

Life insurance | Information duties of the insurance intermediary during the lifetime of the insurance contract

## **Periodic report on services provided on Insurance-based investment products ("IBIP")**



## Legal basis

A Luxembourg insurance intermediary shall provide a periodic report to its customers who hold Insurance-based investment products, hereinafter referred to as “IBIP” or “IBIPs”.

IBIP:

Article 2 (“Definitions”) of the IDD Directive<sup>1</sup> defines an IBIP as follows:

*“Insurance-based investment product means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include:*

- a) non-life insurance products as listed in Annex I to Directive 2009/138/EC (Classes of non-life insurance);*
- b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;*
- c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;*
- d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC;*
- e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.”*

This definition has been transposed into Luxembourg law, in Article 32 (“Definitions and abbreviations”) of the amended law of 7 December 2015 on the insurance sector.

Therefore, if the product distributed is not considered as an IBIP, a periodic report is not required.

Among the information duties of insurance intermediaries distributing Insurance-based investment products is the obligation to provide their customers with a periodic report on the services provided.

The purpose of this article is to analyse what this obligation consists of for a Luxembourg insurance intermediary vis-à-vis its Luxembourg resident and non-Luxembourg resident customers when it operates under the freedom to provide services or the freedom of establishment\*.

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\* Luxembourg insurance intermediaries operating in one or more other EU/EEA Member States must comply not only with Luxembourg requirements but also with national requirements known as “general good provisions”. These are national rules of the Member States (not harmonised at European level) which introduce additional requirements addressing specificities of the respective markets. EIOPA has published information on national general good rules on its website. See: [https://www.eiopa.europa.eu/tools-and-data/registers-lists-and-databases/idd-general-good-provisions\\_en](https://www.eiopa.europa.eu/tools-and-data/registers-lists-and-databases/idd-general-good-provisions_en).

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1 IDD: Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution. In Luxembourg, the IDD was transposed by the law of 10 August 2018 amending the amended law of 7 December 2015 on the insurance sector.

It should be noted that, depending on national law, the concept of IBIP may cover several types of products.

In Italy, for example, IBIP covers Ramo I (*“polizze vita rivalutabili collegate a gestioni separate”* offering protection for invested capital), Ramo III (unit-linked and index-linked), Multiramo (Ramo I + Ramo III) and Ramo V (capitalisation operations).

In Belgium, “investment insurance products” (*“assurances d’investissement”*) (i.e. class 23 insurance products or combinations of class 23 insurance products and combinations of savings insurance products and class 23 insurance products) and “savings insurance products” (*“assurances d’épargne”*) (i.e. classes 21, 22 or 26 insurance products or combinations of such contracts, including insurance offering only a guaranteed rate without profit sharing), are considered as IBIPs. In other words, class 21 insurance products with fixed-return without profit-sharing are IBIPs under Belgian law, whereas they are not IBIPs under IDD.

In France, IBIP refers to capitalisation and life insurance products with a surrender or transfer value.

The obligation to provide this report arises from Article 30(5) of the IDD and Article 18 of the IBIP Delegated Regulation 2017/2359<sup>2</sup> supplementing the IDD.

Article 30(5) of the IDD Directive states:

*“The insurance intermediary or insurance undertaking shall provide the customer with adequate reports on the service provided on a durable medium. Those reports shall include periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.”*

*“Where an insurance intermediary or an insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the insurance-based investment product meets the customer’s preferences, objectives and other characteristics of the customer.”*

This requirement has been transposed into Luxembourg law in Article 295-20 of the amended law of 7 December 2015 on the insurance sector<sup>3</sup>, which states:

*“(5) The insurance intermediary or insurance undertaking shall provide the customer, on a durable medium, with adequate information on the service provided. Such information shall consist at least of periodic communications to customers which:*

*a) must take into account the type and the complexity of the IBIPs involved and the nature of the services provided to the customer, and*

*b) must include, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.”*

*“(8) Where an insurance intermediary or insurance undertaking has informed the customer that it will carry out a periodic assessment of the suitability in accordance with point (a) of the first subparagraph of Article 295-19(1), the periodic report shall contain an updated statement of how the insurance-based investment product meets the customer’s preferences, objectives and other characteristics of the customer.”*

Article 18 of the IBIP Delegated Regulation 2017/2359, which applies directly to all Member States without transposition measures, provides that:

*“1. Without prejudice to Article 185 of Directive 2009/138/EC of the European Parliament and of the Council, the insurance intermediary or insurance undertaking shall provide the customer with a periodic report, on a durable medium, of the services provided to and transactions undertaken on behalf of the customer.*

*2. The periodic report required under paragraph 1 shall provide a fair and balanced review of the services provided to and transactions undertaken on behalf of that customer during the reporting period and shall include, where relevant, the total costs associated with these services and transactions, and the value of each underlying investment asset.*

*3. The periodic report required under paragraph 1 shall be provided at least annually.”*

2 IBIP Delegated Regulation: Commission 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, as amended by Delegated Regulation (EU) 2021/1257 integrating sustainability factors, sustainability risks and sustainability preferences.

3 *Loi modifiée du 7 décembre 2015 sur le secteur des assurances.*

## Is this report mandatory?

Yes, it is mandatory to provide such a report if the products marketed are IBIPs.

In the Technical Advice of EIOPA on possible delegated acts concerning the Insurance Distribution Directive dated February, 1<sup>st</sup> 2017<sup>4</sup>, hereinafter “EIOPA Technical Advice”, it is indicated:

*“EIOPA understands that adequate reports on the service provided are mandatory according to Article 30(5) of IDD. In practice, they might not be separable from other customer communication and could be delivered together with other documents or even electronically.”*

## Who must provide this report?

To this question, EIOPA replied that the obligation to provide this periodic report lies with the provider of the service. This is generally the insurance intermediary, except in the case of direct distribution.

*“Question ID: 1645 - Periodic reporting and requirements to provide ‘adequate reports on the service provided’*

*Date of submission: 10 Jul 2018*

*Question*

*In the context of periodic reporting to customers, is the insurance intermediary also expected to develop and provide ‘adequate reports on the service provided’? Is the insurance intermediary primarily responsible for reporting to customers on costs & charges and providing periodic reports to customers, with the insurance undertaking always responsible for delivering information on the product, as required under the Solvency II Directive?*

*EIOPA answer*

*With regard to the obligations to provide appropriate reporting under Articles 29(1) and 30(5), IDD and Article 18 of Delegated Regulation 2017/2359, it will depend upon who is providing the service. This may generally be expected to be an insurance intermediary, except where the insurance undertaking is providing services when distributing directly. The insurance undertaking will be responsible for delivering information required by Article 185 of Directive 2009/138/EC (Solvency II).”*

In practice, to prepare this report, the insurance intermediary may use data sent by the insurance company.

This data may also be the subject of information flows agreed between the intermediary and the insurance company to enable each party to fulfil its own obligations related to insurance distribution.

## How often should this report be provided? For how long?

The report shall be provided at least once a year.

It may be supplied more frequently depending on the nature and complexity of the product.

It must be provided throughout the life of the contract.

## Who is this report for?

The report shall be provided to the customers, both individuals and legal entities.

It should be noted that, depending on national law, there may be specificities or exemptions.

For example, in Belgium it is not mandatory to provide periodic reports to “professional clients” within the meaning of the MiFID 2 Directive.

## How should the periodic report be submitted?

The periodic report shall be supplied on a durable medium.

Article 2 (“Definitions”) of the IDD defines a durable medium as follows:

*“any instrument which:*

- a) enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information; and*
- b) allows the unchanged reproduction of the information stored.”*

This definition has been transposed into Luxembourg law, in Article 32 (“Definitions and abbreviations”) of the amended law of 7 December 2015 on the insurance sector.

The periodic report can, for example, be supplied on paper or as an electronic file sent by email.

4 Technical Advice on possible delegated acts concerning the Insurance Distribution Directive dated 1 February 2017.

## What should this report contain?

The periodic report is a “fair and balanced review of the services provided to and transactions undertaken on behalf of that customer during the reporting period and shall include, where relevant, the total costs associated with these services and transactions, and the value of each underlying investment asset.”

As a preamble, the report could explain its purpose, its legal basis.

The report could then identify the insurance intermediary, the contract concerned, the customer (the sole policyholder or the joint policyholders) and the period covered.

The required information would then be communicated.

In the EIOPA Technical Advice it is mentioned:

*“EIOPA expects the periodic communication to disclose to the customer the costs that are incurred by transactions, which is understood with regard to changes to the underlying investment assets in insurance-based investment products.”*

### “Transactions carried out”

“Transactions carried out” means operations carried out on the insurance contract.

EIOPA's Technical Advice could be interpreted as meaning that only transactions carried out on the contract that have an impact on the insurance contract's investment assets (additional payment, surrender, switch) would be covered.

Given the specific nature of Luxembourg insurance products, a change in the investment policy of a dedicated internal fund, a change of asset manager or custodian bank in the case of a dedicated internal fund or a specialised insurance fund could also be considered as transactions affecting the investment assets.

However, I recommend mentioning all operations carried out on the contract during the period covered, including those that have no impact on the investment assets (e.g. changing the beneficiary clause in a life insurance contract).

### “Services provided”

These are the services provided by the insurance intermediary in connection with the transactions listed (preparatory work for the conclusion of the contract, impartial and personalised analysis, provision of advice, provision of information, assistance in

drafting/modifying the beneficiary clause, analysis of costs and expected benefits in the event of switch, etc.).

### “Period covered”

As the periodic report must be provided at least once a year, it can cover each calendar year (from 1st January to 31st December) or be drawn up on each anniversary date of the contract.

Drawing up a periodic report covering the calendar year would make it possible to establish a link or to make a useful reference, for certain information, to the annual communication made by insurance companies.

### “Total costs associated with these services and transactions”

The periodic report will include costs incurred by the operations listed above.

This information could also enable the insurance intermediary to meet, where applicable, another obligation, that of providing the customer, at least annually during the life of the contract, with information relating to costs and charges, including any costs and charges relating to the distribution of the product that are not already included in the costs and charges specified in the key information documents provided for in the PRIIPs Regulation (e.g. where the insurance intermediary receives fees from the customer).

On the other hand, non-transaction charges, i.e. charges levied on the contract on a recurring basis unrelated to the transactions carried out (e.g. administrative management fees, risk premiums, etc.) should not be included in the periodic report. These charges are generally included in insurance companies' communication.

### “Value of each underlying investment asset”

This is the value of the different investment assets linked to the policyholder's contract (general or currency funds, external funds, dedicated internal funds, collective internal funds, specialised insurance funds) on the date in question (e.g. 31 December).

Of course, the insurance intermediary shall take into account any stricter provisions imposed by the applicable national law and/or recommendations issued by the national supervisory authorities regarding the content of the report.

A periodic report should be provided even if no operations have been carried out during the period covered.

## What about periodic assessment of product suitability?

Where advice is provided and the insurance intermediary has indicated to the customer (e.g. in the “insurance brokerage mandate” or similar) that it will carry out a periodic assessment of suitability, the intermediary must assess the suitability of the recommended product at least once a year.

If the assessment shows that the product is still adequate, EIOPA considers that it is sufficient to refer to the periodic assessment in the periodic report provided to the customer.

In this case, the periodic report must include an updated statement on how the contract meets the customer's preferences, objectives and other characteristics.

The updated statement may, in accordance with the terms of the IBIP Delegated Regulation, be limited to changes in the services provided or the underlying investment assets, and/or the circumstances of the customer without repeating all the details contained in the first statement<sup>6</sup> (the one made prior to the subscription of the contract when advice is provided).

If, on the other hand, the assessment shows that the product is no longer in the customer's best interests, the customer must be informed immediately after the assessment.

In the EIOPA Technical Advice, it is mentioned:

*“In the cases where a periodic assessment of suitability is agreed, a customer should be able to trust that this review takes place at least annually. However, if the assessment shows that the product is not in accordance with the best interests of the customer anymore, the customer should be informed without undue delay after the assessment.”*

*“If the assessment shows that the product is still suitable, EIOPA considers it sufficient to refer to the periodic assessment in the periodic communications to the customer. This would also be proportionate and would not overwhelm the customer with too much information.”*

In this respect, it is important to remember that the periodic assessment of suitability is an opportunity to identify the customer's sustainability preferences or changes in the customer's sustainability preferences<sup>7</sup>.

## Periodic report vs. annual situation

The intermediary's obligation to provide periodic information should be distinguished from the insurance company's obligation to provide information pursuant to Article 185 of Directive 2009/138/EC (“Solvency 2”) as transposed into national law<sup>8</sup>.

In the EIOPA Technical Advice, it is mentioned:

*“EIOPA expects in practice a clearer demarcation of reporting obligations for insurance undertakings (reporting foreseen by Article 185 of Solvency II) and periodic communications following from the direct customer relationship, Article 30(5) of IDD.”*

However, in practice, some of the information provided by the periodic report is redundant with that currently provided by insurance companies.

The Omnibus “Retail Investment Strategy” Directive adopted on 24 May 2023 and currently under discussion at European level should clarify and simplify the requirements relating to periodic reporting while maintaining the obligation to provide such a report.

*Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules (7 June 2024)*

*“Member States shall ensure that insurance intermediaries provide the policyholder with adequate reports on the insurance distribution activities. Those reports shall contain periodic communications to policyholders, taking into account the type and the complexity of insurance-based investment products involved and the nature of the insurance distribution activities undertaken for the policyholder and shall contain, if not already provided for in the annual statement referred to in Article 29, paragraphs 2 and 3, the fees associated with those insurance distribution activities.*

*Insurance intermediaries that directly charge fees to the policyholder shall provide adequate reports on the insurance distribution activities undertaken for the policyholder. Such a report shall include the nature of the insurance distribution activities undertaken by the insurance intermediary for the policyholder during the reporting period and the fees associated with those insurance distribution activities.”*

<sup>6</sup> See Article 14 of the IBIP Delegated Regulation and Article 2 of Delegated Regulation 2021/1257.

<sup>7</sup> EIOPA Guidance on the integration of sustainability preferences in the suitability assessment under the Insurance Distribution Directive (IDD).

<sup>8</sup> A comparison of these two obligations is provided in the appendix, along with a summary of this article.

<sup>9</sup> Interinstitutional negotiations (trilogue) between the Commission, Parliament and the Council.

## Opportunities beyond obligation?

The periodic report may be used for other purposes or to comply with other obligations applicable to the insurance intermediary.

In the EIOPA Technical Advice, it is mentioned:

*“EIOPA expects that the periodic communication goes beyond the criteria prescribed, if the products involved or the nature of the service provided warrant for the communication of additional elements.”*

For example, the periodic report could be used to update customer data (relating to customer's situation, for tax compliance purposes, copy of a valid identity document, etc.).

This report could include the insurance company's annual statement, information on market trends or regulatory developments likely to affect the customer or his/her contract, explanations, etc.

The intermediary could remind the customer of the services provided or present new services likely to be of interest to the customer.

If the customer has taken out several contracts with different companies via the insurance intermediary, the report could give a consolidated view.

Over and above the report itself, this report can become a key tool for strengthening the relationship of trust, improving satisfaction and encouraging fidelity.

If you have any questions or comments, please send an email to [contact@vinceosolutions.lu](mailto:contact@vinceosolutions.lu).

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# Periodic report on services provided

## Summary

### Legal basis:

IDD Directive, Art. 30 §5 -> transposition into LU law = Law on the insurance sector, Art. 295-20 (5) (8)

IBIP Delegated Regulation 2017/2359, Art. 18 -> directly applicable without transposition into LU law

Responsible	Insurance intermediary*
Targeted products	Insurance-based investment products (IBIP) <i>Depending on national law, products considered as IBIPs may vary</i>
Targeted customers	Individuals and legal entities <i>Depending on national law, there may be specificities or exemptions</i>
Type of information to be provided	Periodic report: <ul style="list-style-type: none"><li>– A fair and balanced review of the services provided to and transactions undertaken on behalf of the customer during the reporting period</li><li>– Where relevant: the total costs associated with these services and transactions</li><li>– The value of each underlying investment asset</li><li>– The report takes into account the type and the complexity of IBIPs involved and the nature of the service provided to the customer</li><li>– If periodic assessment of suitability: the periodic report shall contain an updated statement of how the IBIP meets the customer's preferences, objectives and other characteristics of the customer</li></ul> <i>Depending on national law, there may be particularities regarding the content</i>
Frequency	Min. 1 time/year
Medium	On a durable medium

\* The obligation to provide the periodic report lies with the provider of the service. This is generally the insurance intermediary, except in the case of direct distribution.  
(EIOPA Q&A: [https://www.eiopa.europa.eu/qa-regulation/questions-and-answers-database/1645-periodic-reporting-and-requirements-provide-adequate-reports-service-provided\\_en](https://www.eiopa.europa.eu/qa-regulation/questions-and-answers-database/1645-periodic-reporting-and-requirements-provide-adequate-reports-service-provided_en))

## Periodic report on services provided

### Summary

Information for policyholders during the lifetime of the insurance contract

IDD Directive, Art. 30 §5 / IBIP Delegated Regulation 2017/2359, Art. 18 VS. 2009/138/EC Directive (Solvency 2), Art. 185 §5

	IDD Directive, Art. 30 §5 / IBIP Delegated Regulation 2017/2359, Art. 18	2009/138/EC Directive (Solvency 2), Art. 185 §5*
Responsible	Insurance intermediaries	Insurance companies
Targeted products	IBIP	All life and non-life insurance products
Targeted customers	Individuals and legal entities, with certain exceptions	Individuals and legal entities
Type of information to be provided	The policyholder receives report on the services provided and transactions carried out by the insurance intermediary + associated costs + value of the underlying assets	The policyholder must be kept informed throughout the term of the contract of any changes concerning certain information
Frequency	Min. 1 time/year	Annually for some information, and when changes are made to other information
Medium	On a durable medium	In writing

\* As this is a Directive requiring transposition, depending on national law, the content of the information to be provided by the insurance company to the policyholder pursuant to Article 185(5) may differ:  
<https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=celex%3A32009L0138>

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