted from the scope of the SFDR unless Member States decide to opt out of this exemption. The sustainability-related disclosure obligations apply at both entity and product level. When acting as manufacturers, intermediaries have to comply with additional disclosure obligations. The SFDR contains two categories of "sustainable investment" products. These are "Article 8 products" that promote environmental and social characteristics and "Article 9 products" that have sustainable investment as their objective.

Some of the key issues addressed by the consultation are:

- An assessment of the current state of the SFDR including whether it meets its objectives and is effective and what are the costs associated with implementing it.
- The way the SFDR interacts with other EU legislation (including the IDD and MiFID II) and whether there are any inconsistencies or misalignments.
- Potential changes for the SFDR disclosures framework, such as potential disclosure obligations applicable to all financial products, regardless of their sustainability claims (as to not put ESG products at a disadvantage).
- **The potential creation of a categorisation system for financial products with sustainability features,** which would address the fact that the SFD is currently used as a labelling system despite having been designed as a disclosure framework.

The Commission organised a **workshop on the future of the SFDR on 10 October 2023** (recording available - see link below) in which the BIPAR Secretariat took part. The keynote address was given by **Commissioner McGuinness** who insisted on the fact that, at this point, the foundations of the EU sustainable finance framework were in place. According to her, the sustainable finance legislation led to increased transparency of sustainability claims, but some issues are arising. For instance, the Commissioner stated that the SFDR, which is a disclosures framework, is currently being used more like a labelling system, with products being advertised

as light green or dark green under its Articles 8 and 9. Since the SFDR was not intended to be a labeling scheme, it lacks definitions of key concepts as well as relevant thresholds. The use of the SFDR as a labeling system can therefore lead to uncertainty for investors and risks of greenwashing. The Commissioner closed her keynote address by stating the need for a holistic approach to a potential review to make sure the SFDR remains consistent with other pieces of EU legislation.

EIOPA's consultation on sustainability claims and greenwashing for pensions and insurance

On 12 December 2023, EIOPA published a consultation paper on its draft opinion on sustainability claims and greenwashing in the insurance and pensions sectors. The objective of the draft opinion is to pave the way for a more effective and harmonized supervision of sustainability claims across Europe and limit the risks of greenwashing. BIPAR responded to the consultation.

This draft opinion is addressed to NCAs and aims at providing them as well as insurance and pensions providers (who include insurance undertakings, PEPP providers, **insurance distributors** and IORPs) with general principles regarding sustainability claims in the insurance and pensions sector.

This new initiative accompanies wider efforts by the European Commission and the ESAs to tackle the issue of greenwashing. For instance, in June 2023, the ESAs released their progress reports on greenwashing which contain, amongst others, a common understanding of the term "greenwashing" and examples of practices that can constitute greenwashing in different sectors (including insurance distribution).

This new consultation **focuses specifically on the insurance and pensions sectors**. According to EIOPA, the rise in demand for sustainable financial products has been accompanied by a rise in the offer of products with sustainability features but also increased risks of greenwashing. Some NCAs have also informed EIOPA that they have observed instances of greenwashing in their markets but are not always equipped to supervise these effectively.

Brief summary of the content of the consultation paper:

EIOPA's draft opinion regards the **risks of greenwashing arising from sustainability claims** (i.e. "any claims related to the sustainability profile of an entity or a product"). These claims can arise in the context of regulatory disclosures (ex: SFDR or Taxonomy disclosures) or in the context of marketing communications.

The opinion tackles the **risk of "misleading" sustainability claims**. In this context, "misleading" can mean, inter alia, selective disclosures, empty claims, omissions or lack of disclosures, vagueness or lack of clarity, outdated information, etc. All these practices can lead to customers buying financial products that do not fit their sustainability preferences.

To establish a common understanding and a harmonised approach to supervision of sustainability claims, **EIOPA proposes 4 general principles to be observed by product providers (including distributors) and supervised by NCAs**. **These principles should apply to all products under EIOPA's remit. This means they should apply to all insurance products, including non-life insurance, independently from the specific regulatory requirements applicable to certain types of products (such as IBIPs).** The 4 principles are the following:

- **Principle 1:** sustainability claims made by a provider should be accurate, precise and consistent with the provider's overall profile and business model or the profile of its product(s).
- **Principle 2:** sustainability claims should be kept up to date, and any changes should be timely disclosed and with a clear rationale.
- **Principle 3:** sustainability claims should be substantiated with clear reasoning and facts.
- **Principle 4:** sustainability claims and their substantiations should be accessible by the targeted stakeholders.

EIOPA's consultation paper contains specifications on how to apply each principle in practice and provides some examples of good and bad practices. It also contains some guidance addressed to NCAs when supervising sustainability claims.

Some of the specifications on how to apply the principles focus on distributors (including insurance intermediaries). For instance:

- **Under Principle 1,** EIOPA specifies that, during the delivery process, distributors should maintain accuracy and consistency of sustainability claims while ensuring that any sustainability claim matches the consumer's sustainability preferences. EIOPA adds that distributors should be knowledgeable enough about the products their offer to be able to represent them accurately to their clients.
- **Under Principle 3,** EIOPA insists on the importance for distributors to substantiate their product recommendations based on the sustainability information provided by the manufacturer (and while taking into account the customer's sustainability preferences).
- **Under Principle 4,** EIOPA emphasises the need for distributors to ensure, when conducting suitability assessments, that customers have a good understanding of the notion of sustainability preferences and of the integration of certain sustainability aspects in their investments. Distributors should be able to provide these explanations with clear, succinct, and comprehensible language.

BIPAR's position / key messages

On the framework as a whole, BIPAR insists on the following points:

- **Flexibility**: the entire framework is still developing, moreover, it is developing in an asymmetrical way with different texts having different application dates. This developing framework demands a lot of adaptation from intermediaries, manufacturers and customers. Therefore, and especially in the early years of application of the different legislations, it should allow for flexibility as to not put too much pressure on the different stakeholders.
- **Proportionality**: the principle of proportionality for Delegated Acts is enshrined in the IDD (Article 30(6)) which specifies that Delegated Acts shall take into account the nature of the services, the type and size of transactions, the nature of the products and the retail or professional nature of the customer. This principle should be reflected throughout the framework. For instance, this should allow intermediaries to adapt the information delivered to customers based on the retail or professional nature of said customers.
- **Need for clear, reliable and correct information**: Product oversight and governance requirements are key in this process and can ensure that investors and intermediaries can have full confidence in the information provided by manufacturers.
- **No excessive burden**: the amount of information to be requested from customers and the amount of information to be communicated to customers can lead to documentation overload which might deter customers from wanting to invest in sustainable products.
- **No excessive complexity**: the framework as a whole is very technical and complex. Intermediaries need to be allowed to make arrangements to help customers understand it. This includes the possibility of using more generic, less technical language when communicating with customers about sustainability preferences.

EIOPA's consultation on sustainability claims and greenwashing for pensions and insurance

In its response to EIOPA consultation, BIPAR stated the following:

- BIPAR generally agrees with the objectives of the draft opinion and with the principles drafted by EIOPA,
- BIPAR is somewhat concerned about some of the responsibilities attributed to insurance distributors (i.e. intermediaries) that it believes should ultimately rest on manufacturers (mostly POG requirements),
- BIPAR emphasizes again the current complexity of the sustainable finance framework, its lack of clarity, its lack of harmonisation and the related costs and burden it entails for intermediaries,
- The focus should be on making the current framework less obscure and burdensome and on providing clarity to intermediaries and customers.

Commission's consultation on the implementation and possible review of the SFDR

BIPAR agrees with the stated objectives of the SFDR but believes the SFDR is mostly unsuccessful in reaching these objectives:

- The SFDR lacks clarity both for Financial Market Participants (FMPs) and advisors and end investors. This might deter consumers from investing in ESG products and could also lead to greenwashing.
- Some requirements contained in the SFDR do not seem to have any clear usefulness to financial advisors, FMPs or customers (ex: Article 6 and Article 6(2) SFDR).
- The entire sustainable finance framework is too complex and lacks harmonisation which makes it very difficult for financial advisors to apply in practice.
- The lack of access to accurate, good-quality data is an issue for financial advisors who must recommend products that fit their clients' sustainability preferences.
- The framework should endure good-quality, harmonised disclosures by manufacturers so that advisors can rely on the disclosed data in order to provide accurate and suitable advice.

- The complexity and lack of clarity of the SFDR and its key concepts make it difficult for financial advisors (which include insurance intermediaries) to comply with their obligations under the IDD and MiFID II Delegated Acts on sustainability preferences.
- Advisors often face an issue related to the lack of availability of certain products (ex: Taxonomy-aligned products).
- BIPAR is not, in principle, opposed to the development of an actual sustainability-based categorisation system for financial products, based on well-defined, easily understandable categories. But any such system should be developed in order to simplify the process and not add undue burden. It should also be 100% voluntary.
- Any such categorisation should be built upon existing concepts and categories (such as Articles 6/8/9 SFDR) which should all be better defined and developed in order to avoid uncertainty.
- Any such categorisation should then be aligned with any potential future rules on naming conventions for financial products.

Next steps

Regarding the EU Green Bond Standard: the Regulation was published in the Official Journal of the EU on 30 November 2023 and will apply from 21 December 2024.

Regarding EIOPA's consultation on sustainability claims and greenwashing for pensions and insurance: EIOPA gathered feedback on its draft opinion until March 2024. It is currently examining the comments received and will publish a final version of its opinion shortly. EIOPA's opinions aim at building a common EU supervisory culture and consistent supervisory practices and to ensure consistent procedures and approaches throughout the EU.

The Delegated Act regarding European Sustainability Reporting Standards (ESRS) for companies under the CSRD was published in the Official Journal on 22 December 2023. The CSRD reporting obligations and, therefore, the ESRS will start applying based on a phase-in approach depending on the size of the company:

- Reporting in 2025 for the financial year 2024 for large companies that were already subject to the Non-Financial Reporting Directive (NFRD).
- Reporting in 2026 for the financial year 2025 for large companies not currently subject to the NFRD.
- Reporting in 2027 for the financial year 2026 for listed SMEs, small and non-complex credit institutions and captive insurance undertakings. Listed SMEs can benefit from a two-year opt-out clause and can start reporting in 2029 for the financial year 2028.
- Reporting in 2029 for the financial year 2028 for in-scope large third country undertakings.

Regarding the CSDDD: After being signed by the President of the European Parliament and the President of the Council, the Directive will be published in the Official Journal of the European Union and will enter into force on the twentieth day following its publication.

Member States will have two years to transpose the new rules into their national laws. The new rules (except for the communication obligations) will apply gradually to EU companies (and non-EU companies reaching the same turnover thresholds in the EU):

- From 2027 to companies with over 5000 employees and worldwide turnover higher than 1500 million euro,
- From 2028 to firms with over 3000 employees and a 900 million euro worldwide turnover,
- From 2029 to all the remaining companies within the scope of the Directive (including those over 1000 employees and worldwide turnover higher than 450 million euro).

Links

- SFDR
- Delegated Regulation (EU) 2022/1288 SFDR RTS
- Taxonomy Regulation
- First Delegated Act to the Taxonomy Regulation
- Taxonomy Environmental Delegated Act
- Regulation on European Green Bonds (EuGB)
- Proposal for a Directive on corporate sustainability due diligence (CSDDD) - Council's formal adoption of the CSDDD on 24 May 2024
- Delegated Act regarding European Sustainability Reporting Standards (ESRS)
- Corporate Sustainability Reporting Directive (CSRD)
- ESMA's call for evidence on the integration of sustainability preferences in the MiFID II suitability assessment - All responses received
- Recording of the Commission's workshop on the future of the SFDR (10 October 2023)
- Non-Financial Reporting Directive (NFRD)
- Progress Reports by EIOPA, ESMA and EBA

Climate protection gap

Why does it matter to intermediaries?

Given the increase in the severity and intensity of climate related events, public authorities are mainly responsible for climate change adaptation. However, insurance intermediaries play a pivotal role in contributing to climate adaptation, as many have expertise in the modelling of climate risk and the development of resilient and sustainable business models. Intermediaries also have a role in raising awareness of climate risks, in covering new risks (especially for SMEs), preventing a possible "protection gap/insurance gap" by developing adapted and innovative insurance solutions.

State of play

Natural Catastrophes

In February 2024, and following consultation of stakeholders in which BIPAR participated, EIOPA published a revised Staff Paper: "*Measures to address demand side aspects of the natcat protection gap*". This Paper explores the barriers that keep consumers from buying insurance against natural catastrophes. It also proposes a number of consumer-tested solutions to overcome these challenges and in so doing, bolster European households' and businesses' resilience to extreme weather events. It looks, amongst others, at the distribution of NatCat products and how the sales process can be improved.

The Staff Paper aims at complementing EIOPA's previous work on addressing the NatCat protection gap (on **supply-side** constraints: see Insurance Protection Gap Dashboard, Impact Underwriting and Supervisory Statement on Exclusions), and now focuses on the **demand** side (causes and solutions).

The **factors** EIOPA considers to be contributing to a low uptake of NatCat insurance products (even if products are available) are linked to:

1) understanding of insurance products and (perceived) affordability;
2) previous (negative) experience with insurance and social norms;
3) risks perception and expectations on public support;
4) the insurance purchasing process.

EIOPA considers that to tackle these barriers, **drivers** for **uptake** can be:

1) pre-purchase: raise awareness on risks/offers/benefits;
2) purchase: act on the buying process;
3) price and insurability: reducing the price and risk.

EU Climate Resilience Dialogue

The Climate Resilience Dialogue is a forum set up by the European Commission (its two Directorates-General FISMA and CLIMA) at the end of 2022. Their primary task is "*to exchange views on how to address the losses incurred from climate-related disasters and to identify how the insurance industry can contribute more to climate adaptation, from actions that increase the penetration of climate risk insurance for industry and all of society, to making the conditions right for more investment in good adaptation solutions*".

The objective of the Climate Resilience Dialogue is to create a forum for discussion that will strengthen the collective understanding of insurers, reinsurers, intermediaries, businesses, consumers and other stakeholders about the climate protection gap. The climate protection gap is the share of non-insured economic losses caused by climate-related disasters. The launch of the Climate Resilience Dialogue was announced in the Commission's 2021 EU Strategy on adaptation to climate change, as well as in its 2021 Strategy for Financing the Transition to a Sustainable Economy.

BIPAR (represented by experts) welcomes the initiative and is a member of the Climate Resilience Dialogue.

In July 2023, an Interim Report was released. It outlines the work carried out by the members of the Dialogue since its inception. The Report indicates the focus areas and gaps for the Dialogue's future work, the emphasis of which will be on the identification of solutions to specific climate protection gaps in the EU. Finally, it presents preliminary observations of the Group on some of those focus areas and gaps.

Climate protection gap

BIPAR's position / key messages

Natural Catastrophes

In its response to the EIOPA consultation on its draft revised Staff paper on "*Measures to address demand side aspects of the natcat protection gap*", BIPAR, amongst others, pointed at the **wider uncertain economic context,** and that the main issue is not always affordability, but often a **lack of awareness** of the actual risks some consumers may face as well as of the existence of NatCat coverage. In this respect, BIPAR highlighted the **role of the intermediary** and disagreed with the draft paper's statement that visiting distributors' offices is resource intensive. BIPAR stressed that intermediaries are offering hybrid services and having an intermediary explaining - using digital tools - the needs/characteristics of NatCat protection to the customer will not be more resource-intensive than having the customer informing him/herself alone and digitally – on the contrary.

Regarding **mandatory coverage,** BIPAR stated that tailor-made insurance products in a non-mandatory framework are possibly the best way to cover natural risks as they take into account national and local specificities and risks.

EU Climate Resilience Dialogue

The work of the Climate Resilience Dialogue has been divided into 9 focus areas, including one on risk awareness led by BIPAR experts. In their work on risk awareness, BIPAR experts underline that risk awareness can be defined as a pre-condition for any actions to address the climate protection gap. Risk awareness enables preparedness and enhanced resilience and provides the necessary information for decision-making and long-term planning. They further explain that informing households and businesses about the climate risks they are exposed to can lead to behavioural changes and positive uptake of preventive risk reduction measures and insurance. Intermediaries play an important role in this respect.

Next steps

Natural Catastrophes

EIOPA will continue working with its members to address aspects in its supervisory remit whilst also continuing to raise awareness.

Climate Resilience Dialogue

The conclusions of the Dialogue will be published in a report mid 2024. The report will contain practical good practices and recommendations, with a view to accelerating Europe's adaptation to climate change.

Links

- EIOPA's revised Staff Paper: "*Measures to address demand side aspects of the natcat protection gap*"
- EIOPA's Insurance Protection Gap Dashboard
- EIOPA's Impact Underwriting
- EIOPA's Supervisory Statement on Exclusions
- Climate Resilience Dialogue interim report
- EIOPA's and ECB's joint discussion paper
- EIOPA's sustainable finance agenda

Markets in Financial Instruments Directive (MiFID II)

Why does it matter to intermediaries?

On 3 January 2018, the Directive on Markets in Financial Instruments (MiFID) II became applicable. **Financial intermediaries providing investment advice** act as investment firms as defined by the MiFID II and have to comply with a set of MiFID II conduct rules. These concern, amongst others, remuneration, information requirements and professional knowledge. Independent advice is clearly distinguished from non-independent advice and there is a **ban on commission for independent advice**. The Directive foresees an **opt-out regime**. Firms that are regulated at national level and that do not hold clients' money and only receive and transmit orders and/or provide advice, like many financial intermediaries, can be exempt by Member States from the MiFID II regime. Some MiFID II requirements, however, have to be applied in an "analogous" way to opt-out firms. The latter do not benefit from the MiFID II Single License to operate cross-border.

BIPAR and its Working Party on MiFID have been actively following the discussions and developments regarding MiFID II (levels 1, 2 and 3) and its review.

State of play

The Commission was required to review certain parts of MiFID II. This review happened in different phases, with part of the review covered by the CMU follow-up package, and other parts covered by the Retail Investment Strategy (RIS).

CMU follow-up package - MiFIR / MiFID II Review

The CMU follow-up package included a review of MiFIR (Markets in Financial Instruments Regulation) and some targeted changes to MiFID II. Important proposed changes by the Commission included the introduction of an EU-wide consolidated tape for trading information and a ban on payment for order flow (PFOF - triggered by the "GameStop-case"). The PFOF ban was much discussed in the European Parliament and Council. The end result, as published in the Official Journal on 8 March 2024, is a ban on PFOFs. Member States where the practice of PFOF already existed before 28 March 2024 have the possibility to allow investment firms under their jurisdiction to be exempt from the ban, provided that PFOF is only provided to clients in that Member State. However, this practice must end by 30 June 2026. Member States making use of this option will have to notify ESMA by 29 September 2024 and ESMA will make a (public) list of these countries making use of the exemption.

On 27 March 2024, the Commission published a draft interpretative notice to provide clarity to market participants on the transitional provision in MiFIR. Certain elements of the Regulation will phase in over the coming years. The new rules cover the limitations regarding "dark trading" (trading without pre-trade transparency), moving from a double to a single volume cap. The EU is now preparing Commission delegated Regulations specifying the new rules, including the single volume cap. The transitional regime sets out that the existing Commission delegated Regulations remain applicable until the new ones enter into force. This means, for instance, that the current double volume cap will remain in place until the new Commission delegated Regulations covering the single volume cap enter into application.

Retail Investment Strategy

The RIS proposal, published on 24 May 2023, also contains amendments to MiFID II. Indeed, the first set of provisions of the Omnibus Directive deal with MiFID II.

Focus on some key proposed amendments to MiFID II

The Commission's proposal for an Omnibus Directive brings, amongst others, the following changes:

- ***inducement rules:*** the current ban remains (in case of independent advice and portfolio management) but there is an additional ban on inducements regarding reception and transmission of orders or execution of orders. In the ECON report this new ban on inducements for non-advised sales has been deleted. In the Council, the topic of remuneration is also an important point of discussion, and it seems the new ban would be removed here as well.

- ***introduction of a "best interest test":*** the currently existing MiFID II "quality enhancement test" for inducements is replaced by a "best interest test", requiring firms:
  (a) to provide advice on the basis of an assessment of an appropriate range of financial instruments.
  (b) to recommend the most cost-efficient financial instruments among financial instruments identified as suitable to the client and offering similar features;
  (c) to recommend, among the range of financial instruments identified as suitable to the client, a product or products without additional features that are not necessary to the achievement of the client's investment objectives and that give rise to extra costs.

The EP has made substantive changes to this new test, aiming, amongst others, to put less focus on cost-only. In the ECON report firms who provide advice would have to:

- inform the client of the range of instruments assessed and advise on an appropriate range suited to the client's needs whereby the range is adapted to the business model;
- recommend the most efficient instruments, taking into account performance level of risk, qualitative elements, costs and charges (so the efficiency is not limited to cost-efficiency-only, as the Commission proposal did) and if an equivalent product with higher cost is recommended, firms have to justify this on objective grounds;
- not to place the firm's interest ahead of the client's;
- criterion c) is deleted by the EP.

The EP also adds that where an inducement ban exists, the best interest test conditions will be presumed fulfilled (BIPAR note: this implies that there is no "best interest test" for independent advice, nor in Member States with a ban on inducements). In the Council, this test is also an important point of discussion.

- ***appropriateness and suitability tests:*** as part of the suitability test, the Commission adds that firms will have to look at portfolio diversification and the appropriateness test is expanded to also contain the capacity to bear full or partial loss and risk tolerance. In case of a negative appropriateness test, the firm has to give a warning and can only proceed upon explicit request of the client. Changes are brought here also by the EP and Council. "Capacity to bear losses" and portfolio diversification are amended to make these requirements more practical. In its report, in case of advice and portfolio management, the EP has added that the composition of existing portfolios only has to be investigated by the firm to the extent that the client discloses this. It has added the need to look at sustainability within the suitability assessment. Firms also have to inform clients about the existence of different types of advice. In case of the appropriateness test, the EP has deleted the requirement to include in the assessment the client's capacity to bear full or partial loss and risk tolerance.

- ***a new type of "independent advice"*** is introduced by the Commission when well-diversified, cost-efficient and non-complex financial instruments are advised upon, with a "light" suitability test (no need to assess knowledge and experience of clients, nor portfolio diversification). It is unclear if this new type of advice is kept in the EP report amendments to MiFID II (one reference is deleted but another one remains).

- ***value for money:*** new product governance rules are introduced by the Commission to ensure value for money. ESMA is to create benchmarks and there are requirements (reporting) for distributing firms as well. In the EP, the benchmarks are turned into supervisory tools. This is an important point of discussion for the co-legislators. The EP has drafted a new art 69a on benchmarks as a supervisory tool. These are European benchmarks for groups of comparable products, manufactured and distributed in more than one Member State, to be developed by ESMA. For financial instruments that are manufactured and distributed in only 1 Member State, national benchmarks have to be developed (there will be RTS from ESMA to ensure a horizontal approach). Deviations from the benchmark will have to be explained (the measure of last resort is removal of the financial instrument from the market). In the Council, it seems that discussions go in the same direction of benchmarks as supervisory tools.

- ***training:*** the Commission moved the current ESMA guidelines regarding training into a new MiFID II annex; continuous professional development is added ("CPD", 15h per year) and a training requirement regarding sustainable investment. A certificate is needed in the Commission proposal to prove compliance. The EP states that Member States may require a certificate or other types of documents. The EP has kept the 15h of CPD (more hours were proposed in some of the MEP amendments), adding this should be during working hours. The EP added that Member States need to have assessment mechanisms and that they can require more than 15h. It also adds that an appropriate number of the 15h has to go to sustainability. Member States may provide that continuing vocational training acquired and required as part of another professional qualification can be valid.

- ***product governance:*** the EP keeps the Commission's requirement for "distributors" to regularly review the products offered/recommended to see if they remain in line with the target market. The EP adds several additional requirements: "distributors" have to also check if the (non)monetary benefits are still relevant for the identified target market and reasonable compared to the costs and charges.

  For PRIPs (packaged retail investment products), the EP amends the requirements for "distributors": it clarifies that they only have to identify and quantify additional costs regarding distribution not already taken into account by the manufacturer (so there is no more duplication of requirements as was the case in the Commission text). It also clarifies that the distributor

does not have to assess whether all costs are justified, but only those costs incurred for the distribution (so also here no more duplication). The EP does add the requirement to assess additional features/services that could impact the value and benefits provided to the investor.

The EP deletes the reference to benchmarks again but adds for PRIPs a peer grouping exercise requirement – distributors may rely on the manufacturers' analysis. "Distributors" have to do a peer analysis of service costs based on an internal analysis of relevant peers in the market. ESMA will develop guidelines on the process / criteria for the peer grouping.

For PRIPs, the EP specifies that manufacturers and "distributors" have to report costs and charges of the products to the NCA, including where relevant distribution costs and costs related to "the distribution of advice". NCAs have to report these data to ESMA and ESMA has to develop RTS regarding the content / type of data and the format / frequency/ starting date. The EP has also added a requirement for ESMA to create guidelines on criteria if costs are justified / proportionate.

The EP has also added that Member States have to report to the Commission and ESMA 5 years after the application date of RIS regarding the implementation of this article. The Commission has to do an evaluation and assess if the new product governance rules brought better value for money to citizens; the impact on conflicts of interest associated with inducements; and the implementation of financial literacy measures. If there is no positive change, the Commission shall issue legislative proposals if appropriate. In the Council, we understand that a similar approach is under discussion, with peer reviews.

- ***More detailed rules on costs and charges*** and their disclosure are added in the Commission's proposal. The EP keeps the requirement to inform the client prior to services / transaction with information on costs, associated charges and third-party payments. It adds that this includes all costs and charges relating to the distribution of the instrument, cost of advice where relevant.

  The EP has made a distinction for expressing the overall cost over different periods for different types of products.

  It keeps the need for separate itemisation for third-party payments. For third-party payments, it kept the requirement to disclose the cumulative impact on the net return over the holding period (it deleted this requirement for other types of costs/charges).

  The possibility to give the method of calculation when this cannot be ascertained prior to the provision of the service has been limited to third party payments only by the EP (not anymore for "any costs, associated charges"). The EP adds that the exact amount then has to be provided ex post.

  The EP has kept the requirement for an annual statement. It has kept the fact that an annual statement should not be provided if there is an online system with up-to-date statements, but added that this is upon request of the client (not automatically as proposed by the Commission).

Next steps

The **RIS proposals** will follow the normal legislative procedure of the EP's and Council's amendments and adoption (see article on RIS).

ESMA's guidance

ESMA has continued working on MiFID II-related guidance over the past year. In August 2023, it published all language versions of its reviewed product governance guidelines under MiFID II. The changes concern, amongst others, target markets for clusters of products instead of individual products and specification of sustainability objectives. The Guidelines have applied since 3 October 2023.

ESMA's other action

In July 2023, ESMA published a **statement on results of joint supervisory action and mystery shopping** exercise with national competent authorities to assess investment firms' application of MiFID II rules on costs and charges. ESMA found that for ex-post costs and charges information there is an adequate level of compliance, but there are some shortcomings such as for inducements: differing practices and sometimes lack of disclosure. The mystery shopping regarding ex-ante costs and charges information showed:

- in most cases some information is provided prior the provision of the investment service,
- only in half of the cases, proper information is given in a durable medium,
- In the other cases, the information was incomplete,
- Ex-ante costs and charges were at times only disclosed late in the decision process,
- In case of advice, firms did not always disclose whether this was independent or not,
- Disclosure of inducements was also not always done correctly or timely.

ESMA is working on Q&As and a possible standardised EU format for the provision of information about costs and charges to clients.

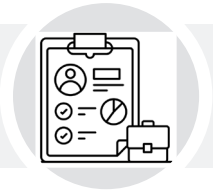
NCAs are to address regulatory breaches as well as other shortcomings or weaknesses.

Also in July 2023, ESMA published a **supervisory briefing on understanding the definition of advice** under MiFID II. The latter is a review and update of the 2010 CESR (predecessor of ESMA) Q&A on "Understanding the definition of advice under MiFID", which was a document to clarify and illustrate situations where firms would, or would not, be considered as providing investment advice. The briefing reflects the evolution of business models and technology and lists five (cumulative) key tests for a service to be considered investment advice. It looks, amongst others, into whether other forms of information could constitute investment advice. The briefing also includes a number of "practical cases".

On 6 February 2024, ESMA published a "**Warning" for people posting investment recommendations on social media.** With this warning, ESMA and NCAs are raising awareness of requirements established by the Market Abuse Regulation (MAR) which apply when posting such recommendations and on the risks of market manipulation in such publications. ESMA refers to the applicable rules (MAR and its delegated Regulation) and that non-compliance can lead to sanctions, and even criminal prosecution, in some Member States. The paper also includes an annex with practical examples of direct and indirect recommendations by different categories of people.

Links

- Directive on Markets in Financial Instruments
- Overview of the state of play of the different ESMA's Guidelines
- Reviewed MiFIR Regulation
- Reviewed MiFID Directive
- Commission's draft interpretative notice to provide clarity to market participants on the transitional provision in MiFIR - Annex
- ESMA Guidelines on MiFID II product governance requirements
- ESMA statement on results of joint supervisory action and mystery shopping exercise
- ESMA updates its guidance on the definition of advice in a supervisory briefing
- ESMA warning for people posting Investment Recommendation on social media
- Market Abuse Regulation



Regulation on the Key Information Documents for packaged retail and insurance-based investment products (PRIIPs)

Why does it matter to intermediaries?

On 1 January 2018, the PRIIPs Regulation became applicable. It introduces the requirement for product manufacturers - before making a packaged retail and insurance-based investment product (PRIIPs) available to retail investors - to draw up a standardised Key Information Document (KID) and publish it on their website. Distributors (persons selling or advising) of PRIIPs have to hand over this KID to retail investors. The KID is intended to provide precontractual information on the nature, risks, costs, potential gains and losses of the product and it should facilitate comparison between different products and can be a maximum of 3 pages.

Over the past years, various issues with the current KID have been raised by stakeholders (both by industry - including BIPAR - and consumer representatives).

State of play

On 1 January 2023, some new PRIIPs rules started applying, the PRIIPs "quick-fix Regulation" - amending the PRIIPs Regulation to include an extension till 1 January 2023 for UCITs to start using the KID instead of the KIID (Key Investor Information Document) and quick-fix Directive; and PRIIPs Level 2 amendments - targeted amendments regarding the cost presentation, performance scenarios, past performance and rules for multi-option products (MOPs).

The broader level 1 review of PRIIPs is included in the Commission's Retail Investment Strategy (RIS). For the RIS, the **Commission's proposal** introduced amongst others:

- a definition of electronic format and a stronger preference for the electronic format (also specification of the conditions for the use of layering and personalisation of the KID);
- amended rules for presenting costs of MOPs;
- a new section in the KID "Product at a glance" to summarise and highlight the information on an investment product type, its costs and the level of risk, recommended holding period and presence of insurance benefit.
- removal of the comprehension alert for complex products as it was not deemed effective;
- a new section in the KID on sustainability to provide investors with a harmonised set of information on the sustainability profile of relevant investment products, building on existing product disclosures;
- a new statement that the KID shall remain accessible on the website of the person advising or selling the PRIIPs.

On 20 March 2024, the **ECON Committee** voted on the draft ECON report and amendments to the PRIIPs Regulation. The ECON members also voted in favour of the mandate given to Rapporteur Stéphanie Yon-Courtin to start trilogue negotiations on the basis of her adopted PRIIPs report.

Some important points for intermediaries in the adopted report:

- The current definition of "person selling or advising" has been changed into ***"(5) 'PRIIP distributor' means a person advising on, offering, selling or concluding a PRIIP contract with a retail investor;"***
- There are updated rules on KIDs for **MOPs** – see changes to article 6 of the Regulation;
- **Format** of the KID: **4 pages** instead of 3 (and extra focus on the need for comprehensible language);
- The new "**product at a glance dashboard**" heading of the KID as proposed by the Commission is maintained;
- Where the Commission had deleted the currently existing **comprehension alert** in its proposal, the Parliament reintroduced a warning: "*where applicable, about the specific risks of potential losses associated with particularly risky or complex financial instruments in accordance with Article 24(5c) of MiFID II or with particularly risky or complex insurance-based investment products in accordance with Article 29(5) of IDD";*
- ESMA and EIOPA are to develop an **independent Union online comparison tool,** based on key information document data that will be available under the European Single Access Point. A link to the independent online comparator, once available, shall be added to the key information document. *"Management companies, investment firms and insurance intermediaries shall promote the use of the online comparison tool on their websites, including in relevant marketing material.";* See recital 3a + article 8
- The EP has amended the **sustainability related information** in the KID that the Commission had proposed. See in article 8 on the new heading "How environmentally sustainable is this product?";
- In article 10 the Parliament made some changes regarding the need for the manufacturer to **review and where needed to revise the KID,** in case the product is no longer open to subscriptions / available on a secondary market;

- **Provision of the KID** – article 13 – the EP made changes to this article to avoid that **marketing information** would "distract" the client from the KID information: *"1. A PRIIP distributor shall provide retail investors with the key information document in good time before those retail investors are bound by any contract or offer relating to that PRIIP. In any case where marketing communication about the PRIIP is provided by the financial adviser to the retail investor on paper or in a digital format, the key information document shall be provided to the retail investor **at the latest at the same time**, together with an explanation of the regulatory nature of such document.";*
- In article 14 the EP made some changes to the part on the **electronic format** of the KID, which may be provided by means of an interactive tool (which may be based on personal preferences);
- Also in article 14 is the important part for intermediaries regarding KIDs to be put on the **distributor's website**; BIPAR had raised concerns about the **Commission's proposal requiring the person selling needing to put all KIDs on their websites.** The EP has amended this text and added an exemption. The EP text says: "*The latest version of the key information document shall remain easily and publicly accessible to all retail investors on the website of the PRIIPs manufacturer and, with regard to the relevant PRIIPs that are sold or subject to investment advice, on the website of the PRIIPs distributor. The key information document shall remain capable of being downloaded and stored in a durable medium, for such period of time as the retail investor may need to consult it. If the key information document is not available on the website of the distributor, the distributor shall provide it to the retail investor upon request within 2 working days* (…)".

In the **Council**, discussions are ongoing but no general approach was reached at the time of drafting this article. The Spanish Presidency published a progress report mid-December 2023. Discussions under their presidency covered:

- who is responsible for accuracy of information in the interactive comparison tool (manufacturer /distributor);
- on the insertion of a product at a glance section in the KID;
- on the content of the sustainability section of the KID;
- on whether there should be an obligation to keep the KID accessible as long as the retail investor may need to consult it;
- on the feasibility of limiting the length to 3 pages;
- agreement was reached to extend the application deadline.

BIPAR's position / key messages

With regard to **PRIIPs in general**, BIPAR has, from the outset, agreed that for all products which include an investment risk, specific, proportional and relevant pre-contractual information should be available. However, it pointed out from the start how extremely ambitious and difficult it is to achieve a level playing field and relevant, real comparability between all products within the scope of PRIIPs, adding that there was a risk that harmonisation could result in misinformation of the retail investor. BIPAR, for instance, pointed out that IBIPs could be perceived as less interesting/more expensive at the moment compared to "pure investment products".

With regard to the **RIS proposals**, the current PRIIPs Regulation states that the KID should be accessible on "a website", not "the website of the person advising or selling" as proposed by the Commission in the framework of RIS. BIPAR and its members have explained to policymakers that such a new requirement for persons selling/advising / intermediating/ distributing is not logical and inefficient. Distributors/ advisors/ sellers etc. potentially have a very large amount of KIDs that they should thus have on their website and keep updated there. It should be the manufacturers' responsibility to keep their KIDs up to date on their websites and then distributors/ intermediaries and advisors can, if they wish, make links on their own websites to these manufacturer's websites. This approach also facilitates supervision and avoids confusion. BIPAR is, therefore, in favour of keeping the existing wording. If further specification is desired by the co-legislators, it should be the manufacturer's website where the KIDs should remain accessible on (not the website of the person distributing / advising or selling).

Other ESAs' work on PRIIPs

On 15 March 2024, the European Supervisory Authorities published an update of their "Consolidated questions and answers on the PRIIPs KID". The new questions that have been answered amongst other deal with issues such as a clarification of what "PRIIPs open to subscription" are; what the difference is between a "benchmark" and a "proxy" within the meaning of the PRIIPs Delegated Regulation; when past performance should be published, etc.

Next steps

Once the Council reaches its common approach on the PRIIPs text, trilogue negotiations between the European Parliament, Commission and Council can start with a view on final adoption of the text.

Links

- PRIIPs Regulation
- EP ECON report
- Council progress report
- ESAs' update of consolidated Q&A on PRIIPs KID

Pan-European Personal Pension Products (PEPP)

Why does it matter to intermediaries?

The Regulation on a Pan-European Personal Pension Product ("PEPP") deals with the registration, manufacturing, distribution and supervision of PEPP. It was adopted and published in the Official Journal of the EU in July 2019. It is directly applicable and started to apply on 22 March 2022. BIPAR and its member associations have been very active on this file all along the legislative process.

The PEPP is an optional, 2nd regime instrument, complementary to the existing state-based (pillar 1), occupational (pillar 2) and national personal pensions (pillar 3) and has standardised key product features.

PEPP can be distributed by **insurance intermediaries** offering insurance under IDD and **investment firms** providing advice under MiFID II. Some specific PEPP rules also apply to all kinds of distributors. All PEPP providers have to offer "Basic PEPPs", which are "simple and affordable default investment options" that have to provide capital protection and where costs and fees shall not exceed 1 % of the accumulated capital per year (this includes (initial) advice costs).

The Regulation foresees mandatory advice (with a suitability test) and a demand and needs test for PEPP providers and **distributors**, for all PEPPs, including Basic PEPPs.

State of play

At the time of writing this article, one provider is offering a PEPP in Czechia, Croatia, Polan and Slovakia according to the EIOPA central database that contains information on all PEPPs in Europe.

BIPAR's position / key messages

BIPAR and its members were active on this file. BIPAR did not support in particular the cost cap for the basic PEPP and the inclusion of advice costs in the cap. We refer to earlier Annual Reports for more detail on the content of the Regulation and BIPAR's position on the different aspects.

Next steps

Five years after the date of application (March 2027), and every five years thereafter, the Commission will have to carry out an **evaluation**, and after consulting EIOPA and the other ESAs where appropriate, present a **report** on the main findings (a report, amongst others, on the uptake of the basic PEPP and on whether advice provided to PEPP savers is adequate), accompanied, where appropriate, by a legislative proposal.

Links

- Regulation on a Pan-European Personal Pension Product (PEPP)
- EIOPA's PEPP central database
- EIOPA's Register of national laws, regulations and administrative provisions regarding PEPP
- EIOPA's FAQs on PEPP for professionals and for consumers

Institutions for Occupational Retirement Provision Directive (IORP II)

Why does it matter to intermediaries?

In December 2016, the Directive on the activities and supervision of Institutions for Occupational Retirement Provision (IORP II) was adopted. It entered into force in January 2017 and Member States had until 13 January 2019 to transpose it into national law. Many Member States were late in their transposition.

Occupational pension funds or IORPs are financial institutions which manage collective retirement schemes for employers in order to provide retirement benefits to their employees. Occupational pensions, which include an employer contribution, are known as the "second pillar" of pension systems.

The IORP II Directive aims to ensure the soundness of occupational pensions, to better inform pension scheme members and beneficiaries with a standardised "Pension Benefit Statement" at EU level, to promote cross-border activity and to help long-term investment by encouraging occupational pension funds to invest long-term in growth-, environment- and employment-enhancing economic activities. It does not concern issues of national social, labour, tax or contract law, or the adequacy of pension provision in Member States.

State of play

The European Commission started the **review procedure** for this Directive and asked technical advice from **EIOPA** in the form of a stock taking exercise of the **implementation and effectiveness of the IORP II Directive.** On 28 September 2023, EIOPA published its technical advice after having consulted on it – a consultation to which BIPAR responded.

EIOPA's advice:

- proposes changes to keep the regulatory framework for IORPs relevant bearing in mind the ongoing shift from defined benefit to defined contribution pensions, and in relation to the environmental and socio-economic challenges facing society;
- recognises the need for existing Defined Benefit IORPs to be properly regulated and supervised;
- proposes ways to enhance the proportionality measures of the existing Regulation and to reflect it in new standards. EIOPA proposes to increase the threshold for small IORPs to give Member States more flexibility in applying proportionality.

EIOPA also published a **factsheet** that gives an overview of the presence/assets of IORPs in the different Member States.

BIPAR's position / key messages

BIPAR responded to EIOPA's consultation in May 2023. In its input, BIPAR focused, amongst others, on the need for a reviewed IORP Directive to take into account proportionality (also regarding the size of the IORP – something EIOPA took into account in its final advice) and for aligned rules in IORP regarding sustainability.

Next steps

EIOPA submitted its technical advice to the Commission and BIPAR understands that the Commission started preliminary work on the review and that a proposal will be published during the new Commission mandate (2024-2029).

Links

- IORP II Directive
- EIOPA's technical advice
- EIOPA's factsheet

Consumer Credit Directive (CCD)

Why does it matter to intermediaries?

Among BIPAR members, certain national associations represent credit intermediaries. The Consumer Credit Directive (CCD) contains rules applicable to credit intermediaries. Over the past years, BIPAR, together with its Working Party on Credit, has been working on the Commission's review proposal for the CCD (proposal published on 1st July 2021 and the final text published in October 2023 in the Official Journal). The Commission's main drivers for the proposed changes were digitalisation, recent other newer EU legislation in fields relevant for consumer credit, Covid-19 and over-indebtedness.

State of play

- The trilogue agreement on the new CCD was officially signed by the Parliament's Plenary in September 2023 and by the Council in October 2023.
- The new CCD was published on 30 October in the Official Journal of the EU in all official languages of the EU (it entered into force on 20 November 2023).

Content

The new Directive has **a broader scope** than the previous Directive 2008/48. In particular, this new Directive now also applies to:
(i) credit agreements involving a total amount of credit of less than EUR 200,
(ii) credit agreements where credit is granted free of interest and without other charges, the so-called "buy now pay later arrangements" (**unless certain conditions are complied with),**
(iii) credit agreements under the terms of which the credit must be repaid within three months and only insignificant charges are payable,
(iv) certain credit agreements in the form of deferred debit cards and
(v) credit agreements involving a total amount of credit of more than EUR 100,000 and which are not secured by a mortgage, where the purpose of those credit agreements is the renovation of a residential immovable property.

Regarding the use of the terms, **"advice" and "advisors",** Member States can prohibit the use of those terms, or of similar terms, where such advisory services are being provided to consumers by creditors or credit intermediaries. Where Member States do not prohibit the use of the terms 'advice' and 'advisor' or similar terms, they must impose the following conditions on the use of the term 'independent advice' or 'independent advisor' by creditors and credit intermediaries providing advisory services:
(a) creditors and, where applicable, credit intermediaries shall consider a sufficiently large number of credit agreements available on the market; and
(b) credit intermediaries shall not be remunerated for the advisory services by one or more creditors.
(! b) applies only where the number of creditors considered is less than a majority of the market.)

Member States must ensure that where creditors or credit intermediaries provide advisory services, the remuneration structure of the staff involved does not prejudice their ability to act in the consumer's best interest and is not contingent on sales targets. In order to achieve that goal, Member States can also ban commissions paid by the creditor to the credit intermediary.

The new CCD also includes a "right to be forgotten" for people who are cured from cancer. Member States shall require that personal data concerning consumers' diagnoses of oncological diseases are not used for the purpose of an insurance policy related to a credit agreement after a period of time determined by the Member States, not exceeding 15 years following the end of the consumers' medical treatment (see also, in this respect, the article on Right to be forgotten in case of cancer).

BIPAR's position / key messages

BIPAR's position focused on the following points:
- credit intermediation and a level playing field (remuneration, advice, ancillary intermediation, etc.);
- caps on interest rates, annual percentage rate of charge or total cost of credit to the consumer;
- cross-selling;
- overload of precontractual/general information;
- access to credit databases;
- additional proportionality for micro and SMEs.

Key points for BIPAR in the **final text** include:
- in the definition of credit intermediary, the neutral word "**remuneration**" is used instead of "fee";
- the proposal of the EP to limit the use of the words "**advice" and "advisor**" and the *de facto* ban on commission for independent advice are not in the final text anymore;
- there is no additional piece of **precontractual information** (SECCO);
- there are no EU-wide **caps** on rates/costs, but MS should take measures to limit these and communicate these to the Commission;
- however, the rules on **cross-selling** are softer in the final text than the wording that BIPAR called for and the **additional application time** of the new rules to micro/SMEs does not figure in the text.

On 13 November 2023, BIPAR participated in a **workshop** where the European Commission presented the new Directive's rules.

Over-indebtedness

In January 2024, the European Commission presented - linked to CCD (and MCD) - a study on over-indebtedness. The study also addresses the role played by credit intermediaries. The aim of the study is to provide an updated mapping of the situation of households' over-indebtedness for each EU Member State. The report also consists of a series of country files providing structured information on over-indebtedness in each Member State. These files build on the previous national reports from the European Commission's study on "the over-indebtedness of European households: updated mapping of the situation, nature and causes, effects and initiatives for alleviating its impact" published in 2013.

Next steps

Member States will have to adopt and publish by 20 November 2025 the laws, regulations and administrative provisions necessary to comply with the Directive. They will have to communicate the text of those provisions to the European Commission. They shall apply those measures from 20 November 2026.

Links

- New Directive on credit agreements for consumers
- Commission's study on over-indebtedness - Country reports

Directive on credit agreements for consumers relating to residential immovable property ("Mortgage Credit Directive" or "MCD")

Why does it matter to intermediaries?

The Directive on credit agreements for consumers relating to residential immovable property ("Mortgage Credit Directive" or "MCD") has applied since 21 March 2016. It aims to improve consumer protection measures across the EU and establishes principles for the authorisation and registration of credit intermediaries. BIPAR and its Working Party on Credit represented intermediaries' views during the preparatory phase of the Directive until its adoption, as well as during Levels 2 and 3 proceedings.

State of play

BIPAR has been involved in the review process of the Directive that was launched by the European Commission in its 2019-2024 mandate.

In May 2021, the European Commission published a **report on the review of the MCD**, together with a short annex on the role of credit intermediaries in mortgage lending. It then organised a **public consultation** on the review, to which BIPAR, together with its Working Party on Credit, responded in February 2022, including questions on information to consumers/digitalisation, on green mortgages, on tying and bundling and on credit intermediaries (their passporting right under the MCD and their (non) use of it). BIPAR was also contacted by a consultant (on behalf of the European Commission's DG FISMA) to take part in a **survey** on the impacts of a possible revision of the MCD. The survey was intended to feed into a **study** for the Commission to support their **evaluation and impact assessment** accompanying a **possible proposal for the MCD revision**. However, in the end, the study was not published.

In June 2022, as input for the review of the MCD, the European Banking Authority (**EBA**) published some advice to the European Commission proposing to revise it. EBA identified some specific issues to be addressed, such as:

- the **scope** of the MCD, including **tying/bundling practices** where EBA found that the rules should be changed / strengthened;
- **information disclosure** (simplification, better presentation etc) and **robo-advice**;
- ways to facilitate the **cross-border provision for mortgages** – for example, to set up a **single EBA register for credit intermediaries;**
- **sustainability** and properties at risk due to climate change;
- to clarify whether credit intermediaries are capable to **hold funds** from borrowers in order to transfer them to the creditors and, if so, whether this activity would be **excluded or not from PSD2**.

BIPAR's position / key messages

- BIPAR stressed, amongst others, that the MCD is still relevant, but that the **administrative burden** needs to be tackled in a review (for example, the European Standardised Information Sheet (ESIS) could be simplified and made more concise) and that the issue of **cross-selling** should be reviewed, as there are still cases where de facto consumers are bound to an insurance for the same duration as their mortgage loan.
- BIPAR also called for more study with regard to the so-called "**robo-advice**".
- Regarding credit intermediaries' **European Passport**, BIPAR stressed that for this to work in practice, it is important that as much legal clarity and certainty as possible is given to business. Clarity and consistency in the content of the information to be notified by credit intermediaries wanting to operate cross border has been ensured by the EBA guidelines, but there is even a bigger need for legal clarity regarding the triggering element regarding FOS and FOE activities of credit intermediaries.

Next steps

The indicative planning for the Commission's action was in the first quarter of 2024. Nothing was published and it will therefore be for the next Commission to continue working on this file.

Links

- Directive on credit agreements for consumers relating to residential immovable property
- Commission's report on the review of the MCD
- EBA's advice on the review of the MCD

Digital Operational Resilience Act (DORA)

Why does it matter to intermediaries?

The Digital Operational Resilience Act (DORA) is part of the Commission's Digital Finance Strategy that was published in September 2020. DORA's primary objective is to enhance the IT security of financial entities. DORA will aim to establish a comprehensive digital operational resilience framework across the European banking, insurance and investment sectors, requiring financial entities in its scope to comply with digital security and reporting requirements to mitigate their information communication technology (ICT) risks.

Insurance intermediaries who are SMEs and microenterprises are exempted from the scope of DORA and its level 2 measures. Opt-out investment firms under MiFID II are exempted as well. Larger insurance intermediaries are in scope. It is possible, however, that under certain circumstances insurers (or clients) will require (partial or full) DORA compliance of service providers (such as intermediaries) at national level.

DORA entered into force on 16 January 2023 and will start applying - together with its level 2 measures - on 17 January 2025. The Regulation is binding in its entirety and directly applicable in all Member States.

Financial entities in the scope of DORA will have to respect strict common standards to ensure they can withstand ICT- related disruptions and threats. They will have to put in place, amongst others:

- dedicated ICT risk management capabilities (contract compliance, as part of 'ICT Third-Party Risk Management' is one of the five pillars of DORA),
- harmonised reporting of major ICT-related incidents,
- digital operational resilience testing,
- management by financial entities of ICT third-party risk,
- information sharing among financial entities.

DORA also introduces some key principles for a sound management of ICT third party risks as well as an EU oversight framework for critical ICT service providers (such as Big Techs which provide cloud computing to financial institutions).

DORA has assigned new tasks and roles to the ESAs, as well as the development of a set of policy mandates before DORA enters into application, i.e. the drafting of Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) on certain provisions of the DORA Regulation:

- RTS on ICT risk management framework,
- RTS on simplified ICT risk management framework,
- RTS to further specify the detailed content of the policy in relation to the contractual arrangements on the use of ICT services supporting critical or important functions provided by third-party providers (TPPs),
- RTS to specify elements when sub-contracting critical or important functions,
- two RTS on incident reporting,
- ITS to establish the templates for the Register of information and,
- by 30.09.2023, the input to the Commission's Call for advice on criticality criteria.

RTS and ITS of the ESAs aim to clarify the provisions of a European legislative text and to ensure a coherent harmonisation of the defined areas. All of the above-mentioned RTS and ITS will be of importance for intermediaries falling under the scope of DORA and having to comply with it. For example, the ESAs' RTS specifying which elements to be included in the ICT security policies, procedures and protocols referred to in DORA to ensuring the security of networks, enabling adequate safeguards against intrusions and data misuse.

State of play

DORA level 2 measures

The DORA Regulation mandates the European Supervisory Authorities (EIOPA, ESMA and EBA – the ESAs) to develop a series of level 2 measures to complement/specify the level 1 requirements (see above). Over the last year, the ESAs conducted two consultations on their draft proposals for these level 2 measures. BIPAR responded to these consultations. Following these consultations, the ESAs reviewed the comments received from stakeholders and adjusted the draft level 2 measures accordingly.

On 17 January 2024, as announced during the webinar BIPAR organised with EIOPA on the issue on 16 January**, the ESAs published their final reports on some of the draft level 2 measures** and **sent them to the European Commission for adoption**.

In March 2024, based on the ESAs' proposals, the Commission adopted the following level 2 measures:

- **Commission's Delegated Regulation** supplementing DORA with regard to RTS specifying the **criteria for the classification of ICT-related incidents and cyber threats,** setting out materiality thresholds and specifying the details of reports of major incidents,
- Commission's **Delegated Regulation** supplementing DORA with regard to RTS specifying the **detailed content of the policy regarding contractual arrangements on the use of ICT services supporting critical or important functions** provided by ICT third-party service providers,
- Commission's **Delegated Regulation** supplementing DORA with regard to RTS specifying **ICT risk management tools, methods, processes, and policies** and the simplified ICT risk management framework.

The measures will be subjected to a 3-month scrutiny period until mid-June during which time the European Parliament and the Council will be able to formulate objections. If no objections are formulated, the measures will be published in the OJ of the EU and will enter into force.

The Commission is expected to adopt the remaining level 2 measures by the end of June.

Consultation on remaining level 2 measures

On 18 April 2024, the ESAs issued a consultation paper containing a draft RTS on the harmonisation of conditions enabling the conduct of the oversight activities under Article 41(1) point (c) of DORA. This consultation paper and the included draft RTS cover the draft technical standards aimed at specifying the criteria for determining the composition of the joint examination team ensuring a balanced participation of staff members from the ESAs and from the relevant competent authorities, their designation, tasks, and working arrangements. As the empowerment included in point (c) of Article 41(c) has an impact only on the supervisory community, BIPAR did not respond to the consultation.

ESAs' voluntary exercise on collection of registers of information

During a webinar organised on 30 April 2024 and in which BIPAR participated, the ESAs provided the industry with information on their voluntary exercise for the collection of the registers of information of contractual arrangements on the use of ICT third-party service providers by the financial entities (such as large insurance intermediaries).

Under DORA and starting from 2025, financial entities will have to maintain registers of information regarding their use of ICT third-party providers. In this **"dry run" exercise**, the information will be collected from financial entities through their competent authorities and will serve as preparation for the implementation and reporting of registers of information under DORA.

The ESAs and the NCAs are introducing this voluntary exercise to help financial entities prepare for establishing their registers of information, gathering the relevant information specified in the **ESAs' final draft Implementing Standards on the registers of information** and reporting them to their respective competent authorities, who will, in turn, provide them to the ESAs. The ESAs will provide individual and general feedback to financial entities regarding their registers of information in the second half of 2024.

BIPAR's position / key messages

During the legislative process

Insurance intermediaries were included in the scope of the Commission's proposal for DORA, together with much larger financial entities such as insurers or credit institutions.

While BIPAR welcomed DORA's objective to increase the digital operational resilience of the financial sector, it informed the EU legislators that the financial sector is not uniform in scale and structure. The incidents experienced by different financial services entities, as well as their consequences (for the financial stability, consumers etc.), differ from one financial services sector to another. DORA's requirements would simply not be operationally and financially sustainable for (small) insurance or financial intermediaries. DORA's regulatory architecture was not adapted to the insurance distribution sector, and BIPAR pointed out that proportionate application of its numerous and detailed requirements would be difficult to ensure in practice (further complicated by levels 2 and 3 measures).

For BIPAR and its members, insurance and financial intermediaries (and, in particular, micro and SMEs) had, therefore, to be completely exempted from DORA. This message was successfully relayed to MEPs, the Council and the Commission.

EIOPA's consultations

In its responses to the ESAs' consultations on DORA level measures, **BIPAR highlighted the importance of maintaining the proportionality and flexibility of the DORA framework**. This was reflected in the ESAs draft RTS that include recitals explaining the concept of proportionality under DORA and acknowledging the different operational structures and risk profiles of the entities in scope.

In line with BIPAR's comments, the **ESAs clarified for example certain technical requirements** regarding, inter alia encryption, administration of ICT assets, human resources policies, collection and analysis of data, business continuity plans, etc.

The ESAs also acknowledged BIPAR's point on the high complexity of the RTS. BIPAR suggested the ESAs should issue non-mandatory guidance at a later date, to provide entities in scope with more detail on how to comply with the requirements. The ESAs mention the possibility of issuing future guidance on business continuity management, amongst others.

On the classification of major ICT-related incidents, **the ESAs took into account BIPAR comments mentioning the complexity of the classification framework and simplified the process**. Regarding classification criteria and threshold, BIPAR underlined the need for flexibility in order to make the criteria and threshold relevant to all entities in scope (which vary in size, nature, risk profile, etc.). The ESAs took these comments into account and:

- increased certain thresholds, in order to avoid overreporting,
- allowed the use of estimates for certain criteria to lower reporting burden,
- clarified the scope and meaning of certain criteria,
- removed the reference to "escalation to senior management" as an indicator, in line with BIPAR's suggestion, as this would disproportionately impact smaller entities,
- exempted SMEs from having to report on "recurring incidents".

The ESAs, in line with BIPAR's comments, significantly simplified the reporting templates, removing a number of fields.

The ESAs also took into account BIPAR's comments regarded proportionality and flexibility, including the following:

- Possibility for groups to maintain a single register at the most consolidated level, rather than multiple registers depending on the group's structure,
- Streamlining of required fields,
- Removal of the requirement for an "audit functionality",
- Review "on a regular basis" rather than "ongoing".

Regarding the proposed taxonomy of ICT services, BIPAR's comments point out its complexity and its lack of clarity. The ESAs clarified a number of definitions, eliminated unnecessary elements and specified that services listed are not mutually exclusive, allowing for more precision when classifying services.

Next steps

- Adoption by the Commission of the remaining level 2 measures in the summer of 2024.
- Publication in the OJ of the EU of all DORA level 2 measures.
- DORA and its level 2 measures will apply as of 17 January 2025.
- BIPAR will be monitoring with its member associations the application of DORA in Member States.

Links

- Digital Operational Resilience Act (DORA)
- Delegated Regulation supplementing DORA with regard to RTS specifying the criteria for the classification of ICT-related incidents and cyber threats
- Delegated Regulation supplementing DORA with regard to RTS specifying the detailed content of the policy regarding contractual arrangements on the use of ICT services supporting critical or important functions
- Delegated Regulation supplementing DORA with regard to RTS specifying ICT risk management tools, methods, processes, and policies and the simplified ICT risk management framework.
- ESAs' consultation paper on the draft RTS on the conduct of oversight activities
- ESAs' final draft Implementing Standards on the registers of information
- Commission's Digital Finance Strategy
- ESA's dry run exercise

Markets in Crypto-Assets Regulation (MiCA)

Why does it matter to intermediaries?

The MiCA Regulation will establish uniform rules across the European Union for crypto assets. It covers issuers of unbacked crypto-assets and the so-called "stablecoins", as well as the trading venues and the wallets where crypto-assets are held. The Regulation covers intermediaries when selling with advice unit-linked life insurance products with crypto-asset funds as underlying investments.

In its position on the MiCA proposal, the European Parliament amended the article on advice on crypto assets of the proposal and introduced a ban on remuneration *"paid or provided by an issuer or any third party or a person acting on behalf of a third party in relation to the provision of the service to their clients."*

State of play

- The final text as adopted in trilogue by the Council and Parliament Plenary did not include the EP proposed general ban on remuneration. Instead, it included– as a compromise – wording that is very similar to MiFID II, namely amongst others, **a duty to inform the client if advice is provided on an independent basis**. **Where independent advice is provided, then commission is banned (also a ban on commission for portfolio management, as in MiFID II).**
- The Council of the EU officially adopted and published the MICA text on its website on 31 May 2023.
- MiCA was published on 9 June 2023 in the Official Journal of the EU.
- MiCA includes an important number of level 2 and level 3 measures (technical standards) that need to be developed by the ESAs before the new regime commences. Once finalised they will provide greater granularity on the provisions in the MiCA.
- On 25 March 2024, ESMA published:
  1) a final report on the first package of measures under the MiCA,
  2) a final report on the cooperation between various authorities in relation to the MiCA, and
  3) a consultation document on the third package of measures under the MiCA.

  Stakeholders are encouraged to provide their feedback by 25 June 2024.

BIPAR's position / key messages

BIPAR and its members informed lawmakers that they were opposed to the ban on commission as proposed by the EP and provided arguments against such a ban. As explained above, this was taken on board by the co-legislators.

Next steps

The rules will start applying on 30 December 2024 (+/- 18 months after entry into force) but with application for certain parts of the Regulation (Titles III (Asset-Referenced Tokens) and IV (E-Money Tokens) already on 30 June 2024.

Links

- MiCA Regulation
- ESMA's final report on the first package of measures under the MiCA
- ESMA's final report on the cooperation between various authorities in relation to the MiCA
- ESMA's consultation document on the third package of measures under the MiCA

Digitalisation - European Cybersecurity Strategy

Why does it matter to intermediaries?

The EU Cybersecurity Strategy is an initiative aimed at building resilience to cyber threats through the Union and ensuring that citizens and businesses benefit from trustworthy digital technologies. In order to implement this strategy, the European legislators are working on several legislative proposals. The **Cyber Resilience Act** seeks to establish common cybersecurity rules for digital products and associated services that are placed on the market across the EU. It will complement the **Directive on measures for high common level of cybersecurity across the Union (NIS2).** The **Cyber Solidarity Act** aims to improve the preparedness, detection and response to cybersecurity incidents across the EU.

State of play

The Cyber Resilience Act

On 15 September 2022, the European Commission adopted a proposal for a Regulation on horizontal cybersecurity requirements for products with digital elements (the "Cyber Resilience Act"). On 30 November 2023, after three trilogues, the Council's Presidency and the European Parliament's negotiators reached a **provisional agreement** on the proposed Cyber Resilience Act.

This new Regulation introduces EU-wide cybersecurity requirements for the design, development, production and making available on the market of hardware and software products, to avoid overlapping requirements stemming from different pieces of legislation in EU Member States. It will apply to all products that are connected either directly or indirectly to another device or to a network. There are some exceptions for products for which cybersecurity requirements are already set out in existing EU rules, for example medical devices, aeronautical products and cars. The Regulation aims at allowing consumers to take cybersecurity into account when selecting and using products that contain digital elements, making it easier for them to identify hardware and software products with the proper cybersecurity features.

The provisional agreement maintained the general thrust of the Commission's proposal, namely as regards:

- rules to rebalance **responsibility** for compliance towards manufacturers, who must meet certain obligations such as providing cybersecurity risk assessments, issuing declarations of conformity, and cooperating with the competent authorities,
- **vulnerability handling processes** for manufacturers to ensure the cybersecurity of digital products, and obligations for economic operators, such as importers or distributors, in relation to those processes,
- measures to improve **transparency** on the security of hardware and software products for consumers and business users,
- a **market surveillance** framework to enforce the rules.

However, the co-legislators proposed various adjustments to parts of the Commission's proposal, mainly with regard to:

- the **scope** of the proposed legislation, with a simpler methodology for the classification of digital products to be covered by the new Regulation,
- the determination of the expected **product lifetime** by manufacturers: while the principle remains that the support period for a digital product corresponds to its expected lifetime, a support period of **at least five years** is indicated, except for products which are expected to be in use for a shorter period of time,
- the **reporting obligations** regarding actively exploited vulnerabilities and incidents: the NCAs will be the initial recipients of such reports but the role of the EU agency for cybersecurity (ENISA) is strengthened,
- the **new rules will apply three years** after the law enters into force.
- **additional support measures for small and micro enterprises** have been agreed, including specific awareness-raising and training activities, as well as support for testing and conformity assessment procedures.

The Cyber Solidarity Act

On 18 April 2023, the Commission adopted its proposal for a Regulation laying down measures to strengthen solidarity and capacities in the Union to detect, prepare for and respond to cybersecurity threats and incidents (the "Cyber Solidarity Act"). On 6 March 2024, the Council's Presidency and the Parliament's negotiators reached a **provisional agreement** on this Act.

The new Regulation establishes EU capabilities to make Europe more resilient and reactive in front of **cyber threats**, while strengthening cooperation mechanisms. It mainly aims to:

- support detection and awareness of significant or large-scale cybersecurity threats and incidents,
- bolster preparedness and protect critical entities and essential services, such as hospital and public utilities,
- strengthen solidarity at EU level, concerted crisis management and response capabilities across Member States,
- contribute to ensuring a safe and secure digital landscape for citizens and businesses.

To detect major cyber threats quickly and effectively, the new Regulation establishes a **"cyber security alert system"**, which is a pan-European infrastructure composed of national and cross-border **cyber hubs** across the EU. These are entities in charge of sharing information and tasked with detecting and acting on cyber threats. They will strengthen the existing European framework and in turn, authorities and relevant entities will be able to respond more efficiently and effectively to major incidents.

The new Regulation also provides for the creation of a **cybersecurity emergency mechanism** to increase preparedness and enhance incident response capabilities in the EU. It will support:

- preparedness actions, including testing entities in highly critical sectors (healthcare, transport, energy, etc.) for potential vulnerabilities, based on common risk scenarios and methodologies,
- a new EU cybersecurity reserve consisting of incident response services from the private sector ready to intervene at the request of a Member State or EU institutions, bodies, and agencies as well as associated third countries in case of a significant or large-scale cybersecurity incident,
- mutual assistance in financial terms.

Finally, the new Regulation establishes an **evaluation and review mechanism** to assess, amongst others, the effectiveness of the actions under the cyber emergency mechanism and the use of the cyber security reserve, as well as the contribution of this Regulation to strengthening the competitive position of the industry and service sectors.

The Directive on measures for a high common level of cybersecurity across the Union (NIS2 Directive)

The NIS2 Directive entered into force on 16 January 2023. It replaced the Directive on security of network and information systems (the NIS Directive) and improves the resilience and incident response capacities of both the public and private sector and the EU as a whole.

The NIS2 Directive is a framework containing general measures to boost cybersecurity through the EU. It applies to both public and private essential and important entities that provide their services or carry out their activities within the Union. The sectors to which the NIS2 Directive apply are listed in the Annex to the Directive and include the banking sector (and in articulation credit institutions) and the financial market infrastructures sector (and in particular operators of trading venues under MiFID II and Central Counterparties under EMIR). **Insurance intermediaries and financial advisers are not mentioned in the Annexes (but this is a minimum harmonisation Directive, meaning Member States may choose to extend its scope of application).**

Member States have to adopt and publish the measures necessary to comply with the NIS2 Directive by 17 October 2024. They must apply these measures from 18 October 2024.

BIPAR's position / key messages

BIPAR supports the initiative to build cyber resilience and cooperation across the Union. It highlighted the need for the emerging frameworks to take into account pre-existing sector-specific rules (for instance, the Digital Operational Resilience Act for the financial sector) in order to avoid duplication of obligations or fragmentation of the framework.

Next steps

The Cyber Resilience Act: the provisional agreement was approved by the Parliament as a whole on 12 March 2024. The text still needs to be formally adopted by the Council before it can enter into force.

The Cyber Solidarity Act: in March 2024, the Council's COREPER agreed on the final compromise text and announced it would approve the text if the Parliament's plenary vote would not change it anymore. In April 2024, the Parliament voted on the agreement reached in negotiations with the Council. The agreement will now have to be formally adopted by the co-legislators. It will then be published in the EU's Official Journal and will enter into force 20 days after this publication.

BIPAR will continue to follow the procedures regarding the adoption of the Cyber Resilience Act and the Cyber Solidarity Act and to assess the impact these texts might have on our sector.

Links

- EU Cybersecurity Strategy
- Cyber Resilience Act
- NIS 2 Directive
- Proposed Regulation on the Cyber Solidarity Act
- EP document on Cyber Solidarity Act
- EU Cyber Solidarity Act Factsheet
- Cyber Solidarity Act: Council's text

Digitalisation - Open finance/insurance - Financial Data Access (FIDA)

Why does it matter to intermediaries?

Data and technology are increasingly driving changes in the insurance sector, producing new business models, insurance products and ways for firms, and in particular insurance intermediaries, to engage with their clients.

State of play

Open Insurance - EIOPA use case

In July 2023, EIOPA published a discussion paper on open insurance which concerns, amongst others, insurance intermediaries. This paper contains a use case on the potential development of an insurance dashboard under the open finance (FIDA) framework. The insurance dashboard presented in the use case would collect and display all of a consumer's insurance policies in one place, in a user-friendly manner. To do so, it would aggregate and combine information from the different insurance companies and intermediaries with which the consumer has a relationship. The dashboard would also allow other insurance companies and intermediaries to include information on their own products, allowing consumers to compare coverage and prices. The use case is limited in scope and focuses on non-life insurance and specifically on motor and household insurance. EIOPA specifies that the dashboard itself might not offer financial advice, but that it might do so if it is run by a regulated insurance intermediary. This would depend on the concrete model used.

FIDA

In June 2023, together with one set of measures concerning the banking sector and dealing with the revision of the Payment Services Directive (open banking), the Commission published a proposed Regulation for a framework for Financial Data Access (FIDA). It concerns the insurance distribution sector directly.

As in DORA, micro and SME (re) insurance intermediaries and ancillary intermediaries are excluded from the scope of the FIDA proposal "*to ensure proportionality (...) for reasons associated with their size or the services they provide, which would make it too difficult to comply with*". The data users (see below) within the scope of the Regulation should indeed be subject to the DORA requirements and therefore be obliged to have strong cyber resilience standards in place to carry out their activities.

The proposal establishes a framework governing access to and use of customer data in finance, including insurance. Financial data access refers to the access to and processing of business-to-business and business-to-customers (including consumers) data upon customer request across a wide range of financial services. It builds on the already existing "open banking" provisions introduced by the Payment Services Directive (PSD2) that regulate access to customer data held by account-servicing payment service providers.

Regarding the type of data that is in the scope of the proposed FIDA, it is both personal data that relates to identified or identifiable individuals and non-personal data that relates to business entities or financial product (contract) features. In terms of specific types of customer data, the initiative covers loans, savings, investments (including IBIPs), occupational and personal pensions, and non-life insurance. Input data collected for the purposes of carrying out an assessment of suitability and appropriateness as defined in Article 25(2) and Article 25(3) of MIFID II and input data collected for the purposes of creditworthiness assessment of firms are also covered.

The proposal does not cover some customer data where an overall cost benefits analysis found that risks of financial exclusion may outweigh potential benefits. This concerns, in particular, creditworthiness assessments of natural persons; and life, sickness and health insurance.

Key provisions of the proposed Regulation on Open Finance (FIDA)

The proposal establishes rights and obligations to manage **customer data sharing in the financial sector**:

- **Possibility but no obligation for customers to share their data with data users** (e.g. financial institutions (including large intermediaries) or fintech firms) in secure machine-readable format to receive data-driven financial and information products and services (i.e. such as financial product comparison tools, personalised online advice)
- **Obligation for customer data holders** (e.g. financial institutions (including large intermediaries) to make this data available to data users (e.g. other financial institutions (including large intermediaries) of fintech firms) by putting in place the required technical infrastructure and subject to customer permission.
- **Data users** can be licensed financial institutions such as insurance intermediaries or fintech firms, and in this case, they are defined as financial information service providers (FISP). They will have to submit an application to their competent authority to be authorised to access data and comply with other requirements. EBA will also develop an electronic central register on those FISP. This is an important article for BIPAR and its members to study.
- **Full control by customers over who accesses their data and for what purpose,** facilitated by a requirement for dedicated permission dashboards and strengthened protection of customers' personal data in line with the GDPR.
- **Standardisation of customer data and the required technical interfaces** as part of financial data sharing schemes, of which both data holders and data users must become members.
- **Liability regimes for data breaches and dispute resolution mechanisms** as part of financial data sharing schemes so that liability risks do not act as a disincentive for data holders to make data available.
- **Additional incentives for data holders to put in place high-quality interfaces for data users** through compensation from data users in line with the general principles of business-to-business (B2B) data sharing laid down in the Data Act.

EP and Council readings

The proposal is being discussed by the two EU legislators, i.e. the European Parliament and the Council.

At EP level

The EP Committee in charge of the file is the ECON Committee. The EP rapporteur is Michiel Hogeveen (The Netherlands, ECR), the shadow rapporteurs are Frances Fitzgerald (Ireland, EPP) Ondřej KOVAŘÍK (Czech Republic, Renew) and Eero Heinäluoma (Finland, S&D).

On 18 April, during its last meeting of the current EP mandate, the ECON Committee adopted its draft report on the proposal with 43 votes to 1 and 5 abstentions.

The ECON Report contains some of the following important points, amongst others, that **BIPAR supported** and proposed in its suggestions for amendments to ECON MEPs:

- "Opt-in" clause for micro/SME insurance intermediaries (Article 2): if they so wish, micro and SME intermediaries could fall in the scope of FIDA, provided that they prove their compliance with its relevant provisions.
- The possible inclusion of other types of entities (such as credit intermediaries) in the scope of FIDA being assessed by the Commission in its evaluation report to be published 4 years after the application of FIDA (Article 31)
- Exclusion of small and non-interconnected investment firms: FIDA shall not apply to entities referred to in Article 12 of the Regulation 2019/2033.
- Definition of "financial information service" (FIS): Very importantly, the Report expressly states that FIS shall not include the provision of services regulated under existing Union financial services legislation and reserved for financial institutions authorised under union law (such as insurance intermediation for example).
- Recital stating that FISPs should not use their license as financial information service providers to conduct activities regulated by existing sector-specific legislation, for example they should not be authorised to carry out insurance distribution activities regulated under the IDD.

The ECON Committee Report does include some of the following points, amongst others, that **are not in line with BIPAR's position:**

- A reduced scope of data: IBIPs and non-life insurance data (except for health and sickness insurance) are still within the scope, including data collected for the purpose of a demands and needs assessment in accordance with the IDD (non-life and life) and for the purpose of an appropriateness assessment in accordance with the IDD (IBIPs). However, on that last point, the ECON Report specifies that that data only includes input data provided by the customer and not the result of the assessment performed by an intermediary.
- No possibility for relevant professional organisations to become members of Financial Data Sharing Schemes (FDSS). Under the ECON Report only data users/holders and relevant customer and consumer associations are authorised.

At Council level

The Council is discussing the proposal. It is unlikely to reach its position on the text under the Belgian Presidency (January – June 2024). Based on the discussions it has had so far, the Council seems to be open to adopting a more gradual approach to the inclusion of certain categories of data within the scope (without, however, completely excluding categories of products).

Regarding FDSS, Member States seem to agree about having a market-led- scheme-based approach to standardization, reasonable compensation and liability rules (with different stages in the deployment of the FDSS, such as agreement on general governance rules, on standardisation and compensation and operationalisation). Details on the functioning of the schemes should be provided at level 1 or 2 (example: model to determine compensation, liability of entities etc..). A longer time period than 18 months is needed to develop the schemes.

It is interesting to note that Member States seem to agree that it should still be possible to share data outside of FIDA. The Belgian presidency explains that contractual freedom will thus always allow entities to agree sharing contracts outside the scope of FIDA. However, scheme membership would still be a prerequisite for data holders and data users to benefit from FIDA rights (example: compensation for the data holders and access right for data users).

Some Member States have called for strong safeguards beyond those included in FIDA as regards big techs and their considerable economic power in the digital economy. In this context, some MS have suggested looking into the option of preventing entities designated as gatekeepers under the Digital Markets Act from becoming FISPs and thus gaining access to financial data. Under the Digital Markets Act, the Commission can designate a provider as a "gatekeeper" and impose a number of obligations on these designated gatekeepers. These obligations include, for instance, the prohibition on combining certain data without consent of the end user, or the obligation to guarantee effective data portability rights.

BIPAR's position / key messages

Open insurance – EIOPA use case

In its response to the EIOPA consultation, BIPAR outlined the following points:

- **Insurance is not banking**. The products in these two sectors are not comparable as insurance products are much more complex and varied and not just purely transactional. Any framework applicable to data exchange in the insurance sector needs to take into account the specificities of that sector.
- **A dashboard,** as described by EIOPA would not be the most effective way to allow for better comparison of insurance products. Professional advice provided by an intermediary is more effective in recommending products suited to a client's demands and needs. The creation of insurance dashboards might lead to information overload for clients who might be led to make bad choices based on one criterion (most likely costs) rather than on an overview of their needs.
- **Standardisation** of product data, in the insurance sector, would be very difficult to implement as the products are very varied and complex. In addition, it should not lead to excessive product homogeneity.
- **Sharing relevant data** with currently unregulated third parties could present both competition and data protection issues.
- **The whole framework** presents risks of customer exclusion based either on refusal to share personal data, on misuse of data acquired through the framework or on lack of financial/technical literacy.
- **The costs incurred by intermediaries** in such a model are unclear.

FIDA proposal

Like all legislative proposals published by the European Commission**, the FIDA proposal was open for feedback.** These automatic "better regulation" consultations aim at involving citizens and businesses on new EU policies and existing laws.

In preparation of its response to the Commission consultation, on Friday 29 September 2023, BIPAR organized a one-hour Webinar with DG FISMA on the proposal for a Regulation on a framework for FIDA.

In its response to the Commission's consultation submitted in November 2023, BIPAR outlines the following points amongst others. Together with its members, and in the context of the EP and Council readings of the FIDA proposal, BIPAR also informed the ECON MEPs and the Council's representatives of its position:

- The possible consequences of the **exclusion of micro and SME insurance intermediaries** from the scope of FIDA and the possibility **to include an "opt-in" clause** in the proposal that would allow certain of these intermediaries to voluntarily participate in the framework;
- The possibility to **limit the categories of investment firms included in the scope** as some smaller and non-interconnected structures might not have the necessary means and capacities to comply;
- **The lack of clarity regarding credit intermediaries;**
- The **necessity to limit the scope of the data to be shared** under the proposal;
- The **risk of high added costs and burden** for entities in scope;
- The **necessity for FDSSs to respect competition rules;**
- The **necessity to allow relevant professional associations** (such as national associations of intermediaries) **to participate in FDSSs** in the same way that consumer and customer organisations are allowed to;
- The **lack of definition** of FISPs that, if it is not addressed, could lead currently unregulated third parties (most likely FinTechs) to possibly take on some activities that are currently reserved to entities regulated under the IDD or MiFID II;
- The **lack of reciprocity in data sharing**. The FIDA proposal as it stands allows FISPs to require access (upon customer request) to data held by data holders (financial institutions) but does not allow data holders to request access to data held by FISPs;
- The **unrealistic timeline for implementation** of the framework.

Next steps

Open insurance – EIOPA use case

EIOPA explained that the use case is not a consultation regarding a legislative proposal. It is exploratory and aimed at receiving stakeholder feedback on the issues and challenges that would arise from such an initiative under the open insurance framework.

FIDA proposal

The ECON Report was not voted in EP plenary. This means that the entire file will need to go through ECON again in the next EP mandate, including another vote in ECON to give a mandate to the Rapporteur to start the trilogue negotiations. That also means that MEPs can reopen the file under the next parliamentary term after the EU election in June if they want to.

The Council is still developing its position. Once this is done, and assuming MEPs don't reopen the file, the trilogue will start to agree on a final text.

Because of the EP election and the appointment of the new European Commission in June next year, the proposal is unlikely to be adopted before 2025.

It seems that the Belgian Council's Presidency would apparently leave it to the Hungarian Presidency (starting in July 2024) to reach a Council's position on the FIDA proposal. It is therefore likely that the trilogue on the FIDA proposal will start at the end of the Hungarian Presidency or under the Polish Presidency.

Links

- EIOPA's discussion paper on open insurance
- Commission's 2020 Digital Finance Strategy
- Payment Services Directive 2
- Expert Group's report on open finance
- FIDA proposal

Why does it matter to intermediaries?

The development of the use of AI systems by more and more sectors prompted the European Commission to propose several pieces of legislation aimed at regulating its use. The developing framework currently includes the **AI Act** and the **EU rules on civil liability for AI**. Insurance and financial intermediaries using AI systems will be affected by the framework.

State of play

Artificial Intelligence Act

On 26 January 2024, the EU co-legislators reached an agreement in trilogue on the Regulation laying down harmonized rules on artificial intelligence (the AI Act). On 13 March 2024, the European Parliament formally adopted the agreement. On 21 May 2024, the Council did the same.

The AI Act is part of the EU's digital strategy. It aims at providing AI developers, deployers and other operators with clear requirements and obligations regarding specific uses of AI. It adopts a risk-based approach and regulates AI systems based on the risks they present. It also prohibits certain AI systems deemed to present an unacceptable risk.

The AI Act is cross-sectoral, it applies to both public and private EU and non-EU actors. It applies to professional uses of AI systems and does not apply to AI systems essentially used for national security purposes.

Focus on some provisions that could impact insurance intermediaries

According to BIPAR's understanding, insurance intermediaries using an AI system in their professional practice would be considered to be "deployers" of AI systems. The AI Act would therefore apply to an insurance intermediary using an AI system in the context of his/her activities.

Annex 3 to the Act lists a series of areas in which the use of AI systems for certain purposes should be considered as "high-risk" and therefore be subjected to more stringent requirements for providers (undertakings commercializing AI models) and deployers (entities using AI systems in a professional context). Point 5(ca) of Annex 3 includes in the list of "high-risk" AI systems ,"*AI systems intended to be used for risk assessment and pricing in relation to natural persons in the case of life and health insurance*". Intermediaries using AI systems in that context would therefore be required to comply with all requirements for deployers of "high-risk" AI systems (see Title III of the Act).

The Act also contains specific transparency requirements applicable to certain AI systems, including those that interact directly with natural persons (see Article 52) as well as some requirements regarding fundamental rights that would apply, amongst others, to intermediaries using AI systems for risk assessment and pricing in relation to natural persons when selling life and health insurance (see Article 29a).

More details on the content, scope and procedure regarding the AI Act can be found in the BIPAR working memo that was provided to its members.

EU Liability rules for AI

On 28 September 2022, the Commission issued a **proposal for a Directive on EU non-contractual civil liability rules for AI.** The point of the proposal is to adapt private law to the needs of the transition to the digital economy by laying down harmonised rules for damage caused with the involvement of AI systems. The proposed Directive contains provisions aimed at proportionally easing the burden of proof in case of damage caused with the involvement of AI systems through the use of disclosure and rebuttable presumptions. It also establishes a possibility, for those seeking reparations, to obtain information on high-risk AI systems to be recorded or documented pursuant to the AI Act.

The most relevant provisions are the following:

- Rebuttable presumption of causality between non-compliance with duty of care under EU rules and the output or lack of output of AI systems that gave rise to the damage.
- The claimant still has to prove the AI system gave rise to the damage.
- When the claim is directed against the user of a high-risk AI system, and not the provider of the said system, the claimant has to establish that the user in question did not comply with their obligation to use the AI system in accordance with the instructions of use or used the system in a way that was not intended.

BIPAR responded to the consultation that preceded the Commission's proposal and will continue to follow the developments of this text through the legislative process.

BIPAR's position / key messages

On AI, BIPAR holds the position that a consistent, transparent, all-encompassing and clear activity-based, risk-oriented regulatory framework should be maintained. In this respect, BIPAR believes that the development of rules on digitalisation should happen within the existing sectoral framework and should adapt to its structure. BIPAR insists on the necessity of maintaining a **level playing field** between all providers of comparable insurance services.

Any governance measures or regulations linked to the use of AI should be **proportionate** to the potential impact of a specific AI use case on consumers or insurance firms. Such impact should be determined based on the severity of the potential harm and the likelihood of that harm happening. Financial exclusion of customers should be avoided by including, in any framework, rules on the fair use of data, and especially behavioural data.

BIPAR always highlights the fact that insurance and financial intermediaries are already efficiently playing their role through the use of new technologies, including AI. Many of these intermediaries are **micro and SME entities that should be treated fairly and proportionately**.

Next steps

AI Act

The AI Act needs to be published in the Official Journal of the EU. It will then enter into force on the twentieth day following its publication.

Article 85 of the provisional agreement contains the following timeline for the application of the provisions of the AI Act: application 24 months after entry into force for all provisions except:

- Titles I and II: application 6 months after entry into force,
- Title III chapter 4 and Titles VI, VIIIa and X: application 12 months after entry into force,
- Article 6(1) and corresponding obligations: application 36 months after entry into force.

EU rules on civil liability for AI

The EU rules on civil liability for AI are still under examination by the EP and the Council. BIPAR will continue to follow the developments of this proposal through the legislative process. Timing remains uncertain.

Links

- Text of the AI Act
- Proposal for a Directive on EU non-contractual civil liability rules for AI

Digitalisation - Revised provisions regarding the distance marketing of financial services

Why does it matter to intermediaries?

Published in the OJ of the EU in December 2023, the revised provisions regarding the distance marketing of financial services aim at modernising the rules established back in 2002 – the **Distance Marketing of Financial Services Directive (DMFSD)** -, strengthening consumer rights and fostering the cross-border provision of financial services in the Single Market.

The 2002 DMFSD applied to intermediaries when distributing insurance/financial products under an organised distance sales/service provision scheme and exclusively via one or more means of distance communication. The revised provisions still apply to intermediaries.

The revised provisions were introduced in an additional chapter of the already existing Consumer Rights Directive (CRD), which protects consumers in all kinds of commercial practices. The new Chapter includes, amongst others, revised provisions on the right to pre-contractual information, the right to withdrawal, to adequate explanations and rules ensuring online fairness. Some articles of the other chapters of the CRD will also apply to financial services sold at a distance. **The revised CRD repeals the 2002 DMFSD (2002/65/EC).**

State of play

Some key elements of the revised CRD

Level of harmonisation

Maximum harmonisation (i.e. Member States are not allowed to maintain or introduce national provisions) in general and minimum harmonisation for pre-contractual information obligations: the co-legislators have indeed agreed to preserve the Member States' possibility to apply stricter provisions regarding pre-contractual information, in line with the 2002 DMFSD option given to Member States.

Scope of application – Lex Specialis- safety net

The revised Directive does not amend or modify existing sectoral legislation. In order to ensure legal certainty and that there are no duplications or overlaps, the following is clarified: where other EU legislation relating to specific financial services also provides for pre-contractual information, adequate explanations or a right of withdrawal, the provisions of that sectoral legislation (example: IDD, Solvency II etc.) rather than the provisions introduced by the new Directive will apply, unless otherwise provided in the relevant legislation.

There is also confirmation of the continued application of the "safety-net" feature of the current DMFSD for financial services which are either not covered by EU sector-specific legislation or are excluded from the scope of such legislation.

Financial service contracts concluded in some other manner than at a distance are not covered by the revised Directive. Member States can determine, in accordance with EU law, which rules apply to such contracts, including the application of the requirements set out in the revised Directive to contracts not included in its scope.

Proportionality

Member States are encouraged to take account of the specific needs of micro-, small- and medium-sized enterprises in the application of the rules transposing the revised Directive. The notion of micro, small and medium-sized enterprises, refers to Article 2 of the Annex to Commission's Recommendation 2003/361/EC.

Exercise of the right of withdrawal

The right of withdrawal from distance contracts will be facilitated through an easy to find 'withdrawal function' on the provider's interface. This is designed to raise consumers' awareness of their withdrawal rights. The function must be continuously available during the withdrawal period of the contract.

If pre-contractual information is provided less than 1 day before a consumer is bound by a distance contract, the consumer must be reminded of the withdrawal right between 1 and 7 days after the contract date. If the consumer doesn't receive the pre-contractual information and terms & conditions, the withdrawal period will last until 12 months and 14 calendar days after the contract date. The withdrawal period will not expire if the consumer is not told in a durable medium about the withdrawal right.

EU Member States may provide that consumers cannot be required to pay for withdrawing from an insurance contract.

Pre-contractual information

All pre-contractual information has to be provided in good time before and not at the same time with the conclusion of the distance contract or any corresponding offer.

There are changes to the rules on information disclosure and a modernisation of the obligations. As mentioned above, Member States are also given the ability to impose stricter national rules in this area. Examples of the modernised approach to provision of information include specific reference to the practice of layering when providing the pre-contractual information by electronic means (i.e. placing certain key elements of the information prominently on the first layer and other detailed parts of the information in accompanying layers). Where the information is layered it must be possible to view, save and print as one single document. The Recitals to the Directive include more guidance on the approach to layering.

Pre-contractual information will need to include information on electronic means of communication, the environmental or social objectives targeted by the financial service, and the consequences of late / missed payments.

Consumers must be told before they are bound by a distance contract if the price was personalised based on automated decision making.

All information should be provided in a durable medium, be easy to understand and in a readable format. The recitals clarify what constitutes "*a readable format*".

Robo-advice

The new Directive establishes the right of consumers to request human intervention on sites that display automated (AI) information tools like robo-advice or chatbots, so that they can better understand the effects of the contract on their financial situation. This is similar to provisions introduced in the revised Consumer Credit Directive in relation to creditworthiness assessments conducted using automated processes.

Dark patterns

Additional protection for consumers from dark patterns (i.e. a user interface designed to deceive or nudge users into making unintended and potentially harmful choices) is introduced. Member States must take measures to limit the use by financial services providers of dark pattern marketing techniques to influence consumers' choices. Again, Member States are also given the ability to impose stricter national rules in this area.

Extension of some CRD rules to financial services

Certain other provisions from the CRD will also apply to financial services distance contracts. These include provisions **on inertia selling, additional payments, enforcement, and reporting**.

Review

A review clause is added to the revised Directive inviting the Commission to submit a report on the application of this Directive by 31 July 2030.

BIPAR's position / key messages

Together with its members, BIPAR has been active during the legislative process that led to the provisional agreement of the revised Directive. BIPAR's key recommendation to EU legislators was to ensure clarity regarding the prevalence of sectoral rules over the rules laid down in the revised Directive. In other words, to ensure that the revised Directive provisions do not duplicate the provisions of other EU texts applying already to the sector.

Prevalence of sectoral rules

As mentioned above, the revised Directive ensures that its provisions do not duplicate the ones of other EU texts applying already to the insurance (distribution) sector such as the IDD (prevalence of sectoral rules), and in particular as far as the right to pre-contractual information, the right to withdrawal and the right to adequate explanations are concerned.

This is an important principle for our sector that BIPAR focused on during the EP and Council readings of the text. This means that the revised provisions will apply to the insurance (distribution) sector **only to a limited extent,** i.e. when the IDD, MiFID II, PEPP, Solvency II and other existing EU text applying to our sector do **not** contain similar rules to the revised ones regarding the right to pre-contractual information, the right to withdrawal and the right to adequate explanations (for example, when concluding an insurance contract **at a distance,** an intermediary will only have to comply with the IDD precontractual requirements and not with the ones of the revised Directive). Other provisions will apply to intermediaries where appropriate, such as for example the new rules on online interfaces.

Scope

The revised rules do not apply to services provided on a strictly occasional basis and outside a commercial structure dedicated to the conclusion of distance contracts (see Recital 16). This is something BIPAR also requested during the legislative procedure. This is however not reiterated in the articles of the Directive, something BIPAR had called for.

Contracts concluded via telephone

In the revised Directive, in the case of telephone communications (Article 16a 2), the identity of the trader and the commercial purpose of the call initiated by the trader shall be made explicitly clear at the beginning of any conversation with the consumer. The trader shall also notify the consumer when the call is or may be recorded. If the consumer explicitly agrees, the trader may only provide the information regarding the identity of the trader, main characteristics of financial services product, total price and taxes to be paid by the consumer and the right of withdrawal. The trader shall inform the consumer of the nature and the availability of any other information.

BIPAR's other messages during the discussions:

- **Scope**: The revised rules should not apply to off-premises financial services contracts, and it should not apply to services provided on a strictly occasional basis and outside a commercial structure dedicated to the conclusion of distance contracts.
- **Proportionality**: the principle should be introduced in the Directive as its all-encompassing scope covers the entire financial sector which means that it applies to large institutions and SMEs alike.
- **Withdrawal button/function**: it should be made possible in the electronic interface to confirm that the button has not been pushed by mistake or by accident by the consumer. This is a very substantial move, which can have significant and negative consequences for consumers, such as for example the risk of being uninsured.

Next steps

The revised CRD with its new chapter on the distance marketing of financial services, entered into force on the 18 December 2023. From that day, Member States have 24 months to transpose the Directive into national law and a further 6 months to implement it. The Commission will publish a report on the application of this Directive by 31 July 2030.

Links

- Directive of 23 September 2002 concerning the distance marketing of consumer financial services
- Revised Directive as regards financial services contracts concluded at a distance
- Commission's Recommendation 2003/361/EC

Digitalisation - Digital Services Act (DSA) and Digital Markets Act (DMA)

Why does it matter to intermediaries?

The **Digital Services Act (DSA)** and the **Digital Markets Act (DMA)** create a horizontal framework for all categories of online services, contents and products, including financial services and activities.

The main purpose of these two pieces of legislation is to ensure that "what is illegal offline is equally illegal online". For our sector, this means, for example, comparison websites that provide their online services to businesses and consumers which are established in the EU, will have to comply with due diligence obligations imposed on online platforms, irrespective of their own place of establishment. On the other hand, intermediaries who provide their financial services online as users of a platform will be entitled to the rights accorded to them as "recipients" of the website's services. Intermediaries who provide their services via an online platform (either their own platform or as users of a platform) have to also comply with the sector-specific rules and competition law.

State of play

The Digital Services Act (DSA)

The DSA was adopted on 19 October 2022 and entered into force on 16 November 2022. It contains due diligence obligations that apply to all digital services and aims to target trade and exchange of illegal goods, services and content online and algorithmic systems amplifying the spread of disinformation. It contains specific rules on targeted advertising, content recommendation, profiling and minor protection.

The obligations under the DSA depend on the role, size and impact of the entity. Very large online platforms will have to take risk-based action to prevent abuse of their systems, including oversight through independent audits of their risk management measures. Based on that risk-based approach and the principle of proportionality, certain exemptions for micro and small entities are included within the DSA.

The DSA also aims to ensure that recipients of digital services and organisations representing them will be able to seek redress for any damages resulting from a platform breaching its due diligence obligations.

The DSA empowers the Commission to adopt a series of level 2 rules through Delegated and Implemented Acts. Here are some of them:

- On 2 March 2023, the Commission adopted a **delegated Regulation on the detailed methodologies and procedures regarding the supervisory fees** charged by the Commission on providers of very large online platforms and search engines. Under the DSA, the Commission is required to charge an annual supervisory fee to each provider designated as a very large online platform or search engine. The DSA only sets basic criteria for the determination of this supervisory fee. The delegated Regulation sets out detailed procedures and methodology to calculate and levy the supervisory fees in order to provide the concerned platforms with legal certainty. On 9 June 2023 the Act was published in the OJ of the EU.

- On 5 May 2023, the Commission launched a **public consultation on a DSA Delegated Regulation regarding independent audits.** The DSA requires very large online platforms to conduct such independent audits to ensure compliance with their risk management and crisis response obligations. The draft Delegated Act contains main principles that auditors should apply when selecting methodologies and procedures. It also contains templates for the audit report. The delegated Regulation is expected to be adopted by the summer of 2024.

The Digital Markets Act (DMA)

The DMA was adopted on 14 September 2022 and entered into force on 1st November 2022. Its objective is to address the negative consequences arising from certain behaviours by large online platforms acting as digital "gatekeepers" to the Single Market. These are the kind of platforms that serve as important gateways for business users to reach their customers.

The DMA considers "gatekeepers" to be online platforms that have an annual turnover of at least €7.5 billion within the EU in the past three years or have a market evaluation of at least €75 billion and have at least 45 million monthly end users and at least 10 000 business users established in the EU. The platform must also control one or more core platform services in at least three Member States.

The Regulation defines and prohibits a series of unfair practices by gatekeepers such as self-referencing in ranking of products and services offered, reuse of private data

collected for the purposes of another service, establishment of unfair conditions for business users, pre-installing certain software or applications, etc. The DMA also imposes some obligations on gatekeepers such as ensuring that users have the right to unsubscribe, not requiring software by default upon installation of the operating system, ensuring the interoperability of their instant messaging services' basic functionalities, giving business users access to their marketing/advertising performance data and informing the Commission in case of an acquisition or merger.

BIPAR's position/key messages

BIPAR welcomes the initiative's objective to tackle unfair online business practices and insists on the necessity to ensure that a level playing field exists, even in a digital environment. Competition issues have been arising as more and more business is carried out online and SMEs and startups find it difficult to compete with very large online platforms.

The existence of smaller entities in digital markets should be considered and the new obligations and sanctions should be proportionate to the size, turnover, scope and risk exposure of the different online entities. This will ensure innovative SMEs and startups are not being prevented from competing on the same online market as large platforms.

Next steps

- The DSA started applying on 17 February 2024 and earlier for very large online platforms. These platforms were subject to the application of the DSA four months after their designation. In addition, certain obligations started applying when the DSA entered into force on 16 November 2022. These include some transparency and reporting obligations for online platforms and the establishment of supervisory authorities by Member States.
- The DMA started applying on 2 May 2023.

Links

- Digital Services Act (DSA)
- Digital Markets Act (DMA)
- Delegated Regulation on the detailed methodologies and procedures regarding the supervisory fees
- Commission's public consultation on a DSA delegated Regulation regarding independent audits

Digitalisation - European Strategy for Data: Data Act and Data Governance Act

Why does it matter to intermediaries?

The European Strategy for Data, which aims to create a Single Market for data in order to ensure that more data becomes available for use in the economy and society while keeping the people and companies who generate that data in control, materialises through two pieces of legislation: the **Regulation on European data governance (Data Governance Act)** and the **Regulation on harmonised rules on fair access to and use of data (the Data Act).** While the Data Governance Act creates the processes and structures to facilitate data, the Data Act clarifies who can create value from data and under which conditions. **Both acts will apply across sectors and could impact insurance and financial intermediaries insofar as they receive and share data.**

State of play

The Data Governance Act

It was adopted on 30 May 2022 and entered into force on 23 June 2022. It started applying on 24 September 2023. Its objective is to make more data available and facilitate data sharing across sectors and EU countries in order to leverage the potential of that data for the benefit of European citizens and businesses. The Act contains four broad sets of measures:

1) Mechanisms to facilitate the reuse of certain public sector data that cannot be made available as open data.
2) Measures to ensure that data intermediaries will serve as trustworthy organisers of data sharing or pooling within the common European data spaces.
3) Measures to make it easier for citizens and businesses to make their data available for the benefit of society.
4) Measures to facilitate data sharing (especially cross-border and cross-sector) and to enable the right data to be found for the right purpose.

The Data Act

The Data Act entered into force on 11 January 2024 and will become applicable in September 2025.

As explained in a memo sent to BIPAR members, the Data Act lays down rules on the use of and access to data generated by connected objects. It also creates consistency between rules on data access which are often developed for specific purposes, in a disorganised manner. As such, the Data Act is an important basis for the proposal for a Regulation on a framework for financial data access (FIDA).

The Data Act aims at laying down harmonised rules on making products or related data service data available to users of connected products or devices. It also aims at ensuring fairness by setting up rules regarding the use of data generated by Internet of Things (IoT) devices and by allowing data holders to require compensation for making data available to third parties. Lastly, the Data Act ensures consistency between data access rights and makes more data available for the benefit of companies, citizens and public administrations.

The Data Act applies to the following entities:

- Manufacturers of connected products and providers of related services placed on the EU market,
- Users of such connected products or related services in the EU,
- Data holders that make data available to EU recipients,
- Data recipients in the EU,
- Public sector bodies, the EU Commission, the EU Central Bank and other Union bodies that request access to data from data holders,
- Providers of data processing services, providing such services to EU customers,
- Participants of data spaces and vendors of applications using smart contracts and persons whose trade, business or profession involves the deployment of smart contracts.

The Data Act's obligations apply to both business to consumer and also business to business relationships. **The Data Act applies to the following types of data:**

- Product data, i.e. data generated by the use of connected products,
- Related service data, i.e. data representing the digitalisation of user actions or events related to the connected product.

The Data Act applies to **both personal and non-personal data.**

Because of its interactions with the FIDA proposal that concerns large intermediaries and some investment firms, the Data Act is of importance to insurance and financial intermediaries.

The overall objective of the Data Act is to establish a Single Market for data, where data from public bodies, businesses and citizens can be used safely and fairly for the common good. This may add a compliance burden on organisations such as insurance and financial intermediaries that hold,

share or provide data to customers and/recipients in the EU. **BIPAR believes that the limited activities which are most likely to be of relevance to insurance and financial intermediaries are "user of a product or related service", "data holder" and "data recipient".**

Obligation to make product and related service data available to users

Connected products must be designed and manufactured in a manner that ensures product data and related service data (including relevant metadata) are, by default, easily, securely and free of charge, made available to users of such products and devices.

Data sharing with third parties

Upon request of a user, data holders shall make readily available data available to a third party (acting as a data recipient), without undue delay and free of charge for the user. "Gatekeepers" (such as big platforms and fintechs) cannot be considered to be third parties. Therefore, they cannot solicit or commercially incentivise a user to make data available to them under the Data Act. "Gatekeepers" cannot receive any data made available to a user or to third parties.

Obligations of third parties receiving data

Third parties can only access data made available to them under the Data Act for the purposes and under the conditions agreed with the user. The third party shall delete the data when it is no longer necessary for the agreed purpose. When legally obliged to make data available to a third party, data holders may require a reasonable compensation.

SMEs and microenterprises

SMEs and microenterprises acting as data holders are not subject to the obligation to make data available to users or third parties under the Data Act. They can, however, act as a data recipient.

Contractual terms

The Data Act includes some safeguards against unfair contractual terms regarding contracts on access to and use of data. The point of this provision is to address the risk of unfair contractual terms imposed by one party with a significantly stronger bargaining position.

BIPAR's position/key messages

BIPAR focuses on the importance for the European Strategy for Data (and especially the Data Act) to achieve a level playing field between different players and to ensure a fair and equal access to data across all sectors. BIPAR also emphasizes the importance of considering data sharing in the context of competition law. BIPAR insists on the need for proportionality with regard to smaller entities that should not be subjected to unreasonable added burden or costs as not to put them at a significant disadvantage when compared to bigger entities.

Next steps

The Data Act entered into force on 11 January 2024, and it will become applicable in September 2025.

Links

- Data Governance Act
- Data Act

Digitalisation - European Single Access Point (ESAP)

Why does it matter to intermediaries?

The ESAP aims at contributing to the achievement of the CMU objectives by providing an EU-wide and easy access to public financial and non-financial information published by financial entities, including insurance and financial intermediaries, that is relevant to capital markets, financial services and sustainable finance, i.e. mainly information about their economic activities and products. Marketing information is excluded. The ESAP is directed primarily to users such as investors, financial analysts and market participants, for example, asset managers, advisors or data aggregators.

State of play

On 20 December 2023, the Regulation creating the European Single Access Point (ESAP) was published in the Official Journal of the EU (together with an "Omnibus" Regulation and an "Omnibus" Directive that amend existing EU texts such as the IDD and MiFID II.

The ESAP Regulation mandates ESMA to establish and operate in 3 and a half years an ESAP, i.e. a platform that will provide centralised electronic access:

- to the information that entities, including intermediaries, must already disclose to the public pursuant to the existing European legislation listed in the Annex of the ESAP Regulation (Article 1.1a) (ex: IDD, MiFID II, PRIIPs, SFDR ....) (or to any future legally binding EU acts providing for centralised electronic access on ESAP) and
- (once the operational soundness and efficiency of the ESAP is ensured) to additional categories of information that entities, including intermediaries, decide to include on a voluntary basis on ESAP (Article 1.1b) (this information can be either referred to in the above-mentioned list of EU texts or in any future legally binding EU acts providing for centralised electronic access on ESAP)

As explained in Recital 7 of the ESAP regulation, the ESAP will not impose any new disclosure requirements in term of content on the concerned entities. It will build upon existing requirements laid down in EU Directives and Regulations. It adds "it *is important to avoid double reporting, in order to prevent the imposition of any additional administrative and financial burden on entities", especially SMEs*".

The information that will be made publicly accessible on the ESAP will be collected by designated collection bodies (mainly EIOPA for our sector) and will be accessible through a single application-programming interface (API). By providing data in digital format (data extractable or machine-readable format), the ESAP is intended also to be a cornerstone of the EU Digital Finance Strategy that would enable a planned transition to data-driven finance.

As mentioned above, the ESAP Regulation was adopted together with two other EU texts (an Omnibus Directive and an Omnibus Regulation) that **will amend 16 existing EU Directives and 19 Regulations**. This is to ensure consistency in publicly available information on the ESAP platform**.** These texts are listed in the Annex to the ESAP Regulation. **For our sector, the key EU texts of interest are the following EU Directives:** IDD, UCITS, Solvency II, MiFID II, IFD and IORPs, and the following EU Regulations: PRIIPs, PEPP, IFR, SFDR and Taxonomy.

The amendments consist of adding to these EU **texts one ESAP stand-alone provision on the format of the information that will be made public on the ESAP and its submission to a collection body.**

For example, the **following Article 40a will be included in the IDD:**
"Article 40a Accessibility of information on the European Single Access Point (ESAP)
From 10 January 2030, Member States shall ensure that the information referred to in Article 32(1) and (2) of this Directive is made accessible on the European single access point (ESAP) established under Regulation (EU) 2023/2859 of the European Parliament and of the Council. For that purpose, the collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 shall be the competent authority.
Members States shall ensure that the information complies with the following requirements:
(a) be submitted in a data extractable format as defined in Article 2, point (3), of Regulation (EU) 2023/2859;
(b) be accompanied by the following metadata:
(i) all the names of the entity to which the information relates;
(ii) where available, the legal entity identifier of the entity, as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859;
(iii) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;
(iv) an indication of whether the information contains personal data".

Article 32 (1) and (2) of the IDD requires Member States to ensure that the competent authorities publish any administrative sanction or other measure that has been imposed for breaches of the national provisions implementing the IDD. There will be therefore no direct obligation here for intermediaries to provide information to the collection body - competent authorities – to be published in the ESAP. The information as defined in Article 32 is collected and published by NCAs.

The amendment to the SFDR will create a direct reporting obligation for intermediaries. For instance, when making public any information related to sustainability risks and principal adverse impacts of investment decisions on sustainability factors, all intermediaries providing advice for IBIPs and investment advice will have to submit that information to the relevant collection body at the same time for accessibility on ESAP.

How is the ESAP going to be set up?

The ESAP has three main components:

1) **Access to data**: Determining how the information will be collected from private entities, such as issuers of securities, funds, auditors, banks, insurance companies or intermediaries.
2) **Data infrastructure**: The European Securities and Markets Authority (ESMA) will build, operate and govern the ESAP.
3) **Data availability**: barriers to the use and re-use of data will be removed. The information will be available for free for investors, including downloads. Open formats will be used which will enable data extraction, with an increasing amount of information made machine-readable in the long run.

Impact on intermediaries?

As mentioned above, the amendment to the SFDR would create – in 4 years- a **direct reporting obligation for intermediaries.** For instance, when making public any information related to sustainability risks and principal adverse impacts of investment decisions on sustainability factors, all intermediaries providing advice for IBIPs and investment advice will have to submit that information to the relevant collection body at the same time for accessibility on ESAP.

The above-mentioned information will have to be accompanied by different metadata, including the legal entity identifier. Under the current EU text, intermediaries are not required to have a LEI (since 1 July 2022 only insurance, reinsurance and ancillary insurance intermediaries which carry out cross-border business in accordance with the IDD, insofar as they fall under the supervisory remit of the competent authority, will need a LEI). The costs of such an obligation will need to be assessed.

The amendments to the IDD, the MiFID II, the PRIIPs, the PEPP do not create a direct reporting obligation for intermediaries to a collection body/the ESAP.

However, insurance and financial intermediaries wishing to publish and include additional categories of information in the ESAP, could decide to do so on a **voluntary** basis. The Commission explains that *"Small and medium-sized enterprises may want to make more **information publicly accessible in order to become more visible to potential investors** and thereby increase funding and diversify funding opportunities.* (…) *Any entity should therefore be allowed to make financial, sustainability-related and other relevant information accessible on ESAP".*

Benefits and drawbacks of such a decision for intermediaries will need to be properly assessed (costs, which information, visibility etc.)

BIPAR's position/key messages during the regulatory process of the ESAP Regulation

As far as the IDD is concerned, BIPAR did not believe that the information regarding administrative sanctions or other measures that have been imposed for breaches of the national provisions implementing the IDD (Article 32 (1) and (2)) should be published in the ESAP. This information is not even made public in some Member States. BIPAR contacted the EP and Council accordingly during the adoption process of the ESAP texts.

In its position on the ESAP, the Council deleted the IDD from the scope of the ESAP while the EP left it in as proposed by the Commission. During the Trilogue, it was decided to leave the IDD in the scope of the final ESAP Regulation.

Next steps

The ESAP Regulation and its Omnibus Regulation and Directive **entered into force on 9th January 2024**. The ESAP Regulation is binding in its entirety and is directly applicable in all Member States.

According to Recital 9, the development of the ESAP will have an initial phase of 12 months to grant sufficient time to Member States and ESMA to establish the IT infrastructure and test it on the basis of the collection of a limited number of information flows.

The ESAP platform is expected to be **available from summer 2027 and gradually phased in** to allow for its implementation. This phasing-in will ensure that European Regulations and Directives will enter into the scope of ESAP within four years, in order of priority (for example, in January 2030 for the IDD). During this time, there will also be a **regular assessment of ESAP's functioning and a review** that should guarantee the adequacy of the platform to the needs of its users and its technical efficiency.

Links

- Regulation creating the European Single Access Point
- Omnibus Regulation
- Omnibus Directive
- EU Digital Finance Strategy

Digitalisation - Pan-European digital identity framework

Why does it matter to intermediaries?

The "eIDAS Regulation" is applicable since 2016 and creates a European internal market for the so-called "eTrust Services" by ensuring that these services will work across borders and have the same legal status as traditional paper-based processes. These eTrust services include services that intermediaries can make use of: **e-signatures, electronic seals** (i.e. the electronic equivalent of a seal or stamp which is applied on a document to guarantee its origin and integrity), **electronic time stamps** (i.e. date and time on an electronic document which proves that the document existed at a point-in-time and that it has not changed since then), **electronic registered delivery service** (i.e. the equivalent in the digital world for registered mail) and **website authentication certificates** (i.e. a trust mark for websites).

The eIDAS Regulation ensured that people and businesses can use their own national electronic identification schemes (**eIDs**) to access **public services** in other EU countries where eIDs are available (this happens on the basis of mutual recognition; for the **private sector** the currently applicable legislation only encourages Member States to open the use of eID to the private sector).

In 2018, the European Commission undertook various initiatives to promote eIDAS, amongst others, focusing on SMEs in the financial services sector and BIPAR participated in several events in this respect. The material remains accessible on the Commission's website.

State of play

After evaluating the framework, the Commission published a **review proposal** on 3 June 2021. In parallel, it adopted a **recommendation to design a toolbox** supporting the framework so as to avoid fragmentation and barriers due to diverging standards.

After the European Parliament and the Council of the EU approved their negotiating positions on the proposal in March 2023 and December 2022 respectively, they reached a provisional agreement on 8 November 2023.

On 11 April 2024 the text was officially signed by the President of the EP and by the President of the Council. It was published in the Official Journal of the EU on 30 April 2024 and entered into force on 20 May 2024. **Margrethe Vestager**, Executive Vice-President for a Europe Fit for the Digital Age said: "*Today marks an important step in the development of the EU Digital Identity Wallet. About two years from now, every European will be able to safely manage personal digital documents and access public and private online services with full control of personal data from a personal mobile app offered on a voluntary basis to all European citizens and residents.*" **Thierry Breton**, Commissioner for Internal Market, said: "*The entry into force of the European digital identity rules is a major step towards the EU's 2030 goal of giving European citizens the possibility to use a secure and privacy-preserving digital identity. It will give citizens control over their personal data in the digital world and strengthen Europe's technological sovereignty.*"

The Regulation is binding in its entirety and directly applicable in all Member States.

Some key elements of the digital identity wallet

The eIDAS Regulation had already laid the foundations for safely accessing public services and carrying out transactions online and across borders in the EU.

The new text:

- Requires Member States to issue digital wallets in the form of **apps** that can be downloaded, installed and used on mobile phones or devices, allowing citizens to **digitally identify** themselves, **store and manage** identity **data** and **official documents** in **digital form.** Wallets should have **t**he function of a **common dashboard** embedded into the design, in order to ensure a higher degree of transparency, privacy and control of the users over their personal data.
- **All EU citizens** will be offered the possibility to have an EU Digital Identity Wallet to access **public and private** online services in full security and protection of personal data all over Europe (and this will be **accepted all over Europe**).
- In addition to public services, **Very Large Online Platforms** designated under the Digital Services Act **and private** relying parties that provide services, **with the exception of micro- and small enterprises,** that are required by the Union or national law to use strong user authentication for online identification or where strong user authentication for online identification is required by contractual obligation (including in the areas of transport, energy, **banking, financial services**, social security, health, drinking water, postal services, digital infrastructure, education or telecommunications), **shall**, no later than 36 months from the date of entry into force

of the implementing acts and **only upon the voluntary request of the user, also accept European Digital Identity Wallets** that are provided in accordance with the Regulation (see article 5f "Cross-border reliance on European Digital Identity Wallets").

- Regarding **financial services,** the new text also states:
  Recital 62) "*Secure electronic identification and the provision of attestation of attributes should offer additional flexibility and solutions for the financial services sector to allow the identification of customers and the exchange of specific attributes necessary to comply with, for example, customer due diligence requirements under a future Regulation establishing the Anti Money Laundering Authority, with suitability requirements stemming from investor protection law, or to support the fulfilment of strong customer authentication requirements for online identification for the purposes of account login and of initiation of transactions in the field of payment services.*"
  Recital 69) "*The role of trust service providers for electronic ledgers should be to ascertain the sequential recording of data into the ledger. This Regulation is without prejudice to any legal obligations of users of electronic ledgers under Union or national law. For instance, use cases that involve the processing of personal data should comply with Regulation (EU) 2016/679 and use cases that relate to financial services should comply with the relevant Union financial services law.*"
- The use of the wallet, including electronic signatures for **non-professional use,** will be **free** for natural persons. Member States may provide for measures to ensure that the free-of-charge use is limited to non-professional purposes and **businesses may,** therefore, be subject to **fees** to use the wallet services, depending on Member States' choice for the business model of the wallet.
- The EU wallet will be used on a **voluntary** basis (avoiding discrimination against those opting not to use the digital wallet).
- Relevant parts of its code will be published **open source** to exclude any possibility of misuse, illegal tracking, tracing or government interception. Indeed, the co-legislators have decided that the wallet will be **open-source licensed**. Security weaknesses, bugs or malfunctions can be better identified and corrected in this way. Member States may provide that, for duly justified reasons, the source code of specific components other than those installed on user devices shall not be disclosed.
- The Wallet will fully respect the user's choice whether or not to share **personal data**. It will contain a dashboard of all transactions accessible to its holder, ensuring that users are able to have full control of their data, report alleged violations of data protection and request that their data be deleted, as provided for under the General Data Protection Regulation (**GDPR**). Additionally, the right to use a **pseudonym** is enshrined in the legislation.
- Citizens will be able to onboard the wallet with **existing national eID schemes**. The EU Digital Identity Wallets will build on existing national systems and will not replace but complement existing national solutions.
- In cooperation with Member States, the Commission shall facilitate the development of **codes of conduct** in close collaboration with all relevant stakeholders in order to contribute to the wide availability and usability of European Digital Identity Wallets and to encourage service providers to complete the development of codes of conduct.

Next steps

Member States will have to provide at least one European Digital Identity Wallet within 24 months of the date of entry into force of the implementing acts. These implementing acts – to be adopted 6 and 12 months after adoption of the Regulation – will draw on the specifications developed as part of the EU Digital Identity Toolbox, setting harmonised conditions for implementing the wallets all across Europe.

There are transitional measures for existing systems (for instance secure signature creation devices of which the conformity has been determined in accordance with Directive 1999/93/EC shall continue to be considered to be qualified electronic signature creation devices until 21 May 2027).

The Commission is in the process of developing a wallet prototype based on the technical specifications. The software will be available for voluntary use by Member States.

Links

- Commission's website page on eIDAS
- Regulation on the European Digital Identity Framework
- EU Digital Identity Wallet Home
- What are the Large-Scale Pilot Projects

Solvency II and Insurance Recovery and Resolution Directives

Why does it matter to intermediaries?

On 22 September 2021, the European Commission adopted its **review of the Solvency II Regime** in the context of the EU's post pandemic recovery. The review consists of:

- **a legislative proposal to amend the Solvency II Directive** and
- **a legislative proposal for a new Insurance Recovery and Resolution Directive (IRRD),** which seeks to harmonise national laws on recovery and resolution of insurance and reinsurance undertakings.

The review does not contain proposals on the introduction of harmonised rules for Insurance Guarantee Schemes (IGS). The Commission stated, however, that it is committed to reassessing the appropriateness and timing of any such alignment in the future. It has, therefore, published, at the same time of the review, a quantitative assessment of several policy options for a possible proposal on the introduction of harmonised rules for IGSs.

State of play

On 14 December 2023 the Council and the EP announced a provisional agreement on amendments to the Solvency II proposal and to the IRRD proposal.

Solvency II Directive

The provisional agreement aims to **incentivise insurers to invest in long-term capital for the economy, notably towards the Green Deal.** According to the EU legislators, the provisional agreement improves the long term guarantees measures making them more risk sensitive. It also increases the resilience of the insurance industry and introduces a new macroprudential dimension in the regime. The agreement reflects the continuing importance of sustainability risks and sustainability factors and the need to integrate consideration of sustainability into (re)insurers risk management frameworks, business models, and investment strategies. According to the agreement, **more simplified and proportionate rules will ensure flexibility and reduce the administrative burden especially on small and non-complex insurance companies**.

The enhanced framework will also **strengthen coordination among NCAs regarding insurers and reinsurers' cross-border activities (**where (re)insurers carry out significant cross-border activities, i.e. annual Global Warming Potentials (GWP) in the host Member State exceeds €15 million and the supervisory authority in the host Member State consider the activities to be of relevance to their national market).

According to the Council and the EP, the protection of insurance policyholders has been improved, notably when buying insurance in another country, through the above-mentioned enhanced cooperation between supervisory authorities. Consumers will also be better informed.

Supervisory authorities will be able to take all measures necessary to safeguard the interests of policyholders where (re)insurers are in a deteriorating financial position. **For example, supervisors will be able to require (re)insurers to take measures set out in their pre-emptive recovery plans (as must be put in place under the IRRD) and to suspend or restrict bonuses and distributions.** The provisional agreement assigns a few new tasks to EIOPA in terms of elaborating various strands of technical standards.

Insurance Recovery and Resolution Directive

The Council's and the EP's agreement gives national authorities **preventive powers to intervene at an early stage**. Member States will have to set up national insurance resolution authorities, either within existing authorities or as new self-standing legal entities, ensure effective cooperation across borders, and grant EIOPA a coordinating role.

The provisional agreement requires (re)insurance companies and groups to draw up and submit **pre-emptive recovery plans to national supervisory authorities. This requirement will apply to companies representing at least 60% of the respective (re)insurance market.**

Furthermore, resolution authorities will have to draw up a resolution plan for insurance and reinsurance undertakings and groups, representing at least 40% of their respective market. Small and non-complex undertakings will in principle not be subject to pre-emptive recovery planning requirements on an individual basis.

Resolution authorities would be given powers to implement resolution actions in a coordinated and timely fashion. The provisional agreement provides them with resolution tools and procedures (including write-down and conversion, solvent run-offs and transfer tools) to address failures, notably in a cross-border context.

The provisional agreement also includes detailed conditions for the use of the tools and procedures. **In particular, with regard to write-downs and conversions, some liabilities will be excluded from these tools to avoid adverse outcomes for policyholders. Specific provisions on financing arrangements and a review clause in relation to IGS are included.**

Next steps

Once the new legislative texts published in the Official Journal of the EU, Member States will have 2 years to transpose them into national law.

Links

- Solvency II general agreement
- IRRD general agreement

Financial education of the consumer

Why does it matter to intermediaries?

In the framework of the 2020 CMU Action Plan, the European Commission stated that it would like to improve citizens' financial literacy by developing a European financial competence framework and incentives for Member States to promote financial education and responsible investing. The ESAs and the Council are also active on the topic of financial literacy.

State of play

As a result, the **Commission and the OECD** published a joint financial competence framework for **adults** in January 2021. This is a framework for voluntary uptake in the EU by public authorities, private bodies and civil society. The framework divides the competences into four content areas: money and transactions; planning and managing finances; risks and reward; and financial landscape. For each competence, three dimensions are considered: awareness/knowledge/understanding; skills/behaviour; and confidence/motivation/attitudes. The framework has a special focus on digital and sustainable finance skills.

On 2 October 2023, the **Commission and OECD** launched another financial competence framework for **children and youth** (the uptake and use of the framework are also **voluntary)**. This framework aims to build a common understanding of financial literacy competences for children and youth at different ages (-18) and across different stages of their formal education. This is expected to facilitate the coordination, design and evaluation of policies and concrete actions taken by national policymakers and stakeholders, including education practitioners, which will facilitate the sharing of best practices and make financial literacy measures more effective across the EU. In line with the adults' framework, competences in this framework are divided into four content areas. These content areas are then further divided into topics (with one or more dedicated subtopics for each topic, including sustainable finance competences, digital finance competences, etc.).

In February 2024, BIPAR attended a high-level **conference** organised by the European Commission and the Belgian Financial Services and Markets Authority (FSMA) **"Money matters - Financial literacy, resilience and inclusion".** The conference aimed to address the different dimensions of financial literacy, resilience, and inclusion, how to build on existing work in this area and to discuss the opportunities, challenges and best practices.

The **RIS**, published on 24 May 2023, also contains provisions calling upon Member States to promote measures that support the education of retail clients/prospective retail clients/customers in relation to responsible investment/purchase of insurance products when accessing investment/insurance services or ancillary services.

The **Parliament's ECON Report on RIS** stresses the importance of financial literacy even further, amongst others stating that Member States shall consider the contribution of NCAs, universities and relevant stakeholders when designing the educational instruments to promote financial literacy. Member States shall consider introducing compulsory teaching content in their national school curricula. They shall also establish programmes to fund consumer organizations, independent investor or shareholder organisations that support the education of retail clients and potential retail clients in relation to responsible investment when accessing investment services or ancillary services.

The Commission with the ESAs, the European Investment Bank and the ECB shall facilitate cooperation and exchange of best practices; establish clear targets on financial literacy and establish a Platform on Financial education and literacy.

The **ESAs** have been active regarding financial literacy over the past years as well. Recently, in November 2023, they published, for instance, an **interactive factsheet on financial education and sustainable finance**.

At **Council** level, on 14 May 2024, the Eurogroup (the EU finance ministers) adopted the Council's conclusions (i.e. not binding legislation) related to financial literacy as well. These conclusions aim to give guidance to the Commission and the Member States on how to improve citizen's knowledge and understanding of finance, to help them make more informed financial choices and to encourage them to invest on European financial markets. In the conclusions, the Council refers to the OECD-Commission frameworks and also highlights that digitalisation of the financial landscape increases the need and the urgency to further enhance the level of financial literacy and digital skills in the EU, and notes that enhanced financial knowledge may help individuals to embrace new opportunities stemming from digital finance.

For **young people**, the Council encourages Member States or, where relevant, competent bodies, including but not limited to national authorities, to consider integrating financial education in school curricula. For **adults**, the Council suggests that Member States identify financial vulnerability in their context and encourages them to also address the needs of older people specifically. For **entrepreneurs and**

SMEs, the Council invites to assess their financial literacy levels and encourages the development and delivery of strategies and programmes, potentially in collaboration with financial institutions, providers of accounting services and academia, that will contribute to improving weak points identified in the assessments and general levels of SMEs and potential entrepreneurs.

The Council calls on the Commission, amongst others, to continue promoting the uptake of the financial competence frameworks and to facilitate the exchange of best practices by Member States and its stakeholders and to regularly monitor financial literacy levels in the EU, in coordination with OECD/INFE (International Network on Financial Education), including by conducting in-depth Eurobarometer surveys where possible, and to provide analyses of the developments in financial literacy, sharing available data with Member States.

BIPAR's position / key messages

Investment / financial education should be included in the curricula of secondary schools. This is something that BIPAR has been advocating for 20 years. The public should also be made better aware that most of the products and activities are regulated and supervised and that such a system should create the necessary trust in the financial products, manufacturers and distributors, intermediaries and advisors.

Links

- 2020 CMU Action Plan
- Commission's and OECD's joint financial competence framework for adults
- Commission and OECD joint EU/OECD-INFE financial competence framework for children and youth + Excel tool
- Belgian Presidency's/Commission's conference recording
- ESAs's interactive factsheet on financial education and sustainable finance
- Council's conclusions on financial literacy

Right to be forgotten in case of cancer

Why does it matter to intermediaries?

In 2021, the **European Commission** adopted a "Europe's Beating Cancer Plan" and in May 2022 followed up with a study on the access to financial products for persons with a history of cancer, the so-called 'right to be forgotten', in the EU. The Cancer Plan stated that a stakeholder dialogue should be established to develop a **code of conduct** to ensure that cancer treatment developments are reflected in the business practices of financial services providers.

In parallel, the **European Parliament** also published an "own-initiative report" on this issue: "Strengthening Europe in the fight against cancer". This stated that "by 2025, at the latest, all Member States should guarantee the right to be forgotten" to patients who have survived cancer (10 years after the end of their treatment, and up to five years after the end of treatment for patients whose diagnosis was made before the age of 18) and that this right should be embedded in the relevant EU legislation.

Several **Member States** already have a right to be forgotten (8 Member States have legislation, 4 have a code of conduct) – but 15 Member States have no mechanism.

Intermediaries are always looking for the best solutions for their clients and in certain countries, intermediary associations have set up mechanisms to support this, for example, in Ireland, there is a dedicated page on the website of Brokers Ireland, referring to specialised intermediaries.

State of play

The European **Commission**, together with consultant Deloitte, kicked off stakeholder discussions in the summer of 2023 with different consultations to which BIPAR responded. This was followed in autumn 2023 by the launch of a series of roundtable discussions with the different stakeholders (representatives of patients -cancer and other treatable diseases-, the medical community, representatives of financial services providers including BIPAR and consumer representatives), to achieve, if possible, a common code of conduct.

The BIPAR Secretariat actively participated in these roundtable discussions together with a representative from BIPAR member, Brokers Ireland.

At the time of writing this article, no code has been agreed on yet. Some of the key concepts under discussion are to create a **voluntary** code that contains **commitments** for financial services undertakings (including intermediaries) to disregard the cancer history of clients. These would be applied in the context of the underwriting and distribution of outstanding balance insurance contracts to guarantee repayment of a **mortgage loan** that concerns a primary residence and of outstanding balance insurance contracts to guarantee repayment of a **professional loan** (acquisition of professional premises / professional equipment). Discussions are ongoing amongst others on the timing for the right to kick in.

Intermediaries (and insurers) would be expected to **communicate clearly** and upfront regarding the code on the right to be forgotten to their clients.

On 14 May 2024, the Commission (DG Health and DG Financial services) organized a **stocktaking event** to discuss and present the outcome of the discussions and some best practices, and to continue the dialogue. BIPAR attended this event. **Financial Services Commissioner McGuinness** thanked all the roundtable participants for the work and for listening to each other and she encouraged them to keep moving forward together. "*This code of conduct would represent a really important step forward that would improve access to financial services for cancer survivors. Especially in those 15 Member States – that's a lot of people – that don't have any mechanism on the right to be forgotten today.*" She added (for those stakeholders who prefer EU legislation over a code) that any EU legislation in this area would take time to propose, to negotiate and then to apply whereas in the meantime an EU code of conduct could be a giant step forward. **Health Commissioner Stella Kyriakides** commented in a similar way that it is important to keep up the momentum on the right to be forgotten and to continue the discussions in view of finding an agreement that is fair and sets the highest standard for Europe's cancer community (see link below for a summary of the event).

BIPAR's position / key messages

BIPAR is in favour of clients obtaining insurance for their needs. During the discussions on a possible code, BIPAR stated that any code of conduct on a right to be forgotten has to be workable for the insurance sector. The limited scope of the outstanding balance insurance contracts regarding mortgage and professional loans that was under discussion, was supported by BIPAR. BIPAR also stressed that it had to be clear that **European federations** cannot bind their members (national associations) by signing a code. They can only provide information to their members about it.

Next steps

Stakeholder discussions on a possible code of conduct are likely to continue over the next weeks/ months.

Links

- Study on the access to financial products for persons with a history of cancer
- Parliament's report: "Strengthening Europe in the fight against cancer"
- Brokers Ireland's dedicated page on its website referring to specialised intermediaries
- Commission's event "Cancer survivorship: advancing the right to be forgotten"
- Closing address by Commissioner McGuinness
- Speech by Commissioner Stella Kyriakides
- Summary of the event

Anti-Money Laundering (AML)

Why does it matter to intermediaries?

Current EU AML rules apply to insurance intermediaries where they act with respect to life insurance and other investment-related services and investment firms.

In July 2021, the European Commission presented a package of four legislative proposals to strengthen EU rules on anti-money laundering and countering the financing of terrorism (AML/CFT). The package aims to make the EU AML/CFT framework more effective and adapt it to technological developments such as the use and transfers of crypto currencies.

The Commission's legislative package does not change the scope of the existing AML/CFT rules. According to Article 2(6)(C) of the proposed "Single Rulebook" Regulation, AML/CFT rules apply to:

- **(c) an insurance intermediary as defined in Article 2(1), point (3) of the IDD where it acts with respect to life insurance and other investment-related services,**
- **(d) an investment firm as defined in Article 4(1), point (1) of MiFID II.**

State of play

Commission's AML package

The AML/CFT legislative package includes the following key components:

1) The **Regulation on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing** (the **"Single Rulebook" Regulation**),
2) The **6th AML/CFT Directive** replacing the 4th AML/CFT Directive 2015/849/EU (itself amended by the 5th AML/CFT Directive),
3) The **Regulation establishing the European Anti-Money Laundering Authority (AMLA)** *(regarding this text, please note that the provisional agreement was reached in December 2023. The co-legislators agreed that the location of the seat of the future Authority will be in Frankfurt),*
4) A **revision of the 2015 Regulation on Transfers of Funds** to include crypto-assets in its scope *(regarding this text, please note that the revised Transfers of Funds Regulation entered into force on 29 June 2023 and will start applying on 30 December 2024).*

On 24 April 2024, the European Parliament formally adopted the provisional interinstitutional agreements reached by the European institutions in December 2023 and February 2024 on the Single Rulebook Regulation, 6th AML/CFT Directive and the AMLA Regulation.

The new AML/CFT framework brings significant changes that are especially relevant to insurance intermediaries involved in life or investment-related insurance activities. Additionally, the establishment of a Single Rulebook Regulation, which provides a uniform set of rules for all Member States, marks a significant shift in the current regulatory landscape for insurance intermediaries.

Some key aspects of the provisional interinstitutional agreements (BIPAR members received more details in a BIPAR memo):

- *Scope*
  Insurance intermediation of non-life insurance products is not in the scope of these provisional agreements. Credit intermediaries are now explicitly included in the scope, as financial institutions, whereas they were not mentioned expressly in the 5th AML/CFT Directive. Article 3 of the 6th AML/CFT Directive allows Member States to apply all or part of the requirements of the Single Rulebook Regulation to additional entities in other sectors when they determine these entities are exposed to ML/TF risks. This is already the case under the current framework and some Member States have adopted wider scopes than others.

- *Risk-based approach*
  The entire framework is based on a risk-based approach to AML/CFT. As explained in several Recitals and Articles, this means, when complying with the requirements of the framework, obliged entities' approaches should "be proportionate to the nature of the business, including its risks and complexity, and the size of the obliged entity and respond to the risks of money laundering and terrorist financing that the entity faces". This approach also applies to supervisors.

- *Requirements for obliged entities*
  Obligation to set up internal policies, procedures and controls: under Chapter II, Section 1 of the Single Rulebook Regulation, obliged entities are required to set up internal policies, procedures and controls to mitigate and effectively manage the risks of AML/CFT and the risk of non-implementation of targeted financial sanctions. These requirements build upon requirements included

in the 5th AML/CFT Directive and provide more precision about the content of the obligations while harmonising them.

Chapter III of the Single Rulebook Regulation sets up the customer due diligence (CDD) requirements to be applied by obliged entities.

- *Beneficial ownership transparency*

CDD and reporting of beneficial ownership: Article 42 defines beneficial owners of corporate and other legal entities as the natural person who:

- has a direct or indirect ownership interest in the corporate entity,
- controls the corporate entity directly or indirectly through ownership interest or other means.

Article 42a specifies that an "ownership interest" for the purpose of Article 42 means direct or indirect ownership of 25% or more of the shares or voting rights or other ownership interest in the corporate entity. However, Member States, when they identify specific risks for certain categories of legal entities shall inform the Commission that can determine that a lower threshold is appropriate. The lower threshold shall then be set at a maximum of 15% of ownership interest. The threshold set in the 5th AML/CFT Directive was 25% as well.

Under Article 44, legal entities must **ensure their beneficial ownership information is adequate, accurate and up-to-date.** The Article provides a list of the information to be disclosed for that purpose. These requirements were already included in the 5th AML/CFT Directive but are extended to a number of legal arrangements. **Legal entities must report that information to central beneficial ownership registers established under Article 10 of the 6th AML/CFT Directive.**

- *Outsourcing*

These provisions are new to the Single Rulebook Regulation. Article 14a of this Regulation does allow for outsourcing tasks derived from the requirements of the Regulation. **When outsourcing such tasks, obliged entities should inform their supervisor and shall remain fully liable for any action carried out by the service provider and connected to the outsourced task.** Before outsourcing a task, the obliged entity should ensure the service provider is qualified and applies its policies, procedures and controls.

Article 14a(2) lists a series of tasks that can never be outsourced under this Regulation: proposal and approval of the business-wide risk assessment (Art 8(2)), approval of the policies, procedures and controls (Art 7), decision on the risk profile of a customer, decision to enter into a business relationship or carry out an occasional transaction with a client, reporting of suspicious activities to Financial Intelligence Units (FIUs) (Art 50) and approval of the criteria for the detection of suspicious or unusual transactions.

BIPAR's position / key messages

All throughout the process of adopting new AML/CFT rules, BIPAR informed the EU legislators of its views on the proposals for a Single Rulebook Regulation and the 6th AML/CFT Directive.

The provisional interinstitutional agreements encompass some of BIPAR's key messages regarding:

- **Proportionality**: BIPAR emphasised the need to adopt a risk-based approach to the implementation of AML/CFT requirements and to supervision. The compromise agreements emphasize the importance of a risk-based approach throughout the framework, including in supervisory efforts.
- **Threshold for identification of beneficial owners**: BIPAR was worried about the low thresholds proposed by the co-legislators to characterise beneficial owners of corporate structures. The comprise agreements settled on a threshold of 25% or more of share or voting rights or other ownership interest.
- **Compliance functions**: BIPAR suggested that these functions should be outsourceable. It also suggested these functions should not be required in all structures but that their necessity should be assessed on a case-by-case basis. Although these functions are required from all obliged entities in the provisional agreements, they can be outsourced.
- **Outsourcing**: BIPAR insisted on the need for certain obliged entities to outsource some of the tasks required under the AML/CFT framework. The provisional agreement limits the list of tasks that can never be outsourced.

Next steps

The **Single Rulebook Regulation**, the **6th AML/CFT Directive** and the **AMLA Regulation** now need to be formally adopted by the Council before they can be published in the Official Journal of the EU. They will enter into force on the twentieth day following their publication.

Given the existing interinstitutional agreements, only minor modifications are expected for the Council's first reading position. This expectation is further reinforced by the **Council's Information Note** issued on 30 April 2024, which outlines the outcome of the Parliament's first reading of the proposed Directive. The note addresses the amendments to the Commission's proposal and the Parliament's position, underscoring the consensus established among the institutions. Notably, it explicitly indicates that the Council is anticipated to approve the Parliament's position, resulting in the enactment of the 6th AML Directive in line with the wording of the Parliament's adopted text.

Once the Council adopts the remaining texts, **BIPAR will issue a final memo on the impact on intermediaries of the AML/CFT Package** and will **organise a webinar** with a law firm as well.

As for the implementation timelines, **Member States will have a period of 36 months to transpose the 6th AML/CFT Directive following its entry into force,** with few provisions granting additional time for implementation. Conversely, for matters relevant to insurance intermediaries, **the Single Rulebook Regulation will become directly applicable to Member States 36 months post-entry into force.**

The **AMLA Regulation will start applying on 1 July 2025** (except for some provisions that should start applying on the day of entry into force).

Links

- Single Rulebook Regulation
- 6th AML/CFT Directive
- AMLA Regulation
- Revision of the 2015 Regulation on Transfers of Funds
- Interinstitutions agreements on the AML package
- Text of the Regulation on Transfers of Funds as adopted by the EP and Council
- Council's Information Note

Whistleblower Directive

Why does it matter to intermediaries?

Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law ("Whistleblower" Directive) was adopted by the EU legislators in October 2019. Its purpose is to lay down minimum standards providing for a high level of protection of persons reporting breaches of Union law. The deadline for transposition of the Directive was 17 December 2021. However, Member States had until 17 December 2023 to transpose the obligation to set up internal reporting and follow up channels (Article 8(3)), as regards entities with 50 to 249 employees.

The Whistleblower Directive applies to persons reporting breaches on Union law in several areas, **including "*financial services, products and markets* *and prevention of money laundering and terrorist financing*".** It specifies that the provisions of the Directive do not apply when there exist specific rules on the reporting of breaches within the sector-specific acts listed in the Annex to the Directive. The Article further states that the provisions of the Whistleblower Directive are applicable to the extent that a matter is not regulated in these sector-specific acts. The sector-specific acts referred to in the Annex (Part II) include, amongst others, the IDD, MiFID II, the IORPs Directive, the PRIIPs Regulation, etc.

Although certain of these sector-specific EU acts (notably the IDD and MiFID II) contain some provisions on the reporting of breaches (ex: Article 35 of the IDD), it appears that none of them includes any requirements on the setting-up of internal channels for reporting and follow-up. Therefore, the Whistleblower Directive requirements on this particular topic (Chapter II, Articles 8 and 9 and parts of Chapter V) apply to the sectors regulated by these acts, such as the insurance distribution sector.

The private legal entities subject to the obligations of the Whistleblower Directive include amongst others, **insurance intermediaries as defined in the IDD and investment firms as defined in MiFID II.**

State of play

Article 8 of the Whistleblower Directive lays down an obligation for Member States to ensure that private and public legal entities establish internal channels for reporting and follow-up that workers can use to report information on breaches of Union law.

Article 8(3) specifies that this obligation only applies to private legal entities with 50 or more workers. Small and micro-enterprises are therefore excluded from the scope of this Article. However, as explained in **Recital 50 and Article 8(4),** the exemption of small and micro-enterprises from the obligation to establish internal reporting channels does not apply to private enterprises which are obliged to establish internal reporting channels by virtue of Union acts referred to in Parts I.B and II of the Annex. Part II of the Annex refers to a number of EU legislations including the IDD, MiFID II, the Directive on the activities and supervision of IORPs and the Regulation on key information documents for PRIIPs.

Entities such as insurance intermediaries as defined in the IDD, are, therefore, all subject to the obligation of setting up internal channels for reporting and follow-up, even if they have fewer than 50 workers, i.e. small and micro-intermediaries.

Article 8(6) allows private legal entities with 50 to 249 workers to share resources as regards the receipt of reports and any investigation to be carried out. However, for the small and micro-enterprises that are not exempted from the obligation to establish internal reporting channels, such as intermediaries, as explained above, this means that they cannot rely on shared resources regarding the receipt of reports or investigations.

For BIPAR, there could be a breach of the proportionality principle within Article 8(6): the requirements of the Whistleblower Directive that apply to intermediaries with fewer than 50 employees are more stringent than for intermediaries with 50 to 249 employees.

BIPAR conducted a short survey among its members and realised that **Member States had different approaches regarding the transposition of Article 8(6) into their national legislations:**

- some transposed the Directive literally, including the breach of proportionality in Article 8(6) (inter alia, the Netherlands, Hungary, etc.);
- some transposed the Directive while correcting the breach of proportionality in Article 8(6) (inter alia, Austria, Belgium, France, etc.);
- some transposed the Directive but excluded entities with fewer than 50 employees from the scope of the obligation to establish internal channels for reporting and follow up (inter alia Sweden);
- some have not (fully) transposed the Directive as yet (inter alia, Germany, Italy, etc.).

Whistleblower Directive

BIPAR's position / key messages

For BIPAR, Article 8(6) of the Whistleblower Directive represents a **breach of the proportionality principle** by imposing stricter standards on some micro and smaller entities than on larger ones. The proportionality principle is of very high importance within EU financial legislation, in order to ensure smaller entities are not subjected to unreasonable administrative or financial burden. Therefore, BIPAR contacted the Commission (specifically DG JUST that was in charge of that topic) in order to inquire about the intentions behind Article 8(6) and whether or not they intended to exclude micro and small entities from its scope.

In its response to BIPAR sent in November 2023, the Commission pointed out that whereas its services are able to provide a technical assessment of the matter, the assessment is not binding for the Commission. It further states that the Court of Justice of the EU is the only institution that can provide an authoritative interpretation of EU law.

The Commission states that "[...] ***based on a systemic and teleological interpretation of the Whistleblower Protection Directive, it is our understanding that this Directive allows for the sharing of resources for companies with up to 249 workers falling within the scope of the Directives concerned***".

According to the Commission, as **the objective of the provision** (Article 8(6)) granting the possibility to share resources **is to alleviate costs and burdens for smaller entities it cannot be interpreted as excluding the possibility for companies with fewer than 50 employees,** obliged under sector-specific Union acts referred to under Part II of the Annex (including insurance intermediaries), **to benefit from this provision**.

Therefore, according to the Commission, insurance intermediaries with 1 to 249 employees must be allowed to share resources for the receipt of reports and any investigation to be carried out under Article 8(6) of the Whistleblower Directive, despite a lack of explicit reference.

BIPAR believes that the Commission response is of interest in particular to those intermediaries whose National Competent Authorities (NCAs) transposed the Directive "literally", including the provision presenting a potential breach of proportionality and suggest they inform their NCAs about the Commission's response to BIPAR if needed.

Next steps

Article 27 of the Whistleblower Directive required the Commission to submit, by 17 December 2023, a report on the application and implementation of the Directive. It also requires the Commission to submit a report, by 17 December 2025, assessing the impact of national law transposing the Directive. The latter shall be accompanied, if appropriate, with relevant amendment proposals.

BIPAR will follow the procedures related to these two reports and mention the issue of Article 8(6) in these contexts.

Link

- Whistleblower Directive

Environmental Liability Directive (ELD)

Why does it matter to intermediaries?

The Environmental Liability Directive (ELD - adopted in 2004 and first evaluated in 2016) sets out an environmental liability framework to prevent and remedy environmental damage to pre-damage condition when it is caused by economic operators. It contains the "polluter pays" principle. One of the issues that has come up over the years in the discussion at European level is the availability (at reasonable costs) of insurance and other types of financial security, and the need or not for mandatory financial security.

State of play

The ELD required the European Commission to carry out an evaluation before 30 April 2023 and every five years thereafter. The Commission started this second evaluation process of the ELD, aiming to examine the effectiveness, efficiency, relevance, coherence and EU added value of the ELD. Two public consultations were launched in the summer of 2022: a general public consultation by the Commission on the evaluation of the ELD and a targeted public consultation from external service providers who are preparing a supporting study on the evaluation of the ELD on behalf of the Commission. The questions dealt, amongst others, with:

- whether ELD influenced the availability of financial security instruments at an affordable cost;
- the availability of insurance for ELD liabilities for large/ multinational and for SME operators;
- whether intermediaries/brokers as stakeholders have been engaged in the process of improving the implementation of the ELD at Member State level.

On 12 May 2023, the Commission also launched a public consultation on the "polluter pays principle" (PPP) which aims to assess how the principle is applied across EU policies.

Following a report from the European Court of Auditors that found that the "PPP principle" is reflected and implemented to varying degrees in EU environmental policies and its coverage and implementation is therefore incomplete, the Commission has planned to issue a recommendation on how to better implement this principle on the basis of a fitness check in 2024.

In October 2023, the Commission published a summary of the online public consultation.

BIPAR participated in a dedicated workshop in November 2023.

BIPAR's position / key messages

BIPAR is not in favour of mandatory financial security / insurance at EU level. Some of BIPAR's key messages are:

- National markets are still very different in terms of "sensibility" for this risk. Insurers from their side are not yet everywhere in Europe keen or able to take up the risk at reasonable or realistic prices.
- A mandatory regime for environmental liability insurance may be considered by clients and entrepreneurs as a "tax".
- Considering the wide variety and the strict regulatory framework, there are probably many challenges in finding the right, "economically fair", activity-adapted compulsory regime.
- Although the ELD brings uniformity, the local situation creates diversity.
- The discussion on environmental liability cannot be considered in a silo.
- The potential cost impact of a compulsory insurance on SMEs should be looked at.

Next steps

- The final external study regarding the ELD evaluation is not available.
- A Commission's Staff Working Document was expected for the end of April 2023, but is also not as yet available.
- The outcome of the "polluter pays" fitness check was expected for the first half of 2024, but nothing has been published yet.

Links

- Environmental Liability Directive
- Commission's public consultation on the "polluter pays principle"
- Commission's summary of the online public consultation
- How the Commission implements the ELD
- Evaluation of the ELD

BIPAR has responded to various consultations and participated in several meetings and workstreams of the 3 European Supervisory Authorities (**ESAs** – **EIOPA** (European Insurance and Occupational Pensions Authority), **ESMA** (European Securities and Markets Authority) and **EBA** (European Banking Authority)) on issues that concern intermediaries.

These include:

EIOPA's value for money methodology for the unit-linked market

EIOPA has been working in the past years on value for money, in particular, in the unit-linked and hybrid market ("Hybrid products" are described by EIOPA as products that combine a unit-linked component with a profit participation component and/or a capital guarantee).

In this respect, EIOPA published a **Supervisory Statement** on value for money for unit linked and hybrid products in November 2021 and a **methodology** to ensure a consistent and convergent approach by NCAs towards the implementation of the Supervisory Statement, in 2022. The methodology aimed at providing clarity for insurance manufacturers and distributors on the supervisory approaches to address value for money risks, to ensure that they are sufficiently customer-centric and that they take into account value for money considerations.

EIOPA has continued developing this workstream, and this, in parallel to what is being discussed on value for money and benchmarks in the **Retail Investment Strategy**. It has in particular started working on developing **reference benchmarks** for unit-linked and hybrid products to:

1) assist NCAs in identifying products with higher value for money risks and promote a more efficient and risk-based approach to conduct supervision; and
2) assist product manufacturers in identifying comparable offers in the market to determine if their products offer value – by making sure all costs are due.

In December 2023 EIOPA launched a **consultation paper** presenting how it aims to develop such **reference supervisory benchmarks,** by taking a gradual approach to ensure they well reflect the characteristics of products sold in different markets across the EU. **Three steps** are envisaged to create these reference benchmarks:

1) EIOPA proposes a system to categorize unit-linked and hybrid insurance products with similar features into groups based on policyholders' needs: clusters.
2) Building on the earlier methodology from October 2022, EIOPA suggests adapted indicators around which value for money benchmarks should be developed.
3) The third step concerns data collection and benchmark calibration. To minimize the reporting burden on the market, EIOPA recommends leveraging existing data collection processes, such as the one for the annual EIOPA Cost and Past Performance report.

The benchmarking exercise is to be considered **complementary to the POG activities** (i.e. product testing) performed by manufacturers during the product design. **EIOPA states that a product should provide value for money to consumers regardless of where it stands in relation to the benchmarks**. In parallel to the public consultation, EIOPA is also carrying out a **pilot data collection exercise** with selected undertakings, who are willing to voluntarily participate to the dry run of the benchmarks' methodology.

Beyond reviewing the methodology prior to collecting the data and developing the first set of benchmarks, EIOPA plans to conduct **regular reviews** to **adjust and improve the methodology.** To this extent, in the first phase, **EIOPA does not plan to publish the benchmarks on its website**. It rather envisages to:

- share the benchmarks with NCAs, who will use them for supervisory purposes – i.e., they will use the benchmarks to identify those products – within a defined set of clusters – which pose higher value for money risks and which require higher supervisory scrutiny.
- share the benchmarks with NCAs and, once EIOPA is confident with the data quality, NCAs should confidentially share the ones for the clusters which they deem relevant for their market with insurance product manufacturers. The purpose of NCAs sharing these relevant benchmarks with insurance product manufacturers is for the product manufacturers to take into account the benchmarks in their product testing process, in line with EIOPA's VfM Supervisory Statement, and, therefore, to determine whether their products offer value – including if costs are proportionate vis-à-vis other offers in the market.

BIPAR responded to the consultation in March 2024. In its reply, BIPAR stated being in favour of taking a broader approach than a price/ quality-oriented approach only. Besides cost and value the factor risk/ risk cover should have more attention when debating comparability. Regarding costs, every cost that has an impact on the return for the policyholder needs to be transparent.

Product Oversight and Governance (**POG**) is very important for investment products and IBIPs and **intermediaries need to be able to rely on information that is provided by manufacturers**. The market needs to be able to rely on the supervisory authorities to supervise manufacturers' POG processes. BIPAR recalled that unit-linked and

hybrid products are already subject to a robust regulatory framework that ensures consumer protection and provides national authorities with tools and powers to intervene where necessary. EIOPA has provided useful guidance in its previous Statement and Methodology.

BIPAR also pointed out that, taking into account the **RIS** process, it wonders if the **timing** is right for EIOPA to work on this concept. Decisions in RIS may later lead to, again, a different set of rules/ approach.

Links:
- EIOPA's Supervisory Statement on value for money for unit-linked and hybrid products
- EIOPA's methodology to assess value for money in the unit-linked market
- Consultation on the Methodology on value for money benchmarks

EIOPA's consumer trends report

EIOPA is mandated by its empowering Regulation to collect, analyse and report on consumer trends. For this purpose, EIOPA publishes, on an annual basis, a Consumer Trends Report. BIPAR was consulted by EIOPA on the drafting of its 2023 Report, which was published in January 2024. BIPAR also had the opportunity to discuss its input with EIOPA during a webinar.

The 2023 Report's main findings are:
- Cost-of-living crisis can lead to under-insured consumers,
- Value for money risks remain (in particular for unit-linked/ hybrid insurance products),
- Issues related to poor value of ancillary products, high commissions and aggressive sales techniques despite some improvements,
- Rise in digital distribution can enhance consumers' experience,
- Improved transparency and disclosure and Member States' financial literacy initiatives enhance pension awareness, yet many EU consumers are concerned about ability to retire comfortably,
- Gender, vulnerability, minority groups, non-dominant traits and characteristics may lead to some consumers being insufficiently served and/or fairly treated,
- Sustainability claims are not always substantiated,
- Cross-selling remains an issue in many Member States.

This year's report also included a **risk heat map** (giving a visual summary representation of the key findings from the report); a **statistical annex** (containing amongst others sections on complaints, NCA supervisory activities, the retail risk indicators methodology); and the results of the **Flash Eurobarometer** that EIOPA commissioned (questions included how the insurance policies purchased in the past 2 years were bought (via intermediary etc); whether respondents agreed with the statement that commissions and fees paid to insurance intermediaries and advisors are transparent and clear or the statement that it is difficult to get unbiased advice on the optimal coverage for your needs; or the statement that it is easier to receive tailored advice when buying insurance policies in person/via phone rather than online or still whether it is easier to gather information and compare products online rather than in person/via phone ...).

Link:
- Consumer Trends Report 2023

EIOPA's mystery shopping

At the end of June 2023, EIOPA announced its first joint mystery shopping exercise on sales of insurance in 8 Member States. The results of the exercise should still be made available in the first half of 2024.

According to EIOPA, the main objectives of mystery shopping are the understanding of consumers' experiences in practice, evaluation of how providers treat consumers in the sales process, assessment of the application of regulatory requirements and monitoring and the follow up on supervisory measures. Mystery shopping gives particular insights on consumer risks arising in the product delivery phase as part of the interaction between consumers and distributors at the point of sale.

EIOPA further explained that besides the benefits emerging from the use of mystery shopping in relation to distribution, mystery shopping could also be valuable when assessing other areas of risk associated to the way that manufacturers' structure, drive and manage their business and how products are targeted to consumers.

EIOPA's and ESMA's yearly reports on costs and performance of retail investment products

In December 2023, EIOPA and ESMA published their annual statistical reports on costs and performance of EU retail investment products (IBIPs, personal pension products, UCITS, ...). The reports follow the request from the European Commission to the ESAs back in 2017 to periodically report on the costs and past performance of retail investment products. In January 2024, BIPAR attended a joint ESMA-EIOPA event where the findings of both reports were shared.

EIOPA's report provides an analysis of the evolution of past performance from 2018 to year-end 2022 as well as costs in 2022. According to EIOPA, in the light of financial market downturns and instability, several IBIPs reported significant (potential) losses for consumers in 2022 but the mid/long-term nature of IBIPs and the capital protection features existing in some products may limit losses. The report incorporates the effect of inflation on IBIPs returns for consumers including product returns in nominal and real terms. In 2022, after positive performance in the last three years, unit-linked and hybrid products offered overall negative returns while profit participation products, given their features, provided positive returns. For IBIPs, the report refers to market coverage, performance and costs, value for money, IBIPs with sustainable factors and cross-border IBIPs.

ESMA's report looks at the markets for UCITS (the largest retail investment sector in the EU), retail Alternative Investment Funds (AIFs, the second largest market for retail investment) and structured retail products (a much smaller market than UCITS and AIFs sold to retail investors). ESMA, amongst others, comments that costs and performance of retail investment products are key determinants of the benefits for retail investors in the EU. Clear and comprehensive information on retail investment products can help investors assess the past performance and costs of products offered across the EU and foster retail investor participation in capital markets. ESMA's report helps to monitor progress in this regard by providing consistent EU-wide information on cost and performance of retail investment products. It also demonstrates the relevance of disclosure of costs to investors, as required by the MiFID II, UCITS and PRIIPs rules and the need for asset managers and investment firms to act in the best interest of investors, as laid down in MiFID II, and the UCITS and AIFM Directives.

Links:

- EIOPA's Costs and Past Performance Report December 2023
- ESMA's Market Report on Costs and Performance of EU Retail Investment Products 2023

ESMA's consultation on digitalisation of retail investment products

In December 2023, ESMA published a discussion paper regarding the digitalisation of retail investment services and related investor protection considerations. The paper focuses on 2 overarching topics, i.e., digital disclosures and digital tools and marketing. The paper addresses these two topics through a series of sub-topics each outlining the main risks and opportunities associated with different practices and lays down some recommendations for investment firms using these techniques. **The recommendations cover the following topics:**

- Layering and accessibility of information,
- Digital marketing communications and practices,
- The use of influencers,
- Social features of investment apps,
- Gamification,
- Nudging techniques,
- Dark patterns.

BIPAR together with its members prepared input to the consultation, focusing on the following points:

- BIPAR generally agrees with the points addressed by ESMA and the risks identified. However, some risks are not addressed in the paper and should be examined.
- Information overload is a big issue for customers and any additional disclosures obligations would only add to that problem.
- Additional risks exist regarding marketing communications that can lead customers to being exposed to low-cost products and/or overly risky products that do not match their risk profiles or needs.
- Digital tools cannot replace financial intermediation performed by a professional financial intermediary. Digitalisation should not lead to "disintermediation". Human intervention should always be an option for clients.

ESMA has in the meantime published all input received and has explained that the feedback will support its convergence work and prepare it for potential mandates for technical advice/ standards in these areas.

Link:

- ESMA's Discussion Paper on MiFID II investor protection topics linked to digitalisation

Why does it matter to intermediaries?

Insurance Sectoral Social Dialogue

In the framework of the EU Insurance Sectoral Social Dialogue (ISSD), BIPAR takes part in the regular meetings of the Committee composed of organisations representing employees and employers ("social partners"). BIPAR participates in these meetings on the employers' side, together with representatives from Insurance Europe and AMICE. During these meetings, participants mainly exchange good practices on different topics and where possible work towards joint declarations.

Cross-sectoral social dialogue

In January 2023, the European Commission proposed a Council's Recommendation, which sets out how EU countries can further strengthen social dialogue and collective bargaining at national level. It also presented a Communication on reinforcing and promoting social dialogue at EU level.

BIPAR participates in cross-sectoral discussions regarding social dialogue, in particular in the framework of the Review of EU Social Dialogue.

State of play

Cross-sectoral social dialogue

In 2022 and 2023, BIPAR co-signed several cross-sectoral joint letters with social partners (employers and trade union representatives) to the European Commission regarding the **review of the rules on the financing of the European Sectoral Social Dialogue Committees**.

These were a reaction to the Commission's plans which should aim to promote social partners' involvement at EU level, but which also include alternative approaches on the organisation of Sectoral Social Dialogue Committees such as the Insurance sectoral social dialogue in which BIPAR participates (with less financial and technical support).

In October 2023, BIPAR co-signed, together with the other insurance sectoral employers' associations, a **cross-sectoral employers' letter** to Commission President, Ursula von der Leyen. With the letter, employer associations involved in social dialogue at European level express their interest in the Commission's intention to organize a new Social Partner **Summit in Val Duchesse**. The joint letter stated that the **sectoral dimension** of social dialogue should be prominently brought to the forefront in this new Summit. This could further showcase not only the shared challenges but also the remarkable diversity within EU industries.

On 31 January 2024, the four EU cross-industry social partners, the European Commission and the Belgian Presidency signed the **Val Duchesse "Tripartite Declaration for a Thriving European Social Dialogue"**[1]. The Declaration stands for a renewed commitment to **strengthen social dialogue at EU level** and to join forces in addressing key challenges in our economies and labour markets. However, there is no specific reference in it to sectoral social dialogue. The aim of the declaration is to support thriving businesses, quality jobs and services as well as improved working conditions.

The text recognises that social dialogue is a fundamental component of the European social model, contributing to economic prosperity, improving living and working conditions, fostering the competitiveness of EU businesses, and helping to anticipate and manage change, for instance in the context of the green and digital transitions. The Commission will establish a dedicated European Social Dialogue Envoy to further promote and strengthen further the role of social dialogue at European and national level. A Pact for European social dialogue will also be launched: a series of bipartite and tripartite meetings to identify how to reinforce social dialogue further at EU level. This includes EU institutional and financial support and capacity building, as well as an agreed bipartite approach for the negotiation, promotion and implementation of social partners agreements. The aim is to conclude the Pact by early 2025.

On 16 April 2024, as part of the European Pillar of Social Rights, the "La Hulpe Declaration on the Future of Social Europe" was signed. This is an interinstitutional Declaration signed by the EU institutions (Commission, Parliament and Council of the EU), social partners and civil society. The aim

[1] The first Val Duchesse meeting, which saw the birth of European social dialogue, was organised by former Commission President Jacques Delors in 1985

of the Declaration is to prepare the future social agenda of the 2024-2029 period and to reconfirm the European Pillar of Social Rights as the EU social policy compass for years to come.

The Declaration contains a heading on "Upholding Social Dialogue as a Pillar of Democracy". In line with the Val Duchesse Declaration, signatories reaffirm the **indispensable nature of effective social dialogue at EU level,** as a fundamental component of the European social model and of European democracy. It improves working conditions and contributes towards the shared goal of making the EU the best place to live, work and do business in. Signatories stress that social dialogue and collective bargaining remain key tools in shaping the ongoing transitions. They call for a reinforcement of European cross-industry and **sectorial social dialogue,** continued support for the social partners and their agreements, and for the involvement of social partners in EU policymaking, including in the implementation of the green transition. From the employers' side, the Declaration was signed by SME-United, but not by Business-Europe.

Links

- Council's Recommendation
- Commission's Communication
- Val Duchesse "Tripartite Declaration for a Thriving European Social Dialogue"
- La Hulpe Declaration on the Future of Social Europe

Taxation

Why does it matter to intermediaries?

EU taxation policy mostly focuses on establishing a minimum degree of harmonisation of tax rules in order to fight against harmful tax competition and fight tax fraud, while endeavouring to remove tax obstacles for cross-border economic activities. It affects insurance intermediaries in various ways.

With regard to the Value-Added Tax (VAT) policy, although financial services are currently exempted from it, there have been talks, from the Commission, on the possibility of (partly) introducing VAT in the financial sector.

State of play

DAC8

In 2022, the European Commission adopted its proposal for a Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC8). The DAC8 proposal aimed at tackling certain insufficiencies and loopholes of the DAC.

The focus of the DAC8 proposal was to include crypto-assets and e-money within the scope of the framework. The Commission emphasized the problems currently faced by tax authorities that lack the necessary information to monitor proceeds obtained by using crypto assets. These supervisory issues can lead to tax fraud, tax evasion and tax avoidance. The DAC8 proposal's objective was to bring the framework on administrative cooperation in the field of taxation up to date.

As the proposal is related to taxation matters, the special legislative procedure applied. Therefore, **the proposal needed to be adopted unanimously by the Council, after consulting the EP and the European Economic and Social Council (ECOSOC).**

In May 2023, the Council reached a provisional agreement on the DAC8. The EP adopted its (consultative power only) decision in Plenary in September 2023. The **agreement was formally adopted on 17 October 2023 and was published in the Official Journal on 24 October 2023.**

Brief overview of the main features of the DAC8 as adopted by the Council:
The text adopted by the Council is relatively close to the initial Commission's proposal. Its main features include the following:

- ***Inclusion of crypto-assets within the scope of the Directive:*** building on the definitions introduced by the MiCA, the scope is extended to include crypto-assets, e-money and central banks' digital currencies. Regarding crypto-assets, the DAC8 applies both to crypto-to-crypto transactions and to crypto-to-fiat transactions. It also includes crypto-assets issued in a decentralized manner and stablecoins, including e-money tokens and some Non-fungible Tokens (NFTs).
- ***Reporting requirements for crypto-asset service providers (CASPs):*** the Directive requires CASPs, whatever their size and location, to report domestic and cross-border transactions of clients residing in the EU.
- ***Extension of the current rules regarding exchange of tax-relevant information:*** the DAC8 requires automatic exchanges of information regarding advance cross-border rulings concerning high-net-worth individuals.
- ***Strengthening of the rules regarding the reporting and communication of the Tax Identification Number (TIN):*** the DAC8 aims to make it easier for tax authorities to identify relevant taxpayers and to correctly assess the related taxes.

The Council did not include, in its final text, the Commission's proposal for common minimum penalties for the most serious non-compliant behaviours (such as complete absence of reporting).

BIPAR's position / key messages

BIPAR's key points on the topic of taxation are as follows:

- measures should always be proportionate and follow a risk-based approach,
- tax rules are already complex, they need simplifying, not added burden,
- intermediaries are already highly regulated and supervised and should not be subjected to additional requirements unless absolutely necessary.

Regarding the issue of VAT:

- it would be preferable to maintain the VAT exemption for financial and insurance services,
- any changes to the VAT treatment of financial and insurance services should always consider other applicable taxes (e.g. insurance premium tax, government tax incentives, etc.) to avoid double taxation,
- only an activity-based approach can ensure legal certainty and a "tax" level playing field among operators.

Next steps

The DAC8 rules will start applying on 1st January 2026.

Links

- Council's provisional agreement on the DAC8
- Parliament's decision on the DAC8
- Council's Directive published in the OJ

Reporting simplification

Why does it matter to intermediaries?

BIPAR has been calling for, and has been supportive of, actions to rationalise and simplify reporting requirements for companies, particularly SMEs, and to have a predictable regulatory environment.

State of play

In October 2023, the European Commission adopted, together with its 2024 Work Programme, a set of "simplification proposals". Indeed, the Commission's President, Ursula von der Leyen, had made a commitment to reduce reporting requirements by 25%, in line with the Commission's strategy to boost the EU's long-term competitiveness and to provide relief for SMEs. Examples of the new simplification proposals include the postponing of deadlines for sector-specific standards set out in the Corporate Sustainability Reporting Directive, as well as a proposal to facilitate data-sharing between financial sector authorities and reduce redundant reporting.

The European Commission's Horizontal Call for evidence

In October 2023, the European Commission also launched a horizontal (not limited to financial services) call for evidence to reduce the burden in reporting requirements. It stated that the streamlining of reporting requirements is a long-term effort and that establishing a baseline of reporting requirements will be complex given the breadth of EU legislation and its interaction with national and regional laws, but it will be crucial to measuring progress.

With the call for evidence, it wanted to gather feedback on burdensome reporting requirements, with the aim to rationalise them by removing redundant, duplicating, or obsolete obligations, inefficient frequency or timing, inadequate methods of collection accumulated over the years, without undermining the policy objectives or standards of conduct and protection.

The Commission's progress report on the strategy on supervisory data in EU financial services

In December 2021, the Commission adopted a strategy on supervisory data in EU financial services. Its main objective was to put in place a system that delivers accurate, consistent, and timely data to supervisory authorities at EU and national level, while minimising the overall reporting burden on financial institutions.

On 28 February 2024, the European Commission published a report on the implementation of its strategy on supervisory data in EU financial services.

The report shows that, among other achievements, the Commission has proposed targeted improvements in sectoral reporting frameworks, such as the reviews of the insurance and investment funds legislation. It has also proposed mandates to the relevant ESAs on further integration of reporting in their sectors and data standardisation across them. The report also shows that progress is ongoing in data sharing, the design and governance of reporting requirements, and the application of new technologies.

These achievements contribute as well to the Commission's wider aims to reduce administrative burden and rationalise reporting requirements, as well as to develop a regulatory framework that is more suited to competitiveness and growth.

Work should continue, starting with the finalisation of pending legislative proposals.

BIPAR's position / key messages

BIPAR together with its members prepared input to the call for evidence.

- BIPAR welcomed the Commission's announced measures and actions aimed at improving the competitive position of EU businesses in global markets and its push to rationalise and simplify reporting requirements for companies, particularly SMEs, reducing such burdens by 25%.
- BIPAR supported the Commission's statement on the need for a predictable regulatory environment, referring to the Retail Investment Strategy proposals, where IDD and MiFID II are still very recent pieces of legislation, and the market (and the supervisors) hardly had the time to make the IDD and MiFID II rules work (in particular at POG level).
- BIPAR called upon regulators to avoid duplication of reporting requirements between manufacturers of financial products and distributors/intermediaries.
- BIPAR also stated that any simplification should however not be translated into a reduction in relevant information and reporting relating to ESG factors. It welcomes any form of simplification but maintaining the interest for insurers and intermediaries in having relevant, accurate and comparable quality information.
- Finally, BIPAR supported the "one in, one out" principle endorsed by the Commission, but it should be recognized that every change in legislation (and thus compliance procedures) has a cost for the firms in the industry (in particular for micro and SME firms).

BIPAR provided concrete examples of the RIS, AML and shared national examples received from its members.

Next steps

Regarding the call for evidence on reporting, based on the results of the 'call for evidence', other consultation activities, and data collected through preparatory work, the Commission will prepare concrete rationalisation plans (for 2024 and thereafter).

It will also work towards a full repository of reporting requirements with a view to monitoring their relevance and performance, and with the aim to reduce their burden by 25%. The 2023 Annual Burden Survey (to be published around September 2024) will transparently present the results of the consultation activities and other activities, particularly in priority areas identified by stakeholders.

Links

- Commission's 2024 Work Programme
- Proposal for a Regulation as regards certain reporting requirements in the fields of financial services and investment support
- Commission's strategy to boost the EU's long-term competitiveness
- Commission's strategy to provide relief for SMEs
- Corporate Sustainability Reporting Directive
- Proposal to facilitate data-sharing between financial sector authorities and reduce redundant reporting
- Commission's call for evidence - Rationalisation of reporting requirements
- Commission's progress report on the strategy on supervisory data in EU financial services

2024: Election of a new European Parliament - New European Commission

The next elections to the European Parliament will be held on 6-9 June 2024. The citizens of the European Union will elect the European Parliament for the tenth time. Elections to the European Parliament take place every five years.

The new European Parliament will have 720 members, 15 more compared to the previous elections.

After the elections, the elected MEPs will work to form political groups. At its first plenary session where all MEPs meet (16-19 July 2024), the new Parliament will elect a President. In a subsequent session, Parliament will elect the new President of the European Commission and later will examine and approve the entire College of Commissioners. The new European Commission is then appointed by the European Council.

Over summer 2024, the different Parliamentary Committees (such as the Economic and Monetary Affairs Committee (ECON), or the Internal Market and Consumer Protection Committee (IMCO) will also be newly constituted and new chairpersons elected. It is possible that the committees that currently exist are reshaped / renamed in this process.

Unfinished business: what happens to legislation that has not been completed by the end of a parliamentary term?

All votes taken by Parliament in plenary before the elections, whether at first or second reading, remain legally valid for the next Parliament. This means that after the elections the new Parliament will pick up the files where the previous Parliament left off and will continue with the next stage of the decision-making procedure (for example, this will be the case with the RIS proposals). However, for legislative business that does not reach the plenary before the elections, there is no legally valid Parliamentary position (for example this is the case with the ECON report on FIDA) and Parliament's internal rules of procedure stipulate that in these cases the work done on them (in committee) during the previous parliamentary term lapses.

Nonetheless, at the beginning of the new parliamentary term, the new Parliament's Conference of Presidents, consisting of the EP President and the political group leaders, shall take a decision on reasoned requests from parliamentary committees and other institutions to resume or continue the consideration of such unfinished business (rule 240 of the EP's rules of procedure).

The **Framework Agreement between the European Parliament and European Commission** states that the incoming authority, the European Commission, reviews the proposals which have been put to the legislators by its predecessor, but not yet adopted. It then decides whether or not to pursue work in these areas. In its 2020 Work Programme, the then new Commission examined the proposals that were still on the table from the previous mandate to assess whether to maintain, amend or withdraw them and it proposed to withdraw 32 proposals.

Practical examples for the next mandate

For the Retail Investment Strategy, the European Parliament Plenary accepted the mandate to enter into trilogue negotiations on the basis of the adopted ECON texts. Once the Council also agrees on its position, this means that trilogue discussions can start. For FIDA however, no plenary vote took place on the ECON report, so here all will depend on what the next Parliament wants to do with the file (build on the previous Parliament's ECON report or start all over).

BIPAR action

In preparation of the election of a new European Parliament, BIPAR encouraged its member associations to organise interviews with their current national MEPs and candidate MEPs in their national sector magazines on a number of topics that affect insurance and financial intermediaries.

Links

- Commission's 2020 Work Programme
- Timeline to new EU institutional leadership of the European Parliament

Next EU Presidencies

The Presidency of the Council rotates among the EU Member States every 6 months. During this 6-month period, the Presidency is responsible for driving forward the Council's work on EU legislation, ensuring the continuity of the EU agenda, orderly legislative processes and cooperation among Member States. It chairs meetings of the different Council configurations (with the exception of the Foreign Affairs Council) and the Council's preparatory bodies, which include permanent committees such as the Permanent Representatives Committee (Coreper) and working parties and committees dealing with very specific subjects.

The Presidency ensures that discussions are conducted properly and that the Council's rules of procedure and working methods are correctly applied. It also organises various formal and informal meetings in Brussels and in the country of the rotating Presidency.

Member States holding the Presidency work together closely in groups of three, called "trios". This system was introduced by the Lisbon Treaty in 2009. The trio sets long-term goals and prepares a common agenda determining the topics and major issues that will be addressed by the Council over an 18-month period. Based on this programme, each of the three countries prepares its own more detailed 6-month programme.

Belgium is now holding the Presidency of the Council of the EU. The current trio is made up of the Presidencies of Spain (June-December 2023), Belgium (January-June 2024) and Hungary (June-December 2024).

Future Presidencies up to 2030:

- **Poland (January-June 2025)**
- Denmark (July-December 2025)
- Cyprus (January-June 2026)
- Ireland (July-December 2026)
- Lithuania (January-June 2027)
- Greece (July-December 2027)
- Italy (January-June 2028)
- Latvia (July-December 2028)
- Luxembourg (January-June 2029)
- Netherlands (July-December 2029)
- Slovakia (January-June 2030)
- Malta (July-December 2030)

Glossary

AI	Artificial Intelligence
AIFMD	Alternative Investment Fund Managers Directive
AML/CFT	Anti-Money Laundering/ Countering the Financing of Terrorism
AMLA	European Anti-Money Laundering Authority
CCD	Consumer Credit Directive
CDD	Customer Due Diligence
CMU	Capital Markets Union
COREPER	Council's Committee of Permanent Representatives
CSDDD	Corporate Sustainability Due Diligence Directive
CSRD	Corporate Sustainability Reporting Directive
DG FISMA	European Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union
DMFSD	Distance Marketing of Financial Services Directive
DORA	Digital Operational Resilience Act
DSA / DMA	Digital Services Act / Digital Markets Act
EBA	European Banking Authority
ECON committee	European Parliament's Committee on Economic and Monetary Affairs
eIDAS	electronic Identification, Authentication and Trust Services
EIOPA	European Insurance and Occupational Pensions Authority
ELD	Environmental Liability Directive
ESAs	European Supervisory Authorities
ESAP	European Single Access Point
ESG	Environmental, Social and Governance
ESIS	European Standardised Information Sheet
ESMA	European Securities and Markets Authority
FIDA	Financial Data Access
FOS / FOE	Freedom of Services / Freedom of Establishment
GDPR	General Data Protection Regulation
IBIPs	Insurance-based investment products
ICT	Information and Communication Technology
IDD	Insurance Distribution Directive
IGS	Insurance Guarantee Schemes
IMCO committee	European Parliament's Committee on the Internal Market and Consumer Protection
IORP	Institutions for Occupational Retirement Provision Directive
IPID	Insurance Product Information Document
IRRD	Insurance Recovery and Resolution Directive
ISSD	Insurance Sectoral Social Dialogue
KID / KIID	Key Information Document / Key Investor Information Document
LIBE committee	European Parliament's Committee on Civil Liberties, Justice and Home Affairs
MCD	Mortgage Credit Directive

Glossary

MiCA	Markets in Crypto-Assets
MiFID II	Markets in Financial Instruments Directive
NCAs	National Competent Authorities
NFRD	Non-Financial Reporting Directive
OECD	Organisation for Economic Co-operation and Development
PEPP	Pan-European Personal Pension Products
POG	Product Oversight and Governance
PRIIPs	Regulation on the Key Information Documents for packaged retail and insurance-based investment products
PSD	Payment Services Directive
RIS	Retail Investment Strategy
RTS	Regulatory Technical Standards
SFDR	Sustainable Finance Disclosures Regulation
SMEs	Small and medium-size enterprises
UCITS	Undertaking for Collective Investments in Transferable Securities

Directive	*"A Directive is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals."* (european-union.europa.eu)
Regulation	*"A Regulation is a binding legislative act. It must be applied in its entirety across the EU."* (european-union.europa.eu)
Green Paper	*"Green papers are documents published by the European Commission to stimulate discussion on given topics at EU level. They invite the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward. Green papers may give rise to legislative developments that are then outlined in white papers."* (eur-lex.europa.eu)
Trilogue	Step in the legislative process during which the three EU institutions (Commission, Parliament, Council) work on a compromise text which reflects most of their common views

BIPAR 47 member associations in 31 countries

BIPAR's member associations

For contact details, please visit www.bipar.eu

BIPAR's Governing Board (June 2023-June 2024)

Juan Ramón Plá
Secretary General

Dominique Sizes
Vice-Chair

Christoph Berghammer
Treasurer

Nicolas Bohême
Chair

Yorck Hillegaart
Vice-Chair

BIPAR activities are governed by its Governing Board, a Management Committee and a Steering Committee.

The **Management Committee** is composed of the members of the Governing Board and of the following 3 members:

Paul Carty
Chair of the
EU Committee

Jean-François Mossino
Chair of the
Agents' Committee

Onno Paymans
Chair of the
International Affairs Committee

The **Steering Committee** is composed of the members of the Governing Board, the Management Committee and of the following members:

Gerald Archangeli

Gunnar Hökmark

Steve Sartor

Roger Van Der Linden
(Chair of the Brokers' Committee)

David Wahli

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2023-2024 Annual Report

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