

<b>Comments Template on            DP-14-IMD            Discussion Paper on            Conflicts of Interest in            direct and intermediated sales of            insurance-based investment products (PRIIPs)</b>		<b>Deadline            22 July 2014            18:00 CET</b>
Name of Company:	Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber	
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 <b>Public</b> in the column to the right.</i>	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ <u>Do not change the numbering</u> in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool</li> <li>⇒ Leave the last column <u>empty</u>.</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.</li> </ul> <p><b>Please send the completed template, in Word Format, to DP-14-IMD@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</b></p>		
Reference	Comment	
General Comment	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber is part of the Austrian Chamber of Commerce and represents the interests of all Austrian insurance brokers. In Austria most of the around 3.946 insurance brokers are smaller or micro enterprises, established near to the customer. They render	

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personalised services to mostly local private clients and smaller to mid-size businesses. All insurance brokers operate their businesses in a highly competitive environment with intense competition from alternative forms of distribution.

Due to the fact that there are four major insurers, insurance brokers – not only not depending on an insurer but legally bound to provide best advice to the client (see below) - play a key role in fostering a competitive environment in Austria.

Austrian insurance brokers do not only have an incentive to deliver quality service to the client because reputation is an important business asset of insurance intermediaries, they have a legal obligation to do so.

Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber welcomes the opportunity provided by EIOPA to comment on its **“Discussion paper on Conflicts of interest in direct and intermediated sales of insurance- based investment products (PRIIPs)”**.

Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber believes that it is essential that insurance brokers, as in every sector of the economy, put in place reasonable and proportional systems to identify, manage and mitigate conflicts of interest. In this context it should **be noted that IMD I already covers the issue of conflict of interests**. With its Article 12, the IMD already addresses the issue though not using the term “conflict of interest”. The IMD requires intermediaries, on a contract-by-contract basis, to tell the customer whether they are

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giving advice based upon a fair analysis, or whether they have contractual obligations with one or more insurers. As a result, customers know where they stand at the outset of the relationship. In addition, the intermediary has to state in writing the reasons for any advice on a given insurance product and all this is supervised and controlled by the national supervisory authorities.

In order to mitigate the potential conflicts of interest, Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber supports transparency. We promote that before the conclusion of the contract, insurance intermediaries and direct writers shall provide insurance customers with sufficient and clear information to make informed decisions about the purchase of insurance products and about the nature of their services. For insurance brokers this is already a legal obligation under Austrian law (see below).

The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber is a member of BIPAR. As Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber is aware of, BIPAR will also respond to the EIOPA consultation paper on Discussion paper – Conflicts of interest in direct and intermediated sales of insurance – based investment products (PRIIPS). Therefore the follow response will only focus on specific issues while on a general level Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refers to and supports BIPARs response.

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Q1.	<p>First of all, as highlighted in the BIPAR answers, the whole topic depends very much on the size of the broker. Since in Austria brokers are small and micro enterprises, they will NOT have experienced in practice, a number of the conflicts included within the list in the discussion paper. It would therefore be disproportionate to place similar obligations on these SME brokers to have systems and processes to manage these conflicts.</p> <p>We agree that proportionality shall be a key element of every discussion regarding possible obligations regarding the managing of conflicts of interests.</p> <p>Further, in order to identify and deal with potential conflicts of interest, the national legal framework has to be taken into consideration in detail.</p> <p>Therefore, we give a brief overview of the Austrian broker regulation:</p> <p>Austrian brokers are regulated by the Gewerbeordnung (trade law) and the Maklergesetz (broker law). Brokering insurance services can only be provided by authorised brokers. Austrian brokers are defined as so called "Bundesgenossen" of the customer. They are obliged to provide "best advice" to the customer, which means that, according to the specific risk situation of the customer, the insurance broker guarantees to provide the customer with the best insurance coverage available on the market. In order to fulfil this obligation, the insurance broker has to</p>	

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	<p>analyse the specific risk situation of the customer as well as the insurance market in detail. Further the insurance broker has to provide the customer with a detailed documentation. In case, the insurance broker fails to fulfil these legal obligations, he can be held liable by the customer for damages.</p> <p>This legal framework leads to a situation, in which Austrian brokers do not experience conflicts such as included in the list in the discussion paper.</p> <p>Further, as covered by BIPARs answers in detail, we believe that the EIOPA discussion paper already captures the broad spectrum of potential conflicts of interest. We also believe that article 21 MIFID I, level 2 reflects a rather exhaustive set of criteria for identifying conflicts which are potentially detrimental to the customer.</p> <p>Finally, we also believe that some situations which at first sight or in theory may be considered as a potential conflict of interest do not harm the interest of the customer because there is an alignment of the interest between the parties.</p>	
Q2.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	
Q3.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	
Q4.		

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Q8.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	
Q9.	<p>Disclosure can play an important role in tackling conflicts from commission payments or third party payments be tackled but we believe – as BIPAR - that it is not a panacea.</p> <p>The context of all sales must be taken into account as well as the context of the totality of the insurance mediation regulatory backdrop. The IMD requires intermediaries, on a contract-by-contract basis, to tell the customer whether they are giving advice based upon a fair analysis, or whether they have contractual obligations with one or more insurers. As a result, customers know where they stand at the outset of the relationship.</p> <p>In addition, the intermediary has to state in writing the reasons for any advice on a given insurance product and all this is supervised and controlled by the national supervisory authorities. According to Article 13d of the IMD I as amended by Article 91</p>	

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of MIFID II, insurance intermediaries have a professional and contractual duty to give advice in the best interest of their clients. Always alleging that remuneration issues create a conflict of interest to be dealt with in addition to the fulfillment of that duty, would undermine the duty, create suspicion against the intermediaries and make the clients concentrate on remuneration rather than on product, coverage and quality issues. See also the above outlined duties of Austrian insurance brokers according to the *Maklergesetz*.

In accordance with BIPAR, we believe that for insurance based investments there is a need for full transparency of all costs including the commissions and remunerations. And this on a level playing field basis with the right to be fairly remunerated.

The prohibition of remuneration by insurers would be an obstacle to free market principles of fair remuneration for services rendered. It would lead to a massive reduction of insurance brokers and a lack of competition in the Austrian market.

The remuneration of intermediaries being in principle commission-based with the possibility to agree fees has been and continues to be a major contributing factor in the successful development of insurance markets all over the world. Any other situation would ignore the fact that the insurance intermediary typically renders services to both sides of the contract, the client and the insurance company: as with any commercial relationship both kinds of services have to be remunerated by the beneficiary. It would also deprive consumers from choice between business models.

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Q10.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	
Q11.	<p>We note that there has been and still is much discussion about the “right” level of transparency. In this discussion it is of utmost importance to consider the SME-character of broker firms (as in Austria) and to make sure that obligations are appropriate and suitable to deal with them in practice. It is always in the best interest of consumers to be offered a choice of competing or comparable products and to be provided with adequate information so that they can make an informed decision. This is the task of insurance brokers in the Austrian insurance market and depend on whether a level playing field of transparency is set into force for all competitors.</p> <p>It is important to ensure that any future European policy on conflict of interests for brokers does not have any unintended side effects and does not result in less choice for consumers by driving brokers out of business.</p>	
Q12.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	
Q13.	In accordance with BIPAR, in relation to Article 24 & 25 relating to investment research, we do not believe that they should be applied to insurance distribution activities.	
Q14.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	

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Q15.		
Q16.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	
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Q18.		