

Comments Template on DP-14-IMD Discussion Paper on Conflicts of Interest in direct and intermediated sales of insurance-based investment products (PRIIPs)		Deadline 22 July 2014 18:00 CET
Name of Company:	Insurance Europe	
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Reference	Comment	
General Comment	Insurance Europe welcomes the opportunity to comment on EIOPA's discussion paper on conflicts of interest in direct and intermediated sales of insurance-based investment products. We would like to stress, however, that discussions are still ongoing on IMD2, particularly on chapter VII of the draft directive, so the current discussion paper based on IMD1.5 provisions could be partly out of date in a few months. As a consequence, Insurance Europe reserves judgment on certain points until the future orientation of	

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	IMD2 becomes clearer.	
Q1.	<p>There are a range of different types of potential conflicts of interest and not all of them can be dealt with in the same way. Not all conflicts of interest have the potential of causing detriment directly to consumers, and EIOPA should focus on those that are demonstrated as being detrimental to consumers, while also bearing in mind the extent of potential damage.</p> <p>For example, in some Member States, the case of an intermediary being involved in developing a product together with an insurance undertaking would often actually create positive outcomes for consumers, as the intermediary knows the market very well and can incorporate knowledge of consumer demands and needs into the design of the product. Cooperation between intermediaries and undertakings in product development is also foreseen under ESMA's current work on MiFID2, which highlights the need for manufacturers and distributors to work together and share information in order to fulfil their respective product governance requirements. Any potential conflict of interest has to be looked at in terms of the detrimental effect on the consumer. It should be stressed that just because there is the potential for a conflict of interest does not always mean that a conflict exists.</p> <p>Another example might be circumstances where there is a potential for conflicts of interest in relation to "minimum levels of sales being required from an intermediary in order to be accepted as an intermediary by the insurer". This is also a measure that helps to improve efficiency and is often linked to both the economic decision-making and the solvency of the insurance undertaking.</p> <p>An example of where national remedies are developed includes the option in some Member States for exclusive agents to propose to their customer a contract issued from a company other than the one they represent, as long as the company they represent is not able to provide such a contract. In this case and for this contract,</p>	

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	<p>registration as a broker is required by law, and the intermediary must explain to the customer that he is not acting as an exclusive agent. This is how these Member States have chosen to deal with the potential for this particular conflict of interest, which is relevant for this distribution model and legal corporation structure. It is therefore important to ensure that the rules remain high level enough to offer Member State regulators the flexibility to learn from each other across the EU and be inspired to develop rules relevant for their market.</p>	
Q2.		
Q3.	<p>The conflicts of interest identified by EIOPA in the discussion paper are already captured by Article 21 of the MiFID1 implementing directive. This article is high-level enough to capture any potential conflicts of interest related to insurance-based investment products.</p>	
Q4.	<p>The conflicts of interest identified by EIOPA in the discussion paper are already captured by Article 21 of the MiFID1 implementing directive. This article is high-level enough to capture any potential conflicts of interest related to insurance-based investment products.</p>	
Q5.	<p>We are concerned that EIOPA's focus is to not only apply the types of conflicts of interest identified under the MiFID regime to all insurance-based investment products, but to also add further instances from the insurance sector on top of this by having a non-exhaustive list, instead of properly tailoring and adapting the text to insurance. We would seek confirmation from EIOPA that in adapting the MiFID1 conflicts of interest rules to insurance PRIIPs, EIOPA will make every effort to remove unnecessary MiFID1 requirements, so that insurance firms in Member States where MiFID1 already</p>	

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	<p>applies do not suffer from <i>additional</i> regulation, but rather that the new EIOPA rules will introduce <i>equivalent</i> regulation instead that has negligible impact on firms that have already implemented MiFID1 for insurance-based investment products.</p> <p>It is also essential to bear in mind that IMD2 is still under discussion and may apply from late 2016. Therefore, it is important to ensure that IMD2 is fully aligned with IMD1.5 in relation to conflict of interest rules for insurance-based investment products. Otherwise this would result in firms having to make significant changes to their systems twice within the space of a year, with no added benefit for the customer, and additional cost that will be passed on to policyholders. There should be full consistency between Chapter IIIA of IMD1.5 and Chapter VII of IMD2 in order to maintain legal certainty and legitimate expectations.</p> <p>The conflicts of interest identified by EIOPA in the discussion paper are already captured by Article 21 of the MiFID1 implementing directive. We therefore do not support the creation of a non-exhaustive list of conflicts of interest, as we believe it is unnecessary.</p>	
Q6.	<p>We would support an approach that introduces measures that are as close as possible to the MiFID1 implementing directive for conflicts of interest associated with insurance PRIIPs, with an appropriate adaptation for issues specific to insurance. This should not however be understood as support for the application of MiFID2 Level 2 measures, which have yet to be drafted, given the reference in the mandate to ensuring that EIOPA's advice should be in line with such provisions as much as possible. It is not possible at this stage to comment on rules that have still to be developed. EIOPA notes in its discussion paper that certain of the terms in the MiFID implementing directive would need to be adapted to apply to insurance distribution. It is crucial that any measures dealing with conflicts of interest are appropriately adapted to insurance specificities. However, it may not be sufficient to simply replace any references to 'investment services' with 'insurance distribution activities'. The measures introduced</p>	

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	<p>in the MiFID implementing directive have been created with investment services in mind. For example, we do not see how the criteria referred to in Article 21(d) of the MIFID1 implementing directive could apply to insurance distribution activity.</p>	
Q7.	<p>Insurance Europe believes that firms should be responsible for both actively identifying and managing any potential conflicts of interest which might have a detrimental impact on their customers. However, we believe that any new rules on conflicts of interest should be of clear and demonstrable benefit to consumers. In this respect, national regulation on consumer protection should also be taken into account, as it is designed to tackle the various issues that arise locally in that market and is aimed at effectively dealing with those types of conflicts of interest. National supervisors, who are in regular contact with firms, are also best placed to ensure that companies are effectively managing any conflicts of interest. Any European regulation on conflicts of interest should therefore be high level enough to allow suitable adaptations to Member States' own regulation, both current and future.</p> <p>There are a range of different types of potential conflicts of interest and not all of them can be dealt with in the same way. Not all conflicts of interest have the potential of causing detriment directly to consumers, and EIOPA should focus on those that are demonstrated as being detrimental to consumers, while also bearing in mind the extent of potential damage.</p> <p>As mentioned in the discussion paper, there could be several types of potential conflicts of interest. These conflicts of interest, however, differ between financial services industry sectors and between Member States, given the different distribution structures across Member States – particularly for insurance. In our view therefore, possible solutions for potential conflicts of interest should also be dealt with at the level of the Member States. In addition, it should be borne in mind that in the insurance sector conflicts of interest do not arise to the same extent in the different distribution channels. As the European Commission points out in its call for advice,</p>	

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	<p>different products as well as different distribution channels might present different conflict of interest risks. Indeed, the risks of conflicts of interest and their impact on consumers in the independent intermediated channel are different to the potential conflicts of interest that might arise in the direct selling or exclusive/tied agent channel and any future rules must recognise this fact.</p> <p>It is not possible to specify every conceivable type of conflict of interest at EU level, nor do the same types of conflicts of interest arise in each market. Rather the focus should be more on establishing general principles at EU level and leaving it to national supervisors to tackle the specific types of conflicts of interest that arise at local level. In any case, the conflicts of interest identified by EIOPA in the discussion paper are already captured by Article 21 of the MiFID1 implementing directive. We therefore do not support the creation of a non-exhaustive list of conflicts of interest, as we believe it is unnecessary.</p>	
Q8.	<p>We agree with the recognition of the need to take into account the principle of proportionality. Many distributors of insurance products are small and medium sized enterprises and in some cases are run by one self-employed individual, who does not have a separate person available to carry out different activities, so any measures developed should not give rise to an onerous regulatory burden for SMEs. National regulators are best placed to assess proportionality, as they will already be closely monitoring the risk management approach in the firms they supervise. They will also be better placed to take account of the extensive variation in legal forms and in corporate governance regimes and practices.</p> <p>In many Member States, SMEs are involved in the distribution of complex products. A lot of them are managed by one person. So a two person management requirement, as introduced in asset management in order to manage conflicts of interest, would put a heavy burden on the market and force SMEs to cooperate with other SMEs or just stop their business.</p>	

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Q9.	EIOPA should avoid addressing issues at this stage that are still the subject of on-going discussions by the co-legislators on IMD2. The rules being developed under IMD2 on conflicts of interest and remuneration will apply to all insurance products, including insurance PRIIPs, so to start developing measures here that tackle remuneration and commissions would be to effectively pre-empt the outcome of those discussions.	
Q10.	<p>It is worth pointing out that, in the insurance context, the Directive on Legal Expenses Insurance (87/344/EEC) already contains solutions to prevent conflicts of interest that would also be relevant to the discussion at hand.</p> <p>When it comes to the management of conflicts of interest, the approach followed in Article 3 para 2 of this Directive should be taken into account, as it provides for a separation of functions (task and duties) that has also been identified by EIOPA as one possible approach to dealing with conflicts of interest. This could be relevant, for example, in the case of distribution and claims assessment activities.</p>	
Q11.		
Q12.		
Q13.		
Q14.		
Q15.		
Q16.		

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Q17.	<p>According to EIOPA's assessment, in the absence of any change, unmitigated conflicts of interest could lead to harm for individual customers that would otherwise be avoided. It notes that other measures such as increased product oversight, product intervention powers and improved transparency measures might help reduce such harm.</p> <p>However, it concludes that inconsistencies in regulatory approaches between sectors at EU level would continue and expose the insurance sector to stresses as a result of regulatory arbitrage, while evolving national measures will lead to growing fragmentation of applicable standards across the EU due to national specificities.</p> <p>If the intended aim of this exercise is to manage existing conflicts of interest, then it is crucially important to take national specificities into account. Evolving national measures are designed to tackle the various issues that arise locally in that particular market and thus are aimed at effectively dealing with those types of conflicts of interest. The focus should therefore be on establishing general principles at EU level and leaving it to national supervisors to tackle the specific types of conflicts of interest that arise at local level.</p>	
Q18.		