



Briefing Note for BIPAR National Member Associations

IDD Delegated Regulations

Insurance-Based Investment Products (IBIPs)

Conflicts of Interests/Inducements/Assessment of Suitability and Appropriateness and Reporting to Customers

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Editorial

The Directive (EU) 2016/97 of 20 January 2016 on insurance distribution (IDD) authorises the European Commission to adopt certain delegated regulations to define more precisely various regulatory requirements of the IDD. Such authorisations apply – generally with respect to all insurance products concerned except for those concerning large risks – to the topic product oversight and governance requirements (Art. 25 IDD) and – solely with respect to insurance-based investment products – to the topics management of conflicts of interest (Art. 27 and Art. 28 IDD), inducements (Art. 29 IDD) and assessment of suitability and appropriateness and reporting to customers (Art. 30 IDD).

The EU Parliament and the Council expressed no objections, and the delegated regulations were published in the Official Journal of the European Union on 20 December 2017 (L 341/1, L 341/8).

The IDD and the delegated regulations were originally intended to apply from 23 February 2018, but on 20 December 2017 the European Commission proposed pushing back the application date of the IDD by seven months to 1 October 2018.

As a reason for its proposal, the European Commission cited the need to allow more time for insurance companies and insurance distributors to better prepare for the proper and effective implementation of the Directive and to implement the technical and organisational changes necessary to comply with the delegated regulations.

This proposal was adopted by the European Parliament and the Council on 14 March 2018, with retroactive effect as of the initial application date of the IDD and published on 19 March 2018 (L 76/28). Member States are now required to adopt and publish the necessary laws, regulations and administrative provisions implementing the IDD by 1 July 2018 and to apply them by 1 October 2018 at the latest.

In order to align the application of the delegated regulations to the new application date of the IDD, a separate act was published on 6 April 2018 (L 90/59). According to this act, the delegated regulations concerning product oversight and governance (**POG**) and insurance-based investment products (**IBIPs**) will apply directly to the area of insurance distribution and therefore to insurance intermediaries (**intermediaries**) as of 1 October 2018 without any need for national implementing laws.

Based on the delegated regulation concerning IBIPs, CMS has produced this briefing note for and in cooperation with BIPAR. The note is addressed to the member associations of BIPAR and is intended to provide an overview and orientation on how the business organisation of intermediaries might need to be adapted with regard to the new rules.

This briefing note deals with the general IBIPs regulation requirements applicable to insurance undertakings (**insurers**) and intermediaries. Please note that the briefing note is not exhaustive and is provided solely for general information purposes. It should not be relied upon as legal advice. Professional advice should always be obtained before applying the information to particular circumstances.



Introduction

Background

IDD directive, national implementing laws and EU delegated regulations

The IDD is based on the so-called Lamfalussy Process. At Level I of this process, the EU Parliament and the Council of the EU have adopted the IDD as a framework directive updating the Insurance Mediation Directive (IMD) dating from the year 2002. The Member States are required to adopt and publish the necessary laws, regulations and administrative provisions implementing the IDD by 1 July 2018 and to apply them by 1 October 2018 at the latest. In this regard, the IDD does not apply directly. Actually, the national implementing laws are decisive. With regard to the national implementations, however, it should be noted that the aim of the IDD is to achieve minimum harmonisation. This means that its rules set a standard that national legislation must meet. However, national law may exceed the terms of the IDD in order to protect customers, provided that such provisions are consistent with EU law, including the IDD. The IDD thus defines a minimum standard and generally does not prevent the national lawmakers from maintaining or introducing more stringent rules for their countries (see Recital 3 IDD).

In contrast to this, on Level II the EU delegated regulations with regard to the IDD – and thus the IBIPs Regulation as subject matter of this briefing note – will apply directly without any need for national implementing laws.

In addition to Level I and Level II, on Level III there may be guidelines and recommendations to be issued by EIOPA.

National implementing laws are of particular relevance | The Lamfalussy Process leads to a complex and generally somewhat confusing situation where rules on national and EU level have to complete each other and apply simultaneously. Moreover, due to the concept of minimum harmonisation, differences between the IDD rules and the respective national implementing laws are likely to exist. Therefore, besides the directly applicable delegated regulations on Level II, intermediaries must in any case take a close look, in particular, at the national

implementing laws of their respective home country concerning the IDD rules on Level I. In the event of activities in other countries, the implementing laws of the country of activity should also be checked with regard to deviating provisions to be observed, as the case may be.

Delegated IBIPs Regulation

The IDD provides, in addition to the standards established for all insurance products, a set of specific requirements applying to the distribution of insurance-based investment products (“**IBIPs**”) in particular. Therefore, within the IDD a special regime has to be followed with regard to IBIPs. This situation results from the intention of the European lawmakers to provide a more or less aligned legal framework for the distribution of investment products, irrespective of whether investment or insurance law applies to their distribution. For investment products in terms of investment law, the Markets in Financial Instruments rules are relevant (i.e. MIFID II 2014/65/EU; MIFIR No 600/2014). The European lawmakers, however, explicitly recognised the specificity of IBIPs and made them subject to the IDD.

In addition to this, the Commission Delegated Regulation (EU) supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products (**IBIPs Regulation**) introduces generalised and directly applicable requirements into EU insurance distribution law concerning the management of conflicts of interest, inducements and the assessment of suitability and appropriateness and reporting to customers with regard to IBIPs (**IBIPs rules**).



Scope of application

As of what date do IBIPs rules apply?

The IBIPs Regulation will generally apply as of 1 October 2018. From this time on, the IBIPs Regulation will then be relevant for insurance distribution in relation to the sale of IBIPs (see Art. 1 IBIPs Regulation).

IBIPs already sold? | One could initially argue that the IBIPs rules will apply only with regard to contracts concerning IBIPs concluded after 1 October 2018. However, the expectation that the IBIPs rules will need to be followed not only for newly concluded contracts, but also for all distribution activities conducted with regard to IBIPs before 1 October 2018 and thus also with regard to existing contracts is more convincing.

Relevant products

The IBIPs rules apply to the distribution of IBIPs only (Art. 1 IBIPs Regulation). Therefore, only investment products based on life insurance contracts are concerned.

Definition of IBIPs | According to the definition of the IDD (see Art. 2 (1) (17) IDD), the term IBIPs designates insurance products which offer a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations. IBIPs do not include:

- (a) non-life insurance products as listed in Annex I to the Solvency II Directive 2009/138/EC (classes of non-life insurance);
- (b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;
- (c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;
- (d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC;
- (e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.

Persons addressed

The IBIPs rules apply to insurance undertakings (**insurers**) and all kinds of insurance intermediaries (**intermediaries**) distributing IBIPs (see Art. 1 IBIPs Regulation).

Exemptions? | According to Art. 22 (2) IDD, the Member States may provide exemptions for professional clients as defined in Article 4 (1) (10) of Directive 2014/65/EU on markets in financial instruments (MIFID) with regard to certain information requirements concerning IBIPs.

Ancillary intermediaries not allowed to sell IBIPs | Since the definition for ancillary intermediaries does not include the distribution of life insurance products (see Art. 2 (1) (4) IDD), the IBIPs rules are not relevant to ancillary intermediaries. Such intermediaries are not allowed to sell IBIPs.

To what extent is the principle of proportionality relevant for the IBIPs rules?

The IDD already sets out that its rules should not be too burdensome for small and medium-sized insurance distributors and that one of the means by which to achieve this objective is the proper application of the principle of proportionality (see Recital 72 of the IDD).

Principle of proportionality | The IDD refers with regard to the principle of proportionality to Article 5 of the Treaty of the European Union setting out that the content and form of EU actions may not exceed what is necessary to achieve the objectives of the EU treaties. In line with this – as is the case with regard to other EU directives – the principle of proportionality is not only relevant with regard to the degree of the legal provisions imposed by the EU and the respective national lawmakers on intermediaries and insurers and with regard to the IDD, but also to the question of what degree of the requested IDD measures can be demanded in the particular case from intermediaries and insurers, considering the specific distribution activity conducted.

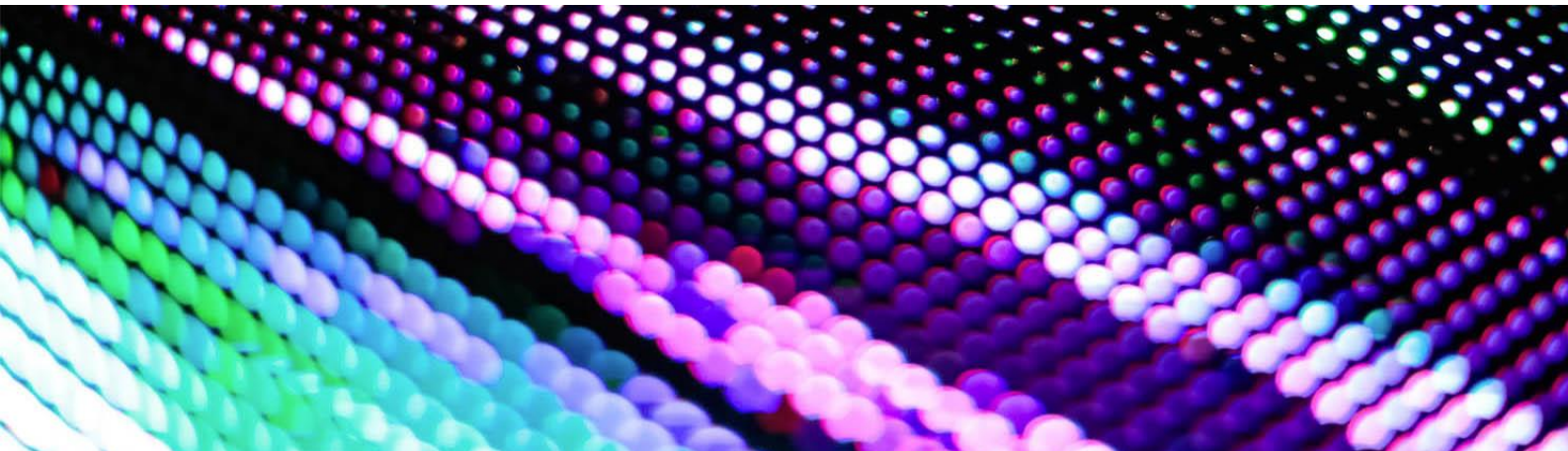


Notably, the IBIPs rules under the IDD are extensive, and significant effort is required to follow them. With regard to the principle of proportionality, the Commission has therefore clearly expressed in the IBIPs Regulation, particularly with regard to the measures concerning conflicts of interests, that the organisational measures and procedures to manage them should be carefully adapted to the size and activities of the intermediary or insurer and of the group to which they may belong and also to the risk of damage to the customer's interests. The Commission has emphasised that the proposed measures should be understood as a non-exhaustive list of possible measures and procedures. These measures and procedures might not be of relevance to or appropriate for all intermediaries (in particular, for small intermediaries with a limited scope of business) (see expressly with regard to conflicts of interest Recital 4 IBIPs Regulation). In line with this Art. 5 (1) IBIPs Regulation, for example, requires the standard measures to manage conflicts of interest described in more detail by the rule only where the measures are appropriate. Where this is not the case, intermediaries or insurers should thus be able to adopt alternative measures and procedures that are more suitable to ensure, in their particular situation, that the distribution activities are carried out in accordance with the customer's best interests (see Recital 4 IBIPs Regulation).

The other measures of the IBIPs Regulation concerning inducements, suitability and appropriateness also apply in consideration of the principle of proportionality.

Minimum harmonisation

In line with the harmonisation concept pursued, it is emphasised in the IBIPs Regulation that the IDD is aimed at minimum harmonisation and therefore does not preclude the Member States from maintaining or introducing more stringent provisions in order to protect customers, provided that such provisions are consistent with EU law (see Recital 14 IBIPs Regulation). The rules of the IBIPs Regulation are also designed in such a way that they allow the national lawmakers to maintain stricter provisions in their national laws (see Recital 14 IBIPs Regulation). As already described above, besides the directly applicable rules of the IBIPs Regulation, intermediaries should in any case take a close look and must observe the national implementing laws of their respective home country in particular (for further details, please see above).



Conflicts of Interest

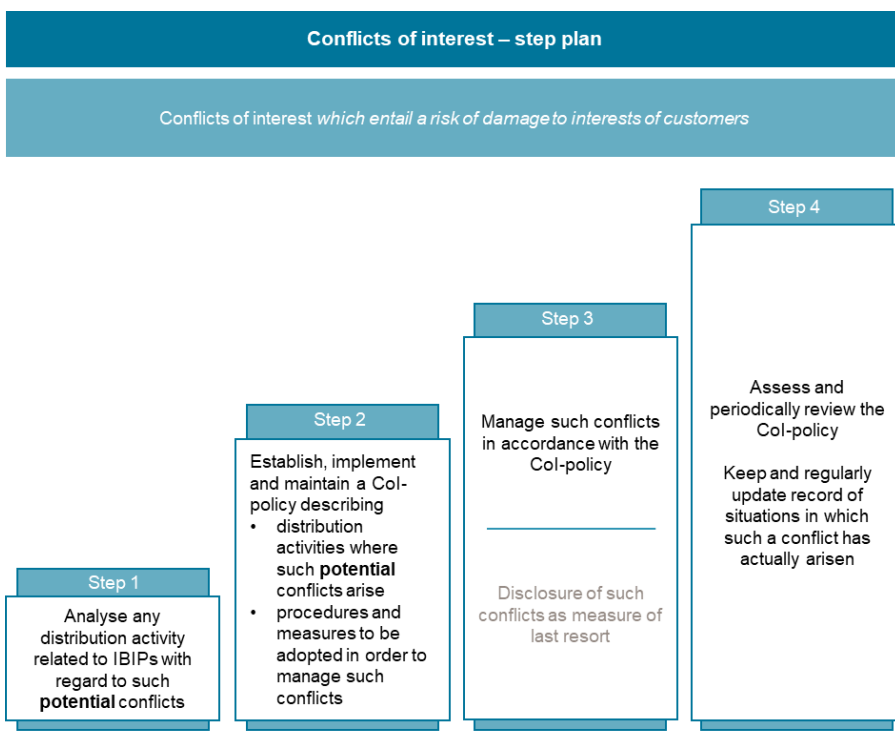
General considerations

The IDD already deals with conflicts of interest at various points. The directive assumes in general that the expanding range of different activities of many intermediaries and insurers has increased the potential for conflicts of interest between those different activities and the interests of the customers (see Recital 39 IDD).

In particular, the IDD sets out explicitly the basic rules for IBIPs that insurance distributors should put in place appropriate and proportionate but effective arrangements in order to identify and prevent conflicts of interest

from adversely affecting the interests of their customers (Art. 27, 28 IDD).

Based on the IDD rules, the IBIPs Regulation further defines the steps that intermediaries and insurers are expected to take to identify, prevent, manage and disclose conflicts of interest and to determine the types of conflicts of interest whose existence might damage the interests of (potential) customers (see Art. 3 to Art. 7 IBIPs Regulation).





Identification of conflicts of interest - step 1

The IBIPs rules concerning conflicts of interest require insurers and intermediaries to assess their business in order to identify potential conflicts of interests that arise in the course of carrying out insurance distribution activities related to IBIPs **and that entail a risk of damage to the interests of a customer** (see Art. 3 (1) IBIPs Regulation).

The purpose of the assessment is to identify conflicts adversely affecting the interests of customers with regard to the outcome of the insurance distribution:

- either existing between the interests of the intermediary or insurer and the interests of the customer;
- or existing between the interests of one customer and the interests of another customer.

In any case only such conflicts of interests are relevant within the assessment that have the potential to influence the outcome of the service provision to the detriment of a customer (see Art. 3 (1) IBIPs Regulation)

Relevant conflicts of interests | For the identification of relevant conflicts of interest, it is not sufficient that divergent interests somehow related to distribution activities of IBIPs exist. Relevant conflicts of interest within the identification are actually only such conflicts that have the potential:

- to influence the outcome of distribution activities
- **to the detriment of a customer.**

Where these preconditions are not fulfilled, no relevant conflicts of interests are likely to exist from the outset. Nevertheless, intermediaries should check whether the national laws contain deviating provisions or whether regulators and courts will take a different opinion.

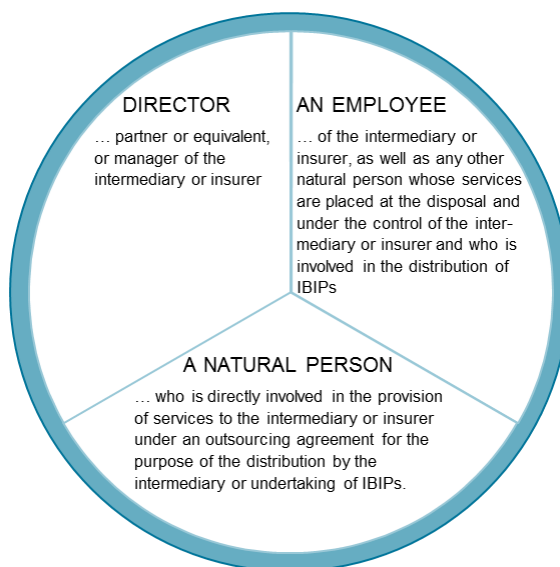
Whose interests are relevant?

On the one hand, intermediaries or insurers have to consider the interests of:

- the intermediaries or insurers themselves;
- specifically defined relevant persons; and
- any other person directly or indirectly linked by control to the intermediary/insurer themselves and/or relevant persons.

Definition of relevant persons | For the purposes of the rules on conflicts of interest and their different measures, IBIPs Regulation includes a definition of the term relevant persons with the following content (see Art. 2 (1) IBIPs Regulation).

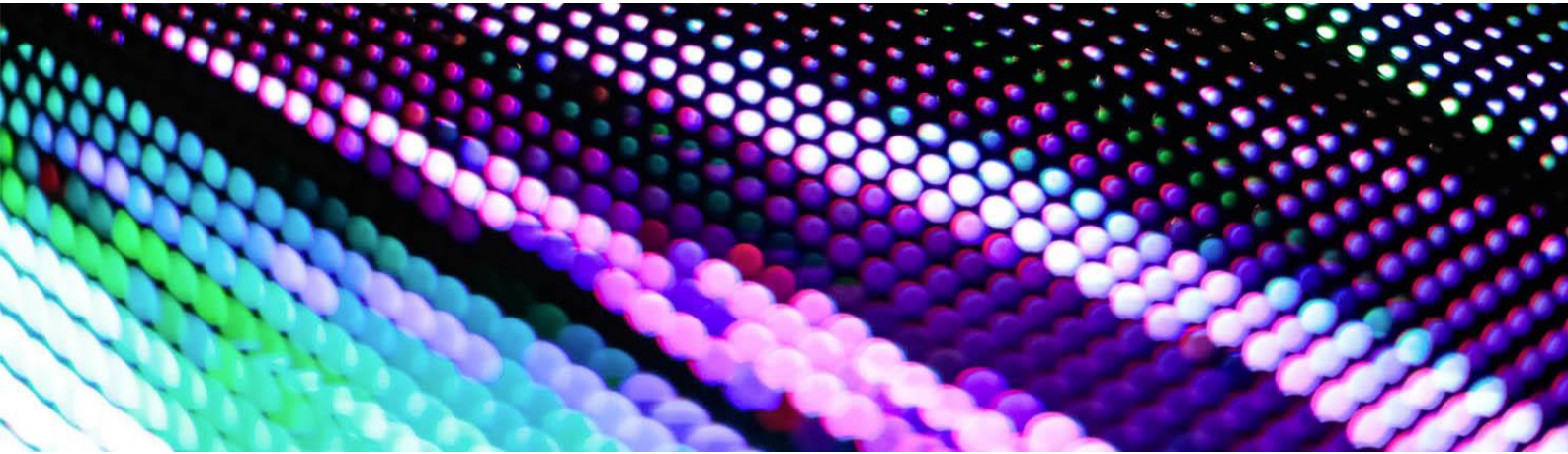
Relevant persons of an intermediary or insurer are:



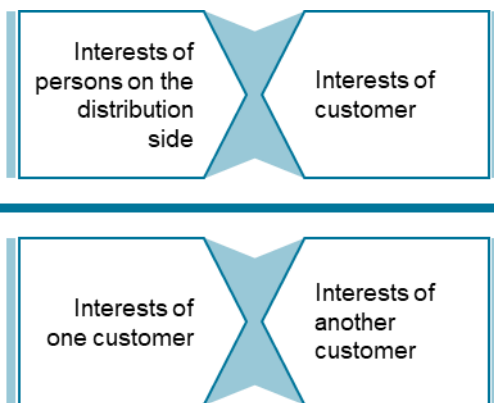
Person directly or indirectly linked | Even though not expressly defined, it should be assumed that the requirement of a directly or indirectly linked person by control refers to groups or affiliated companies on which a dominant influence can be exercised directly or indirectly: for example, through the majority of shares, voting rights or a controlling agreement.

Together with the intermediary or insurer itself, the persons directly or indirectly linked to the intermediary by control are hereinafter referred to as **persons on the distribution side**.

On the other hand, the intermediaries or insurers have to consider customers' interests.



Relevant interests | Relevant conflicts of interest with regard to the outcome of the insurance distribution activities may exist not only with respect to the interests of a person on the distribution side and the interests of a customer. Actually, conflicts of interest existing between the interests of one customer and another customer should also be identified (see Art. 3 (1) IBIPs Regulation).



Conflicts of interest policy (Col Policy) – step 2

According to the IBIPs rules, intermediaries and insurers must establish, implement and maintain a written conflicts of interest policy with regard to their IBIPs business (**Col policy**) (see Art. 4 (1) IBIPs Regulation).

The required written Col policy must contain the following content (see Art. 4 (2) IBIPs Regulation):

- description of circumstances which constitute or may give rise to conflicts of interest entailing a risk of damage to the interests of one or more customers under particular consideration of the specific insurance distribution activities carried out;
- description of the procedures to be followed and measures to be adopted in order to manage such conflicts of interest and prevent them from damaging the interests of the customer.

What situations have to be examined?

The IBIPs rules expressly require with regard to the identification of conflicts of interest that the assessment should consider the following situations/answers to the following questions (see Art. 3 (2) IBIPs Regulation):

- Is it likely for any persons on the distribution side to make a financial gain or avoid financial loss to the potential detriment of the customer?
- Does any person on the distribution side have a financial or other incentive to favour the interest of another customer or group of customers over the interest of the customer?
- Is any person on the distribution side substantially involved in the management or development of IBIPs and, in particular, does that person have an influence on the pricing of those products or their distribution costs?

Minimum criterion | Under the IBIPs Regulation, it is considered a minimum criterion to take the above-mentioned three situations into account. The described situations are thus not conclusive.



Col policy and principle of proportionality | The Col policy should be seen as a measure within the general business organisation of IBIPs distributors. As such, establishing a Col policy basically means setting up a written internal business guideline or business instruction with regard to potential conflicts of interest adversely affecting the interests of customers in connection with the distributed products. Based on such a guideline/instruction, the distributors' business organisation with regard to conflicts of interest must be structured by giving directions to the relevant departments and staff.

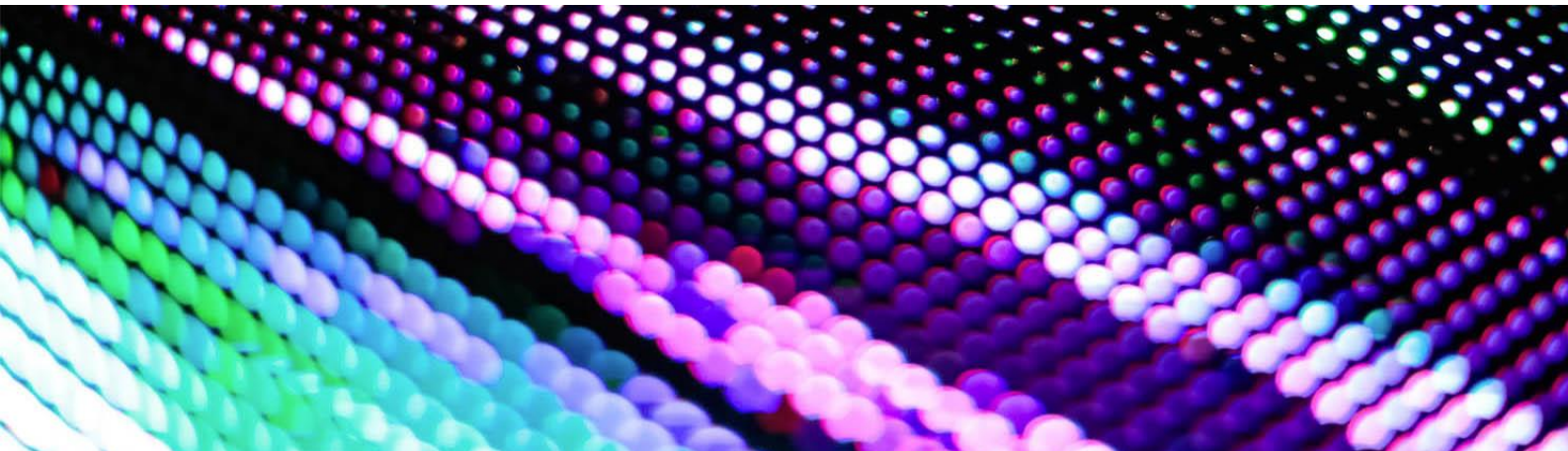
With regard to the principle of proportionality, the Col policy to be maintained by an intermediary must be appropriate to its size and organisation and the nature, scale and complexity of its business (see Art. 4 (1) IBIPs Regulation).

Where the intermediary is a member of a group, the Col policy must also take into account any circumstances of which the intermediary is or should be aware which may give rise to conflicts of interest arising as a result of the structure and business activities of other members of the group (see Art. 4 (1) IBIPs Regulation).

Furthermore, the procedures to be followed and measures to be adopted in order to manage conflicts of interest and prevent them from damaging the interests of the customer must be appropriate to the size and activities of the intermediary and of the group to which they may belong, and to the risk of damage to the interests of the customer (Art. 5 (1) IBIPs Regulation).

According to this, it seems reasonable to assume that the Col policy and the measures to be adopted according to it in order to manage conflicts of interest:

- can be simpler and more straightforward for small and medium-sized intermediaries with business with a smaller scale and complexity;
- needs to be more exact for larger intermediaries with complex distribution structures.



Management of conflicts of interest — procedures and measures under the Col policy – step 3

The Col policy required by the IBIPs rules **must include, where appropriate**, the following with regard to the descriptions of the procedures and the measures for the management of conflicts of interest (see Art. 5 (1) IBIPs Regulation):

Procedures and measures of Conflicts of Interest Policy — Management of Conflicts of Interest —	
<ul style="list-style-type: none"> procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more customers 	<ul style="list-style-type: none"> measures to prevent or limit any person from exercising inappropriate influence over the way in which insurance distribution activities are carried out by persons on the distributor side
<ul style="list-style-type: none"> procedures to separately supervise the relevant persons whose principal functions involve carrying out activities on behalf of, or providing services, to customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the intermediary or insurer 	<ul style="list-style-type: none"> measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate insurance distribution activities where such involvement may impair the proper management of conflicts of interest
<ul style="list-style-type: none"> measures to remove any direct link between payments, including remuneration, to relevant persons engaged in one activity and payments, including remuneration, to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities 	<ul style="list-style-type: none"> procedures with regard to gifts and benefits which determine clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits

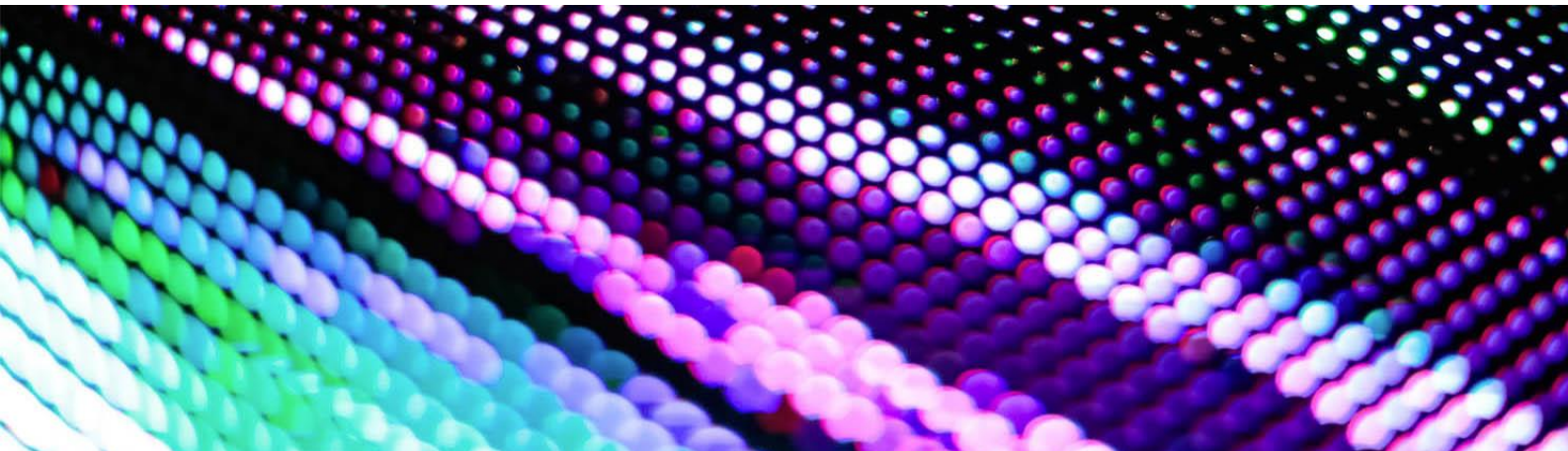
Appropriateness of standard procedures and measures and adequate alternatives | The bulleted list above contains standard procedures and measures to manage conflicts of interest and prevent such conflicts from damaging the interests of the customer for which a Col policy of an intermediary, in consideration of particular IBIPs distributed, should normally contain descriptions.

However, the IBIPs rules expressly provide that the denoted standard procedures and measures must be included in the Col policy only **where appropriate** (Art. 5 (1) IBIPs Regulation).

With regard to the principle of proportionality, the IBIPs Regulation states in this respect expressly that due to the variety of business models the proposed procedures and measures might not be of relevance or

appropriate for all intermediaries, especially for small intermediaries and their limited scope of business (see Recital 4 IBIPs Regulation). Where intermediaries can show that in their case the described standard measures and procedures are not appropriate to ensure that the insurance distribution activities are carried out in accordance with the best interests of the customer and are not biased due to conflicting interests, they must adopt adequate alternative procedures and measures for that purpose (see Art. 5 (2) IBIPs Regulation).

The adoption of alternative procedures and measures with regard to reasons and requirements should be carefully documented by intermediaries in order to demonstrate to competent regulators or courts the feasibility and effectiveness of the alternative measures taken.



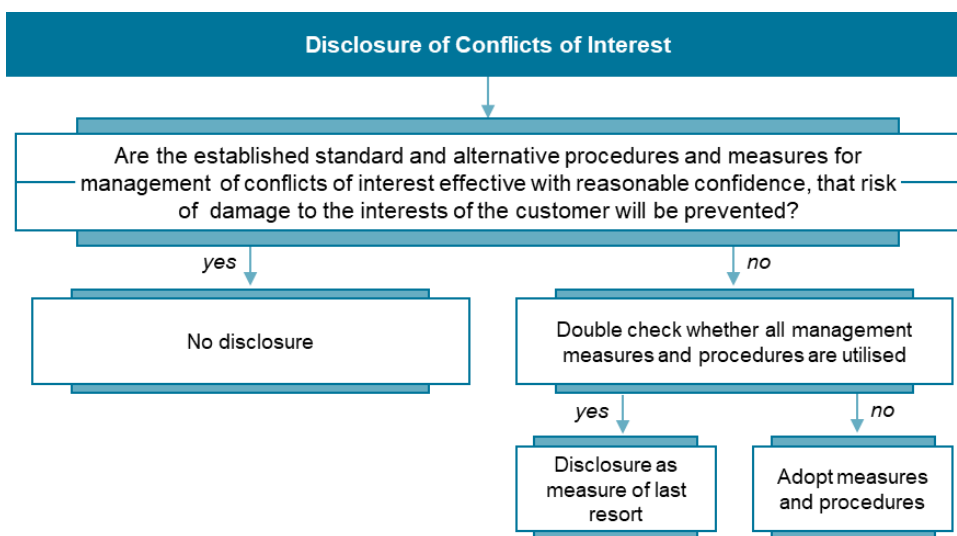
Disclosure of conflicts of interest as a measure of last resort

The IDD assumes that not all relevant conflicts of interest adversely affecting the interests of customers can be managed in terms of complete prevention and that not all risks of damage to the customer resulting from conflicts of interest can be managed and eliminated completely by establishing standard procedures and measures or alternative procedures and measures. In this regard, the IDD provides that remaining conflicts and risks must be disclosed to the customers (see Art. 28 (2) IDD).

In line with this, the IBIPs Regulation sets out that disclosure to customers is a **measure of last resort** that can be used, or better must be used, (only) where the effective organisational and administrative arrangements established by the intermediary or insurer to prevent or manage conflicts of interest adversely affecting the interests of customers are not sufficient to ensure,

with reasonable confidence, that risks of damage to the interests of the customer will be prevented (Art. 6 (1) IBIPs Regulation).

Priority of measures | The IBIPs Regulation sets out that the disclosure of specific conflicts of interest should be a measure of last resort to be used only where the organisational and administrative arrangements are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented, since over-reliance on disclosure may result in a lack of effective protection of the customer's interests (see Art. 6 IBIPs Regulation, Recital 5 IBIPs Regulation). Therefore there is good reason to regard the disclosure of conflicts of interest as a measure subsidiary to all other available measures and procedures to manage and to prevent conflicts of interest from damaging the interests of customers.





What information needs to be disclosed (Art. 6 (2) IBIPs Regulation)?

In the (exceptional) case that a disclosure of conflicts of interest is actually necessary in order to enable customers to take an informed decision, considering the relevant conflicts of interest, intermediaries are required to disclose the following (see Art. 6 (2) IBIPs Regulation):

- description of the conflict of interest in question;
- explanation of the general nature and sources of the conflict of interest;
- explanation of the risks to the customer that arise as a result of the conflicts of interest and the steps taken to mitigate those risks; and
- a clear statement that the organisational and administrative arrangements established to prevent or manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interest of the customer will be prevented.

In what form should the disclosure take place?

In cases of a disclosure, the described information has to be disclosed to the customer using a durable medium (see Art. 28 (3) IDD).

Definition of durable medium | Durable medium means, according to the definition contained in the IDD (see Art. 2 (1) (18) IDD), any instrument which:

- enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
- allows the unchanged reproduction of the information stored.

According to this definition, the term durable medium means a disclosure on paper and a digital disclosure (e.g. by way of electronic documents, email) as long as it is ensured that the digital/electronic information is/can be stored on USB sticks, CD-ROMs, DVDs and the customer's hard drive. The term durable medium does not, however, include websites unless they fulfil the criteria contained in the above definition.

At what point in time should the disclosure be undertaken?

In the (exceptional) case that organisational and administrative arrangements and other measures are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented (see Art. 6 IBIPs Regulation, Recital 5 IBIPs Regulation), the disclosure must take place in good time **before the conclusion of an insurance contract relating to IBIPs** (see Art. 28 (2) IDD).

Review of the Col policy, record keeping and internal reporting – step 4

Review of the Col policy

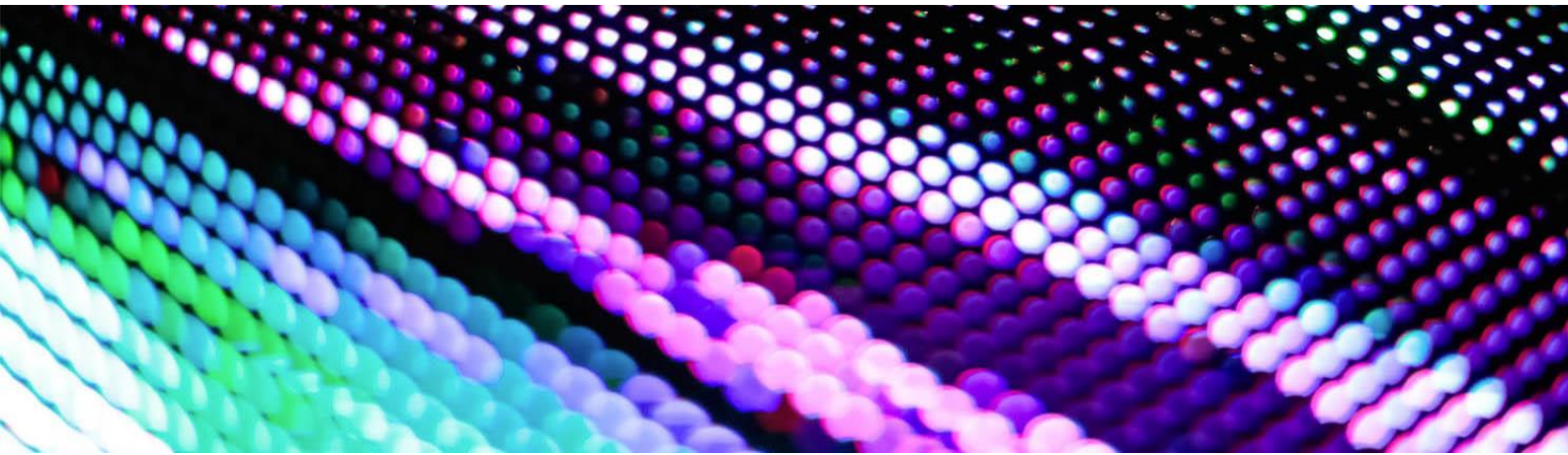
The Col policy has to be periodically reviewed, at least on an annual basis. The aim of the review is to take appropriate measures to address any deficiencies and to adapt the Col policy in this respect (see Art. 7 (1) IBIPs Regulation).

Record keeping and internal reporting

According to the IBIPs rules, intermediaries and insurers must keep and regularly update a record of the situations in which conflicts of interest entailing a risk of damage to the interests of customers have actually arisen or – in case of an ongoing service or activity – may arise in the future.

Internal reporting

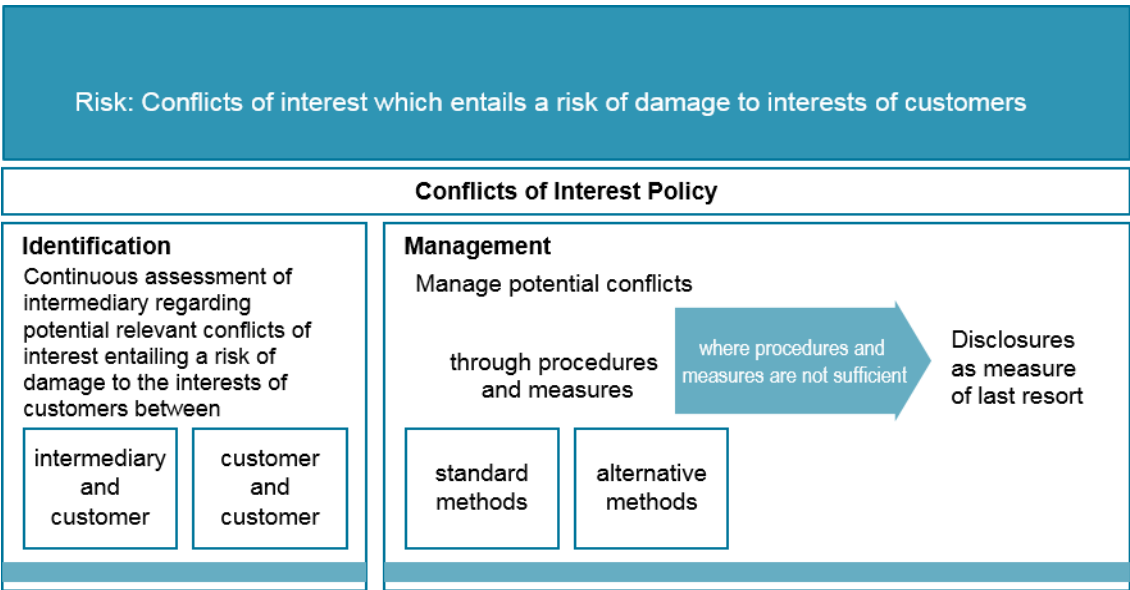
The senior management of the intermediary or insurer must receive on a frequent basis, and at least annually, written reports on the recorded situations (see Art. 7 (2) IBIPs Regulation).



Reporting lines and intervals | From a practical point of view, it can be inferred from the duty to maintain a record on conflicts of interest that intermediaries need to develop and maintain requirements for the reporting of conflicts of interest and reporting lines in this regard also below the senior management level. The risk reporting and the relevant reporting lines can also be made subject to the Col policy.

The IBIPs Regulation does not specify at what intervals updates of the records on conflicts of interest situations must be made. In line with the maximum period provided for by the IBIPs rules for the written reports to senior management (see above and under Art. 7 (2) IBIPs Regulation), however, it is reasonable to assume that updates of the required records should also be made at least annually.

Furthermore, it would seem appropriate that at least where risks of severe damage to the interests of customers are discovered or damage to interests of customers has actually occurred, these situations should be recorded and reported ad hoc to the senior management immediately after discovery.





Inducements

Background

Even though the term inducement is not defined in the IDD, it is already stated in the directive that appropriate and proportionate arrangements in order to avoid detrimental impacts on the quality of the services to customers must also be made with regard to commission or any non-monetary benefit linked to the distribution of IBIPs paid to or paid by any party, except by or on behalf of the customer (see Recital 57 IDD).

Besides the subject of conflicts of interest, the IDD contains a distinct competence to issue a delegated act to specify the criteria for assessing whether inducements paid or received by an intermediary or an insurer have a detrimental impact on the quality of the relevant service to the customer and, beyond that, comply with the obligation of the intermediary or insurer to act honestly, fairly and professionally in accordance with the best interests of the customer (see Art. 29 (4) IDD). In line with this, the IBIPs Regulation takes up the subject of inducements separate from the subject of conflicts of interest in an article of its own (see Art. 8 IBIPs Regulation).

Definition of inducement and inducement schemes

According to the IBIPs Regulation, inducement means any fee, commission, or any non-monetary benefit provided by or to such an intermediary or insurer in connection with the distribution of IBIPs, to or by any party except the customer involved in the transaction in question or a person acting on behalf of that customer (see Art. 2 (2) IBIPs Regulation).

Non-monetary benefits relevant as well | According to this, not only fees or commissions but also non-monetary benefits such as benefits in the form of payments in kind are relevant with regard to inducements.

Furthermore, an **inducement scheme** means a set of rules governing the payment of inducements, including the conditions under which the inducements are paid (Art. 2 (3) IBIPs Regulation).

Inducement schemes = arrangements | According to the definition of inducement schemes, the term refers to arrangements such as fee, commission or brokerage arrangements between intermediaries and insurers or other intermediaries.

Detrimental impact on the quality of IBIPs services

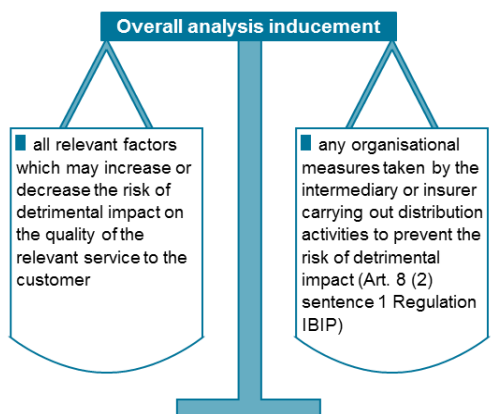
The IBIPs rules on inducements are aimed at identifying and avoiding inducements and inducement schemes that have a detrimental impact on the quality of services concerning IBIPs to the customers. Such a detrimental impact is assumed in cases where an inducement or an inducement scheme is of such a nature and scale that it provides an incentive to carry out insurance distribution activities in a way that is not in compliance with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer (Art. 8 (1) IBIPs Regulation).



Assessment of detrimental impact

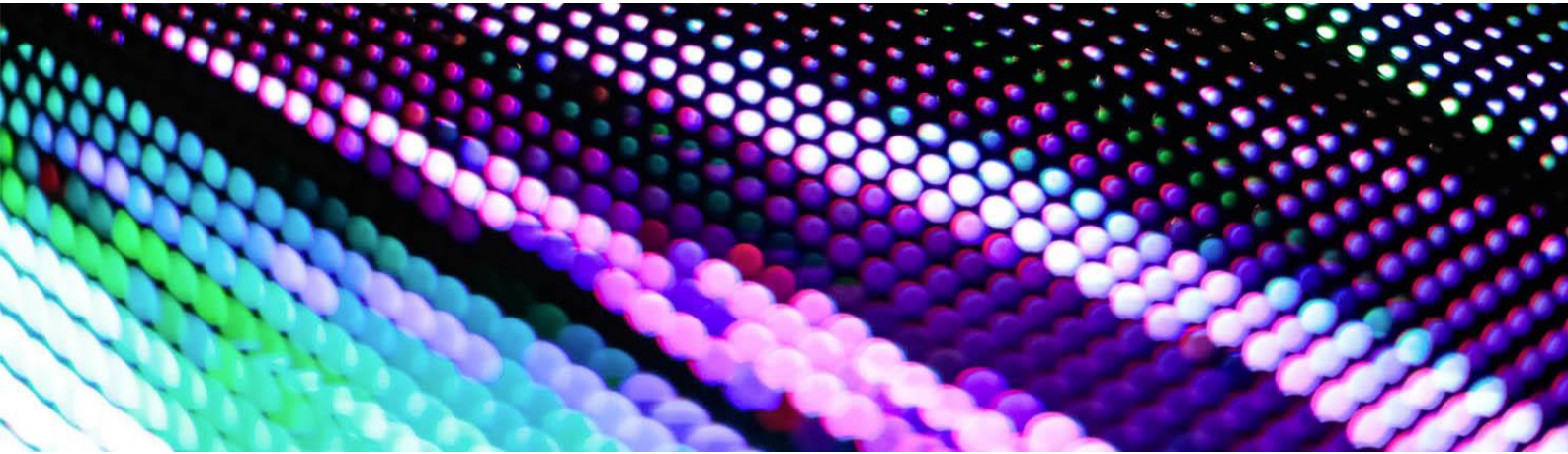
The IBIPs rules require that intermediaries and insurance undertakings assess whether inducements or inducement schemes have a detrimental impact on the quality of the relevant service to the customer.

The assessment must be performed in terms of an **overall analysis** of factors which may increase or decrease the risk of detrimental impact on the quality of the relevant service to the customer (Art. 8 (2) sentence 2 IBIPs Regulation).

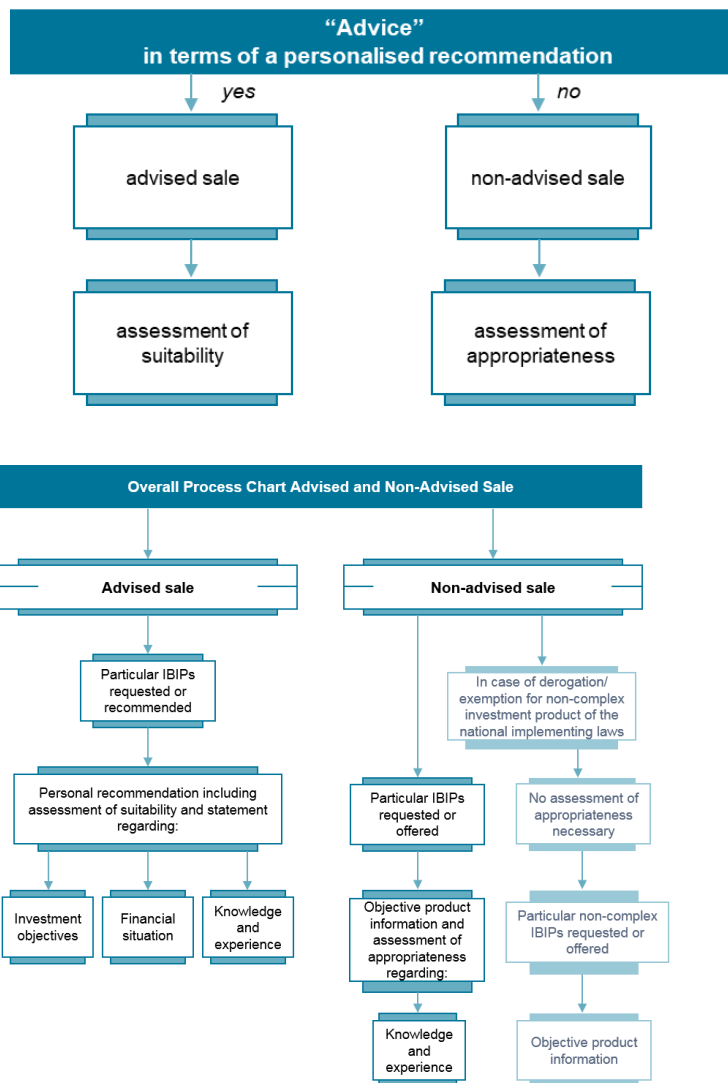


Criteria regarding assessment of detrimental impacts of inducements (Art. 8 (2)) Regulation on IBIPs

<p>■ Is the inducement or inducement scheme capable of providing an incentive to the intermediary or insurer to offer or recommend a particular insurance product or a particular service to the customer despite the fact that the intermediary or insurer would be able to offer a different insurance product or service which would better meet the customer's needs?</p> <p>▶ An inducement capable of providing an incentive for the distribution of a particular product although another product is more appropriate increases the risk of a detrimental impact.</p>	<p>■ Is the inducement entirely or mainly paid at the moment of the conclusion of the insurance contract, or does it extend over the whole term of that contract?</p> <p>▶ An inducement paid entirely or mainly at the moment of the conclusion of the contract (in particular multi annual contracts) increases the risk of a detrimental impact.</p>
<p>■ Is the inducement or inducement scheme solely or predominantly based on quantitative commercial criteria, or does it take into account appropriate qualitative criteria, reflecting compliance with applicable regulations, the quality of services provided to customers and customer satisfaction?</p> <p>▶ An inducement solely or predominantly based on quantitative commercial criteria increases the risk of a detrimental impact. In contrast, an inducement taking into account appropriate qualitative criteria, like the quality of services provided to customers and customer satisfaction, decreases the risk of a detrimental impact.</p>	<p>■ Does an appropriate mechanism for reclaiming the inducement in case the product lapses or is surrendered at an early stage or in case the interests of the customer have been harmed exist?</p> <p>▶ If no appropriate mechanism for reclaiming the inducement in case the product lapses or is surrendered at an early stage exists, the risk of a detrimental impact is increased.</p>
<p>■ What is the relation between the value of the inducement paid or received and the value of the product and the services provided?</p> <p>▶ An inducement having such a value that puts the product price in the background increases the risk of a detrimental impact.</p>	<p>■ Does a variable or contingent threshold in any form or any other kind of value accelerator exist which is unlocked by attaining a target based on volume or value of sales?</p> <p>▶ The existence of a variable or contingent threshold or a value accelerator increases the risk of a detrimental impact.</p>



Assessment of Suitability and Appropriateness and Reporting to Customers





Background

The IDD introduces the requirement of an assessment of suitability or appropriateness and reporting to customers concerning IBIPs (see Art. 30 IDD).

Assessment of suitability or assessment of appropriateness of IBIPs

The IDD thus distinguishes between an **assessment of suitability** (see Art. 30 (1) IDD) and an **assessment of appropriateness** (see Art. 30 (2) IDD) with regard to IBIPs, the two assessments having different functions and characteristics and being different in scope. Which assessment needs to be made depends on the distribution activities actually carried out by intermediaries or insurers.

Advised sale and non-advised sale

In line with this, it is appropriate to differentiate between an advised sale including a personalised recommendation and a non-advised sale not including such a personalised recommendation.

It can be concluded from the above that prior to any conclusion of an insurance contract (advised or non-advised), the intermediary or insurer must specify, on the basis of information obtained from the customer, the demands and the needs of that customer and must provide the customer with objective and comprehensible information about the insurance product to allow that customer to take an informed decision (see Art. 20 (1) IDD).

Based on this general rule, however, the differentiation between an advised sale and a non-advised sale is of particular relevance to the scope, function and characteristic of the assessment regarding IBIPs.

Assessments to be conducted | In accordance with the IDD, the IBIPs Regulation provides in this respect:

- for advised sales of IBIPs, detailed rules for a comparably detailed assessment of suitability (Art. 30 (1) IDD, Art. 9 to Art. 14 IBIPs Regulation);
- for non-advised sales, less detailed rules for a comparably less detailed assessment of appropriateness (Art. 30 (2) IDD, Art. 15 to Art. 16 IBIPs Regulation).

Advice in terms of the IDD

The IDD provides that, for all kinds of insurance products, any contract proposed must be consistent with the customer's insurance demands and needs (see Art. 20 (1) sentence 2 IDD).

According to this, an analysis and assessment of the demands and the needs of the customer are necessary in any case. Beyond that, where advice in the sense of a personalised recommendation is given, the IDD requires that the distributor must explain why a particular product would best meet the customer's demands and needs (see Art. 20 (1) IDD).

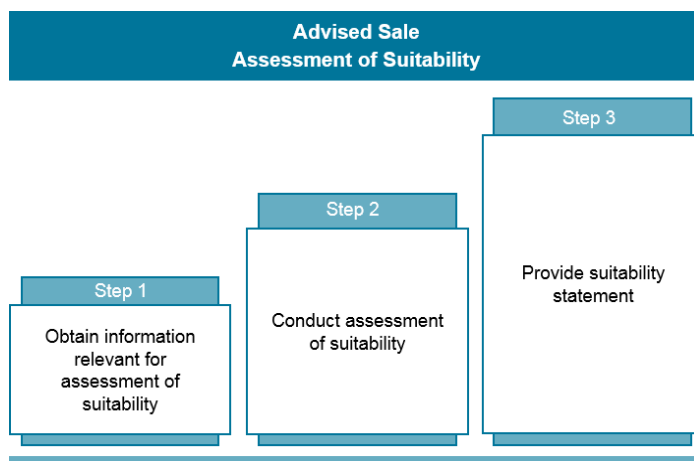
For such advice or personal or personalised recommendation, a closer analysis and assessment of the customers' demands and needs are apparently required in cases where no such advice or personalised recommendation is given.

Advice is defined in the IDD as the provision of a personalised recommendation to a customer,

- either at the request of the customer or
- at the initiative of the insurance distributor, in respect of one or more insurance contracts (see Art. 2 (1) and (15) IDD).



Assessment of Suitability



Advised sale as area of application

The assessment of suitability applies in all cases of an advised sale. The intermediary or insurer should be enabled by the assessment of suitability to advise the customer in terms of a personal recommendation with regard to which IBIPs are suitable in the customer’s particular case (see Art. 30 (1) sentence 1 IDD).

The IBIPs Regulation sets out that the assessment of suitability should be performed not only with regard to recommendations to buy IBIPs, but also for all personal recommendations made during the lifetime of that product. All such personal recommendations regarding IBIPs should thus be based on a thorough analysis of the knowledge and experience and the financial situation of the individual customer (see Recital 8 IBIPs Regulation).

Automated advice | The IBIPs rules also require a full assessment of suitability by intermediaries in the event advice on IBIPs is provided through an automated or semi-automated system (see Art. 12 IBIPs Regulation). Therefore, intermediaries remain responsible for performing an assessment of suitability where their advice on IBIPs in terms of personal investment

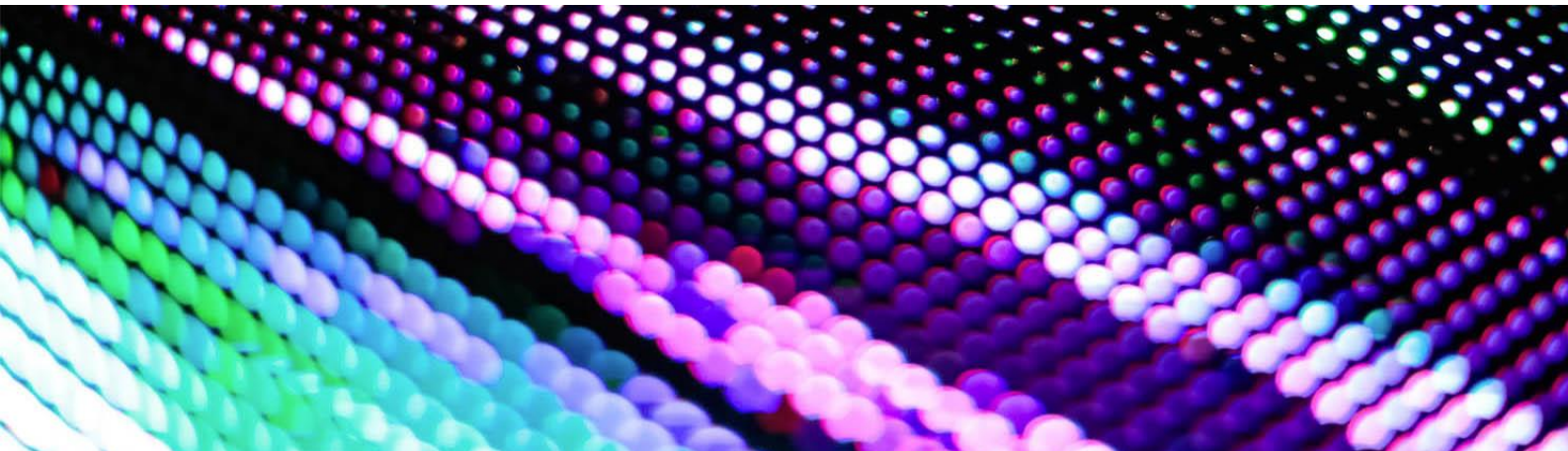
recommendations is provided in whole or in part through IT solutions.

Information to be obtained for the assessment of suitability

The IBIPs rules set out that in the event of an advised sale, intermediaries or insurers must determine within the framework of an assessment of suitability the extent of the information to be collected from the (potential) customer in light of all the features of the personal recommendation to be provided to the customer.

Communication with customers concerning the assessment of suitability

According to IBIPs rules, intermediaries and insurers must inform customers, clearly and simply, that the reason for assessing suitability of IBIPs is to enable them to act in the customer’s best interests. Ambiguity or confusion about their responsibilities in the process of assessing the suitability should be avoided (see Art. 11 IBIPs Regulation).



What information must be collected?

Based on the IDD, the IBIPs Regulation requires that intermediaries or insurers must obtain the following information, in particular, for the assessment of suitability regarding IBIPs:

- Information concerning the knowledge and experience of the customer in the investment field relevant to the specific type of product or service (see Art. 30 (1) IDD in conjunction with Art. 9 (2) IBIPs Regulation).

This includes information on:

- the types of service, transaction, IBIP or financial instrument with which the customer is familiar;
- the nature, number, value and frequency of the customer's transactions in IBIPs or financial instruments and the period over which they have been carried out;
- the level of education and profession or relevant former profession of the (potential) customer.

The level of information gathered must be appropriate to the nature of the customer and the nature and type of product or service offered or demanded, including their complexity and the risks involved (see Art. 17 (1) IBIPs Regulation).

- Information on the financial situation of the customer, including the customer's ability to bear losses (see Art. 30 (1) IDD in conjunction with Art. 9 (3) IBIPs Regulation).

The information on the customer's ability to bear losses must include:

- information on the source and extent of the customer's income;
- assets, including liquid assets;
- investments and real property;
- regular financial commitments.

The level of information gathered must be appropriate to the specific type of product or service being considered (see Art. 9 (3) IBIPs Regulation).

- Information on the customer's investment objectives, including the customer's risk tolerance (see Art. 30 (1) IDD in conjunction with Art. 9 (4) IBIPs Regulation).

This includes information on:

- the length of time for which the customer wishes to hold the investment;
- the customer's preferences regarding risk taking;
- the customer's risk profile;
- the purposes of the investment.

The level of information gathered must be appropriate to the specific type of product or service being considered (see Art. 9 (4) IBIPs Regulation).

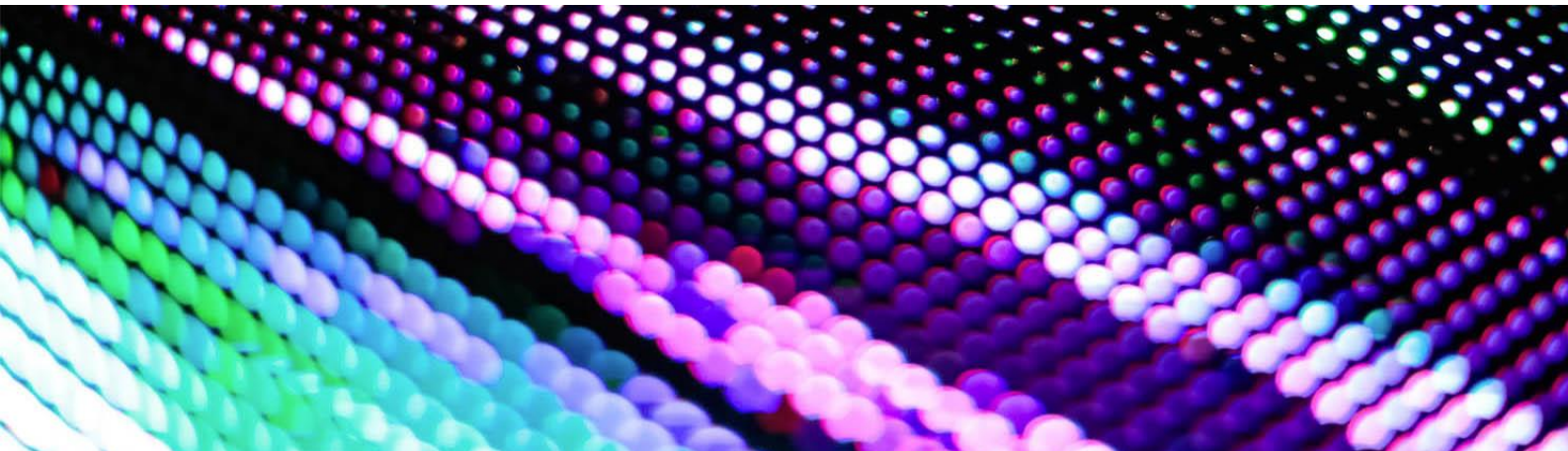
Check list

The following aspects are examples of features which might be relevant for the suitability assessment. The list should in no case be regarded as exhaustive:

- age;
- lifestyle;
- recent or upcoming life events (e.g. marriage, divorce, college tuition, retirement and planned medical expenses);
- other investments;
- financial experience, situation and needs, which might include questions about annual income and liquid net worth;
- tax status, such as marginal tax rate;
- investment objectives, which might include generating income, funding retirement, buying a home, preserving wealth or market speculation;
- investment experience;
- investment time horizon, such as the expected time available to achieve a particular financial goal;
- liquidity needs (which is the customer's need to convert investments to cash without incurring a significant loss in value);
- risk tolerance (which is a customer's willingness to risk losing some or all of the original investment in exchange for greater potential returns).

Switching: Assessment of suitability with regard to switching of investments

The IBIPs Regulation assumes a particular importance of an assessment of suitability for decisions to switch the underlying investment assets or to hold or sell IBIPs (see Recital 8 IBIPs Regulation).



When an intermediary or insurer provides advice that involves switching between underlying investment assets, the IBIPs rules also require that the following information is collected:

- the customer's existing underlying investment assets;
- the recommended new investment assets.

Furthermore, IBIPs rules require that the intermediary or insurer must perform an analysis of the expected costs and benefits of the switch, so that they are reasonably able to demonstrate that the benefits of switching are expected to be greater than the costs (see Art. 9 (7) IBIPs Regulation).

Reliability of information

Intermediaries and insurers are required by the IBIPs rules to ensure that the information collected for the assessment of suitability is reliable (see Art. 10 IBIPs Regulation). Such steps must include the following, in particular:

- ensuring that customers are aware of the importance of providing accurate and up-to-date information;
- ensuring that all tools, such as risk assessment profiling tools or tools to assess a customer's knowledge and experience, employed in the assessment of suitability process are fit for purpose and are appropriately designed for use;
- ensuring that questions used in the process are likely to be understood by the customer and to capture an accurate reflection of the customer's objectives and needs and the information necessary to undertake the assessment of suitability;
- taking steps, as appropriate, to ensure the consistency of customer information, such as considering whether there are obvious inaccuracies in the information provided by the customer.

Prohibition of a personal recommendation and additional rules with regard to the information to be obtained

Where an intermediary or insurer does not obtain the information required for the assessment of suitability, the IBIPs rules require expressly that the intermediary or

insurer may not provide advice in terms of a personal recommendation of IBIPs to the customer at all (see Art. 9 (5) IBIPs Regulation).

Beyond that, intermediaries and insurers must pay attention to the following additional rules in connection with the information to be obtained for the assessment of suitability regarding IBIPs:

- The intermediary or insurer must not discourage a (potential) customer from providing the information required insofar (see Art. 17 (2) IBIPs Regulation).
- Where information required insofar has already been obtained, intermediaries and insurers must not request it anew from the customer (see Art. 17 (3) IBIPs Regulation).
- The intermediary or insurer is entitled to rely on the information provided by its (potential) customers unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete (see Art. 17 (4) IBIPs Regulation).

Suitability statement to be provided

According to the IBIPs rules, intermediaries and insurers must provide a **suitability statement** based on the assessment of suitability to the customers.

What must be included in the suitability statement?

Based on the IBIPs Regulation, the suitability statement has to include the following elements:

- an outline of the advice given;
- information on how the personal recommendation provided is suitable for the customer, particularly how it is in line with:
 - the customer's investment objectives, including that person's risk tolerance;
 - the customer's financial situation, including that person's ability to bear losses;
 - the customer's knowledge and experience (see Art. 14 (1) IBIPs Regulation).
- information on whether the recommended IBIPs are likely to require the customer to seek a periodic review of their arrangements (see Art. 14 (2) IBIPs Regulation).



Periodic assessments of suitability | To ensure an appropriate standard of advice, the IBIPs Regulation highlights with regard to the long-term development of IBIPs that intermediaries or insurers should draw customers' attention to information on whether the recommended IBIPs are likely to require the customer to seek a periodic assessment of suitability (see Art. 14 (2) IBIPs Regulation).

Intermediaries and insurers actually offering/providing a periodic assessment of suitability must review, in accordance with the best interests of their customers, the suitability of the recommended IBIPs at least annually. The frequency of the periodic assessments of suitability must be increased depending on the characteristics of the customer, such as risk tolerance, and the nature of the recommended IBIPs (see Art. 14 (4) IBIPs Regulation).

Where an intermediary has informed the customer that a periodic assessment of suitability is to be carried out, the subsequent suitability statements after the initial service may be limited to changes in the services or underlying investment assets and/or the circumstances of the customer, without repeating all the details contained in the first statement (see Art. 14 (3) IBIPs Regulation).

At what point in time and in what form does the suitability statement need to be provided?

The IBIPs Regulation does not contain any references to the time and form in which the suitability statement needs to be provided to the customer. However, the IDD already sets out in this respect that when providing advice on IBIPs, intermediaries and insurers must, **prior to the conclusion of the contract**, provide the customer with a suitability statement on a **durable medium** specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the customer (see Art 30 (5) IDD).

Beyond that, the IDD refers to Article 23 (1) to (4) IDD. According to this rule, the suitability statement should be communicated to the customer:

- generally on paper;
- in a clear and accurate manner, comprehensible to the customer;

- in an official language of the Member State in which the risk is situated or of the Member State of the commitment or in any other language agreed upon by the parties; and
- free of charge.

However, especially with regard to the requirement that the suitability statement must be provided on paper, certain exemptions and facilitations apply. Under certain conditions, a provision by way of a durable medium other than paper or via a website is feasible (see Article 23 (2) to (4) IDD).

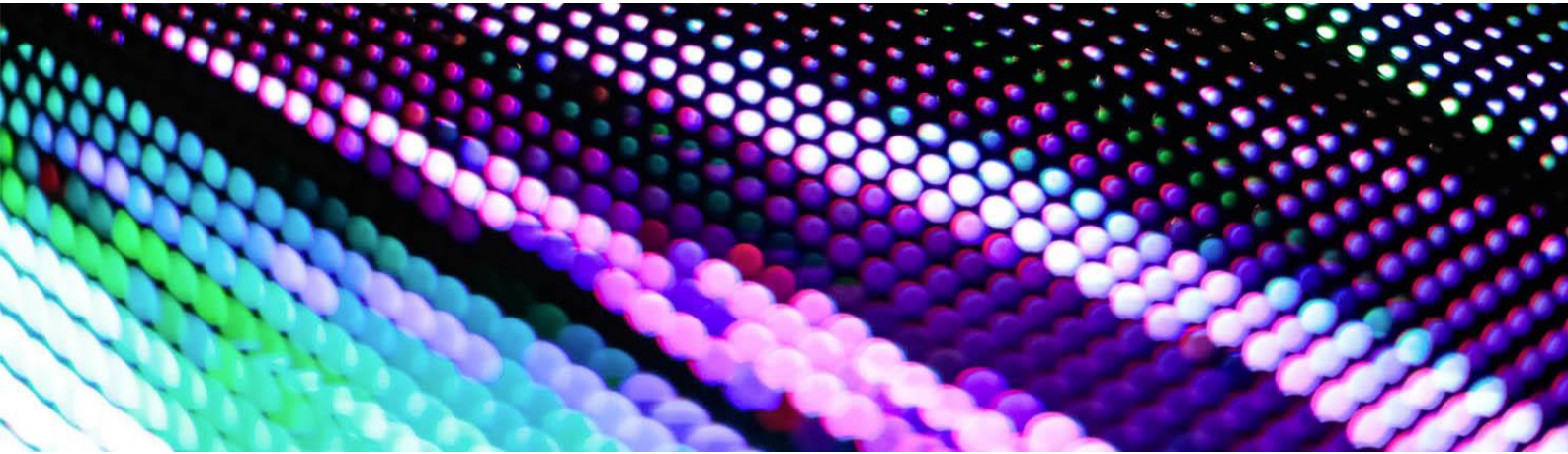
In addition to this, the IDD provides that where the contract is concluded using a means of distance communication which prevents the prior delivery of the suitability statement, intermediaries and insurers may provide the suitability statement on a durable medium immediately after the customer is bound by any contract, provided that both of the following conditions are met:

- the customer has consented to receiving the suitability statement without delay after the conclusion of the contract; and
- the intermediary or insurer has given the customer the option of delaying the conclusion of the contract in order to receive the suitability statement in advance of such conclusion.

Basic rule and exemptions and facilitations | In terms of a basic rule, intermediaries should assume that the suitability statement should be provided to the customer ;

- prior to the conclusion of the contract
- on a durable medium (generally on paper).

However, with regard to the circumstances of the specific case and distribution situation, certain exemptions and facilitations apply (e.g. distance selling) with regard to timing and form. With regard to these exemptions and facilitations, intermediaries should check the implementing laws in their jurisdiction in any case.



Unsuitable products

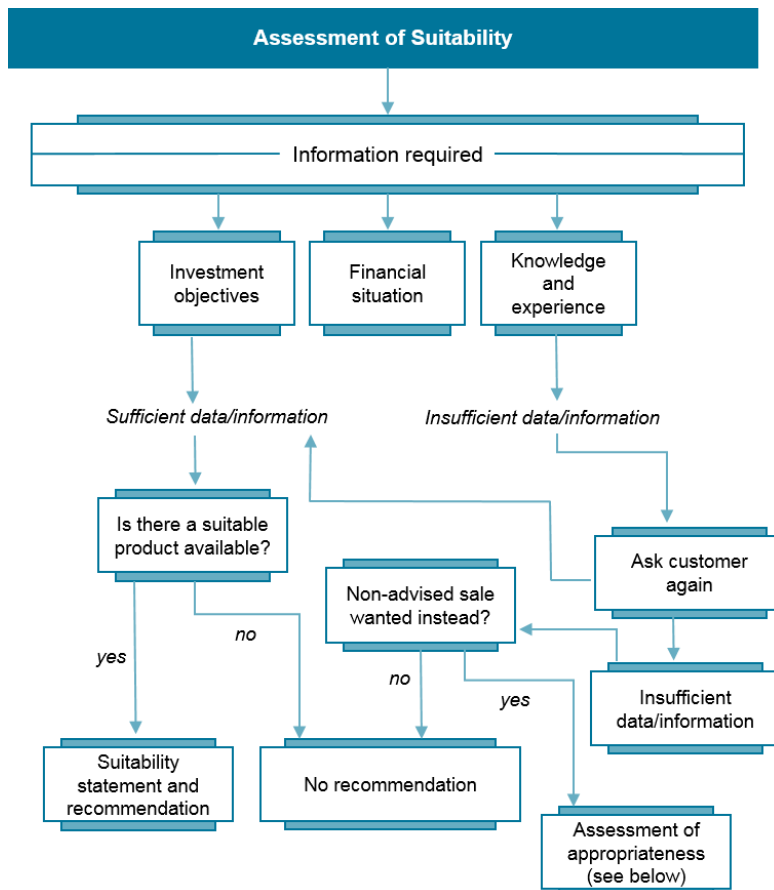
The IBIPs rules require that an intermediary or insurer may not make a recommendation where according to the assessment of suitability none of the products are suitable for the (potential) customers (see Art. 9 (6) IBIPs Regulation).

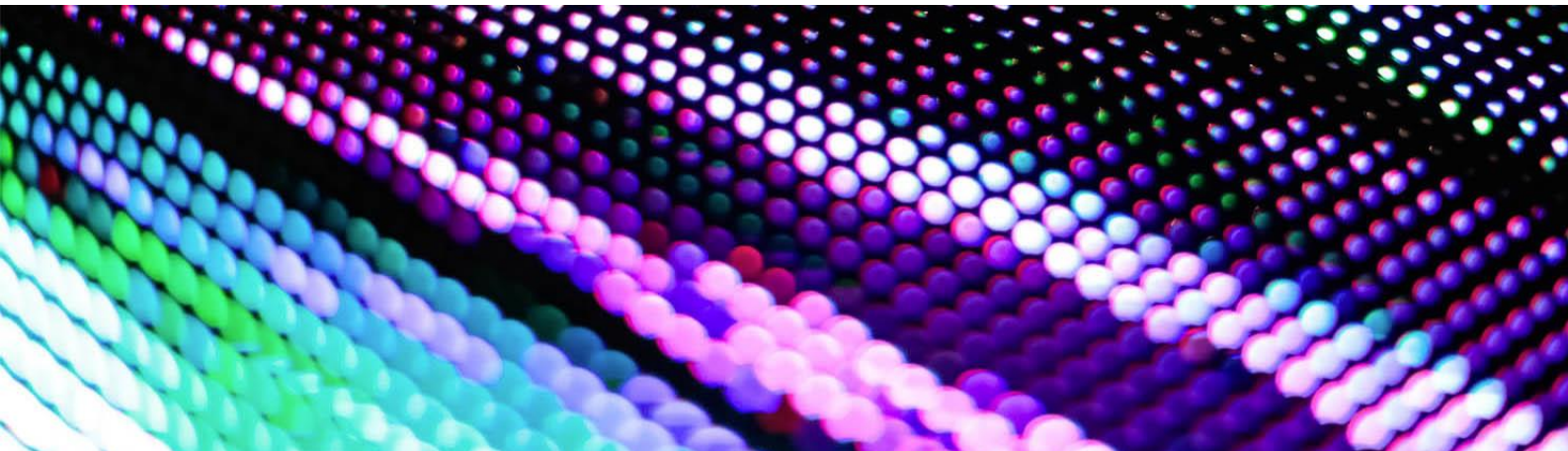
Since the market exposure of IBIPs depends largely on the choice of underlying investment assets, such IBIPs may, in particular, be unsuitable for the customer due to:

- the risks of those assets;
- the type or characteristics of the product;
- the frequency of switching of underlying investment assets;
- an unsuitable portfolio of underlying investments.

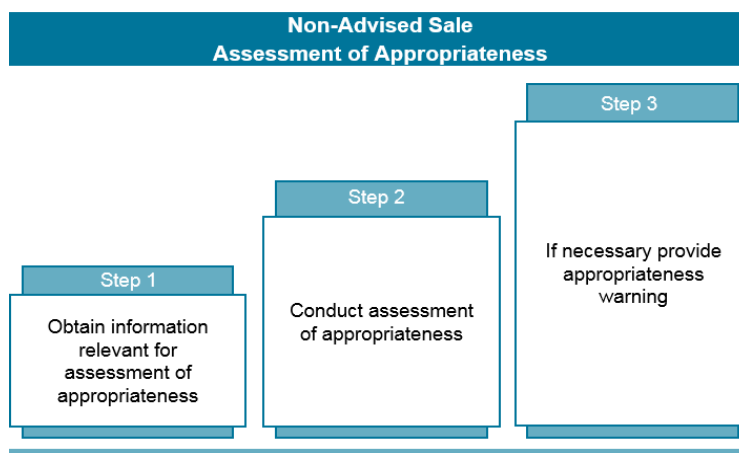
Group insurance

With regard to group insurance, the intermediary or insurer must establish and implement a policy as to who is to be subject to the assessment of suitability where an insurance contract is concluded on behalf of a group of members and each individual member cannot take an individual decision to join. Such a policy must also contain rules on how that assessment will be conducted in practice, including from whom information about knowledge and experience, financial situation and investment objectives is to be collected (see Art. 13 IBIPs Regulation).





Assessment of Appropriateness



Non-advised sale as area of application

The IBIPs Regulation sets out that the assessment of appropriateness has to be conducted generally in all cases where IBIPs are sold without providing advice in the sense of a personal recommendation. Therefore, intermediaries and insurers are required to perform such an assessment of appropriateness in all situations where, in conformity with the applicable rules of their national law, the customer requires a non-advised sale (see Recital 12 IBIPs Regulation).

Beyond that, an assessment of appropriateness must be conducted (see Recital 12 IBIPs Regulation):

- where an assessment of suitability cannot be performed because the necessary information about the customer’s financial situation and investment objectives cannot be obtained; and
- the customer agrees, in conformity with the applicable rules of national law, to proceed with concluding the contract as a non-advised sale.

Information to be obtained for the assessment of appropriateness

Based on the IDD, the IBIPs Regulation requires that intermediaries or insurers must obtain **information concerning the knowledge and experience of the customer in the investment field relevant to the specific type of product or service** within the framework of the assessment of appropriateness (see Art. 30 (2) IDD in conjunction with Art. 17 (1) IBIPs Regulation).

This includes information on:

- the types of service, transaction, IBIPs or financial instrument with which the customer is familiar;
- the nature, number, value and frequency of the customer’s transactions in IBIPs or financial instruments and the period over which they have been carried out;
- the level of education, and profession or relevant former profession of the (potential) customer.

The level of information gathered must be appropriate to the nature of the customer, and the nature and type of product or service offered or demanded, including their complexity and the risks involved (see Art. 17 (1) IBIPs Regulation).



Beyond that, intermediaries and insurers should also pay attention to the following general rules in connection with the information to be obtained for the assessment of appropriateness regarding IBIPs:

- The intermediary or insurer must not discourage a (potential) customer from providing the information required insofar (see Art. 17 (2) IBIPs Regulation).
- Where information required insofar has already been obtained, intermediaries and insurers may not request it anew from the customer (see Art. 17 (3) IBIPs Regulation).
- The intermediary or insurer must be entitled to rely on the information provided by its (potential) customers unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete (see Art. 17 (4) IBIPs Regulation).

Appropriateness warning

It can be inferred already from the IDD that an intermediary or insurer who concludes, on the basis of the obtained information, that the product is not appropriate for the (potential) customer must warn the (potential) customer to that effect (see Art. 30 (2) IDD).

An appropriateness warning notice is thus required. This notice can be provided in a standardised format corresponding to the requirements of the IDD.

Time and form of the appropriateness warning?

The time and form of the appropriateness warning are not expressly stated in the IDD or in the IBIPs Regulation. As a general rule, intermediaries are well advised to give the warning prior to the conclusion of the contract. It can be assumed that an oral warning would not suffice to meet the requirements of a standardised format. It should therefore be handed out on paper or another durable medium (for further details, please see [Time and form of the suitability statement](#)).

Form of appropriateness warning | As a basic rule, intermediaries should assume that the appropriateness warning should be provided to the customer :

- prior to the conclusion of the contract;
- on a durable medium (generally on paper).

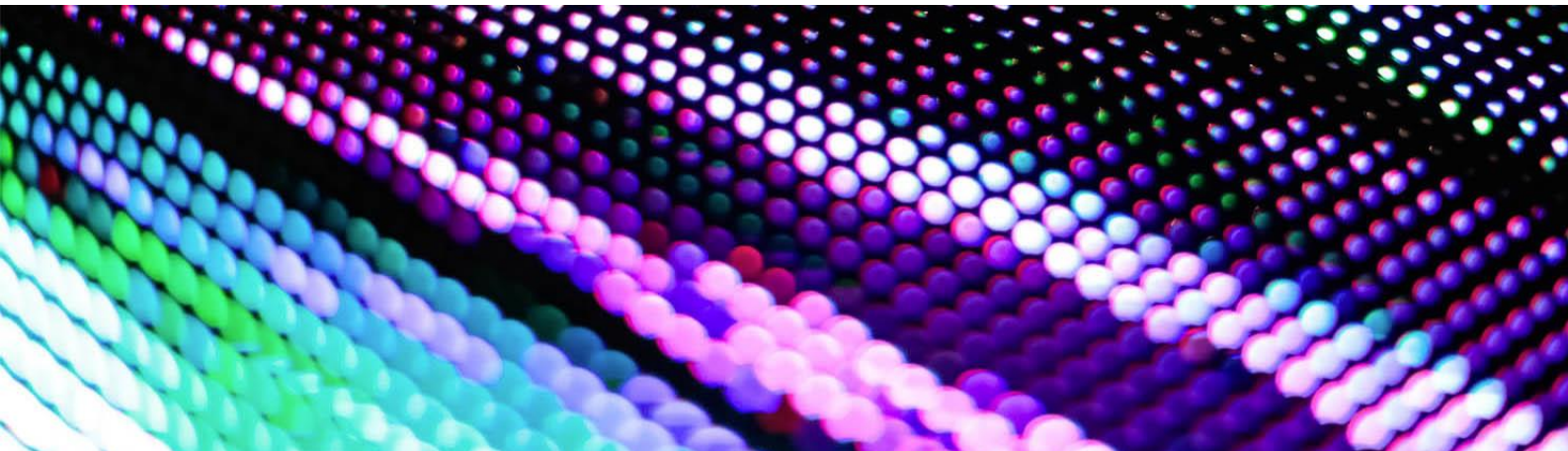
Execution only: National exemptions applying to specific IBIPs and distribution situations

The IDD provides the option for the national lawmakers to exempt particular IBIPs and distribution situations from the requirement to conduct an assessment of appropriateness.

In the event of non-advised sales of so-called non-complex products, it can be the case that not only does the requirement for an assessment of suitability not apply but — depending on the respective national implementation — also no assessment of appropriateness is required for such products in such situations. This type of sale is often referred to as “execution only” as a transaction merely executed without any advice or assessment of the customer’s personal situation. However, in accordance with Article 20(1) IDD as well in this case, it is still necessary for distributors to specify the demands and needs of the customer.

With regard to “execution only sales”, further detail is provided by the Report on Guidelines under the IDD on IBIPs that incorporate a structure which makes it difficult for the customer to understand the risks involved (EIOPA BoS 17/204).

Option for the national lawmakers to derogate | The express option existing for the national lawmakers to derogate from the obligations and exempt particular IBIPs (execution only) from an assessment applies to the situation of a non-advised sale. According to the IBIPs Regulation, in the event of an advised sale, a full assessment of the product needs to be conducted even when the sold product fulfils the requirements for an exemption.



Requirements for derogation

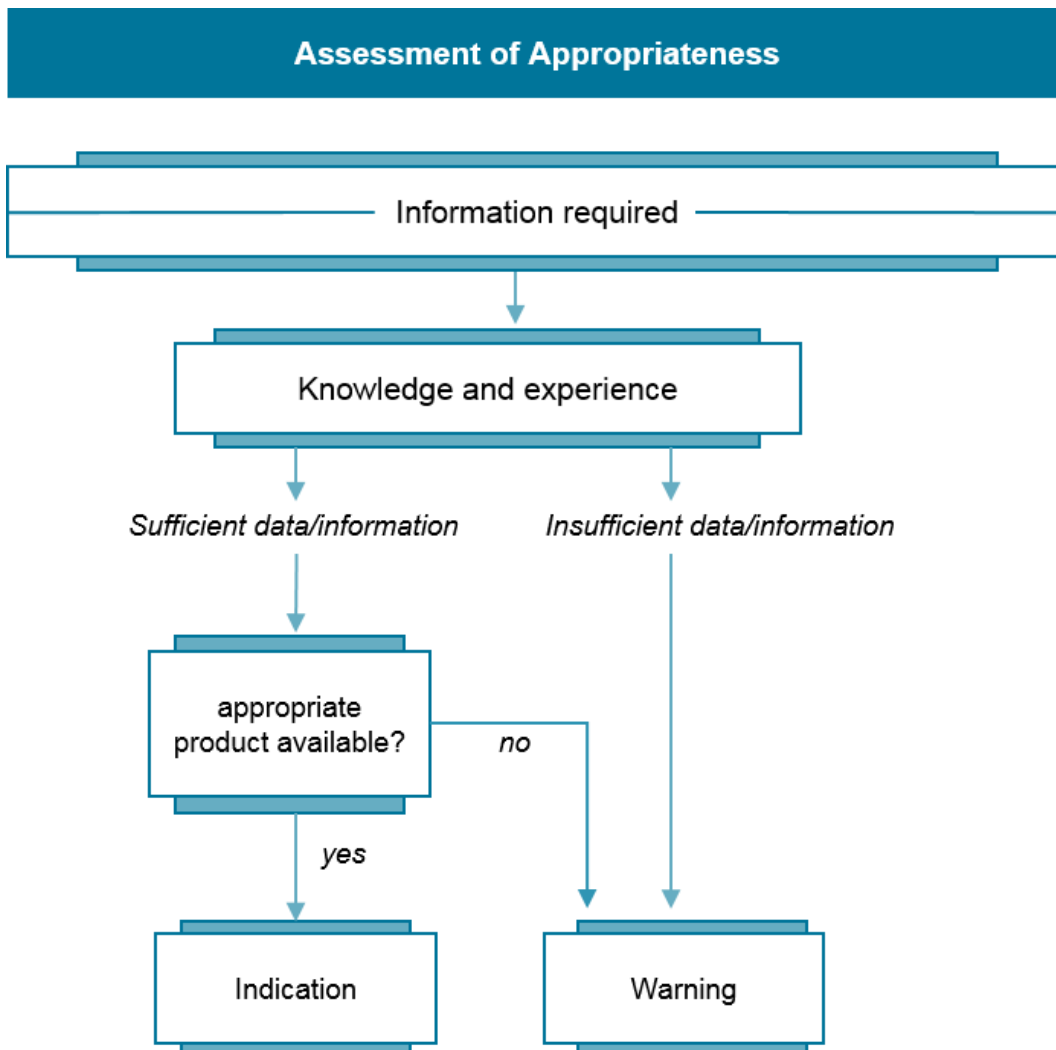
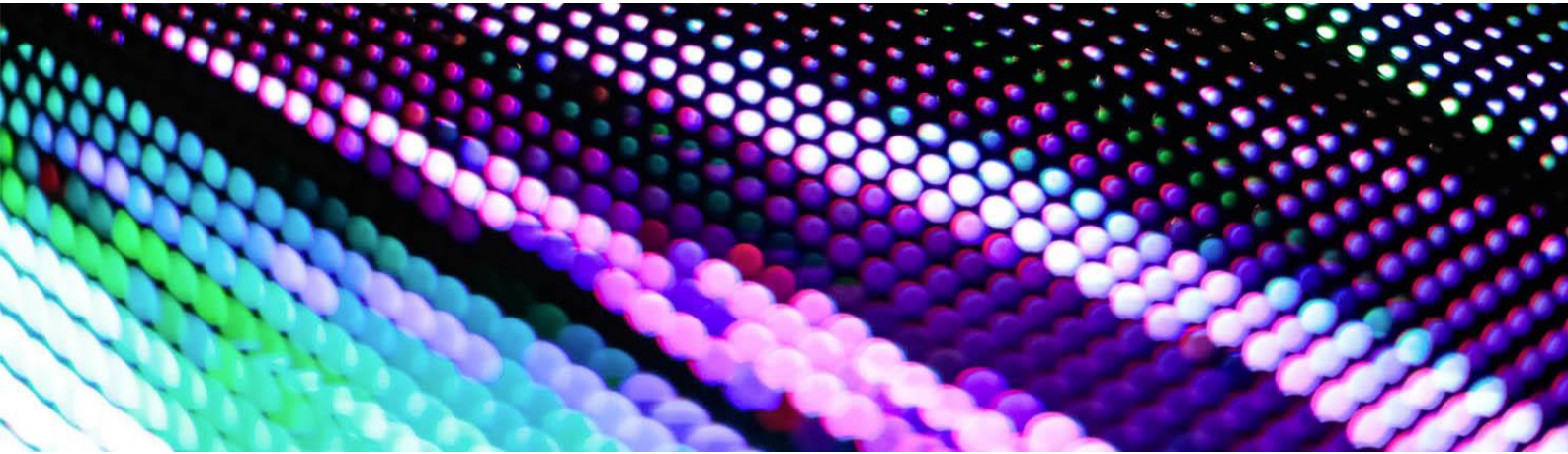
According to the IDD, the national lawmakers may exempt IBIPs distribution situations in the event of non-advised sales from a requirement to conduct an assessment of appropriateness (see Art. 30 (3) IDD) where all of the following criteria are fulfilled:

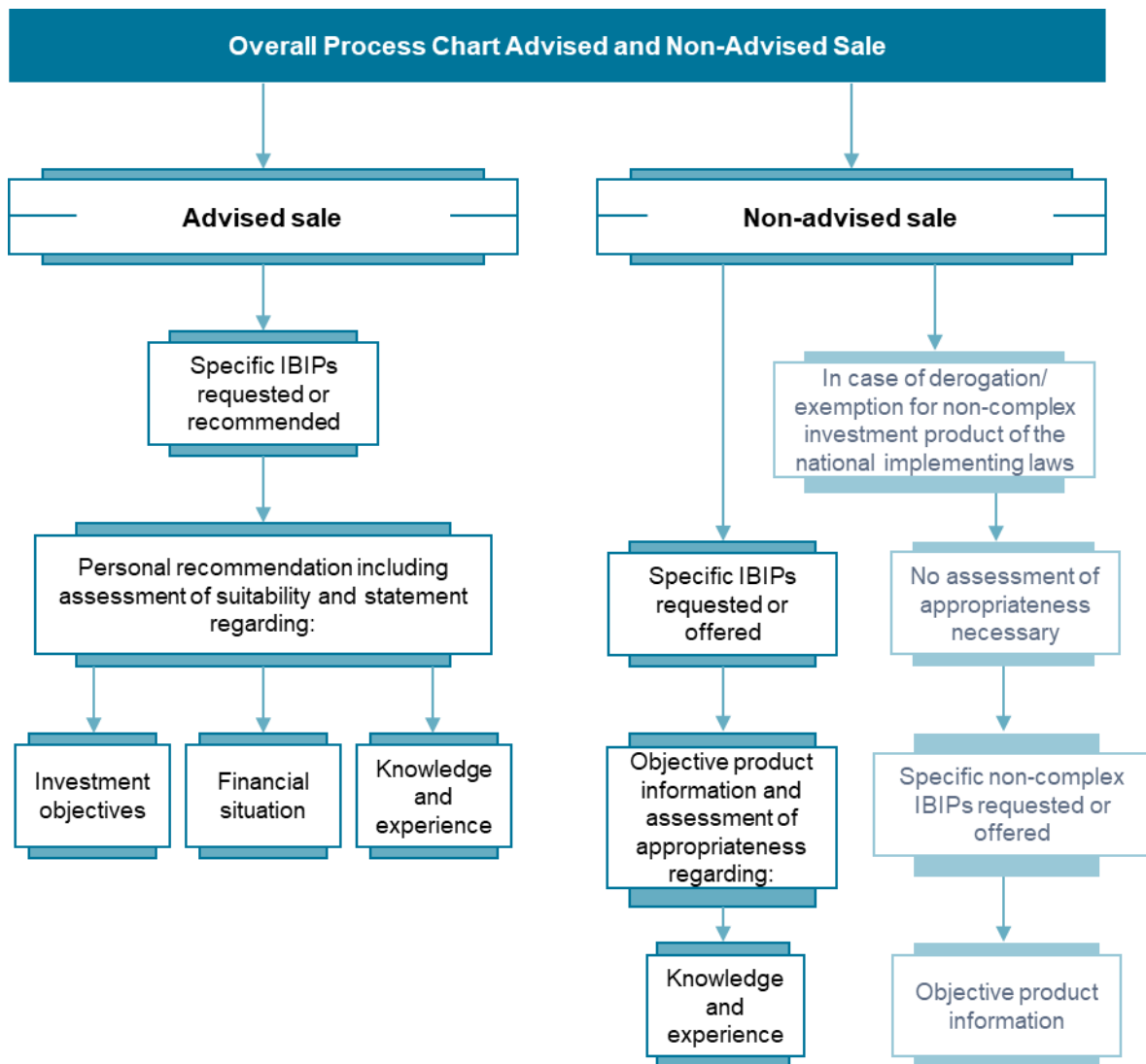
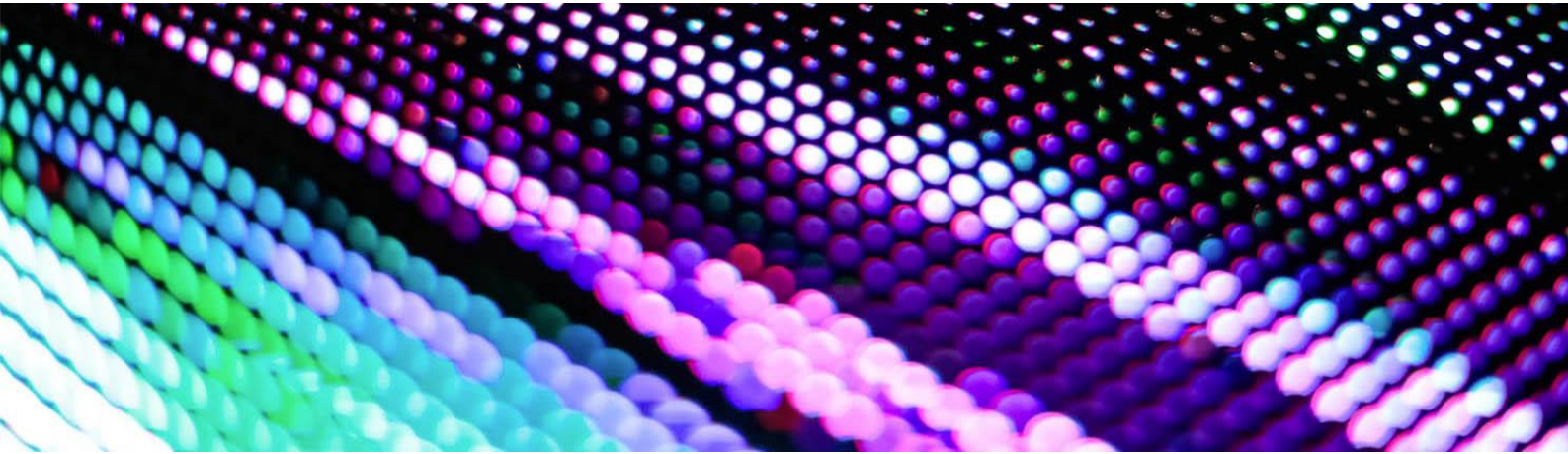
- the insurance distribution activity is carried out on the initiative of the customer; (and)
- the customer has been clearly informed that, in the provision of the distribution activity, (i) the intermediary or insurer is not required to assess the appropriateness of the IBIPs or insurance distribution activity provided or offered and (ii) that the customer does not benefit from the corresponding protection of the relevant conduct of business rules; (and)
- the intermediary or insurance undertaking complies with its obligations under Art. 27 and Art. 28 IDD with regard to conflicts of interest; (and)
- the distribution activities refer:
 - either to contracts which only provide investment exposure to the financial instruments deemed non-complex under the MiFID II and do not incorporate a structure which makes it difficult for the customer to understand the risks involved;
 - other non-complex IBIPs for the purpose of the relevant IDD rules.
- it includes a contractually guaranteed minimum maturity value which is at least the amount paid by the customer after deduction of legitimate costs;
- it does not incorporate a clause, condition or trigger that allows the insurer to materially alter the nature, risk, or pay-out profile of the IBIP;
- it provides options to surrender or otherwise realise the IBIPs at a value that is available to the customer;
- it does not include any explicit or implicit charges which have the effect that, even though there are technically options to surrender or otherwise realise the IBIP, doing so may cause unreasonable detriment to the customer because the charges are disproportionate to the cost to the insurance undertaking;
- it does not in any other way incorporate a structure which makes it difficult for the customer to understand the risks involved.

Criteria cumulatively met | Apart from the last criterion, all cited criteria must be met for an exemption cumulatively (not alternatively). If this is the case, a possibility for exemption exists either for contracts which provide investment exposure only to the financial instruments deemed non-complex under the MiFID II or other non-complex IBIPs for the purpose of the relevant IDD rules.

National implementing laws are decisive | Whether such non-complex IBIPs are actually exempted from the assessment of appropriateness depends for each EU/EEA country on the respective national implementation of the IDD. Therefore, it can be the case that in one country an exemption applies, whereas in another country no such exemption exists. With regard to cross-border transactions under the freedom to provide services or the freedom of establishment, the IDD stresses in this respect that intermediaries or insurers, when concluding insurance contracts with customers having their habitual residence or establishment in another EU/EEA target country which has not made use of the derogation and has not foreseen an exemption for non-complex IBIPs as referred to above, must comply with the applicable provisions in that target country (see Art. 30 (3) IDD).

Under what conditions can a product be regarded as **other non-complex IBIP** in terms of the IDD rules is specified in more detail in the IBIPs Regulation. According to this, the criteria is fulfilled where the product satisfies **all** of the following criteria (see Art 16 Regulation of IBIPs):







Reporting to Customers and Retention of Records

Periodic report to customers

The IDD and the IBIPs Regulation require that intermediaries or insurers must provide the customer at least annually with a periodic report, on a durable medium (see above), on the services provided to and transactions undertaken on behalf of the customer. The required periodic report must provide a fair and balanced review of the services provided to and transactions undertaken on behalf of that customer during the reporting period and must include, where relevant, the total costs associated with these services and transactions, and the value of each underlying investment asset (see Art. 30 (5) IDD, Art. 18 IBIPs Regulation).

Retention of records

The IBIPs rules require that the intermediaries or insurers maintain records of the assessment of suitability or assessment of appropriateness (see Art. 19 (1) IBIPs Regulation).

The record must include:

- the information obtained from the customer; and
- any documents agreed with the customer:
 - documents that set out the rights of the parties
 - other terms under which the intermediary or insurer will provide services to the customer.

Such records must be retained, according to the IBIPs rules, for at least the duration of the relationship between the intermediary or insurer and the customer (see Art. 19 (1) IBIPs Regulation).

Reasonable record retention period? | The requirement to retain the records at least during the duration of the relationship between the intermediary or insurer and the customer is not completely clear. Taken literally, the request could lead to a kind of everlasting record retention obligation, depending on the existence of the relationship between the intermediary/insurer

and the customer. However, such a legal situation is apparently not suitable with regard to relationships lasting for several decades. On the other hand, the request could allow the destruction of information immediately after the relationship has been terminated. Both versions do not seem entirely reasonable. A clearly fixed time period would, in any case, be preferable. It remains to be seen whether the national legislatures or the competent supervisory authorities will make this requirement more concrete.

Additional requirements in the case of an assessment of suitability

Additionally, in the case of an assessment of suitability, the record must also include the following (see Art. 19 (2) IBIPs Regulation):

- the result of the assessment of suitability;
- the recommendation made to the customer and the suitability statement (statement provided in accordance with Art. 14 (1) IBIPs Regulation);
- any changes made by the intermediary or insurer with regard to the assessment of suitability, in particular, any change to the customer's risk tolerance;
- any changes to the underlying investment assets.

Additional requirements in the case of an assessment of appropriateness

For an assessment of appropriateness, the record must include the following, rather than the additional information for an assessment of suitability (see Art. 19 (3) IBIPs Regulation):

- the result of the assessment of appropriateness;
- warnings
 - any warning given to the customer where an IBIP was assessed as potentially inappropriate for the customer,
 - any warning given to the customer where the customer did not provide sufficient information to enable the intermediary or insurer.



- the result of the assessment of appropriateness;
- warnings
 - any warning given to the customer where an IBIP was assessed as potentially inappropriate for the customer,
 - any warning given to the customer where the customer did not provide sufficient information to enable the intermediary or insurer to assess the appropriateness of an IBIP.
- the result of the assessment of appropriateness;
- warnings
 - any warning given to the customer where an IBIP was assessed as potentially inappropriate for the customer,
 - any warning given to the customer where the customer did not provide sufficient information to enable the intermediary or insurer to assess the appropriateness of an IBIP.

In the event of warnings, it needs to be recorded in each case:

- whether the customer asked the intermediary or insurer to proceed with concluding the contract despite the warning

(where applicable) whether the intermediary or insurer accepted the customer's (special) request to proceed with concluding the contract.

Form of record | According to the IBIPs rules, the records must be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority.

The authority must be able to access the records readily:

- to reconstitute each element in a clear and accurate manner;
- to identify easily any changes, corrections or other amendments;
- to identify easily the content of the records prior to such modifications (see Art. 19 (4) IBIPs Regulation).