



The European Federation of Insurance Intermediaries
La Fédération européenne des intermédiaires d'assurance

BIPAR POSITION

MiFID II delegated Directive (7 April) and delegated Regulation (25 April)

June 2016

Introduction

On 7 April 2016, the European Commission published a draft Delegated Directive with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits. On 25 April it published a delegated Regulation on organisational requirements and operating conditions for investment firms and defined terms. Below are some key concerns BIPAR has with these two delegated acts.

1. Product governance requirements (Delegated Directive Chapter III, art 9-10)

BIPAR has always supported the principle of product governance for manufacturers of products. Product governance rules should however not lead to a shift of responsibility from the manufacturer to the distributor.

Most consumers rely on intermediary or advisory firms for advice on their financial products.

These firms are often SME-size or smaller. The current text shifts responsibility and creates legal uncertainty and increases the administrative burden of the process, without a tangible benefit for the consumer or the economy in general.

Regarding the requirement to set the target market in case of non-MiFID firm manufacturers, in some markets, a considerable amount of products originates from non-MiFID firms. It would be disproportionate to shift the responsibility of setting the target market in all these cases to the distributor.

Also, if setting the target market becomes the responsibility of the distributor, this can potentially result in a whole range of target markets for the same product. Finally, if one adds to this obligation of setting the target market, the additional obligation to monitor the target market, this becomes unworkable for (small) distributors.

BIPAR supports some clarifications that have been given by the Commission during the scrutiny session in the ECON committee meeting of 21 June and would like the final text of the delegated act to be clearer in this respect and that there is no shift of responsibility from manufacturer to distributor.

BIPAR is also not in agreement with the requirement for the distributor to provide the manufacturer with sales information and, if appropriate, information on reviews to support product reviews. We believe that the regulator should not get involved at that level.

2. Inducements (Delegated Directive Chapter IV- art 11-13)

BIPAR regrets and is in principle not in agreement that in a highly competitive market, remuneration is supervised and regulated at such a level of detail.

We support that the list of additional or higher level services is not exhaustive and we would like to point at other examples such as a localized service (offering local investment products) or the option to provide advice services at the clients' home – if they wish so.

BIPAR supports some clarifications that have been given by the Commission during the scrutiny session in the ECON committee meeting of 21 June regarding quality enhancement but would like the final text of the delegated act to be clearer in this respect.

The evidence-gathering to prove quality enhancement (art 11, 4) is heavy and bureaucratic, especially for small firms.

In this respect, we are also not in favour of art 11, 5. c, which requires the firm to give information to the client, at least once a year, of the actual amount of payments / benefits received or paid. This is especially for the small firms that we represent, a heavy and bureaucratic level 2 requirement and we are not convinced that this requirement is of real interest to the client.

3. Recording of telephone conversations and electronic communications (delegated Regulation, art 76)

BIPAR believes that recording and monitoring of records of every conversation would be disproportionate and would have a cumulative cost effect (administrative burden) in the case of investment advice. Indeed, not every advice will lead to an order. Such extensive recording requirements go beyond the level 1 Directive which clearly uses the "order" as trigger for recording requirements.

We also believe that monitoring all telephone conversations would overburden investment firms.

These are level 2 requirements that would be very heavy and bureaucratic for small firms, putting them at disadvantage of large (direct distributing) firms.

BIPAR supports some clarifications that have been given by the Commission during the scrutiny session in the ECON committee meeting of 21 June. We would like the final text of the delegated act to be clearer in this respect that the heavy requirements do not apply in case of "advice-only".

4. Choice of legal instrument: delegated Directive vs Regulation

In the delegated Directive's provisions regarding: "safeguarding clients instruments and funds" (p 4), the Commission states that a Directive was favoured because the regulated areas regard rights of clients and rights to property in particular.

BIPAR supports this choice of legal instrument. BIPAR regrets that for the second delegated act, the Commission has chosen the format of a Regulation.

We believe that the level 2 of the level 1 Directive should provide a level of flexibility for Member States in implementing the rules and should thus be dealt with by Directives.