# Q&A

QUESTION ID:
2271
REGULATION REFERENCE:
(EU) No 2016/97 - Insurance Distribution Directive
TOPIC:
IBIPs - Inducements - fees, commissions non-monetary benefits paid by third parties (Art. 29 para. 2 IDD)
ARTICLE:
Articles 29(2), (3); 27, 28, 17 of IDD; Art 8(2) Delegated Regulation (EU) 2017/2359
STATUS:
Final
DATE OF SUBMISSION
16 Mar 2021

## Question

Do commissions received by insurance intermediaries in accordance with Article 29(2) IDD constitute a conflict of interest? Do such commissions constitute a conflict of interest for the purposes of the IDD if the rates of commissions are depending on the insurance undertaking?

## EIOPA answer

*The answer to this question is provided by the European Commission.*

Article 29(2) of the Directive 2016/97/EU (Insurance Distribution Directive - IDD) has to be considered together with Articles 27 and 28 IDD and with the general principles concerning the information provided to customers and the conduct of business in Article 17 IDD.

Article 29 (2) IDD contains the two conditions to be met by insurance intermediaries or insurance undertakings which pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the customer or a person on behalf of the customer. The first condition (a) is that the payment of benefit does not have a detrimental impact on the quality of the relevant service to the customer. The second condition (b) contains the requirement that the payment of benefit "does not impair compliance with the insurance intermediary's or insurance undertaking’s duty to act honestly, fairly and professionally in accordance with the best interests of its customers”.

Article 17(1) IDD provides the requirement that insurance distributors always act honestly, fairly and professionally in accordance with the best interests of their customers.

According to Article 27 IDD, an insurance intermediary or an insurance undertaking carrying on the distribution of insurance-based investment products shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed

to prevent conflicts of interest as determined under Article 28 from adversely affecting the interests of its customers.

Article 28 IDD provides additional information and requirements related to conflicts of interest, including the requirement to disclose the general nature of the sources of possible conflict of interests in good time before the conclusion of an insurance contract.

Articles 29(2) IDD provides that, if the two above-mentioned conditions (a) and (b) are met, the insurance intermediaries or insurance undertakings receiving the commission “are regarded as fulfilling their obligations under Article 17(1), Article 27 or Article 28” IDD. It follows that, if the payment of a commission is in line with the specific conditions (a) and (b) of Article 29(2) IDD, it is automatically considered to be in compliance with Articles 17(1), 27 and 28 IDD. It is therefore not possible to consider that a commission payment which fulfils the conditions set out in Article 29(2) IDD constitutes a conflict of interests under Article 27 and 28 IDD or infringes the obligations under Article 17(1) IDD.

The Commission Delegated Regulation (EU) 2017/2359 provides specifications on the application of Article 29(2) IDD. According to Article 8(1) of the Delegated Regulation, an inducement or inducement scheme shall be considered to have a detrimental impact on the quality of the relevant service to the customer (the condition of Article 29(2)(a) IDD) where it is of such a nature and scale that it provides an incentive to carry out insurance distribution activities in a way that is not in compliance with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer. Article 8(2) of the Delegated Regulation (EU) 2017/2359 provides specific criteria to be taken into account in the assessment of inducements. This list does not exclude other possible criteria. Based on the criteria provided in Article 8(2)(a), different rates of commissions depending on the insurance undertakings could be considered as having a detrimental impact on the quality of the service if they provide an incentive to the insurance intermediary or insurance undertaking to offer or recommend a particular insurance product offered by the insurance undertaking paying the highest commission, instead of a different product or service which would better meet the costumer's needs.

It should also be taken into account that, under Article 29(3) IDD Member States are free to additionally prohibit or further restrict the payment of commissions in relation to the provision of insurance advice. It follows that the national law of a Member State could set additional requirements that have to be met even if a commission payment fulfils the conditions set out in Article 29(2) IDD.

*The disclaimer provided by the European Commission:*

*The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies, in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.*