



The European Federation of Insurance Intermediaries
La Fédération européenne des intermédiaires d'assurances

BIPAR RESPONSE

on Joint Committee Consultation Paper on guidelines for cross-selling practices

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BIPAR is the European Federation of Insurance Intermediaries. It groups 50 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance agents and brokers and financial intermediaries in Europe. Apart from some large multinationals, the insurance intermediation sector consists of hundreds of thousands of SMEs and micro-type operators. It accounts for 0.7% of European GDP, and over one million people are active in the sector. Insurance and financial intermediaries facilitate the insurance and financial process for several hundreds of millions of customers. The variety of business models, the high level of competition and the geographical spread in the sector ensure that everyone in Europe has easy access to tailor-made insurance and financial services.

BIPAR is a member of the World Federation of Insurance Intermediaries (WFI).

I. General Comments

BIPAR is the European Federation of Insurance Intermediaries. It groups 50 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance intermediaries (agents and brokers), credit intermediaries and financial intermediaries in Europe. More information on BIPAR can be found on: www.bipar.eu .

BIPAR welcomes the opportunity provided by the Joint Committee (JC) to comment on its draft guidelines for cross-selling practices.

In order to ensure a similar protection of the consumer whatever the channels of distribution chosen, BIPAR believes that it is crucial to deal with cross selling practices on a broad and cross sector basis. It therefore welcomes the fact that the guidelines apply irrespective of the sales channel used.

For the sake of legal certainty and clarity, it is important to ensure that definitions used by the JC Guidelines are coherent with the definitions of existing EU texts and with the principles established by the Unfair Commercial Practices Directive and by national existing legislations.

It is also crucial to ensure that the JC Guidelines are balanced and do not generate excessive administrative burden with no added-value for customers. The strengthening of the competences of national authorities in this respect must be clearly defined.

BIPAR regrets that the JC draft Guidelines do not address the sales of connected contracts by exempt ancillary sellers, that are referred to in IMD II, and the fact that in this case consumers continue to be exposed – arguably to a far greater degree - to the cross-selling risks from those sales.

The guidelines are addressed to competent authorities with supervisory oversight of firms subject to the IMD amongst others. The IMD is being revised. BIPAR notes that the JC *“acknowledges this situation and will, if and when required, amend these guidelines to ensure a full alignment with the final provisions of the IMD II”*.

BIPAR wonders why the focus of the principles set out in these guidelines is on cross selling practices involving **only** financial services and products, both from the same sector and to the combination of products from different sectors. Indeed the last EIOPA Consumer trends refers to problems regarding cross-selling (tying & bundling) of financial products and non-financial products.

Regarding the mandate given to the European Supervisory Authorities to develop such guidelines, BIPAR would like to highlight the fact that while MiFID II states that *“ESMA, in cooperation with EBA and EIOPA, shall develop by 3 January 2016 and update periodically guidelines”*, IMD II, in the Presidency compromise of 28 October 2014 states that this is only a possibility for EIOPA (*“may develop guidelines”* and not *“shall develop guidelines”*).

II. BIPAR answers to Joint Committee consultation paper

Question 1: Do you agree with the general description of what constitutes the practice of cross-selling?

BIPAR comments

The general description covers cross-selling practices that only involve financial services and products, from the same sector or from different sectors. Current or upcoming legislations, such as MiFID II or the IMD II seem to refer to a broader definition that includes packages where one of the components may not be a financial product. Also in the framework of the legislative process, we are wondering if such packages are covered and we believe that, before any legislation is prepared in this respect, an impact assessment should be carried out.

The JC draft Guidelines confirm that PRIIPS are not considered as packaged for the purposes of this paper, but BIPAR looks for confirmation that single insurance policies which cover a “package” of risks (such as home insurance which provides buildings cover, contents cover, personal belongs cover and more – which are distinct insurance covers but which are available to the client as optional sections of the same, single policy; or Shops/Office insurance which is the commercial equivalent of a home insurance policy) are also not covered by these guidelines. Multi-risk insurance policies are listed in paragraph 4 of annex I but it only refers to “certain” multi-risk insurance policies. BIPAR wonders which policies would be concerned and believes that the fact that multi-risk insurance policies are not considered as cross-selling practices should be highlighted more clearly in the guidelines. The paper does not refer neither to situations where two products or services are not bundled or tied but where special tariff conditions apply if the customer buy both products / services.

BIPAR would like the JC to confirm that “cross selling practices” covered in the proposed Guidelines also cover the “ventes concomitantes” in France (and comparative practices in other Member States), that is to say when an offer is made to the customer at the same moment he is buying another product or service (when he is purchasing a mortgage, he is being offered a better rate if he buys a home insurance at the same time, for example). The products are not offered in a package but the proposed tariffs are lowered at the moment of the sale and sometimes all along the life of the products.

Question 2: Do you agree with the identified potential benefits of cross-selling practices?

BIPAR comments

BIPAR agrees with the identified potential benefits of cross-selling practices.

However the JC should also not lose sight of the fact that clients do not necessarily have a need for a particular insurance contract and their needs may not fit neatly into a particular insurance contract. Instead they have needs which may best be met by a combination of covers under distinct policies.

Question 3: Do you agree with the identified potential detriment associated with cross-selling practices?

BIPAR comments:

BIPAR recognises the circumstance described in paragraph 4.d as being a particular issue within the practices of Price Comparison Websites. The JC definition of cross-selling focuses on what could better be described as add-on sales. BIPAR believes that the JC should make the distinction between the cross-sale of an add-on product (such as Legal Expenses Insurance added to a Private Car Insurance policy) from the cross sale of separate products (if in the discussion for private car insurance, the client advises that they occasionally tow a caravan, a completely distinct conversation may take place about caravan insurance).

We also agree with the circumstance described in paragraph 3.a regarding an insurance contract combined with a loan and the fact that the customer may not be able to make the best decision regarding the insurance cover as he mainly focuses on the loan.

The JC should not ignore the fact that risks also apply to financial services sold as an add-on to a non-financial service/product. The UK provides an example of the Competent Authority having to consult on remedies for GAP insurance sold with a car.

In this context it is also interesting to refer to the last EIOPA Consumer trends report that says on page 3: *“Cross-selling (tying & bundling) and add-ons have been reported by several national supervisors with regard to a large number of financial products such as protection linked to loans, debit and credit cards, including identity theft protection. They have also been reported for non-financial products such as electronic devices, for example, mobile phones (loss, damage or theft).*

Problems have been cited with respect to consumers often not being aware that they are buying an insurance product, due to lack of information, poor product disclosure and selling practices, so they might not activate the policy in the event of a claim. There are often long lists of restrictions and exemptions, leading to add-on products not offering value for money. Multiple cover may be inadvertently bought due to consumers not being appropriately informed about the coverage of their products. Finally, competition for add-on products is often not effective as consumers are less likely to shop around for the add-on cover and are less sensitive to price at the point of-sale, such that add-on products may be overpriced.”

EIOPA, in its 2013 opinion on Payment Protection Insurance, also says in paragraphs 12, 13 and 14 that: *“An issue that certainly has drawn a lot of public and media attention in several countries is mis-selling of PPI, where breaches of business conduct rules resulted in significant consumer detriment. The most frequently arising mis-selling issues are eligibility/suitability issues (where consumers are unable to claim benefits, because their individual situation is not covered by the policy or PPI is not in their best interest, although it is required by national law), and the provision of misleading information. Misleading information often includes hints that PPI is compulsory (although it is not true in the given case), or omits essential product characteristics.*

Apart from mis-selling, market imperfections have extensively contributed to the fact that in many markets, consumers are (or have been) forced into distorted choices, which results in higher prices for them.

One of the major factors contributing to PPI problems is cross-selling, i.e. that payment protection products and loan products are often offered together (jointly), with the loan product being the primary product for the consumer. This market feature can sometimes take the form of a tying practice (meaning that insurance - often from the same company or group - is made mandatory to obtain a loan from a given provider), which is likely to result in very significant market power (economic strength) for distributors (mostly banks or other loan providers). This market power resulted in an upward pressure on the level of commissions and had an unfavourable effect on consumer prices."

Other institutions, such as OECD, also provide examples of potential detriment associated with cross-selling practices. Such examples can be found for instance in the OECD economic survey of the Belgian market (pages 115-117): *"...This may reflect the fact that bank customers are offered low-interest credit products (such as mortgage loans) and interest-savings accounts cross-sold with fee-based services (such as life-insurance...). As noted above, the strategic marketing goal of cross-selling products is to increase the switching costs to customers, thus reducing the probability of their escape toward more competitive rivals. Such cross-selling may include aggressive pricing on mortgage loans or saving accounts, which are cross-sold with other products. Thus, financial services providers tend to compensate their low net interest margins with income from cross-sold banking and insurance products..."*

[...] While cross-selling may be a rational strategy for both banks and customers, tying of financial products is potentially harmful for competition (European Commission 2006). Although in general tying of financial products is explicitly forbidden in Belgium, there is one exception in the mortgage credit law: mortgage loan providers are allowed to grant a conditional interest rate reduction if a life insurance (PPI) and/or a home insurance is bought from the same financial institution. As a result, the closure of a mortgage contract is a bargaining process, with reduced transparency, which is likely to be at the detriment of consumers as they end up with tied products and high switching costs if he wants to escape to a rival at a later stage. It is for the purpose of discouraging anti-competitive cross-selling practices that the authorities should reconsider the regulation of authorizing mortgage interest rate reduction conditional on the joint purchase of insurances products."

Question 4: Please comment on each of the five examples in paragraph 13, clearly indicating the number of the example to which your comment(s) relate.
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BIPAR comments

Example 1

BIPAR believes that example 1 appears very unrealistic and simplistic. Is it based on real-world cases? In practice it happens very often that within a package, the price of the primary product is much lower than if offered separately, but it is bundled or tied with secondary products, also proposed at a lower cost than if sold separately, but very often not wanted and not needed by the client. The secondary products therefore increase the final cost of the package in a kind of artificial way.

Example 2

Example 2 is also unrealistic in an insurance context.

Example 3

Example 3 makes no recognition of circumstances that would make an absence of a refund on the insurance premium justifiable, such as the consumer having made a claim under the policy.

Example 4:

This questions is key and it is important that there is no increased limitation of mobility of the consumer. This latter must be able to seize a market opportunity, to substitute the secondary product of the packaged offer with another similar or equivalent product at a later point in time.

The question is then what is an equivalent product?

Another question is what about the preferential rate that the consumer got when buying the primary product in the package offer? Will they be maintained if he chooses another secondary product? The draft Guidelines are silent on this particular issue.

Example 5

This example is an already identified risk which existing requirement aim to prevent (for which non-compliance is exactly that – non-compliance and so a regulatory breach).

Question 5: Please comment on the proposed guidelines 1 and 5 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

BIPAR comments

Point 5.6 in the consultation states that the JC is looking for full disclosure, which runs contrary to the understanding of “information overload”. Too many figures run the risk of confusing the customer about how much they are expected to pay to buy the combination of products.

Besides we believe that the Guidelines should not exceed the scope of the primary EU legislations they are built upon (MIFID II, IMDII proposal etc...). The proposed disclosure requirement in Guideline 1 goes beyond the cross selling provisions of EU legislation. The requirement in Guideline 1 to itemise component prices should be explicitly limited to circumstances where purchase of the component parts individually is possible.

The value of disclosing how the risk is modified when packaged as required in Guideline 5 would appear to be extremely limited in a situation where the package is two or more insurance contracts. In every circumstance, the combination would reduce the clients’ exposure to insurable risk events.

Question 6: Please comment on the proposed guidelines 2, 3, 4 and 6 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

BIPAR comments

As recommended in connection with Guideline 1, the requirement in Guidelines 2 and 3 to itemise component prices should be explicitly limited to circumstances where purchase of the component parts individually is possible.

Guideline 4 appears not to apply in an insurance-only sales process, as the price of the insurance (“the premium”) is always disclosed clearly. We do not understand the illustrative example of Guideline 4: how does comparing the price of an insurance product with the cost of a personal loan help the customer make an informed decision about the value/benefit to them of either?

Question 7: Please comment on the proposed guideline 7 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates

BIPAR comments

Whilst BIPAR recognises the behavioural implications of opt-out selling as mentioned in paragraph 5.14 and Illustrative example 2, pre-populating a response in the negative has equal risk of poor consumer outcomes. “Default inertia” applies equally to a pre-populated “no” answer and the customer risks missing out on a product they actually need. Positive engagement should mean encouraging the customer to make a choice one way or the other, rather than leading them one way or the other.

BIPAR believes that pre-setting internet purchases practices should not be allowed when this practice does not allow to get the express consent of the consumer.

Question 8: Please comment on the proposed guideline 8 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates

BIPAR comments

BIPAR recognises the validity of the examples in Guideline 8 but does not understand the necessity of this Guideline. The fact that a “package must be distributed in accordance with any applicable requirements to meet the demands and needs of the customer or to assess suitability or appropriateness” is already covered by current EU legislations. It is important not to duplicate or contradict EU legislation in this respect.

Question 9: Please comment on the proposed guidelines 9 and 10 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

BIPAR comments

Guideline 9: The wording of “...is provided to staff in charge of distributing each of...” in Guideline 9, runs the risk of requiring training be completed by the person having management responsibility for the sales, rather than those carrying out the sales, which BIPAR believes in the ESAs actual intention.

Again we believe that this issue is sufficiently covered by the current EU legislation.

Guideline 10: Remuneration and conflicts of interests issues are already covered in details by current EU legislation. Besides the drafting of this guideline is vague and could lead to additional and not needed requirements.

Should this draft Guideline not be deleted, we believe it is necessary to clarify the concept of conflict of interest it is referred to.

It is not clear what kind of conflicts of interests are covered in the draft Guideline. More clarity would be needed on this aspect. The conflict situation can, from a conflict of interest perspective, not seem to be beneficial for the consumer at first glance, but overall it may offer a solution which in competitive terms may be the best available, when analysed. We therefore believe that it should be clear that the conflicts of interests referred to in Guideline 10 are those which existence may adversely affect the interests of the consumers.

Moreover, we believe that the wording “avoidance” is not the appropriate one. The word “management ” would be more in line with the reality of the market and with the texts of current EU and national legislation.

Question 10: Please comment on the proposed guideline 11 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

BIPAR comments

We agree that it is crucial to ensure that any cancellation right attached to the purchase of a component product continues to apply even if the component product is part of a bundled or tied package. We believe that it is equally important to clarify whether in this case, the tariffs that were offered for the other product(s) of the package and that are not cancelled, are still valid.

Question 11: Please provide any specific evidence or data that would further inform the analysis of the likely cost and benefit impacts of the guidelines.

BIPAR comments

It is important to ensure that the potential costs of the guidelines are properly assessed.