

IDD: EIOPA Technical Advice on possible delegated acts

Assessment of suitability and appropriateness and reporting to clients

20 March 2017

Highlights

- Not covered by existing legislation, so expected significant impact.
- Similarities to MiFID II.
- Different to POG Target Market requirements.
- Cumulative to demands and needs specification.
- Applies to IBIPs only.
- As a rule, information has to be collected, reported and recorded.
- Exception applies to non-complex products.

In detail

Recital 44 IDD:

“in order to avoid cases of miss-selling, the sale of insurance products should always be accompanied by a demands and needs test on the basis of information obtained from the customer. Any insurance product proposed to the customer should always be consistent with the customer’s demands and needs and be presented in a comprehensible form to allow that customer to make an informed decision.”

Article 30.1 IDD:

“when providing advice on an insurance-based investment product, the insurance intermediary or insurance undertaking shall also obtain the necessary information regarding the customer’s or potential customer’s knowledge and experience in the investment field relevant to the specific type of product or service, that person’s financial situation including that person’s ability to bear losses, and that person’s investment objectives, including that person’s risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer or potential customer the insurance-based investment products that are suitable for that person and that, in particular, are in accordance with that person’s risk tolerance and ability to bear losses.”

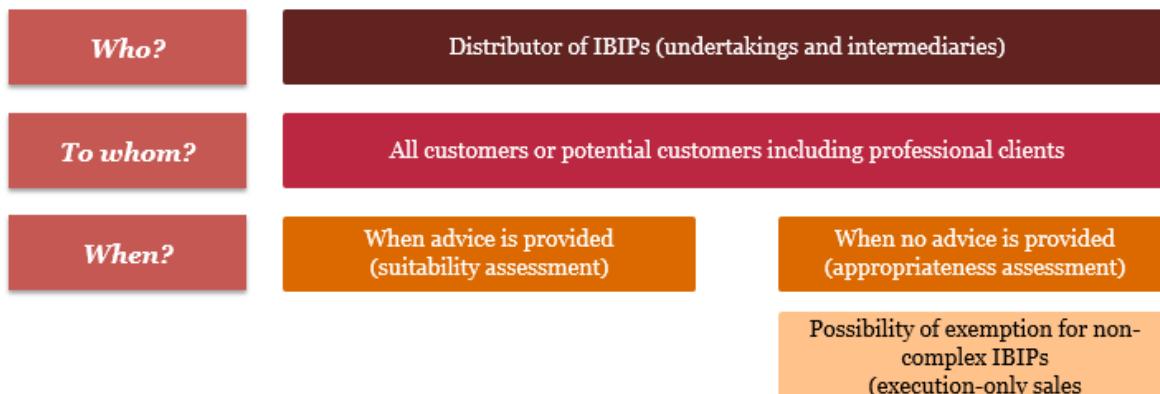
Article 30.2 IDD:

“Member States shall ensure that an insurance intermediary or insurance undertaking, when carrying out insurance distribution activities other than those referred to in paragraph 1 of this Article, in relation to sales where no advice is given, asks the customer or potential customer to provide information regarding that person’s knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or the insurance undertaking to assess whether the insurance service or product envisaged is appropriate for the customer.”

Article 30.3 IDD:

“where no advice is given in relation to insurance-based investment products, Member States may derogate from the obligations referred to in paragraph 2 of this Article, allowing insurance intermediaries or insurance undertakings to carry out insurance distribution activities within their territories without the need to obtain the information or make the determination provided for in paragraph 2 of this Article where all the following conditions are met: (a) the activities refer to either of the following insurance-based investment products: (i) contracts which only provide investment exposure to the financial instruments deemed non-complex under MiFID II and do not incorporate a structure which makes it difficult for the customer to understand the risks involved; or (ii) other non-complex insurance-based investments for the purpose of this paragraph.”

1. Scope of application



2. Suitability and appropriateness: key aspects

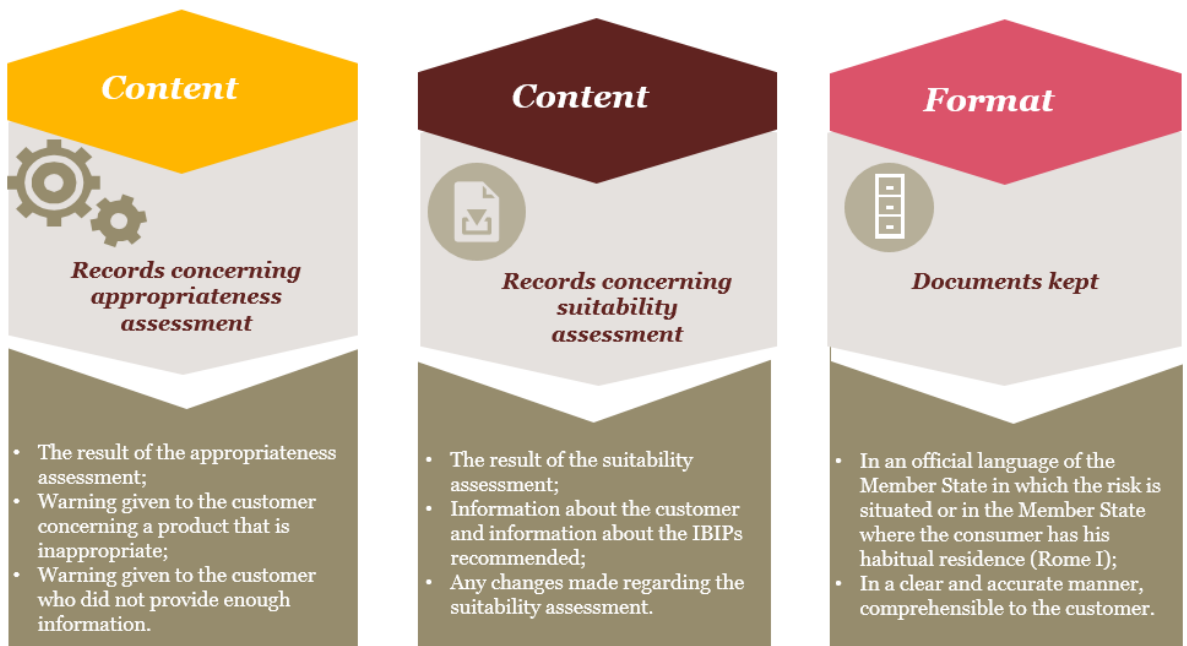
2.1 Information to be collected to assess suitability and appropriateness

Without prejudice to the demands and needs test, the insurance undertaking or insurance intermediary shall obtain from the client the following information:

- **Financial situation:** (i) source and extent of regular income; (ii) assets, including liquid assets; (iii) investment and real property; (iv) regular financial commitment; (v) person’s ability to bear losses.
- **Investment objectives:** (i) person’s risk tolerance; (ii) information on the length of time for which the customer wishes to hold the investment; (iii) preferences regarding risk taking; (iv) risk profile; (v) purposes of the investment.
- **Knowledge and experience in the investment field:** (i) types of service, transaction, IBIPs or financial instruments which the customer is familiar with; (ii) nature, volume, and frequency of the customer's transactions in IBIPs or financial instruments and period over which they have been carried out; (iii) level of education, as well as profession or relevant former profession of the customer or potential customer.

2.2 Retention of records obligation

Insurance intermediaries or insurance undertakings shall keep orderly records of the information obtained where they are required to produce a suitability statement or the customer information obtained to assess appropriateness.



2.3 Periodic information to customers

Insurance intermediaries or undertakings shall provide the customer with a periodic statement in a durable medium of the services provided to and transactions undertaken on behalf of that customer.

- **Content of the periodic reporting to clients:** (i) information about the services provided and the costs associated to these services and transactions; (ii) the value of each underlying investment asset (where appropriate).
- **Frequency and way of reporting to clients:** at least annually, in a durable medium.

In addition, when providing advice, the insurance intermediary or insurance undertaking shall provide clients with the following documents:

- **Suitability statement:** (i) outline of the advice given; (ii) how the recommendation provided is suitable for the customer, including how it meets the customer's investment objectives, including that person's risk tolerance; the customer's financial situation, including that person's ability to bear losses; and the customer's knowledge and experience.
- **Content of the periodic communications to clients:** (i) the frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment; (ii) the extent to which the information previously collected will be subject to reassessment; (iii) the way in which an updated recommendation will be communicated to the customer.
- **Review the suitability of the recommendations:** at least annually, however the frequency of this assessment shall be increased depending on the characteristics of the customer, such as the risk tolerance of the customer and the IBIPs recommended.

2.4 Criteria to assess non- complex IBIPs

In order to apply the exemption for non-complex IBIPs, EIOPA provides a **list of five criteria**. In this regard, when a sale regarding a non-complex product is carried out only at the initiative of the customer or the potential customer, Member States shall not require a suitability nor an appropriateness test to be conducted.

An IBIP is considered as non-complex if it fills the criteria of the following list:

- The contractually guaranteed minimum surrender and maturity value is at least the amount of premiums paid by the customer minus legitimate costs levied.
- It does not incorporate a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk or pay out profile of IBIPs.
- There are options to surrender or otherwise realise the IBIP at a value that is available to the customer.
- It does not include any explicit or implicit charges that could make the surrendering of IBIPs unreasonably detrimental to the customer - e.g. charges are disproportionate to the cost of the insurance undertaking of the surrender.
- It does not in any other way incorporate a structure which makes it difficult for the customer to understand the risks involved.

3. Gap analysis with MiFID II and IMD

Measures	Gap analysis with MiFID II*	Gap analysis with IMD**
Information to be collected	Article 54 of MiFID II Commission Delegated Regulation establishes similar information to be collected from the client as set out in the EIOPA Technical Advice.	IMD does not have any provision about suitability and appropriateness assessment.
Record-keeping obligations	Unlike the EIOPA Technical Advice, MiFID II does not provide information about the content of the suitability assessment records.	
Periodic information to clients	The frequency of reports on the service provided should be yearly, as opposed to the quarterly portfolio management service reporting established in Article 60 of MiFID II Commission Delegated Regulation.	
Assessment of non-complex IBIPs	Article 57 of MiFID II Commission Delegated Regulation includes different criteria to assess non-complex instruments from those set out in the EIOPA Technical Advice.	

* Directive 2014/65/EU on markets in financial instruments.

**Directive 2002/92/EC of 9 December on insurance mediation.

4. Main impacts of the requirements included in the Technical Advice

Requirement	Impacts on the organisation (procedures, policies, contracts)	Impacts on IT	Impacts on business
Information to be collected			
Record-keeping obligations			
Reporting obligation			
Assessment of non-complex IBIPs			

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