GDV Gesamtverband der Versicherer

POSITION PAPER

Position Paper

of the German Insurance Association (GDV)

on the European Commission’s Proposals on the Retail Investment Strategy

GDV

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Executive Summary

The package presented by the European Commission aims at encouraging European consumers to invest more and to save for retirement. When investing and saving, consumers should always be treated fairly and be duly protected. German insurers support this objective of the European Commission. The proposal contains good ideas in this regard, such as the modernisation of information requirements (digital by default), the reduction of overlapping provisions between legal texts, and the focus on financial education. Unfortunately, the proposal also contains several measures which run counter to the objective of increasing retail investor participation. It is therefore important to assess carefully where the proposed text is aligned with the stated objective and where not. The German insurance industry will strive to ensure that the further debate will be dedicated to the chances that are presented by the European Commission's proposal. For this purpose, we would like to make the following suggestions for improvement:

Retaining the coexistence of remuneration systems

The debate on the retail investment strategy is dominated by the question as to whether commissions and other inducements should be banned. The European Commission has decided to propose a staged approach. There will not be a general ban on commissions for the time being. However, the European Commission suggests introducing partial bans. We believe that bans on commissions, including partial ones, will not help to achieve the desired objective. We are convinced that they would reduce retail investor participation so that we instead **advocate for a coexistence of remuneration systems**. According to the proposal, the relevant provisions on the pre-conditions for commission payments and other inducements shall only be specified by the European Commission later at Level 2. It is uncertain whether the proposed conditions might ultimately have the same effect as a ban on commissions. We therefore call on the co-legislators to take definite decisions at Level 1 and to clearly state what they intend and what not.

We appreciate the decision to maintain the legal separation between IDD and MiFID II. This separation ensures that insurance-based investment products (IBIPs) will not simply be equated with pure investment products. However, the European Commission intends to harmonise the rules. When doing so it should be ensured that there will still be sufficient latitude to take account of the specificities of the individual product types. Here we see a need for improvement in several parts of the text that do not sufficiently take the specificities of IBIPs into account, such as the new best interest test pursuant to Article 29 draft IDD.

Amending proposals on product governance and preventing price controls

Similarly, product features of IBIPs are not considered sufficiently within the product governance processes pursuant to Article 25 draft IDD. Moreover, we are particularly critical of the proposed requirements on product governance since it cannot be ruled out that they **will de facto be used to control prices**. This would be an improper interference with the freedom to conduct a business, which is

guaranteed under European primary law. Benchmarks may serve as useful tools for supervisory authorities to identify individual products which need to be investigated further. However, benchmarks are not suitable as general and binding tools for manufacturers' pricing processes.

Setting the costs of regulation in proportion to the benefits

For years, insurers have been requested to reduce the costs of their products, including distribution costs, to achieve better outcomes for consumers. Insurers have responded successfully to these requests and continue to improve their offering to consumers. Unfortunately, the European Commission's proposals would create excessive red tape. Disclosure and reporting requirements as well as the requirements on internal compliance are significantly increasing. Costs and benefits of the proposed measures are clearly not well balanced. Given the fact that the costs for implementing the new rules will ultimately have to be paid by consumers, co-legislators should carefully weigh the cost and benefits of any new provision introduced via the legislative proposal.

Streamlining and simplifying information provided to consumers

The European Commission intended to streamline and modernise the provisions on the information to be provided to consumers. The draft includes promising ideas on this issue: digital transmission of information shall become the standard – for all insurance products. That is an important step forward. We also appreciate the merging of overlapping provisions between different legal texts. **The potential regarding the streamlining and modernisation, however, is far from being fully exploited yet**. Moreover, specifying all details of pre-contractual information on IBIPs at Level 2 risks undoing any efforts of streamlining and will exacerbate information overload.

Finalising basic provisions at Level 1

In many cases, the provisions are designed to be finalised subsequently at Level 2 and Level 3. For the IDD and PRIIPs Regulation alone the European Commission's proposal contains a total of 26 empowerments for delegated regulations, RTS, ITS and guidelines. The Council's and European Parliament's rights of co-determination are being restricted as a result of this delegation of powers. This approach also contradicts the nature of the IDD, which is based on the **principle of minimum harmonisation**. This principle should be **retained** given the differences that exist in the single market. Ultimately, IBIPs often serve the purpose of private pension provision which is deeply embedded in social security and tax systems and hence a national matter by nature. If significant details are specified subsequently at European level, a swift transposition of the Directive into national law will be unrealistic and might even become dispensable.

Introducing a realistic implementation deadline for undertakings

The timeframe for implementing the amendments to the IDD and PRIIPs Regulation is unrealistic. It thus jeopardises any reasonable and good implementation.

According to the draft, the Member States as well as the undertakings shall implement the provisions at a time when it is not clear yet what the detailed specifications at Level 2 will actually look like. The insurance industry is very concerned about the legal uncertainty created by such an approach. **Mandatory application by the undertakings can take place at the earliest twelve months after the publication of all Level 1 and Level 2 regulations in the official journal**

Please find our detailed suggestions below:

1. Ban on inducements

Inducement bans are severe interventions into the market which have a disruptive effect. They are not suitable to induce people to make investments. It is therefore encouraging that the European Commission does not suggest a general ban on inducements. Retaining the possibility of coexistence of remuneration systems in Europe serves the objective of the retail investment strategy. We therefore are concerned that the proposed partial bans on inducements and the European Commission's declared intention to gradually move towards a general ban on inducements will ultimately reduce retail investor participation.

The IDD creates a legal framework which governs the way potential conflicts of interest are dealt with. It equally applies to all distribution channels: potential conflicts of interest must be identified and prevented or managed respectively. In cases where this is impossible, they need to be disclosed as a last resort. There is no evidence of any systematic violations of applicable law.

As a result of the transposition of IDD into national law, the Federal Financial Supervisory Authority *(BaFin)* was given powers to intervene in case of conflicts of interest which could be detrimental to consumers. Against the background of the socio-political necessity of enabling all strata of the population to properly save for retirement, bans on commissions – including partial ones – are neither justified nor would they help achieve the desired objective. **Above all, the German financial services market is a supply driven market rather than a demand driven market.** Moreover, there is hardly any demand for fee-based advisory services that currently exists on the market.[1]

Neither the reasons for a ban on commissions nor the consequences of such a ban have been sufficiently substantiated within the scope of the European Commission's impact assessment. This fact was also criticised by the Regulatory Scrutiny Board. Balanced, evidence-based and scientifically substantiated studies show that, with a view to the ultimate objectives of the retail investment strategy, a narrow focus on general, partial or de facto bans on commissions is more harmful than beneficial.[2]

[1] Institute of Insurance Science at the University of Cologne - Nettotarifangebot deutscher Versicherungsunternehmen, page 38 (only available in German)
[2] Oxera: "An economic analysis of remuneration systems: effective distribution of financial products"

Ban on inducements for independent advice

Across Europe, a ban on inducements for independent advice would mean that in the future such advice could only be offered if consumers directly pay for the services out of their own pockets. Practical experience shows that a large section of the population is not able or not willing to do so. This partial ban de facto makes it more difficult to provide independent advice and hence reduces access to it. Only if commission and fee-based advice continue to both be admissible while being made transparent will consumers really have a choice.

In Germany, the prevailing model for the distribution of retirement saving products is that the product providers pay the remuneration of advisory and/or intermediary services. That also applies to brokers that are not contractually tied to one or more insurers through an agency agreement. In the introductory remarks of the dossier (on page 16) the European Commission addresses the issue as follows:

“In view of the diversity of the insurance distribution structures in the Member States, it should also not prevent insurance intermediaries that are not employed by or contractually tied to an insurance undertaking but receive inducements from presenting themselves as not contractually tied to a specific insurance undertaking.”

This clearly describes what is and what is not intended. The paragraph should therefore be included in the legal text of the draft IDD or at least in the recitals of the draft IDD.

Ban on inducements for non-advised sales

The term “non-advised sales” used by the European Commission is misleading. It suggests that in cases where no personalised advice is given, no service providing added value is delivered. The term “non-advised sales” comprises two cases with different requirements: on the one hand there is the execution-only sales pursuant to Article 30(3) IDD, which is only allowed if certain conditions are met (at the initiative of the consumer, no complex products, prevention of potential conflicts of interest), and on the other hand there is the non-advised sales with assessment of the appropriateness pursuant to Article 30(2) IDD. In the second case an extended service is being delivered which cannot be provided free of charge.

According to the IDD, the demands and needs of consumers shall always be assessed since every insurance product sold should be consistent with these demands and needs. Where preferences in terms of sustainability are expressed within the scope of the specification of the demands and needs, these shall be taken into account together with the applicable comprehensive set of rules. Pre-contractual information needs to be made available and, if necessary, explained. In some cases, warnings might have to be provided and explained.

In the case of distribution with an appropriateness assessment pursuant to Article 30(2) draft IDD, no personalised recommendation is being made, which means that no “advice” within the meaning of the legal definition stipulated in IDD is provided. In practice this materialises most of the time from the fact that consumers are unwilling to disclose all information necessary for a suitability assessment. This has to be accepted by the insurance intermediary. The appropriateness assessment helps in these cases to identify suitable products. This way, consumers who do not want to provide any or all information also have the possibility to acquire suitable products for retirement saving.

Moreover, the requirements for the distribution with appropriateness assessment are being extended by the European Commission’s proposal: in addition to the knowledge and experience of consumers about investments, now also their capacity to bear losses and their risk tolerance will have to be taken into account in the future. For this purpose, information on the assets and income of the consumers as well as on their regular financial commitments is required. This means that major components of a suitability assessment are added to the appropriateness assessment. At the same time, the European Commission wants to prohibit remuneration of this service by means of commissions and other inducements. In our view, this is clearly contradictory. **Commission-based remuneration for distributing an insurance product with appropriateness assessment should continue to be possible.**

In addition, practice shows that the length of the sales and advisory processes can also be a hurdle for consumers. In view of the objective of the retail investment strategy it is therefore unclear why the appropriateness assessment should not continue to be restricted to making sure that consumers have the necessary knowledge and experience to assess the risks of the investment product.

Considering the composition of existing portfolios

The requirement stipulated under Article 30(1) draft IDD raises some questions. According to this provision insurance intermediaries and insurance undertakings, must also take into account the composition of any existing portfolios as well as the need for portfolio diversification when providing advice on insurance-based investment products. Concretely, the proposal states that “the composition of any existing portfolio” shall be considered. The criterion of portfolio diversification thus seems to apply to all forms of investment products across sectors, including investments other than insurance-based investments. The concept of holistic portfolio diversification is known from asset management. However, it does not fit in the context of insurance-based investment products. Portfolio diversification aims at reducing the risks or volatility of investments. With insurance-based investment products, the focus is usually on financial security. In many cases, contractual guarantees are being agreed upon. A substantial part of the investments are not made at individual but at collective level in diversified guaranteed assets. Products mainly serve the purpose of saving for retirement as well as covering against the risk of invalidity or death.

Considering the existing product portfolio of the customer within the scope of the advisory process is of course reasonable. Taking account of the portfolio diversification within the scope of providing advisory services on insurance-based investment products has therefore already been part of specifying the demands and needs of customers under current legislation. **However, no requirement to consider and thus implicitly to assess and provide advice on all existing contracts should be introduced.** This would not be possible since separate business licences are required for providing advice on IBIPs and products of other financial services providers in Germany. It cannot be assumed that every intermediary holds multiple licences. Even if insurance intermediaries have the necessary qualification and expertise, without the respective business licence they would not be allowed to provide advice on financial products other than insurance-based investment products.

Review clause

In the proposal, a review clause enables the European Commission to review the provisions on inducements and conflicts of interest three years after the date of entry into force of the Directive. However, it remains unclear what indicators and methods the European Commission will use to decide whether or not further measures – up to a full ban on commissions – should be introduced. With a view to the objective of the retail investment strategy, these criteria should be determined in the review clause itself.

Prior to any revision of the legal framework consumer testing should be conducted in all Member States and an adequate timeframe for the consultation of stakeholders should be set. Both should be included in the legal text as a precondition for the revision.

Furthermore, the date set for the review is way too early. It is not reasonable to start with these tests and assessments until the new legal framework has been completely implemented for at least two years. Initial impacts cannot be assessed any sooner.

2. Best interest test

Depending on the design of the proposed best interest test, it might lead to a defacto ban on inducements. From our point of view, provisions with such far reaching implications must be specified and finalised at Level 1.

The new Article 29b draft IDD provides for four best interest test criteria which are nearly identical to the best interest test under MiFID. As a result, these criteria do not sufficiently take into account the specificities of insurance-based investment products. Furthermore, some vague legal terms, including “appropriate range of insurance-based investment products”, “most cost-efficient insurance-based investment product” and “insurance-based investment products without additional features”, are being introduced. To make sure that there will be no de facto bans on commissions through delegated acts the best interest test criteria need to be specified and clarified on Level 1.

According to the legislative proposal, inducements shall only be admissible in the future if all conditions for a best interest test have been met.

Insurers and insurance intermediaries shall act honestly, fairly and professionally in accordance with the best interests of the consumers. This requirement has already been stipulated as a guiding principle in the existing IDD.

We appreciate the fact that IDD and MiFID II remain separate directives. However, the fact that insurance-based investment products meet different demands and needs than pure investment products and are introduced to the markets through other distribution structures is not given adequate consideration. The proposed best interest test provides for four criteria for insurance-based investment products at Level 1. These criteria shall be specified within the scope of a delegated regulation at Level 2. This authorisation gives the European Commission very far-reaching powers. Depending on what is being stipulated at Level 2, a ban on commissions might de facto be implemented. The Council’s and European Parliament’s rights of co-determination are being restricted as a result. We believe that it is **necessary to specify and finalise such far-reaching measures at Level 1. The respective empowerment to issue delegated acts should therefore be deleted.**

Appropriate range of insurance-based investment products

We are particularly concerned by the implications of the obligation set out in Article 29b(1)(a) draft IDD. According to this article, advice shall be provided on the basis of an assessment of an appropriate range of insurance-based investment products and, where applicable, underlying investment assets. It is unclear how insurance agents that are contractually tied to one insurer can meet this requirement. A section of the Q&As, published by the European Commission at the same time as the legislative proposal, already addresses this issue.

It states:

“The appropriate range of products can also be met by tied agents, if the advice on an appropriate range of products is ensured through products from one manufacturer. In such a case, clients need to be informed in line with applicable requirements.”

Insurance-based investment products offer a wide range of investment options. They can offer a high degree of flexibility that is de facto tantamount to a wide range of pure investment products. It would therefore be appropriate to **put the focus on “range of products” or “range of options” and stipulate this in Article 29b(1)(a) draft IDD**.

For the purpose of legal certainty, a specification within the legal text of the draft IDD or at least a recital within the draft IDD is required to clarify that tied agents are allowed to receive commissions in the future.

Most cost-efficient insurance-based investment product

The European Commission suggests in Article 29b(1)(b) draft IDD that insurance intermediaries shall always recommend the most cost-efficient product from the range of suitable insurance-based investment products. Focusing mainly on the costs bears the risk that competition will be based exclusively on price. This would mean that other aspects that are inherent to insurance-based investment products and that are important to consumers are being neglected. These aspects include safety, quality of business processes, financial strength of the product provider as well as sustainability issues. The product or provider that is most suitable for the consumer will not necessarily be the one with the lowest costs. Under the proposed rules, consumers would be nudged to not choose the most suitable product or the most suitable provider but the most cost-efficient one. However, this might prove detrimental to consumers’ interests later on.

It would therefore be important to at least clarify in the legal text or in the recitals that cost-efficiency refers to the costs incurred in relation to all of a product’s features that are preferred by consumers. This way it would be clear that what is intended is meeting consumers’ demands and needs in the most cost-efficient way. Furthermore, a note should be included in the legal text stating that the recommendation only refers to products which insurance intermediaries can actually provide.

Insurance-based investment product without additional features

According to Article 29b(1)(c) draft IDD, at least one insurance-based investment product “without additional features” shall be recommended. Additional features shall mean features that are not necessary to meet the demands and needs of consumers and that give rise to extra costs.

According to Article 20(1) IDD and Article 29b(1)(d) draft IDD, all recommended products need to be consistent with the demands and needs of consumers. The further requirements set under Article 29b(1)(c) draft IDD are inconsistent with this principle already stipulated in the current IDD. In addition, the requirements under Article 29b(c) and (d) draft IDD contradict each other. Article 29b(c) states that the recommended insurance-based investment product shall not include any additional features, while Article 29b(d) states that the insurance cover provided by the product shall meet the demands and needs of consumers. **Article 29b(1)(c) draft IDD should be deleted for the purpose of providing clarity rather than contradiction.**

The corresponding empowerments to adopt delegated acts carry the risk that the principle of minimum harmonisation can de facto be abolished at Level 2 without including the co-legislators in this decision. This is of particularly great significance with regard to the provisions stipulated in the new Article 29b draft IDD.

3. Product governance

Mandating EIOPA to develop benchmarks against which insurers are required to compare their products, as stipulated in the draft, is not feasible. Many important features of insurance-based investment products are difficult to compare against benchmarks, such as the design of safeguards and the quality of guaranteed assets. As a result, their relevance would be limited from the outset. Benchmarks can be useful tools for supervisory authorities to identify individual products which require further investigation. However, they are not suitable as a general and binding benchmark in manufacturers' pricing process.

Empowering the European Commission to determine by means of delegated acts which costs may be charged for insurance-based investment products (as "justified and proportionate") would interfere significantly with the freedom to conduct a business, which is guaranteed under primary law (Article 16 of the Charter of Fundamental Rights of the European Union). Such an interference with pricing and thus also with competition is not justified. Under current legislation, supervisory authorities already have extensive powers to identify and remedy possible abuses.

We welcome the clarification that the costs of a product need to be considered within the scope of product governance processes. It is in line with what is already common practice. The extensive price regulation stipulated in the European Commission's proposal, in contrast, would be an unjustified interference with the freedom to conduct a business, which is guaranteed under European primary law.

The purpose of the rules on product governance is to make sure that the products are consistent with the demands and needs of the relevant target market. The costs of a product, too, shall be assessed accordingly. They must not call into question the suitability of the product for the purposes of the target market. Consumers and insurance intermediaries are able to make an informed decision on the basis of the comprehensive information provided on the costs (PRIIPs KID, Article 29 IDD).

Already now, a product is not allowed to be distributed to a target market if it does not meet the target market's needs. The supervisory authorities already have effective means at their disposal to identify and remedy potential shortcomings. The necessary powers to access information and intervene have been defined in the Solvency II Directive as well as in the PRIIPs Regulation. In conjunction with the existing provisions on product governance in IDD, they enable the supervisory authority to conduct a targeted review and intervene accordingly. The effectiveness of these provisions has been proven by the guidance on "Aspects of Conduct of Business Supervision for Savings Products" recently published by the German national competent authority *(BaFin)*, but also through previous publications by EIOPA on the topic of Value for Money.

The way in which benchmarks are currently utilised in the legislative draft has several significant shortcomings. The insurance-based investment products landscape is too diverse to allow for a one-size-fits-all approach. Insurance-based investment products closely follow national framework conditions and consumers' preferences within the Member States. In Germany alone one would have to differentiate between different risk categories, terms, sustainability criteria, guarantee levels, inclusion of the protection of biometric data, and the existence of a pension phase. Purely qualitative features, e.g. the financial strength of the insurer, the quality of the guaranteed assets, access to special investments such as alternative assets, the quality of risk mitigation measures, flexibility, services, a lasting promise in the form of guarantees and lifetime annuities, could hardly be compared against quantitative benchmarks. As a result, the relevance of the benchmarks would be limited from the outset. However, they might be useful as **indicators or guidance for supervisory authorities to identify products that require further investigation. With this purpose in mind, they could already be stipulated in IDD at Level 1**. However, benchmarks are not suitable as a binding standard in the pricing process. Where data is being collected for benchmarks, it should primarily be based on information that has to be made available anyway (IDD, PRIIPs, Solvency II) in order not to further increase efforts and costs.

Within the limitations described, however, it is up to the manufacturers to set the prices. The possibility to determine the remuneration for the services offered on their own is a key element of the freedom to conduct a business, which is enshrined in Article 16 of the Charter of Fundamental Rights of the European Union. The new provisions, however, would significantly intervene in the pricing process. According to the proposals, only costs that are justified and proportionate can be charged. The benchmarks, which have yet to be defined, are intended to provide a guideline in this respect. Moreover, the European Commission wants to specify the criteria based on which this evaluation shall be carried out by means of delegated acts implying no involvement of the co-legislators in terms of content. This tool would give the European Commission the possibility to take pricing de facto away from undertakings, by stipulating criteria for when prices are "justified and proportionate" at Level 2. There are serious doubts to the legal admissibility of the delegation of such an important provision to the European Commission pursuant to Article 290(1) TFEU.

Regulatory interventions have to be justified and proportionate. Both criteria are not fulfilled here. Where problems occur due to excessive costs, they can be easily remedied by consistently applying the existing provisions. The guidance notice on "Aspects of Conduct of Business Supervision for Savings Products" recently published by the German national competent authority *(BaFin)*, for instance, provides evidence of the large scope of action of the supervisory authorities under current legislation. Therefore, there is no need for further interventions in competition. On the contrary, regulating pricing could result in market disruptions, lower market quality, and less innovation. That was the reason why the market for insurance products was deregulated 30 years ago. Binding benchmarks might further impede competition by creating barriers for new market participants, thus restricting the

range of products available to consumers. Well-functioning competition is a prerequisite for good products.

When designing the provisions on product oversight and governance, it is important to avoid that processes which are imposed on the manufacturer have to be repeated by the insurance intermediary. Such a duplication is inherent in Article 25(5)(2)(c) as well as Article 25(5)(3) draft IDD. Even though product manufacturers already must ensure that the offered products deliver value for money, insurance intermediaries shall also assess whether the costs and charges are justified and proportionate. **To enable a distribution process that is as efficient and cost effective as possible, this redundancy should be removed from the legal text.** If all costs have been calculated within the product, the assessment of the costs by the manufacturer is sufficient. Where additional costs are agreed between consumers and insurance intermediaries at the point of sales, it already is the responsibility of the intermediary to take the total costs into account when providing advisory services. The full disclosure of the pricing process to the intermediaries as provided for in Article 25(3)(3) draft IDD is therefore not appropriate either. As is already the case under current legislation, information on all relevant costs is disclosed to the intermediary pursuant to Article 25(3)(2) draft IDD. More detailed information means that trade secrets have to be disclosed. The pricing process of products constitutes an element of competition.

4. Information provided to consumers

We welcome the transfer and merger of all duties to provide information on insurance products in the IDD. The objective of streamlining and simplifying the information, however, was not achieved as result of all-encompassing Level 2 empowerments. This applies in particular to pre-contractual information on IBIPs and the annual statements. More detailed transparency and disclosure requirements will increase internal costs considerably while not making consumer information more understandable in any significant way.

Experience shows that specifically for insurance-based investment products disclosures can be developed in a more tailored manner at national level. Provisions at Level 2 should therefore be avoided. Another standardised pre-contractual information document for insurance-based investment products in addition to the PRIIPs KID would be unnecessary and counterproductive for consumer understanding. Such a standardisation would inevitably come at the expense of comprehensibility while at the same time involving huge additional efforts. Providing information on the costs is reasonable, however, cost information should not become more dominant than information on other product features and aspects.
Provisions on the annual statements should provide for an exception for existing contracts.

By taking the provisions on the information to be provided to consumers as stipulated in the Solvency II Directive and transferring them to IDD, the draft goes into the – from our point of view – right direction of consolidating the respective

provisions in IDD. Furthermore, with the revision of the provisions on the distance marketing of financial services (DMFSD), another important step on this way will soon be completed. As a result of the subsidiarity of the future provisions in the DMFSD, redundancies and duplications regarding the information to be provided to consumers will be reduced. Notwithstanding the above, more needs to be done to streamline, improve comprehensibility and increase the relevance of the information.

Pre-contractual information on IBIPs to be provided to consumers

We agree with the European Commission's draft stating that consumers should be provided with certain information on their insurance-based investment products in a personalised form. This is in line with current legislation under IDD and the Solvency II Directive. According to the European Commission's proposal, however, in the future this kind of information shall be provided in a new standardised pre-contractual information document. In addition, EIOPA shall be empowered to specify the contents, format and language by means of RTS at Level 2.

Consumers already obtain a standardised document with the PRIIPs key information document (PRIIPs KID). **A second standardised document does not provide any added value.** In the PRIIPs KID, the legislator has deliberately accepted a compromise between standardisation and comprehensibility of the information. The aim was to facilitate a simple comparison between different products. The price to be paid by the legislator and the industry was very high: very detailed provisions were established at Level 2 (85 pages RTS, eight annexes, extensive interpretation guidelines at Level 3). As a result of the overly ambitious target of a Europe-wide standardised, detailed information document, the RTS already had to be fundamentally revised after a short period of time. Detailed specification of the content, format, design and terminology in IDD would involve a similar level of effort. Achieving the objective of offering cost-efficient products to consumers would thus be made more difficult.

In fact, there is no need to standardise the information to be provided to individual consumers under IDD. What is crucial here is that the individual contractual information that is required in addition to the PRIIPs KID can be prepared by the insurer in a comprehensible way customised to the specific product. There must be sufficient leeway to take adequate account of the specificities of the national insurance-based investment products and to present them to consumers in a comprehensible manner. In Germany, this includes in particular long contract durations, pension provision and guarantees.

The contents of the information to be provided to consumers should therefore be finalised in die Directive itself, without further delegated acts. Experience has shown that Level 2 and Level 3 empowerments result in very detailed provisions. However, if the provisions are finalised at Level 1, there is a chance to prevent an information overload for consumers. The structure of Article 185 Solvency II Directive, complemented by an adequate disclosure of the costs, could serve as a

model in this context. What would be important is that a balanced view on a product is presented to consumers. It should be taken into account that consumers already obtain up to 16 cost indicators within the PRIIPs KID – providing even more information on costs should therefore be avoided.

In this context, it is also problematic that the European Commission's proposal foresees that EIOPA develops Europe-wide standardised terminology. Such an approach poses the risk of creating huge inconsistencies and contradictions with the terminology in national contract law as well as commonly used terminology in national markets.

European provisions on annual statements for IBIPs

In Article 29(2) and (3) draft IDD, the European Commission proposes a EU-wide harmonised annual statement. It seems reasonable to inform consumers about the performance of their products on a regular basis. However, it seems as though EU-wide harmonisation of this information is neither useful for consumers nor feasible for insurers.

The annual statement mainly serves to inform consumers about the performance of their product. The comparability of information between different countries is of minor importance when it comes to annual statements since the comparison of different products takes place before the contract is being concluded. It seems more reasonable to develop annual statements at national level to better take into account the national needs of consumers. This includes the products' character which reflects national civil law (e.g. in Germany, insurance-based investment products are very much dominated by pension provision) and the terminology used in the individual markets. Having latitude with regard to the transposition into national law is also important since national schemes that collect information on pension entitlements (in Germany: "Digitale Rentenübersicht") are often based on data derived from the annual statements.

From our point of view, consumers would obtain information of a higher quality if it is being generally stipulated at Level 1 that making annual statements available to consumers is mandatory and if the Member States are requested to draw up the details in a way that is consistent with the respective markets.

However, it is **important to clarify that the new provision shall not apply to existing contracts**. In the case of existing contracts, consumers shall continue to be provided with information pursuant to Article 185(5) Solvency II Directive. If this recommendation is not followed, it would be necessary to at least establish a clear approach at Level 1 in the event that a provider does not have the historic data of a contract. In addition, longer implementation periods of at least 36 months would be required since the implementation would be very complex.

Information document for biometric life insurance products

The proposal introduces a new information document for biometric products other than insurance-based investment products. The Insurance Product Information Document (IPID) for non-life risk products serves as a model for the new document. From our point of view, introducing a European information document for biometric life insurance products is reasonable and should be supported.

The scope of Article 20(5) and (8a) draft IDD, however, is too broad and includes products for which the IPID is not suitable. The IPID has been drawn up as brief information on biometric insurance products. By using a negative definition of "insurance products other than insurance-based investment products" to define the scope of application for the new document, certain nationally recognised pension products are unintentionally included. These products are otherwise excluded from provisions on insurance-based investment products for good reasons (Article 2(1) point 17 IDD, Article 2(2) PRIIPs Regulation). The reason for excluding the products has been that they were already governed by special rules that take account of their individual characteristics at national level (e.g. in Germany, Section 7 of the law on the certification of old-age pension and basic pension contracts *(Altersvorsorgeverträge-Zertifizierungsgesetz, AltZertG)* and Section 144 Insurance Supervision Act *(Versicherungsaufsichtsgesetz, VAG)*). The IPID would not be suitable for these products and might even cause confusion. **Nationally recognised pension products should therefore continue to be excluded from the scope of application**, since consumers already obtain suitable information on these products pursuant to national law.

The IPID has proven to be easily understandable and easily accessible product information. This is, above all, due to its focus on the key information on the product (Article 3 IPID Regulation). This focus on the key issues should also be retained for biometric life insurance products.

Provision of information in electronic format

We welcome the fact that, pursuant to Article 23(1) of the proposal, it shall become standard for all insurance products that information will be provided to consumers in electronic format in the future. This is a step in the right direction to adapt the provisions to the digital age. However, the provisions should also allow for information to be provided via a website. The criteria which have to be fulfilled for a website to meet the requirements of a durable medium have not been clarified. Both the European Court of Justice (ECJ)[3] and the EFTA Court[4] have left this question open so far. The legislator should use this opportunity to **also create legal certainty for websites as a means of providing information**. This could be done by adopting the established provision set out in Article 23(5) of the currently applicable IDD. The provision already lays out specific requirements on the provision of information by means of a website. Specification within the context of

3 ECJ, judgment of 5 July 2012, C-49/11
4 EFTA Court, judgment of 27 January 2010, E-4/09

guidelines as provided for in the draft (Article 23(4) draft IDD) is not suitable for this purpose. Guidelines are merely a recommendation addressed to national supervisory authorities to adjust their supervisory practices accordingly. They are not of a regulatory nature and are therefore unable to create legal certainty in the relationship between insurers and consumers.

Furthermore, Article 20(5) draft IDD should be adjusted to the new rules on providing information. It seems as though, with regard to the product information documents mentioned under Article 20(5) draft IDD, information shall continue to be provided “on paper or on another durable medium”.

In addition, it would be welcomed if **“digital by default” will become standard** for any information and documents provided to consumers, that means **also for investment advice minutes, bills, policies, etc.**

Right of withdrawal

The provisions on the right of withdrawal pursuant to Article 186 Solvency II Directive for life insurance contracts and pursuant to Article 6 for insurance contracts sold at a distance should be consolidated in IDD. The right of withdrawal is as alien to the prudential framework of the Solvency II Directive as the duties to provide information to consumers are at present. On this occasion, the instructions on the right of withdrawal should also be included in the respective provisions on pre-contractual information on insurance-based investment products (Article 20 IDD, Article 29(1) draft IDD).

In addition, the **right of withdrawal should be amended by a time limit** (e.g. one year after the conclusion of a contract or one year after the date of entry into force of the amendments of the draft IDD). The legal uncertainty that comes with the lack of such a time limit results in considerable burdens in several European markets. The European legislator has recognised the need for a time limit for most other economic sectors and has established a limit in the respective provisions on the right of withdrawal. In addition to the Consumer Rights Directive, these also include the currently revised provisions on the distance marketing of financial services and the amended Consumer Credit Directive. A regulation following this model is also required for insurance contracts.

A European model should be established for this specific kind of information in order to avoid legal disputes in the future and to ensure sufficient information on the right of withdrawal is being provided. **Such a model could be included in the Directive itself, similar to Annex I of the Consumer Rights Directive.**

Risk warnings

The German insurance industry welcomes the warnings on particularly risky investment products, as provided for in Article 29(5) draft IDD. Consumers shall only be allowed to choose very risky products if it is a deliberate choice.

5. Disclosure of third-party payments

Shifting the obligation to disclose third-party payments to product manufacturers is inconsistent with the system underlying cost disclosure.

Consumers should have the right to directly ask the insurance intermediaries about the remuneration for various, suitable products. That helps consumers assess the interests of the person they are dealing with. Furthermore, it is up to the supervisory authorities to take a close look at the measures that undertakings take to prevent or deal with conflicts of interest.

The system underlying cost disclosure is that product manufacturers disclose the costs and benefits of their products (including investment options) based on pricing. These costs correspond with the amount which consumers pay for the respective product. Consumers should know these costs and understand how these costs influence returns. This information is already provided to them today.

Furthermore, it is important to understand whether part of these costs are charged because the insurance intermediaries receive commissions. From the perspective of consumers, it also interesting to know whether a potential conflict of interest might arise as a result. The answer to these questions can only be given by the insurance intermediaries because they can exactly state what payments they will receive when selling a certain product – also compared to other products. They can also explain that the commission is already factored in the product price, and provide information on factors that mitigate the risk of a potential conflict of interest. These include, for instance, repayment mechanisms for commissions in the event of cancellation or the payment of commissions in instalments. **The duty to disclose payments from and to third parties should therefore be placed on these "third parties", that is the insurance intermediaries.** Shifting the disclosure obligation to product providers would result in a disproportionate burden. Contrary to the original intention, this would increase costs and prices. We suggest instead that consumers should have the right to directly ask insurance intermediaries about the level of the payments for the various, suitable products. That helps them assess the interests of the person they are dealing with.

6. Key information documents pursuant to the PRIIPs Regulation

In our view, the amendments of the PRIIPs Regulation should be limited to those issues for which an amendment of Level 1 provisions is absolutely necessary. Many of the proposed amendments can only be made at Level 2 without changes to Level 1. Furthermore, the empowerments of the European supervisory authorities are too broad. They should be limited to the contents to be amended by the review of the regulation. To continue to fulfil the important requirement of not exceeding three pages, new information must be offset by removing other information following a “one-in, one-out” approach. From our experience the implementation will take at least twelve months, not six months as proposed in the draft.

The PRIIPs KID should continue to be an abstract document, since consumers are provided with personalised information within the scope of the pre-contractual IDD information. Given that highly complex mathematical methodologies are used for calculating key figures, the PRIIPs KID is not suitable for any real-time calculations.

The new PRIIPs RTS in (EU) 2021/2268 have only been applied since this year. It is also only since this year that all products have been in the scope of application for which the PRIIPs KID had been designed for originally. The amendments of the PRIIPs Regulation (draft PRIIPs Regulation) should therefore be limited to those contents that are really necessary.

Six months are not enough for the implementation by providers. The digitalisation of the documents, the inclusion of the dashboard and ESG information (as well as their collection) and innovations with regard to multiple options products (MOP) would lead to a full revision of the PRIIPs KID. The same applies to the information pursuant to IDD, which will have to be implemented simultaneously. As a result of the unrealistic timeframe, first-time application of the PRIIPs Regulation already had to be postponed by one year in 2017. A repetition of this scenario should be avoided. **Undertakings need at least twelve months to implement the provisions. It would be appreciated if the amendments – as was always the case in the past – enter into force on 1 January of a year to prevent any adjustments in the course of the year.**

The revision of the PRIIPs KID should also take place in an orderly review process including consumer testing. In this process it should be tested how the information can still be presented on three pages without sacrificing the comprehensibility. Unfortunately, the PRIIPs KID will become longer as a result of the envisaged amendments. Consumers already find the information on financial products to be overly extensive. We therefore explicitly welcome the fact that the maximum length of three pages shall be retained. As a result of including new information, such as the dashboard pursuant to Article 8(3)(aa) draft PRIIPs Regulation and the new paragraph on the sustainability of products pursuant to Article 8(3)(ga) draft PRIIPs Regulation, other elements will have to be streamlined. For instance, the

intermediate values relating to performance and costs in Annexes V and VII PRIIPs RTS in the section entitled “How long should I hold the investment and can I take money out early” could be transferred to the text body. The second table on the breakdown of costs in Annex VII PRIIPs RTS could be streamlined since the breakdown of costs constitutes expert knowledge. Many redundancies can also be found in the pre-set text modules, such as the table header and the introductory text on performance scenarios. The possibilities for consumers to file a complaint can be transferred to the IDD information.

Any amendments within the PRIIPs Regulation should be limited to amendments which must be made at Level 1. From our point of view, this only applies to making the PRIIPs KID available in digital form as default option pursuant to Article 14(2) of the draft PRIIPs Regulation, which we explicitly welcome. The empowerment of the EU supervisory authorities to further revise the provisions with regard to all contents of the PRIIPs KID pursuant to Article 8(5) of the draft PRIIPs Regulation goes too far from our point of view and should be limited to the newly introduced provisions. Some amendments can only be made at Level 2. There is no need to amend the Regulation for this purpose. These include the design of multiple options products pursuant to Article 6(3) draft PRIIPs Regulation, the introduction of a dashboard pursuant to Article 8(3)(Aa) draft PRIIPs Regulation, and a paragraph on the sustainability of PRIIPs pursuant to Article 8(3)(ga) draft PRIIPs Regulation.

What is crucial is that the PRIIPs KID continues to be abstract in nature. Consumers are provided with information in personalised form within the scope of the documents pursuant to Article 29 draft IDD. **Duplication in the PRIIPs KID is not reasonable**. A deliberate trade-off between comparability and comprehensibility was made in the PRIIPs KID in order to enable consumers to compare uniform standard constellations of different products in a first step.

Furthermore, the PRIIPs KID has not been designed as a dynamic customised document which can be adjusted in real time on the website of the insurer. For instance, the PRIIPs RTS require the performance scenarios in the PRIIPs KID to be calculated based on highly complex mathematical methods. The costs of the products as well as the risk indicator are also derived from these calculations. Experience has shown that it sometimes takes more than an hour to carry out and examine the necessary stochastic calculations. Requiring the manufacturer to create a tool that allows comparing different investment options in real time pursuant to Article 6(2)(a) draft PRIIPs Regulation would inevitably result in a customisation of the PRIIPs KID and a massive increase of effort. Radical simplifications of the provisions on calculation methods would be a necessary precondition. In addition, insurers should not be required to generate entire PRIIPs KIDs in real time since the effort to do so is much higher than the actual benefit. It would be sufficient to inform consumers about the costs which are calculated based on given deterministic scenarios. That should be clarified in the legal text. Moreover, it shall be ensured that a presentation pursuant to Article 10(a) RTS continues to be possible. Here, insurers draw up a separate PRIIPs KID for each investment option. The technically demanding proposals pursuant to Article 14(2) draft PRIIPs Regulation

are not feasible with regard to the purposes of the PRIIPs KID and should be deleted.

Including information on the sustainability of the PRIIP in the new section entitled "How sustainable is this product?" is a good idea. However, the proposal should be consistent with already existing ESG rules, in particular those stipulated in IDD and MiFID II. The proposal should be based on the three questions that are raised for the purpose of assessing the sustainability preferences (minimum share of sustainable investments, minimum share of investments that comply with the taxonomy, consideration of adverse impacts).

We explicitly welcome the decision of the European Commission to refrain from including past performance in the PRIIPs KID since this information is misleading for the purpose of understanding the future performance and risks of investment products.

7. Level 2 and Level 3 empowerments

The draft legislation shifts the specification of provisions to Level 2 and Level 3 in an exceptionally high number of cases – even when they refer to far-reaching amendments. The Council's and European Parliament's rights of co-determination are being restricted by shifting these decisions to Level 2 and Level 3. Moreover, this approach is inconsistent with the nature of the Directive which is based on the principle of minimum harmonisation. This principle has not been changed by the European Commission and should be retained by all means given the existing differences in the single market. There is an urgent need to significantly reduce the number of issues that shall be specified at a later stage.

The European Commission gives itself and the supervisors very far-reaching powers in its proposal. The Council's and European Parliament's rights of co-determination are being restricted as a result. The high number of empowerments is inconsistent with the nature of IDD which is based on the principle of minimum harmonisation. This principle gives Member States some latitude with regard to the transposition of the rules. Given the differences that exist in the individual markets, it is important to retain this approach. Ultimately, in Germany, insurance-based investment products constitute retirement saving products. Retirement provision is national by nature and is designed accordingly.

The empowerments for provisions to be stipulated at a later stage should therefore be limited to what is really necessary. In our view, the **delegations of power provided under Article 23(4) Article 25(9), Article 26a(8), Article 29(4), Article 29a(5), Article 29b(2) and Article 30(1)** do not help achieve the intended target and are thus **– fully or in part – dispensable**.

8. Timeframe

The timeframe for transposing and reviewing the Directive by the Member States and the application of the Directive und the PRIIPs Regulation by the undertakings is overly ambitious. This applies, above all, to the high number of envisaged measures at Level 2 and Level 3 – even if the number will be reduced. As a result, the entire sector will once again face the dilemma of having to apply legislation that has not been finalised yet. We are particularly critical of the legal uncertainty that will be the likely result.

The European Commission suggests implementing the IDD amendments twelve months after the date of entry into force and applying them 18 months after the date of entry into force. That means for the insurance industry that legislation will have to be applied that has not been finalised or specified yet, since the corresponding arrangements at Level 2 will not have been published by this time. We are very critical of the legal uncertainty that will be the likely result of this timeframe.

Experience with the transposition of IDD shows that the proposed timeframe for transposing the draft IDD and draft PRIIPs Regulation is unrealistic and over-ambitious. The IDD was published in January 2016, the two supplementary delegated regulations (Level 2) did not follow until 21 months later. The German IDD transposition law was adopted in July 2017, that is 18 months after the publication of IDD. At that time, the Level 2 provisions had not been finalised yet; they were finalised at the end of September 2017.

The quality of the legal framework should have priority. Insurers need at least twelve months from the date of publication of all measures at Levels 1, 2 and 3 to implement all necessary amendments. **Similar to the PEPP Regulation, a dynamic time limit in the legal texts would be a practical solution** to make sure that the timeframe will be adhered to and to prevent legal uncertainty if there will be any delays in the legislative procedure.

9. Marketing communication

We share the key objective of Article 26a of the draft legislation, which is to prevent misleading marketing communications. As already set out in Article 17(2) of the currently applicable IDD, this constitutes a clarifying repetition of the principle governed in detail within the scope of the Unfair Commercial Practices Directive. In our view, however, the empowerment to further specify this principle with regard to investment products by means of delegated acts is not appropriate. Based on the Unfair Commercial Practices Directive, extensive case law has evolved on this issue at national and European level. This case law is constantly evolving. **A separate regulatory regime for investment products** which shall be complied with in addition to the provisions of the Unfair Commercial Practices Directive **poses the risk of creating legal uncertainty** and contradictions, if applicable, without

providing any obvious value added in terms of consumers protection.

10. Report on the information provided in the suitability and appropriateness assessment

Pursuant to Article 30(1) draft IDD, customers shall be provided with a report on the information collected for the purpose of the suitability or appropriateness assessment upon their request. In addition, EIOPA shall develop a standardised format and content for this report.

This provision seems to duplicate already existing legislation. Pursuant to Article 15 GDPR, in particular, a right to information already exists according to which, amongst others, information on the processed data and the purposes of the processing has to be provided upon the request of the customer. Furthermore, Article 20(1) GDPR enables customers to receive data, which they have provided, in a structured, commonly used and machine-readable format in order to make the data available to a third party (e.g. another provider). The standardisation of contents and formats by EIOPA is not necessary given that respective provisions have already been stipulated in the GDPR. Efforts would be duplicated if information pursuant to Article 15 GDPR and Article 30 draft IDD have to be provided in parallel. We cannot see any value added of another right of access to data for consumers, which would be provided by this provision. **We therefore recommend deleting the respective delegation of power to EIOPA**.

11. Mandatory professional training and development

The introduction of mandatory professional training and development has proven to be a useful provision in IDD. It should be retained. However, transposition by the national legislator has shown that the text of the Directive does not provide the Member States with sufficient possibilities to come up with an appropriate provision for persons who, for instance, take up their distribution activities not until the end of a year. Another example are cases where a person suspends their activities early in the year due to illness or parenthood and only takes them up again after the end of the year. In practice, this has resulted in legal uncertainty. In view of this, an amendment of the proposal would be desirable which enables the Member States to stipulate respective provisions for the cases described above in line with Union law.

Pursuant to Article 10(1)(b) draft IDD, home Member States shall require that compliance with the criteria set out in Annex I as well as the yearly successful completion of the continuous professional training and development is proven by a certificate. It is important in this context that the **home Member States can continue to determine what kind of system of proof shall be in place based on their specific training scheme**. Given that respective systems have already been

successfully established within IDD and have proven their value over the past five years, it would be an unreasonable bureaucratic challenge to have to change this tried and tested procedure and the infrastructure established for this purpose.

We would like to point out that under the European Commission's proposal intermediaries that are subject to both the provisions set out in IDD and MiFID II have to complete a total of 30 hours of further professional training each year even though the training contents correspond with each other. This cumulative effect should be avoided since there are numerous intermediaries in Germany that have an authorisation under commercial law to act as insurance and financial investment intermediaries. If such an intermediary undertakes further training on the chances and risks of investments in funds, this should count towards the obligation to undertake further training pursuant to MiFID II as well as to the respective obligation pursuant to IDD. This is because investments in funds can be made within a unit-linked insurance. In our view, it generally seems reasonable that **further training which is eligible under IDD and MiFID II is also recognised in both sets of rules** and does not have to be attributed to an authorisation under commercial law. Thus, making the verification easier for supervisory authorities and reducing the administrative burden of documentation to be provided by intermediaries. Clarification of both issues would be helpful.

12. Reporting requirements in case of cross-border activities

Extensive reporting requirements in case of cross-border activities in the context of the freedom to provide services and the freedom of establishment are introduced within the scope of Article 9a of the draft legislation. These are usually already available in the form of existing notification requirements of undertakings. To avoid a duplication of reporting requirements it seems appropriate to delete Article 9a of the draft. In addition, a deliberate and informed decision of the undertaking to operate across borders should be required. Cases where policyholders change their place of residence after the conclusion of a contract should not be included here. These cases do not represent a deliberate, active cross-border activity of the undertaking. To avoid ambiguity, **at least the reference to "insurance distribution activities" should be replaced by "cross-border activities under the freedom of services or freedom of establishment"**.

13. Editorial notes

Terms of consumer / customer

We recommend to consistently use the term "consumer" instead of "customer" within the context of the retail investment strategy. Already in the current version of IDD the terms are sometimes used synonymously, which leads to inconsistencies. Depending on the definitions which might be available in national legislation, difficulties might arise within the scope of the transposition into national law. The

focus of the retail investment strategy is clearly on retail investors that is consumers. Consumer protection is also highlighted as the purpose of this regulation in the accompanying texts. **Hence, we suggest to also consistently use the term "consumer" rather than "customer" in the legal texts.**

Berlin, 28 July 2023