

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:	Assuralia	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. <i>Please indicate if your comments on this DP should be treated as confidential, by deleting the word Public in the column to the right.</i>	Public
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Reference	Comment	
General Comment	General comments by Assuralia, the association of insurance undertakings in Belgium: The European Commission has asked EIOPA for technical advice in preparation for the delegated acts referred to in article 91 of MiFID2 Directive 2014/65/EU in order to - define the steps that insurance intermediaries or insurance undertakings might reasonably be expected to take to (1) identify, (2) prevent, (3) manage and (4) disclose conflicts of	

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interest in the context of insurance-based investment products;
- establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers in the context of insurance-based investment products.

EIOPA is invited by the European Commission to base its technical advice primarily on the existing conflicts of interest rules laid down in the MiFID1 Implementing Directive 2006/73/EC , while at the same time closely liaising with ESMA as regards ESMA’s technical advice on MiFID2.

We would like to give two general comments:

A. “Conflict of interest rules in the context of insurance-based investment products”

Insurance-based investment products are subject to the MiFID1 conflicts of interest rules in Belgium since 30th April 2014 (Act of 30th July 2013, hereafter ‘Twin Peaks 2’). The implementation of these MiFID1 rules has been and still is a burdensome process for insurance undertakings and intermediaries, entailing a review of existing business models, ICT adaptations, training of staff, the development of new information documents...

Assuralia calls upon EIOPA to acknowledge the work done by those markets that have already implemented MiFID1 for insurance-based investment products at present. For those markets, the delegated acts based on article 91 MiFID2 should not lead to more complexity caused by new legal concepts and wording, nor should it require insurers and intermediaries to change recently introduced practices based on MiFID1.

B. “Closely liaising with ESMA”

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	<p>Our comments hereunder regard the application of the articles on conflicts of interest of the MiFID1 Implementing Directive 2006/73/EC. <u>Our response should by no means be understood as an approval of the MiFID2 level 2 measures on conflicts of interest, inducements and remuneration that ESMA is currently developing for banking products and investment funds.</u></p> <p>Insurance-based investment products are not taken into account by ESMA when developing the MiFID2 level 2 measures on conflicts of interest (Consultation Paper ESMA/2014/549). We therefore expect EIOPA to consult and involve the insurance sector and its customers if it would consider applying measures to insurance-based investment products that are similar to the upcoming MiFID2 implementing measures for banks and investment funds.</p>	
Q1.		
Q2.		
Q3.		
Q4.		
Q5.	<p>Do you agree that specific types of conflicts of interest for insurance distribution should be added to the basic structure contained within Article 21, as outlined in the discussion above? If so, please clarify which types, and how they might be different from the types of conflict already covered by the criteria in Article 21.</p> <p>Response by Assuralia, the association of insurance undertakings in Belgium:</p> <p>We do not agree.</p> <p>The new article 13c of IMD (as amended by article 91 of MiFID2) requires insurance undertakings and intermediaries to identify <i>all conflicts of interest</i> that are potentially detrimental to a buyer of</p>	

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	<p>an insurance-based investment product.</p> <p>In practice, conflicts of interest vary considerably between market participants, depending on many factors such as their size, their activities, whether they are part of a group, the type of insurance-based products, the type of intermediaries involved... The identification of conflicts of interest is therefore first and foremost the responsibility of each individual insurance undertaking and (non-tied) intermediary, requiring a case-by-case assessment by the local supervisory authority. It is therefore appropriate to formulate generic principles on the EU level and to leave the assessment of concrete situations to the local supervisory authorities.</p> <p>Article 21 of the MiFID1 Implementing Directive obliges market participants to give special consideration to <i>at least</i> ('minimum') five <i>generically formulated</i> situations when performing this identification exercise. In our view most of the conflicts of interest listed on the pages 15 to 17 of the Discussion Paper can be categorized under these situations. Any other conflict of interest that may arise is covered by the general obligation of article 13c IMD.</p> <p><u>There seems to be no compelling need for the Belgian market to adapt the criteria listed in article 21 of the MiFID1 Implementing Directive when drafting the delegated acts on conflicts of interest for insurance-based investment products (article 13c IMD).</u></p>	
Q6.		
Q7.		
Q8.		
Q9.	<p>Do you agree that it is necessary to include a further clarification of how to manage conflicts of interest arising out of third party payments or benefits, commission payments or remuneration? If so, please provide detail on the possible measures and the circumstances in</p>	

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which they might apply, explain why you believe these measures are appropriate, and set out how you believe these measures will effectively manage the conflicts of interest that might arise due to inducements or commission arrangements.

Response by Assuralia, the association of insurance undertakings in Belgium:

A. On conflicts of interests

Third party benefits and remuneration are an aspect that insurance undertakings and intermediaries need to take into account when complying with their general obligation to identify, manage and disclose conflicts of interest. To what extent a concrete and specific conflict of interest is potentially harmful for customers is an issue to be assessed on a case-by-case basis in the context of the general conflicts of interest policy of and the 'reasonable measures' taken by the insurance undertaking or the intermediary involved. Understanding the potential impact of a specific conflict of interest implies a thorough knowledge of the individual insurance undertakings and intermediaries themselves and the context they operate in. The national supervisory authorities are therefore best placed to supervise insurance undertakings and intermediaries when it comes to the identification, management and disclosure of conflicts of interest.

We see no need at present to provide more detail and clarification on the EU level on how to manage conflicts of interest arising out of third party payments or benefits, commission payments or remuneration for insurance-based investment products.

B. On inducements

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The Discussion Paper mentions the specific rules for inducements of article 26 of MiFID2. We see no reason to include specific rules on inducements in the EIOPA technical advice in preparation of delegated acts:

- A political decision has been taken in MiFID2 not to copy the rules on inducements of article 24 (9) MiFID2 and article 26 MiFID1 Implementing Directive into IMD for the time being (art. 91 MiFID2). That discussion will take place in the context of IMD2. Introducing the criteria of article 26 indirectly into IMD by means of delegated acts for the general rule with regard to the identification, management and disclosure of conflicts of interest would go beyond the mandate given by the present MiFID2 Directive.
- Article 91 of MiFID2 entrusts the European Commission with the task to develop delegated acts
 - o to define the steps that insurance intermediaries or insurance undertakings might reasonably be expected to take to (1) identify, (2) prevent, (3) manage and (4) disclose conflicts of interest in the context of insurance-based investment products;
 - o to establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers in the context of insurance-based investment products.

There seems to be no legal ground for the European Commission to propose specific delegated acts for rules on inducements for insurance-based investment products similar to article 24(9)

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	MiFID2 or article 26 of the MiFID1 Implementing Directive. We therefore see no role for EIOPA to develop a technical advice for this particular issue.	
Q10.		
Q11.	<p>Thinking specifically about disclosure, what steps do you think could maximize its effectiveness in ensuring customers understand and are able to use the information provided in their decision-making process?</p> <p>Response by Assuralia, the association of insurance undertakings in Belgium:</p> <p>We suggest two steps with regard to the disclosure of conflicts of interest:</p> <ul style="list-style-type: none"> - In order to help customers to understand the information given to them, it is key to avoid ‘information overkill’ and duplication of disclosure requirements (e.g. national requirements, PRIIPs Regulation...). - It is good for customers to understand the different roles of insurance undertakings and tied intermediaries, on the one hand, and non-tied intermediaries, on the other hand. The MiFID1 framework recognizes this difference: tied agents fall under the conflicts of interest policy of the insurance undertakings they have an agreement with, in contrast with non-tied agents and insurance brokers that must develop their own conflict of interests policy and undertake themselves appropriate action with regard to the identification, management and the way they disclose the remaining conflicts of interest. 	
Q12.	Are there any additional adjustments to the existing MiFID measures in Articles 22 and 23 that	

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	<p>might be necessary to clarify their application to insurance distribution activities? If so, please clarify which adjustments you believe necessary, set out why you believe this, and provide evidence to support your view.</p> <p>Response by Assuralia, the association of insurance undertakings in Belgium:</p> <p>The articles 22 and 23 provide general rules with regard to the establishment, implementation and maintenance of the conflicts of interest policy. These general rules also explicitly apply the principle of proportionality (e.g. <i>“appropriate to the size and organization of the firm and the nature, scale and complexity of its business”</i>; <i>“appropriate to the size and activities of the investment firm and of the group to which it belongs, and to the materiality of the risk of damage to the interest of the client”</i>; <i>“as are necessary and appropriate”</i>...).</p> <p><u>There seems to be no need for additional adjustments to these measures.</u></p>	
Q13.	<p>Do you agree that the existing MiFID measures in Articles 24-25 related to investment research should be applied to insurance distribution activities, following a redrafting to take into account the legal framework applying to insurance undertakings and insurance intermediaries? Please provide details of the aspects of insurance distribution activities to which you believe these measures might apply.</p> <p>Response by Assuralia, the association of insurance undertakings in Belgium:</p> <p>We are not aware of any cases on the Belgian insurance market that are similar to the situations related to investment research described in the articles 24-25 of the MiFID1 Implementing</p>	

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	Directive. <u>There seems to be no reason to apply these articles to insurance distribution activities.</u>	
Q14.	<p>Are there other problem drivers that you believe should be considered?</p> <p>Response by Assuralia, the association of insurance undertakings in Belgium:</p> <p>The experience in Belgium shows that providing sufficiently long transitional periods is essential to avoid and manage problem drivers, especially for those markets that have not introduced MiFID style rules for insurance-based products at present. Although the deadline for implementation was 30.04.2014, the Royal Decrees necessary for practical implementation were only published on 07.03.2014 and the accompanying supervisory guidelines were not official before 17.04.2014. This has brought great discomfort and costs to the Belgian insurance sector, leaving no room for proper planning and efficient implementation.</p> <p><u>We advise EIOPA and the European Commission to leave sufficiently long transitional periods for the practical implementation of the implementing measures on conflicts of interest.</u></p>	
Q15.		
Q16.	<p>Are there other drivers of costs or benefits that have not been identified? Please identify these drivers, and outline how their scale might be estimated, and which stakeholders they might impact.</p> <p>Response by Assuralia, the association of insurance undertakings in Belgium:</p>	

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An important driver of costs and consumer confusion is the rapid succession of overlapping legislation, requiring both consumers and business to adapt to regulatory changes that bring no substantial added value:

- Similar to other insurance markets, the Belgian insurance market has recently invested a great deal of effort in introducing MiFID1 provisions on investor protection for investment-based insurance products, including the rules on conflicts of interest. Customers are getting familiar with these new rules at present.
- We are concerned that the MiFID2 amendments to IMD1 on conflicts of interest will oblige consumers and the insurance sector in Belgium to readapt the recently introduced set of MiFID1 rules and practices already very soon. These amendments serve exactly the same objectives as MiFID1 though and will generate a second wave of substantial costs with limited added value for customers, if any.
- We expect IMD2 to introduce yet another set of rules for insurance-based investment products in exactly the same field of conflicts of interest not much later. This would generate a third wave of substantial costs and consumer confusion, again with no or limited added value for customers.

Assuralia therefore recommends EIOPA and the European Commission to avoid unnecessary costs and to offer customers a consistent and stable framework by

- Aligning the delegated acts on conflicts of interest of IMD with the related requirements

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	<p>in the MiFID1 Implementing Directive;</p> <ul style="list-style-type: none"> - Focusing the delegated acts on general principles for conflicts of interest that can be applied across distribution models and insurance undertakings, leaving the assessment of actual situations of conflicts of interest to the intermediaries, insurers and national supervisors themselves. 	
Q17.		
Q18.		