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Article 25

Product oversight and governance requirements

1. The home Member State of the manufacturer shall ensure that insurance undertakings and insurance intermediaries which manufacture any insurance product for sale to customers establish, maintain, operate and review a process for the approval of each insurance product and of significant adaptations of existing insurance products, before they are marketed or distributed to customers ('the product approval process').

The product approval process shall specify an identified target market for each product, ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market, and take reasonable steps to ensure that the insurance product is distributed to the identified target market.

The product approval process shall be proportionate and appropriate to the nature of the insurance product. The product approval process shall contain all of the following:

- (a) a specification of an identified target market for each insurance product and of the intended distribution strategy associated to the identified target market;
- (b) a clear identification of the target market's objectives and needs;
- (c) an assessment of whether the insurance product is designed appropriately to meet the target market's objectives and needs;
- (d) an assessment of all risks relevant to the identified target market or arising from the distribution strategy and an assessment of whether the intended distribution strategy is consistent with the identified target market;
- (e) reasonable steps to ensure that the insurance product is distributed to the identified target market;
- (f) in relation to insurance-based investment products, an assessment of the risk of misunderstanding of the main features, costs and risks of the insurance-based investment product by the customers belonging to the target market;
- (g) in relation to insurance-based investment products, the value-for-money assessment consisting of:
 - i. a clear identification and quantification of all costs and charges related to the insurance-based investment product, of its performance and of its benefits for the customer;
 - ii. an assessment of whether the insurance-based investment product offers value for money to the customer by determining, on the basis of appropriate testing and assessments, whether the identified costs and charges are justified and proportionate, having regard to the performance, other benefits, including the guarantees and insurance coverage of biometric and other risks, characteristics, objectives, the identified target market, distribution strategy and strategy of the insurance-based investment product.

2. Where an insurance undertaking or insurance intermediary which manufactures insurance-based investment products cannot demonstrate, as a result of the value-for-money assessment, that the costs and charges of an insurance-based investment product that it intends to manufacture, market or distribute to customers, are justified and proportionate and that the product meets the objectives and needs of the identified target market, the insurance undertaking or insurance intermediary shall not approve, manufacture, market or distribute that insurance-based investment product.

3. Insurance undertakings and insurance intermediaries which manufacture insurance products shall understand and regularly review the insurance products they offer or market, taking into account any event or risk that could materially affect the identified target market to assess whether the insurance product remains consistent with the objectives and needs of the identified target market, whether the

intended distribution strategy remains appropriate and, in the case of insurance-based investment products, whether the products continue to offer value for money.

4. Insurance undertakings and insurance intermediaries which manufacture insurance products shall make available to insurance distributors all information on the insurance product and the product approval process that is needed to fully understand that insurance product and the elements taken into consideration during the product approval process, including complete and accurate details on the identified target market and any costs and charges, features and objectives of the insurance product.

The information made available to insurance intermediaries and insurance undertakings distributing insurance-based investment products which they do not manufacture shall also contain complete and accurate information on the value-for-money assessment of the insurance-based investment product.

5. Insurance distributors that advise on or propose insurance products which they do not manufacture, shall have in place adequate arrangements to obtain the information referred to in paragraph 4, to understand the characteristics and identified target market of each insurance product, and the manufacturer's product approval process.

Insurance intermediaries or insurance undertakings distributing insurance-based investment products which they do not manufacture shall:

- (a) make sure that they obtain and fully understand the information referred to in paragraph 1 point (g);
- (b) identify and quantify any further costs and charges, in particular distribution costs, that are not already taken into account in the calculation of total costs and charges by the manufacturer;
- (c) assess whether the product meets the target market's objectives and needs;
- (d) provide the insurance undertaking or insurance intermediary manufacturing the insurance-based investment product regularly with all relevant information about the results of its assessments under points (b) and (c). Where the distributor finds that there are costs and charges, in particular distribution costs, that have not been fully taken into account in the manufacturer's value-for-money assessment, it shall immediately inform the manufacturer. The manufacturer shall, where they have not yet been included, take these costs and charges into account in its value-for-money assessment for the relevant insurance-based investment product.

6. Insurance undertakings or insurance intermediaries which manufacture insurance-based investment products shall document the value-for-money assessments made in accordance with paragraph 1, third subparagraph point (g) and shall, upon request, provide such documentation to the relevant competent authority.

Member States shall ensure that insurance undertakings or insurance intermediaries which manufacture insurance-based investment products keep records of their value-for-money assessments for a period of five years and, where requested by the competent authority, for a period of up to seven years. Those records shall be retrievable by the insurance intermediary or insurance undertaking upon request of the competent authority.

7. EIOPA, after having consulted ESMA and the competent authorities, shall develop and make publicly available Union supervisory benchmarks for insurance-based investment products. These benchmarks shall be used by national competent authorities as a reference point for the supervision of the value for money of insurance-based investment products.

The Union supervisory benchmarks shall be developed on the basis of product clusters containing a significant number of insurance-based investment products that present similar characteristics, including, where relevant, similar levels of performance, risk, guarantee, strategy, objectives,

recommended holding periods, sustainability features, premium frequency, biometric risk coverage or other characteristics.

The benchmarks shall display a range of costs and performance, in order to facilitate the identification of insurance-based investment products whose costs and performance depart significantly from the average.

The costs used for the development of Union supervisory benchmarks shall, in addition to the total product cost, also include all costs of distribution, including inducements. They shall allow comparison with individual cost components.

EIOPA shall regularly update the Union supervisory benchmarks, taking into account the developments in the market.

8. National competent authorities shall monitor the insurance-based investment products offered on their market and evaluate them against the Union supervisory benchmarks. If they identify insurance-based investment products that deviate from the applicable benchmark or if they decide to carry out a control for any other reason, they shall require the insurance undertaking or insurance intermediary manufacturing these products to provide evidence that, as a result of the value-for-money assessment carried out in accordance with paragraph 1, the costs and charges of the product are justified and proportionate and the product meets the objectives and needs of the target market.

Where the national competent authority concludes that the evidence has not been provided or that the costs and charges of the product are not justified and proportionate or the product does not meet the objectives of the target market, it shall require the insurance undertaking or insurance intermediary manufacturing the insurance-based investment product to take measures to ensure compliance with the product oversight and governance requirements. In the absence of such measures, the national competent authority shall make appropriate use of its powers under Article 12(3).

9. The Commission shall be empowered to supplement this Directive by adopting delegated acts in accordance with Article 38 to further specify the principles set out in this Article, including, with regard to insurance-based investment products,

(a) the methodology to be used by EIOPA to develop the benchmarks referred to in paragraphs 7 and 8;

(b) the criteria to determine whether the costs and charges of an insurance-based investment product are justified and proportionate for the purposes of the value-for-money assessment referred to in paragraph 1, third subparagraph, point (g).

Those delegated acts shall take into account in a proportionate way the activities performed, the nature of the insurance products sold and the nature of the distributor.

10. EIOPA shall ensure coordination of the national competent authorities' supervisory practices on value for money assessments for insurance-based investment product. It shall promote consistent supervision on value for money assessments and enhance convergence across Member States. EIOPA shall include, in the EIOPA supervision handbook, a section outlining the best supervisory practices on value for money assessments recommended by EIOPA. Where necessary, EIOPA shall issue guidance to foster convergence in supervisory outcomes of national competent authorities.

11. EIOPA shall use its supervisory convergence powers to ensure a harmonised supervision and enforcement by competent authorities of costs and charges, including inducements, disclosure and value

for money assessments conducted by insurance undertakings and insurance intermediaries which manufacture insurance-based investment products.

12. The policies, processes and arrangements referred to in this Article shall be without prejudice to all other requirements under this Directive including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest, and inducements.

13. In order to ensure a harmonised application and provide guidance to insurance undertakings and insurance intermediaries which manufacture insurance-based investment products on the production of value for money assessments, EIOPA shall develop draft implementing technical standards to determine the content and format of the value for money assessment to be conducted by insurance undertakings and insurance intermediaries which manufacture insurance-based investment products in accordance with the requirements referred to in paragraph 1.

EIOPA shall submit those draft implementing technical standards to the Commission by [xxxx].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

14. This Article shall not apply to insurance products which consist of the insurance of large risks.

15. By ... [five/seven years after the date of application of this amending Directive], Member States shall communicate to the Commission and EIOPA relevant information concerning the implementation of this Article by insurance undertakings and insurance intermediaries manufacturing insurance-based investment products.

On the basis of the information provided by Member States, the Commission, in consultation with EIOPA and ESMA, shall carry out an evaluation of the effective implementation of this Article and assess the impact of the value for money assessment, including the supervisory benchmarks.