

Irish Insurers on IVASS action undermining the EU Single Market to the detriment of Italian citizens

Subject

On 4th April 2024 the Italian Insurance Supervisory Authority (Istituto per la Vigilanza sulle Assicurazioni, IVASS) published a revised Draft Regulation¹ on limitation to the underlying investments for unit- and index-linked life insurance products (hereafter: **Draft Regulation**) for consultation. The consultation laid down provisions on insurance contracts referred to in Article 41(1) and (2) of Legislative Decree no. 209 of 7th September 2005 (i.e. the Code of Private Insurance) – and subsequent amendments and additions. The revised Draft Regulation fails to address the general concern a multitude of stakeholders have voiced with regards to the initial consultation on the Draft Regulation² – the insufficient mandate by IVASS to include insurers operating in Italy under the freedom of establishment (FoE) and the freedom to provide services (FoS).

Italy is the largest importer of life insurance products in the EU Single Market. In 2022, Italian citizens assumed life insurance products from outside Italy worth almost €16bn (in gross-written premiums), representing nearly 15% of the Italian market for insurance. Losing this important part of the market partially or fully would mean a substantial reduction in the freedom of choice for Italian citizens. The high-quality insurance-based investment products imported into Italy also play an important role in the ability of Italian citizens to respond to the rapidly increasing pension gap and heightened pressure on the public pension scheme.

Instead of crowding-out this high-profile segment of its market, IVASS should review the market conduct regulations and seek closer cooperation with other supervisory authorities and the European Insurance and Occupational Pensions Authority (EIOPA).

Immediate action is necessary to avoid detriment for Italian citizens and the credibility of the EU Single Market for insurance. The Draft Regulation should not be further pursued.

Elaboration

IVASS bases its Draft Regulation on Article 133 Solvency II³. It does not challenge that Article 133 mandates only the home-country supervisor of an insurer to make use of a national power in Article 133(3) of Solvency II to limit the underlying assets of unit- and index-linked insurance products. We strongly agree with this assessment. However, IVASS believes that a European Commission Interpretative Communication on “*Freedom to provide services and the general good in the insurance sector*”⁴ (hereafter: **Interpretative Communication**), provides for sufficient justification to

¹ [Consultation no. 2/2024 on a Draft IVASS Regulation laying down provisions on insurance contracts referred to in Article 41\(1\) and \(2\) of Legislative Decree no. 209 of 7th September 2005 \(i.e. the Code of Private Insurance\)](#).

² [Consultazione n. 3/2022](#).

³ Directive 2009/138/EU.

⁴ European Commission’s Interpretative Communication on “*Freedom to provide services and the general good in the insurance sector*” (2000/C 34/03).

overrule the home-country principle. We strongly doubt that this IVASS action is sufficiently justified. According to IVASS on paper, insurers operating in Italy under FoS and FoE can only be included in the scope of a national regulation if the regulation “meets the following conditions (i) it must relate to a non-harmonised area; (ii) it must pursue a general interest objective; (iii) it must be non-discriminatory; (iv) it must be objectively necessary; (v) it must be proportionate to the objective pursued; (vi) it is also necessary that the general interest objective is not already safeguarded by the rules to which the provider is subject in the Member State in which he is established.” IVASS does not elaborate on how it believes these criteria are met to justify the inclusion of insurers from other EU Member States in the scope of its Draft Regulation. Insurance Ireland and Financial Services Ireland (FSI) are convinced that the IVASS assessment is insufficient and does not justify overwriting fundamental freedoms of the Single Market. To emphasise our position, we would like to explore two of these criteria in particular:

“it must be proportionate to the objective pursued”

Where IVASS considers that these supervisory authorities do not fulfil their mandate and protect the “general good” for Italian citizens, IVASS has a set of measures at hand to engage with these supervisors and intervene. However, it is understood that IVASS engaged late and very sporadically with the relevant supervisory authorities.⁵ On the basis that IVASS had (or continues to have) material concerns, it is unclear why IVASS did not do so.

Other than IVASS, the most relevant supervisors for Italian citizens are likely to be the Central Bank of Ireland (CBI), and the Luxembourgish Commissariat aux Assurances (CAA), because of the volume of life assurance products that are sold in Italy by life assurance companies headquartered in Ireland and Luxembourg respectively. Both supervisory authorities have a track record for the high quality of their cross-border supervision, particularly in the insurance sector, as proven by EIOPA in its peer review report “*Decision of the Board of Supervisors on the Collaboration of the Insurance Supervisory Authorities of the Member States of the European Economic Area*”⁶. Solvency II provides for a mechanism in Article 155. Article 155 allows IVASS to contact the home Member State supervisor of any recalcitrant or uncooperative insurer and that supervisor is required to take the appropriate action to remedy the situation. Such an approach would be proportionate and in keeping with applicable EU laws and EIOPA Decision⁷.

Further, Insurance Ireland and FSI have the strongest concerns regarding the proportionality of the measures laid down in the Draft Regulation to fulfil the identified objective. In consultation no. 3/2022, IVASS states that it intends to prevent the offering of products marketed to retail customers which are not suitable to their needs and infringe on their best interests. IVASS’ Draft Regulation is neither suitable nor necessary, and therefore, not proportionate to the alleged public interest goal.

Under the Court of Justice of the European Union (CJEU)-developed case law⁸, a national measure such as the Draft Regulation would be allowed to stand only if the restrictive effect on the internal market FoE/FoS is an inescapable side consequence of the pursuit, by proportionate means, of the protection of a “general good”. In order for the contested measure to be considered proportionate, the rule must be suitable and necessary.

⁵ The CBI reported one meeting in January 2023 (9 months after the initial Draft Regulation had been published).

⁶ EIOPA-BoS-21-234.

⁷ EIOPA-BoS-21-235.

⁸ See Case 120/78, *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* (1979), ECR 649 - famously known as *Cassis de Dijon* case.

The principles of proportionality which the CJEU requires in its case law are not sufficiently reflected in the Draft Regulation. IVASS has not explored the options provided by Solvency II and did not use the other substantial powers (i.e. subject to the Insurance Distribution Directive, IDD⁹, and the Packaged Retail and Insurance-based Investment Products Regulation, PRIIPs¹⁰) to address its concerns and problems with regards to the marketing of insurance products in its territory.

“the general interest objective is not already safeguarded by the rules to which the provider is subject in the Member State in which he is established.”

In Chapter 2.1 of the presentation report to the Draft Regulation, IVASS states that the European Commission’s Interpretative Communication requires *“it is also necessary that the general good objective is not already safeguarded by the rules to which the provider is subject in the Member State in which it is established”*. However, IVASS does not assess if the general good is safeguarded by the rules to which insurers providing their products to Italian citizens under FoS or FoE are subject. The assumption that Member States who do not apply the same restrictions as IVASS do not safeguard the general good for natural persons is overly simplistic and shows a certain disregard for the well-functioning marketplaces across the EU Single Market – this also against the background of the recent challenges and (near) failures in the Italian insurance market.

Article 133 (3) of Solvency II is transposed into Irish law. The CBI, however, does not apply any limitations or restrictions to the EU-wide harmonised provisions safeguarding policyholder interest and the general good for natural persons laid down in Solvency II.

Conclusion

Insurance Ireland and FSI strongly call on the European Parliament, the European Commission, EU Member States (i.e. Ireland and Italy) as well as EIOPA and its Board of Supervisors to avoid protectionist national measures undermining the fundamental freedoms of the Single Market and the underlying supervisory framework. If entered into force, the Draft Regulation will have a detrimental impact on Italian citizens seeking to save for retirement and invest.

We further note that the initiative runs counter to the objectives of allowing EU citizens to invest more effectively and efficiently in EU Capital Markets. The rules set out in the European Commission’s proposal for a Retail Investment Strategy exclusively focus on improving the market conduct framework for financial services and insurance – restrictions and limitations as proposed in the Draft Regulation counteract these ambitions. In consequence, Italian citizens will either lose out from high-profile investment through well-regulated insurance products or turn to less or unregulated market.

Further detail on our position and our technical comments on the Draft Regulation can be found [here](#).

Brussel/Dublin, 29th May 2024

⁹ Directive (EU) 2016/97.

¹⁰ Regulation (EU) No 1286/2014.

About us

Ireland is the 4th largest market for insurance services in the EU and the third largest for reinsurance. In 2023, Irish insurers and reinsurers provided cover in Ireland, the EU and globally for nearly €103bn in gross-written premiums. In the same year, Irish insurers and reinsurers paid out more than €70bn in gross claims. The sector employs 35,000 people directly and indirectly and contributes more than €2.7bn to the Irish Exchequer.

[Insurance Ireland](#) is the voice of insurance in Ireland and of Irish insurers and reinsurers at EU level and globally.

[Financial Services Ireland](#) is the Irish Business and Employer Confederation's group representing the interest of the financial services sector in Ireland including insurance and reinsurance.