

Italy: Review of public consultation on Italian insurance distribution

EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

Executive summary

The Italian Insurance Supervisory Authority (IVASS) and the Italian financial markets Supervisory Authority (CONSOB) issued a public consultation on 23 September 2019 regarding the implementation of Directive 2016/97/EU on insurance distributions (IDD Directive or IDD). As part of the consultation, IVASS published the following papers:

- ▶ *Consultation document no. 1/2019 containing provisions on oversight and product governance requirements for insurance products*, which implements at a regulatory level the framework on oversight and product governance requirements for insurance companies and distributors of insurance products provided for by European Union (EU) Regulation no. 2358/2017 (POG Delegated Regulation) and the Italian Legislative Decree no. 209 of 7 September 2005, Private Insurance Code (CAP), in particular, art. 30-decies, par. 7, and 121-bis, par. 2, of the CAP;
- ▶ *Consultation Document no. 2/2019*, containing seven articles and six annexes, regulating five topics, concerning the amendment of the following IVASS Regulations:
 - No. 23 dated 9 May 2008 on the regulation of the transparency of premiums and contractual terms and conditions with respect to compulsory insurance for motor vehicles and boats

- No. 24 dated 18 May 2008 on the complaint procedure vis-à-vis IVASS and the complaints handling procedure to adopted by insurance undertakings and insurance intermediaries
- No. 38 dated 3 July 2018 on corporate governance
- No. 40 dated 2 August 2018 on insurance and reinsurance distribution provisions
- No. 41 dated 2 August 2018 on provisions on information, advertising and designing of insurance products

Consob has published:

- ▶ The *Consultation document dated 23 September 2019* aimed at implementing at a regulatory level the IDD Directive, in accordance with art. 25-ter, par. 2, of the Italian Legislative Decree no. 58 of 24 February 1998 (as amended by Italian Legislative Decree no. 68/2018) (TUF), through the reference to art. 6, par. 2, of the same TUF.

This Alert summarizes the aspects considered as more significant for the industry.

Detailed discussion

A) Consultation document no. 1/2019 - on oversight and product governance requirements for insurance products

The Draft Regulation reported in the *Consultation document no. 1/2019*: (i) regulates the *approval process* of insurance products, setting forth specific obligations for the manufacturer, who is required to identify the target market of an insurance product and the categories of persons to whom the product cannot be distributed (*negative target market*); (ii) regulates the distribution of insurance products, specifying the obligations of the intermediaries registered in the sections of the Intermediaries Register held by IVASS (the RUI) involved in the distribution activity; and (iii) provides specific provisions for the approval and distribution processes of insurance investment products.

More specifically, the Draft Regulation:

- ▶ Identifies the tasks and responsibilities of the corporate bodies involved in the process of approval and distribution of insurance products.
- ▶ Identifies the rules to be taken into account in order to identify the target market and the negative target market.
- ▶ Establishes rules on information flows between manufacturing insurance undertakings and their distributors.

- ▶ Regulates the distribution mechanisms for insurance products, which - in line with the provisions under art. 30-*decies* of the CAP - shall allow the product to be distributed only to customers within the target market identified by the manufacturer.
- ▶ Sets forth specific supervisory obligations on the department or structure in charge of the distribution for the distributors of insurance products registered under sections A and B of the RUI and regulates the relationships of collaboration between intermediaries involved in the distribution of insurance products.

B) Document in consultation no. 2/2019 - on additional requirements for the distribution of insurance investment products

The Draft Regulation pursuant to the document in consultation no. 2/2019 implements the regulatory framework for Insurance-based investment products (IBIPs products¹) for the distribution channels for which IVASS is competent and includes integrations and amendments to IVASS Regulations no. 40/2018, 41/2018, 23/2008, 24/2008 and 38/2018, and aims to rationalize and simplify the obligations for operators and increase the level of protection for policyholder.

i. Proposed amendments to IVASS Regulation no. 40 of 2018

The main topics that will be amended in accordance with the above reported Public Consultation include:

Pre-contractual information (art. 56)

Attachments 3 and 4 now titled "Distributor Information" and "Non-IBIP Insurance Product Information", and Attachments 4-*bis* "Insurance Investment Product Information" and 4-*ter* "List of Distributor Conduct of Business Rules" have been amended to reform the pre-contractual information to be provided to the clients.

Assessment of policyholder's demands and needs (art. 58)

The new par. 4-*bis* of art. 58 requires the delivery of an *appropriate declaration, signed by the policyholder and the distributor*, in which the latter certifies that the insurance product meets the demands and needs of the policyholder, specifying the relevant reasons (par. 5 and 6 of art. 58, of the current version of the Regulation no. 40/2018 according to which the sale of the insurance product was permitted even if it did not meet the customer's demands and needs or if the distributor was unable to ascertain that the product met

the customer's demands and needs due to the policyholder's refusal to provide the requested information, have been deleted accordingly).

Cross-selling (art. 59-bis)

Art. 59-bis, which identifies the *additional information* to be provided in the case of sale of insurance products combined with an accessory product/service different from insurance products, is included (i.e., the costs associated with the purchase of the package and its components and the key information relating to the characteristics and risks not linked to the prices).

Storage of documentation (art. 67)

Art. 67 is amended to clarify that *distributors shall keep the relevant documentation for the entire duration of the insurance relationship* or for a longer period provided for by law and, in either case, for at least five years. This provision is also amended by providing that distributors shall also keep documentation relating to the product and the product approval process received by companies and intermediaries that manufacture insurance products.

Recording of telephone conversations and electronic communications (art. 67-bis)

The new art. 67-bis introduces rules on the recording of telephone conversations and electronic communications. It establishes that distributors who promote or place insurance contracts by making commercial communications using distance communication techniques shall keep records of telephone conversations or electronic communications relating to such contracts, even if they have not led to the actual conclusion of the contracts. For this purpose, distributors are required to take all reasonable measures to record telephone conversations and electronic communications made, transmitted or received by electronic equipment and to prevent employees, staff and collaborators from making, transmitting or receiving telephone conversations and electronic communications on private equipment that they are unable to record or copy. To this end, prior to the promotion of an insurance contract, distributors are obliged to inform customers that telephone conversations or communications between them, that generate or may generate the conclusion of insurance contracts, will be recorded. In the absence of such communication, distributors must refrain from carrying out insurance distribution by telephone.

Training and professional development

The integration of the provisions of art. 17, 22, 41 and 48 of IVASS Regulation no. 40/2018, is proposed which provide, among other things, that employees of insurance intermediaries operating inside or outside the premises of intermediaries registered in sections A, B, D or F of the Register of intermediaries held by IVASS (RUI) and employees of insurance companies must have the qualification of a second level diploma at a minimum, as already provided for first level intermediaries.

Rules of conduct for the distribution of insurance investment products (Chapter II-bis)

Chapter II-bis on "*Rules of conduct for the distribution of insurance investment products*" has been added, which contains the following Sections:

► Section I - General rules

Art. 68-bis identifies the rules on the distribution of non-IBIPs products which also apply to IBIPs when they are distributed by distributors subject to IVASS supervision.

► Section II - Transparency

Art. 68-ter introduces the obligation to provide the policyholders of IBIPs products with Annex 4-bis and policyholders of non-IBIPs with Annex 4.

This is without prejudice to the obligations to draw up and deliver the pre-contractual and contractual documentation as required by the provisions in force and, in particular, Annexes 3 and 4-ter.

Art. 68-quater sets forth additional obligations with respect to the requirements of the information provided on the product (those concerning the modalities of a possible comparison between different investment products or those concerning the indication of past and/or future performance of the instruments/indices used as underlying).

Art. 68-quinquies requires the provision of advertising information consistent with the information included in the contractual documentation. When advertising communications contain an offer to sign the contract or an invitation to make an offer to purchase an IBIP, they must specify how to adhere to the offer and they must refer to the information package.

► **Section III – Provisions on inducements**

Art. 68-sexies identifies the general conditions under which, in connection with the distribution of insurance investment products, intermediaries and insurance undertakings may pay or receive inducements (fees or commissions or non-monetary benefits provided or received to or from any person other than the customer or a person acting on the customer's behalf). Specifically, the incentives shall meet the following conditions:

- Aim to increase the quality of the insurance distribution business
- Not affect the performance of the obligation to act honestly, fairly and professionally in the best interests of the customer

Art. 68-septies sets out the conditions under which inducements are allowed and that an inducement is not allowed if the provision of the services to the customer is distorted or adversely influenced by it.

This article establishes the activity of registration by intermediaries of the incentives received in relation to any payment or benefit received from or paid to third parties. Finally, it is established that in the case of horizontal collaboration, the information obligations are met by the intermediary who liaises with the policyholder.

Art. 68-octies regulates the perception of inducements in the case of provision by intermediaries of advice on an independent basis (advice based on the analysis of a sufficient number of products, including necessarily those issued by insurance undertakings with which the distributor has no close links, which also includes the existence of an agency mandate).

In particular, where the intermediary provides advice on an independent basis, it cannot receive monetary incentives and can only accept minor non-monetary benefits (reasonable and proportionate and must not influence the intermediary's behavior without being detrimental to the interests of the customer).

► **Section IV – Assessment of adequacy and appropriateness**

Notwithstanding the obligation to assess the customer's insurance demands and needs for all insurance products, this section regulates the distribution of IBIPs products with and without advice.

In particular, this section regulates the sale under mandatory advice for IBIPs products other than non-complex products in accordance with Delegated Regulation (EU) 2017/2359 or IBIPs products that guarantee the recovery of premiums paid net of legitimate costs (**art. 68-duodecies**).

For sales made with advice, **art. 68-novies** specifies the information to be requested to assess – in addition to the customer's demands and needs – whether the product is suitable, according to procedures and policies determined by the distributor. The outcome of the assessment is included in the declaration of correspondence to the customer's demands and needs and of adequacy (**art. 68-decies**).

For sales made without advice, **art. 68-undecies** provides for the obligation to assess the demands and needs (excluding the financial situation, which is typical for sales with advice), as well as the degree of knowledge and experience of the customer with respect to the product sold. Notwithstanding the obligation to issue a declaration of correspondence with the customer's demands and needs, this article foresees, in line with European legislation, the possibility of selling an inappropriate product by issuing a declaration of inappropriateness.

ii. **Proposed amendments to Regulation IVASS no. 41 of 2018**

Art. 5 of the Document in consultation amends certain provisions of IVASS Regulation no. 41 of 2 August 2018.

In line with the content of art. 121-sexies, par. 2, of the CAP, **art. 25** on the annual statement of account for contracts relating to insurance investment products is amended: the provisions already set forth for unit-linked contracts are extended to all IBIPs products, for which the company provides policyholders annually with an analytical report on costs and expenses, including distribution costs. An obligation is also introduced for the company to collect from the intermediary distributor all the information necessary to provide the customer, in the annual statement of accounts, with information including costs and charges related to the distribution activity (Single Financial Statement).

In addition, it is proposed to amend **art. 15 and 21** of the aforesaid Regulation in order to align the order of the sections reported in the *additional*² Life IPID (Insurance Product Information Document) and the *additional* IBIP IPID with the provisions of Annex 2 and Annex 4 to the Regulation, reporting, respectively, the structure of the *additional* Life IPID and the *additional* IBIP IPID.

Finally, *two annexes* are amended:

- ▶ The *additional* IBIP IPID, the changes affect the “complaints” section, which now takes more fully into account the IVASS/ Consob allocation of responsibilities.
- ▶ The *additional* motor liability IPID, in which it will now be indicated if the insurance company does not adhere to the direct compensation system referred to in art. 149 and 150 of the CAP (so-called CARD), with the specification that in such a case the insured party will not be able to apply for compensation directly to his insurance company but will have to apply to the insurance company of the injured party.

iii. Proposed amendments to IVASS Regulation no. 23 of 2008

The Document in consultation contains the obligation for insurance undertakings having their registered office in another Member State of the European Economic Area, authorized in Italy under the *Freedom of establishment* (FOE) or Freedom of services (FOS) regime, to indicate in the estimate of whether they adhere to the direct compensation scheme referred to in art. 149 and 150 of the Private Insurance Code (so-called CARD), specifying that in case of non-adhesion the insured party will not be able to apply for compensation to his insurance undertaking but will necessarily have to apply to the insurance undertaking of the injured party.

iv. Proposed amendments to Regulation IVASS no. 24 of 2008

Art. 2 of the Document in consultation contains the following amendments with regard to the complaints handling:

- ▶ The extension of the obligation to publish the report on the activity of complaint handling also to EU companies authorized to operate in FOE or FOS regime, in order to allow full disclosure of the data, as provided for Italian companies (art. 8 Reg. n. 24/2008); and
- ▶ The introduction of the obligation to communicate to the relevant undertaking the complaints received by intermediaries registered in Section D of the RUI (art. 10-sexies, par. 1 Reg. n. 24/2008) and the consequent integration of the content of the report referred to in art. 9, par. 3 Reg. n. 24/2018. The amendment responds to the need to allow more effective monitoring of the activities of those registered in Section D of the RUI and mainly those related to the banking channel.

The Document in consultation also integrates art. 4, par. 2, letter b) of Regulation no. 24 - which indicates the area of complaints excluded from the competence of IVASS - with the reference to the “correct compilation of the KID.”

The references to the information note (art. 10 of Regulation no. 24/2008) and to Annex 4 (art. 10-decies, paragraph 1 of Regulation no. 24/2008) are also updated, as they are no longer current.

v. Proposed amendments to IVASS Regulation no. 38 of 2018

Art. 3 of the Document in consultation integrates par. 2 of art. 33, relating to the objectives of the compliance function, providing that in identifying and assessing the risk of non-compliance with the rules the company shall pay attention to compliance also with the rules relating to the governance and control process of insurance products.

The amendments to the **Intermediaries’ Regulations** subject to consultation consist of the rewriting of Book IX of the said Regulations in relation to the transparency obligations and the rules of conduct with which supervised parties must comply when distributing IBIPs.

The new provisions will apply to the distribution of IBIPs carried out by persons authorized to distribute insurance products, as defined under art. 1, par. 1, letter *w-bis*) of the TUF.

The purpose of the text submitted for public consultation is to provide a framework as far as possible in line with the rules applicable to the provision of investment services and activities derived from MiFID II.

In particular, the new Book IX regulates the following topics:

- ▶ Transparency obligations with respect to customers
- ▶ Suitability, appropriateness, mandatory advice and cross-selling practices
- ▶ Inducements
- ▶ Reports to be provided to customers
- ▶ The product governance applicable to entities licensed to distribute insurance
- ▶ The knowledge and competence requirements of persons authorized to distribute insurance

- ▶ The obligation for intermediaries carrying out both the service of distribution of structured deposits, of financial products issued by banks other than financial instruments and/or insurance investment products, and placement of financial instruments and/or investment advice, to apply the conduct rules in a uniform manner, independently of the product marketed
 - ▶ Obligations regarding internal procedures, compliance monitoring, complaint handling and personal transactions
 - ▶ Conflicts of interest
 - ▶ Retention of records of all activities and transactions carried out by persons authorized to distribute insurance and records of telephone conversations and electronic communications
 - ▶ Distribution of IBIPs by means of distance communication techniques.
- The public consultations were concluded on 15 November 2019 and the final text will be forthcoming.

Endnotes

1. As regulated by the Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products.
2. According to the CAP and IVASS Regulation no. 41 of 2018 among other precontractual documentation the *Additional pre-contractual information document* shall be delivered to the policyholders.

For additional information with respect to this Alert, please contact the following:

Studio Legale Tributario, Financial Services Law, Milan

- ▶ Avv. Orsola Zane orsola.zane@it.ey.com
- ▶ Avv. Stefano Torregiani stefano.torregiani@it.ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

© 2020 EYGM Limited.
All Rights Reserved.

EYG no. 000304-20Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com