Comments Template on EIOPA-CP 11/007

Draft proposal for Report on

Good Practices for Disclosure and Selling of Variable Annuities

Deadline
03.01.2012
12:00 CET

Company name:	Fédération Européenne des Conseils et Intermédiaires Financiers	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. *Please indicate if your comments on this CP should be treated as confidential, by deleting the word* ***Public*** *in the column to the right and by inserting the word* ***Confidential****.*	Public

The paragraph numbers below correspond to the questions raised in the grey boxes of EIOPA Consultation Paper No. 11/007.

Please follow the instructions for filling in the template:

- ⇨ Do **not** change the numbering in column "Reference", or any other formatting in the file.
- ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty. Please do not delete rows in the table.
- ⇨ Our IT tool does not allow processing of comments which do not refer to the specific question numbers below.
    - o If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies.

Please send the completed template to CP_007@eiopa.europa.eu, in MSWord Format, (our IT tool does not allow processing of any other formats).

Reference	Comment	
General Comment	The Fédération Européenne des Conseils et Intermédiaires Financiers ("FECIF") is grateful for the opportunity to comment on the draft proposal for EIOPA's Report on Good Practices for Disclosure and Selling of Variable Annuities (the "Report").	

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	1. Introduction to FECIF FECIF represents 167,165 individual practitioners (agents, brokers, consultants, etc.) through 23 trade bodies, 36 corporate entities (networks – large or small, wholesale & retail, local & cross border) and 4 financial institutions (life offices or banks). FECIF is committed to supporting EU politics to promote the single market in financial services. It advocates free and fair competition within the EU markets and support its members' efforts to increase efficiency. The last survey carried on 1,245 intermediaries and 3,124 investors (existing and/or potential clients of intermediary's member of FECIF) in 2010 across ten EU Member States indicates that: ➢ 37% of the total number of investors contacted prefer to deal through an intermediary because of the personal attention they received at the occasion of a face-to-face meeting ➢ 30% better trust dealing directly with an institution feeling secured by the size of the bank and/or the insurance company ➢ 18% prefer to rely on the assistance of a friend or a member of the family to provide advice ➢ 12% refer their queries to another professional (accountant, tax adviser, lawyer, etc.) ➢ 3% handle directly their affairs through the Internet for instance For further details please see our website: www.fecif.eu	

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2. Remarks on EIOPA's Report

1) FECIF's Principal Concerns

In our view, many of EIOPA's observations and conclusions on VA products would also apply to traditional with profits life insurance products purchased for savings, investment or retirement purposes ("traditional life products").

We see a significant danger in singling out VA products for special consideration without any mention of whether the matters addressed in the Report should also apply to traditional with profits life products ("traditional life products"). Our reasons are as follows:

- VA products and traditional life products are to a large extent simply different ways of providing guaranteed benefits to consumers. There is therefore no factual justification for any extensive differentiation.

- Since VA products are alternatives to traditional life products for retirement provision, it is important to ensure comparability. However, comparability would suffer, if traditional life products and VA products are subject to significantly different disclosure rules.

- Finally, differentiation of treatment could be understood to be an implied preference for traditional life products on the part of policymakers. However, the traditional method of providing guarantees will not necessarily provide a more favourable outcome or be less likely to lead to insurer insolvency in the future. EIOPA is no doubt fully aware of risks that may arise out of a long term low interest environment.

	The Report states that VA products fall within the category of insurance contracts with an investment element. We therefore expect such contracts to fall within a definition of an insurance PRIP under IMD2. We consider this should be the case even if VA products are purchased for the purpose of retirement provision. In that case, they constitute voluntary Pillar III provision and should be subject to the same PRIPS disclosure principles as alternative forms of retirement provision. We consider it essential that any definition of an insurance PRIP also clearly embrace “traditional”, “classical” and “with profit” insurances other than those which provide pure protection benefits to ensure a level playing field and to enable consumers to compare different PRIPS. The risks identified in this Report are equally relevant to traditional life products and so the same disclosure principles should apply. If this Report is to provide informal guidance to the European Commission on IMD2 and PRIPS, we therefore suggest that EIOPA state that the issues identified and recommendations made in this Report also apply to traditional life products. We are also concerned that some of the disclosure suggested in the Report could lead to excessively complex disclosures beyond those likely to be included within the insurance equivalent of a KII document. This would confuse rather than assist the consumer. For example, an explanation of how guarantees are achieved would require extensive technical details including an explanation of mathematical principles. The difficulty of explaining how guarantees are achieved would also arise in relation to the manufacture of guarantees within a traditional life product. In our view, such information should only be provided at a high level, as is currently the practice in relation to traditional life products. For the customer, a fair and clear description of the scope of the guarantee is much more important than a description of the mechanisms to achieve the guarantee. **2) Comparison of principal VA product features with traditional life products** Some of the features identified by EIOPA in relation to VA products are set out below. We have	

	compared these VA features to traditional life products. In our view, there is no material difference between VA products and traditional products on the features identified. **i) Product complexity** EIOPA takes the view that VA products are inherently complex and must therefore generally be sold on an advised basis. We generally concur with this view. However, we would like to point out that VA products are not more complex than traditional life products from a consumer perspective. The rules governing allocation of profits and charges on traditional life products are highly complex and subject to numerous detailed regulations that require interpretation and discretionary decisions by individual insurers. This process is no more transparent for the consumer than the hedging strategies used to provide guarantees on VA products. Also, hedging instruments used for VA products may also be used by insurers to secure guarantees on traditional with profits products. The consumer is therefore likely to find VA products and traditional products equally complex in terms of the underlying “engine” that is used to deliver the insurance benefits. **ii) Cost transparency** It is also difficult to see why a consumer would find the charging structure of a VA product to be less transparent than a traditional life product. To the contrary, the VA product generally shows express product charges, while charges arising on a traditional life insurance product are often hidden within the calculation of profits available for allocation to policyholders. Given the fact that there is no substantial difference in consumer perceived complexity and transparency, we would welcome the application of the approach taken on VA products to traditional products as well. **iii) Level of product charges**	

	EIOPA points out that VA product characteristics of some insurance groups nowadays may allow for better VA risk management after reflection of their lessons learned during the recent financial crisis. EIOPA also points out that VA product characteristics today (in particular product charges) may render these products less attractive. However, EIOPA should consider the attractiveness of VA products in light of product alternatives and overall market conditions. It is uncertain whether alternatives in the market such as traditional life products will in future necessarily deliver more attractive benefits than a VA product and whether the overall charges of traditional life products (which are largely not transparent) are actually lower. We strongly recommend that the final EIOPA Report consider the attractiveness of VA products in the context of the overall market for life insurance savings and retirement products. This would ensure that the Report provides a more balanced view. Alternatively, we suggest that such an evaluation not be included in the Report. **3) Good selling practices and intermediary due diligence** We agree that VA products should generally be sold on an advised basis, except where the consumer explicitly waives advice. An indicative list of questions to be used and disclaimer required in this context seems to be a valuable tool to avoid the risk of mis-selling. However, it makes no difference to a consumer whether a traditional life product or a VA product was mis-sold due to an inadequate sales process. In both cases, the product will not have met his demands and needs. For this reason, we would recommend against any differentiation based on product type. **4) Further general comments**	

	As FECIF has consistently stated in submissions to the Commission we consider that the revised IMD2 should apply to all distributors of insurance products and so we take the same view in respect of this Report. Thank you for considering our general comments.	
Q1.	Are documents that communicate the key features of the product (Key Feature Documents) used for Variable Annuities? What features do they contain? Yes, key feature documents are already used for variable annuities products. The detailed contents of these key feature documents vary between Member States and depend on local regulatory requirements and market practice, though PRIPS requirements may well result in future changes. The following is an example of information typically provided for the German market: - short product description - insured risks/benefits - amount of premium(s) and due date - exclusions - applicant's duty of disclosure and during policy term - how to claim for benefits - policy duration - rights of cancellation - details of costs covered by premiums expressed in Euros (initial and renewal, including guarantee costs, fund management charges, policy administration charges) - details of any other costs or charges that may arise	

	. statement as to whether profit participation is offered . basis for calculation of surrender values and information on any surrender penalties . extent to which surrender values are guaranteed . details on underlying funds . details of investment risks . tax treatment . name and address of provider . name and address of supervisory authority . information on availability of guarantee fund . availability of ombudsman . applicable law and jurisdiction for resolution of disputes . language of commitment	
Q2.	What kinds of benefits may flow from the use of such a key features document by insurance undertakings? A key features document is intended to put the consumer in a better position to compare products. A KII type document for insurance PRIPS will benefit the consumer by highlighting the most important aspects of the product in a short and readily understandable manner to enable comparison and the making of an informed decision. This will also reduce the risk of customer complaints and mis-selling.	
Q3.	Do you consider FAQ as a useful way of presenting pre-contractual information? What other alternatives do you consider appropriate? We agree that the use of “frequently asked questions” is a transparent way of communicating relevant information. It is common practice in some markets.	

Q4.	During the life of the contract how do providers inform customers on the performance of their VA contract? The customers are informed in writing or through the provider's client extranet service about the performance of their VA contract (i.e. fund value) on a regular basis (usually annually or more frequently) or at any time upon request of the customer.	
Q5.	Which scenarios should providers use to illustrate potential pay-outs to customers? In our opinion specimen calculations as provided for in Article 185 (5) of the Solvency II directive is a valuable and sufficient tool to illustrate potential pay-outs to customers. We also consider that illustrations should show the effect of charges by means of a reduction in yield or similar methodology. In addition, it may be appropriate to provide non-individualised scenarios on how different market developments (e.g. sharp market downturn or prolonged market downturn) could impact the product.	
Q6.	Which unfavourable scenarios should always be presented? A zero performance of the underlying funds could be considered as an unfavourable scenario. However, it is difficult to provide a general answer to this question, as the relevance of unfavourable scenarios often depend on the type of VA product being offered. For instance, a one-off steep market drop or a prolonged market downturn may be appropriate (non-individualised) scenarios to present, depending on the impact that these scenarios would have on the benefit to the customer. In our view, it is most important to ensure that the customer is aware of the maximum investment risk (see below). The presentation of other scenarios simply helps underline the fact that a wider range of outcomes is possible.	

Q7.	How should the maximum risk assumed by the customer be illustrated? We would define maximum risk as the negative difference, if any, between the guarantee and the sum of premiums paid. In providing this information, any conditions attaching to a guarantee should be clearly stated. If there are conditions attaching to a guarantee, a statement should be added that the return to the policyholder may be less than the guaranteed amount. We would not recommend using a numerical example in this case, as there would be too many possible scenarios and corresponding complexity in relation to such information.	
Q8.	What kinds of benefits may flow from the use of illustrations by insurance undertakings? Illustrations can help give customers an understanding of what pay-outs they may receive and what it might cost them in a given set of circumstances. They may also make the product more transparent and easier for the customer to understand subject to clear caveats that these do not give any promise of future benefits.	
Q9.	What are the distribution channels used in your market? Generally independent intermediaries are used as distribution channel for the cross-border EU business.	
Q10.	Are these products also distributed via direct sales in your market? VA products may be distributed via direct sales in some EU Member States. However, we consider that	

	the same requirements should apply to all distribution channels not just insurance intermediaries as currently defined in the IMD.	
Q11.	What type of information does the sales person need to have on the customer prior to giving advice / making a recommendation? Prior to recommending a VA product (or any other insurance product) to a customer a sales person need to be aware of the following: - the customer's age - the customer's personal demand, i.e. private saving for retirement or investment opportunity - the customer's time horizon for his investment (short, medium or long-term) - the customer's financial situation - the customer's knowledge of financial products and markets - alternative products which may also be suitable for the consumer - that there are no conflicts of interest However as previously stated we believe that if the consumer so requires then an execution only sale (or one where less than full information is provided) should be permitted	
Q12.	Does it matter in relation to selling practices for which purpose the product is offered (retirement saving vs. investment solution)? In relation to the selling practice, it does matter for which purpose the product was designed by an insurance undertaking. For example, a consumer who is interested in long-term savings for his retirement should not be offered products which focus on short or medium term investment strategies.	

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Q13.	Does it matter which type of guaranteed minimum benefit is offered? Yes. Since there are a variety of guaranteed minimum benefits, it is important that the type of VA presented to the customer is appropriate, given the customer's personal circumstances and requirements. Please also refer to our response to question 11.	
Q14.	In which instances, if any, should an insurance intermediary present variable annuities, if he informs the customer that he gives his advice on the basis of an analysis of a sufficiently large number of insurance contracts (Article 12 (2) IMD)? Should this principle also apply to any other sales person? As there is more than one type of VA product; the appropriateness of presenting a VA product will depend on the client demands and needs as per question 11. However, generally speaking the insurance intermediary should present a variable annuity product to a customer as an alternative, if the risk profile of the customer indicates that a minimum guarantee is desired or appropriate. In particular, since a VA product provides guarantees, it should be considered as an alternative to a traditional with profits product with guarantees rather than a unit-linked product without investment guarantees. To the extent that a customer wishes potential additional returns to arise from a specific fund choice rather than the general profits of the insurer, then the VA product could be a suitable alternative product to present to the customer. We are of the view that the same principles should apply to sales persons presenting a VA product who are only providing advice with respect to a limited number of insurance contracts.	
Q15.	In relation to the due diligence on insurance intermediaries are there any other good practices that providers should consider?	

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	Any good practices used for traditional life products are also relevant for VA products. As outlined in our introductory note, we are of the view that a differentiation in controls as between VA and traditional life products is not warranted.	