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# Survey on EIOPA Consultation Paper regarding draft Advice on certain aspects relating to retail investor protection

Fields marked with * are mandatory.

## Introduction

On 27 July 2021, the European Commission sent to EIOPA a Call for Advice on certain aspects relating to retail investor protection.

The Call for Advice covers the following six areas:

- Addressing and enhancing investor engagement with disclosures;
- Drawing out the benefits of digital disclosures;
- Assessing the risks and opportunities presented by new digital tools and channels;
- Tackling damaging conflicts of interest in the sales process;
- Promoting an affordable and efficient sales process; and
- Assessing the impact of complexity in the retail investment product market

The Commission has requested EIOPA to deliver its Advice to the Commission services by 30 April 2022 so that the Commission can factor this into its on-going work on its Retail Investment Strategy, which aims to improve consumer outcomes and increase consumer participation in capital markets.

EIOPA welcomes comments on the Consultation Paper regarding its draft Advice on certain aspects relating to retail investor protection.

Comments are most helpful if they:

- respond to the question stated, where applicable;
- contain a clear rationale;
- and describe any alternatives EIOPA should consider.

Please send your comments to EIOPA **by 25 February 2022**, responding to the questions in the following survey.

Contributions not provided using the survey or submitted after the deadline will not be processed and therefore considered as they were not submitted.

**Publication of responses**

Your responses will be published on the EIOPA website unless: you request to treat them confidential, or they are unlawful, or they would infringe the rights of any third party. Please, indicate clearly and prominently in your submission any part you do not wish to be publicly disclosed. EIOPA may also publish a summary of the survey input received on its website. Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents and EIOPA's rules on public access to documents.

**Declaration by the contributor**

By sending your contribution to EIOPA you consent to publication of all information in your contribution in whole/in part – as indicated in your responses, including to the publication of your name/the name of your organisation, and you thereby declare that nothing within your response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

**Data Protection**

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. EIOPA, as a European Authority, will process any personal data in line with Regulation (EU) 2018/1725. More information on how personal data are treated can be found in the privacy statement at the end of this material. www.eiopa.europa.eu/privacy-statement_en

## Remarks on completing the survey

**Choice of internet browsers**

Please use preferably Firefox or Chrome for best speed of the online survey whilst ensuring use of the latest version of the browser.

**Saving a draft survey**

After you start filling in responses to the survey there is a facility to save your answers.
HOWEVER, PLEASE NOTE THAT THE USE OF THE ONLINE SAVING FUNCTIONALITY IS AT THE USER'S OWN RISK.

As a result, it is strongly recommended to complete the online survey in one go (i.e. all at once).

Should you still proceed with saving your answers, the online tool will immediately generate and provide you with a new link from which you will be able to access your saved answers.

It is also recommended that you select the "Send this Link as Email" icon to send a copy of the weblink to your email - please take care of typing in your email address correctly. This procedure does not, however, guarantee that your answers will be successfully saved.

**Uploading document(s)**

In the last section of the survey, you can also share additional material by clicking on "Select file to upload". Several documents (e.g. Word, Excel, Pdf) can be uploaded. However, note that each document / file is limited to 1MB or less in size.

**Printing the completed survey**

You will have the possibility to print a pdf version of the final responses to the survey after submitting it by clicking on "Download PDF".
You will automatically receive an email with the pdf file. Do not forget to check your junk / spam mailbox.

**Limit of characters for the answer of each question**

There is a limit of 5,000 characters for the answer of each question, including spaces and line breaks. If your answer exceeds the limit, you can upload your answer as additional material (see "Uploading document(s)" mentioned above).

## Contact details

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Your member state

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- ○ Estonia
- ○ Finland
- ● France
- ○ Germany
- ○ Greece
- ○ Hungary

- Iceland
- Ireland
- Italy
- Latvia
- Liechenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- Other

## Survey on Consultation Paper regarding Advice on certain aspects relating to retail investor protection

**Do you have any general comments on the Consultation Paper?**

## Addressing and enhancing investor engagement with disclosures and Drawing out the benefits of digital disclosures

**Q1. What do you consider currently to be the most burdensome duplicative requirements between the different legislative frameworks? Do you consider there to be any duplicative disclosures which EIOPA have identified above between different legislative regimes to be not particularly burdensome for insurance undertakings or insurance intermediaries to comply?**

**Q2. EIOPA can see some specific benefits in disapplying a number of disclosure requirements in the Solvency II Directive and the Distance Marketing of Consumer Financial Services Directive and rationalising any remaining requirements in the IDD. Do you agree with this approach?**

**Q3. Notwithstanding the proposed approach set out in Q2, do you consider that there is an element of personalization under the provisions in Solvency II Directive that would justify delivery of personalized information separately and in addition to the generalized information in the PRIIPs KID?**

**Q4. Do you agree that to address the current gap on periodic disclosures, it makes sense to require the disclosure of an "annual statement" which could include information on paid premiums, past performance, current value of the savings, as well as adjusted projections?**

**Q5. Do you agree with the proposed list of "most vital" product and intermediary information? If not, what elements do you identify as being "most vital", that is essential information that is most critical for consumers to read?**

**Q6. Do you currently see specific issues with misleading advertisements and marketing material in relation to the sale of insurance-based investment products (IBIPs), which would merit specific regulatory treatment and if so, which aspects?**

## Assessing the risks and opportunities presented by new digital tools and channels

**Q7. Do you agree on the current level of development of the market for online platforms distributing IBIPs? If not, please could you provide examples of where you see evidence of online platforms selling IBIPs at present and how you see this impacting the customer journey and if possible, any quantitative data you can provide on this distribution channel.**

**Q8. Do you see the potential for the growth of open architecture models for the sale of IBIPs in the future and if so, in relation to which types of products?**

**Q9. Do you share EIOPA's assessment of the types of risks that could arise in the context of the growth of more diverse distribution channels for IBIPs? Are there any risks which you see arising, but which EIOPA has not identified in this paper?**

## Tackling damaging conflicts of interest in the sales process

**Q10. Do you agree with EIOPA's analysis of differences between IDD and MiFID II? Are there any other differences not mentioned which you consider to be relevant?**

**Q11. Do you have any views on EIOPA's analysis of the structure of different distribution models for the sale of IBIPs in the EU?**

**Q12. Has EIOPA captured, in your view, all relevant policy options? Do you agree with the different pros and cons listed for these options and the potential impacts indicated for these options? Are you in favour of any particular options or combination of options? Are there any other policy options and pros and cons to be considered in your view?**

## Promoting an affordable and efficient sales process

**Q13. Where do you see the most significant overlaps lie between the demands and need test and suitability assessment and what can be done to address these overlaps?**

**Q14. Do you see scope for streamlining the suitability assessment and in what way, could digitalisation be harnessed to make advice on IBIPs more affordable?**

**Q15. Do you see any specific risks for consumers in streamlining the advice process further?**

**Q16. What is your view on possible demand-side solutions to facilitate the provision of affordable advice on the sale of IBIPs and support wealth management, such as financial guidance and what benefits could this bring?**

## Assessing the impact of complexity in the retail investment product market

**Q17. Do you agree with EIOPA’s interpretation of complexity and cost efficiency in light of the changing market environment?**

With regard to complexity, we believe that EIOPA's approach of distinguishing the complexity of a product according to its nature and origin is fruitful. It highlights the current confusion which too often leads to a product being described as complex under the comprehension alert.
The distinction within the grid of § 171 between the complexity “of the underlying features and operating of the product” and the complexity “in the understanding of the product from the perspective of an average customer” seems to us to be very accurate and useful for a good treatment of complexity in the framework of the POG. Indeed, the internal mechanics of the product do not in themselves result in complexity for the

customer, the only dimension of complexity to be retained should be that of the understanding for the customer.
Within the grid the presence of complexity “due to market or counterparty risk” seems on the contrary unclear to us. Risk does not necessarily bring complexity. A stock is one of the simplest financial products available. It is, however, a risky one. Admittedly, taking this risk into account may require a greater effort of understanding on the part of the investor, but this seems to us covered by the notion of complexity “in the understanding of the product from the perspective of an average customer” which figures in the same grid.

With regard to cost efficiency, we do not identify a definition or a conceptual framework in the document. It is therefore difficult to answer the question. We agree with the idea of distinguishing between the complexity and the cost-efficiency of the product.
It can also be noted that the two notions are not independent of each other in two respects:
• on the one hand, a complex pricing system that is difficult for the investor to understand generally favors insufficient cost efficiency;
• on the other hand, the link between the complexity of the underlying features of a product and its cost efficiency does not seem to us to be generally established. For example, guaranteed products with participation features appear to be cheap even though their internal functioning is complex (see the Cost & Performance report). Structured unit-linked products are also complex in terms of internal operation and understanding for the client, but are often quite expensive because of the hedging techniques used.

**Q18. Do you agree with EIOPA’s assessment of the types of products and/or products features which could be considered simpler?**

The table in §171 seems to us to demonstrate a real effectiveness in taking complexity into account by distinguishing it according to its different components. It seems important to us to underline the following points:
- Complexity is not in itself a defect of the product.
- It is essentially the complexity “in the understanding of the product from the perspective of an average customer” that deserves the most attention in the context of the POG and that needs to be justified.
- This is illustrated by the widespread example of the guaranteed funds with participation features (euro funds backed on the general account): these are complex products, but they are cheap because they are less expensive to manage in some aspects than unit-linked funds.
- When it comes solely from the underlying features of the product, complexity can play a very positive role. It is indeed unavoidable when it comes to providing a guarantee. Again, guaranteed with-profits euro funds are very simple to understand by the policyholder because of the guarantee they provide, whereas structured products are equally complex from an engineering point of view but the customer promise is often more difficult to understand.
- The multiplicity of funds (underlying investment options) within a MOP and the structure of the MOP itself leads to quite limited complexity. It is quite similar to the complexity of a securities account. And a securities account is a relatively simple product.
- It is not because a product is simpler that it is easier to use: this is the case with investments in equity stocks: these are simple products, the risk of which is easy to understand but which are very difficult to manage for a majority of investors due to a lack of experience and financial literacy as well as to well-identified behavioral biases. This notion is perhaps related to the complexity linked to “the level of market / counterparty risk of the product” mentioned by the consultation document: this last aspect, although included in the table of § 171 as a dimension contributing to complexity, seems to us to belong to another dimension. It could more appropriately signal a higher requirement for financial literacy or experience in the client profile rather than trigger an alert for complexity.

Consequently, where the notion of complexity has to be taken into account in the context of consumer protection (the comprehension alert of PRIIPs is a topical example), it is mainly the complexity “in the understanding of the product from the perspective of an average customer” that must be taken into account.

**Q19. How would you, as an external stakeholder, define simpler and cost-efficient products? Could you please provide concrete examples of products that you consider simpler and cost-efficient?**

Policies with one single underlying fund consisting in a profit-sharing guaranteed fund are the oldest and simplest products on the French market. They are hardly ever sold in this form anymore, but very generally in the form of hybrid MOPs allowing, in addition to investment in the guaranteed fund with profit-sharing, investment in unit-linked products.
Considerations about the MOPs
In our view, this is an example of limited, justified and protective complexity:
- It is limited because the wrapper / underlying options structure is easy to understand. The fee structure (entry fee within the wrapper, then ongoing costs of the wrapper and ongoing costs of the underlying options) is consistent with the product structure and therefore readable.
- The ability to offer multiple investment options within a wrapper is a great advantage for the policyholder who can easily diversify his risks and adjust his exposure without having to take out another contract.
- This structure of the MOP is protective because the product is very liquid, the policyholder can, without having to terminate (at the risk of losing the benefit of the tax regime), reconsider his choices by a simple switch and adapt his exposure throughout his life. This type of contract minimizes his commitment and fully favors the right to make mistakes, which can never be eliminated in investment matters.
It seems important to us to highlight the case of MOPs because these products represent the essential part of the insurance savings offer on the French market. Their very flexible structure contributes considerably to the cost efficiency of the offer: if a life insurance product had to be launched and marketed for each unit-linked or profit sharing fund, the economic model would obviously not be viable. The MOP allows the costs of a single wrapper to be mutualized for the benefit of multiple investor profiles.
It implies that it is important for a MOP to distinguish between the different target markets, which can be very diverse, for which a product of this type is intended.
It is worth noting in this respect that the target market for an underlying option within a MOP may have only a relative meaning, as it is limited to the case where the investor only chooses this option. In fact, within a MOP, it is very useful to combine several options at the same time, so that an investor who accepts only moderate risk can quite appropriately invest in very risky assets, but in a very limited proportion.
The assessment of complexity should combine the complexity of the structure and the complexity of the underlying investment options. In this respect, MOPs may include very simple options (simple UCITS) but also much more complex options (structured funds).
Considerations about the simplicity of the fee stucture :
The simplicity of a product also depends on the simplicity of its fees. In the French market, most products have ongoing costs as a percentage of assets, which include both the administrative management and distribution. It is a particularly simple structure that makes it easy to understand the impact on the final return.

**Q20. Do you consider, as an external stakeholder, that other measures could be more effective in ensuring cost efficiency? Examples of such measures could include amending the wording of the POG Delegated Regulation and state more clearly that, in the product testing, manufacturers should also assess whether costs may be too high and hence not to fit for any target market**

Two considerations seem important to us with regard to cost efficiency.
• On the one hand, the document mentions fees that are in absolute terms extremely high, requiring a return of 4 to 5% per year over long periods so that the investor can only recover his invested savings at the

end. These situations clearly seem abnormal. In general, it is very difficult to address the issue of cost efficiency through regulatory measures, as cost efficiency is in itself difficult to define and cannot fit into binary categories of efficient / inefficient. On the other hand, the fee levels mentioned in the report seem to us to constitute extremes that clearly carry a presumption of non-efficiency.  Without ruling out the possibility of a dedicated warning on these very specific levels, it seems to us that the POG framework, properly implemented and enforced by an efficient supervision, should address such kinds of problematic situations.
•   On the other hand, the temptation to establish a link between guarantees, actual costs and charges, even if only by distinguishing between distribution costs and administration costs, seems to us to be a very bad way forward which ignores both the practical limits of cost accounting and the economic model of life insurance.
Assessing the expenses borne by the insurer for conceiving, developing, managing and selling a product always rely on a great extend to formal and rather theoretic or arbitrary conventions so as to allow the costs. These considerations are questionable even in the framework of the insurance entity's own cost control. It would therefore be difficult for reasons of legal certainty to base a regulatory assessment on these evaluations. The very long-term operation of insurance and the mutualization inherent to life insurance also leads to a more sophisticated view since, in many respects, distinct products within the same product line cannot be separated in economic terms.

**Q21. Do you agree with the advantages and disadvantages of the different options proposed? Are there additional aspects which should be highlighted?**

Option 1: we agree with the advantages put forward: it is important, in the case of an ambitious regulation such as IDD, and given the very different levels of maturity across Europe of the various markets at the time of its implementation, to give the regulation time to be fully enforced.
As far as the disadvantages mentioned are concerned, they do not seem to us to be related to the current regulation. If we can recognize a heterogeneous implementation of the DDA, the existing legislative framework, which brings together the different European supervisors under the EEIOPA and which has given EIOPA the powers and competences necessary for a harmonized application, must respond to this. On the other hand, multiplying the regulatory layers when the existing regulations are struggling to be applied seems to us to add difficulty to difficulty.

Option 2: With regards to the advantages identified (“A more convergent supervisory approach”): EIOPA's framework and the coordination it is in a position to ensure should effectively allow for a homogeneous application of existing provisions, which limits the relative interest of additional guidance. So the advantage it not so strong.
With regards to the disadvantages identified (“This approach does not fully address the request of the European Commission to assess the possibility to promote the marketing and sale of “simpler, cost-efficient, insurance-based investment products.”) : the POG should naturally lead to an improvement in the overall cost efficiency of products. The measures mentioned in §203, for example, already seem to us to fit into the current framework.

Option 3: With regards to the advantages identified : the notion of proportionality is a sensible concept and a welcome one but should not require a guidance : proportionality is already naturally applied in the French market where the supervisor's requirements are higher for some well identified product categories. Without disputing the advantages put forward, it seems to us that, once again, they are very relative, as proportionality can be implemented within the current framework.
With regards to the disadvantages identified : on the other hand, the disadvantages need to be complemented : establishing proportionality principles would first of all mean defining a scale of product

complexity, which would be very difficult to objectify, in addition to the increased complexity of the regulatory corpus that this would require. The result would be additional difficulty in implementation, greater legal uncertainty and corresponding costs.

The evidence for the responses should be provided in the textboxes below the respective questions. However, if you have evidence in a format other than text (e.g. Excel file), please upload the file here.

The maximum file size is 1 MB. If the file size exceeds 1 MB, please send it to RetInvStrat@eiopa.europa.eu

## Contact

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