

Q&A

QUESTION ID:

2100

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:

29

PARAGRAPH:

(2)(3)

STATUS:

Final

DATE OF SUBMISSION

17 Jan 2020

Question

Does the term "third parties" in Article 29(3) IDD also include an insurance undertaking when providing insurance-based investment products or does it refer only to external service providers which are not parties to the insurance contract (such as credit institutions, investment firms, asset managers, other service providers)?

EIOPA answer

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

Article 29(2) IDD sets out the basic rules for the payment of inducements to or by insurance intermediaries or insurance undertakings in connection with the distribution of insurance-based investment products. It refers to the payment or reception of any fee or commission or any non-monetary benefit "to or by any party except the customer or a person on behalf of the customer". Such payments are only in compliance with the obligations under Articles 17(1), 27 and 28 IDD if they (1) do not have a detrimental impact on the quality of the relevant service to the customer and (2) do not impair compliance with the duty to act honestly, fairly and professionally in accordance with the best interests of the customers. Furthermore, Recital 57 of the IDD clarifies that in order to ensure that any fee or commission or any non-monetary benefit in connection with the distribution of an IBIP paid to or paid by any party, except the customer or a person on behalf of the customer, does not have a detrimental impact on the quality of the relevant service to the customer, the insurance distributor should put in place appropriate and proportionate arrangements in order to avoid such detrimental impact.

Article 29(3) IDD provides Member States with the option to “impose stricter requirements on distributors in respect of the matters covered by this Article”. As example for such stricter requirements (“in particular”), the second sentence of Article 29(3) IDD specifically highlights additional prohibitions or further restrictions to the offer or acceptance of inducements “from third parties in relation to the provision of insurance advice”.

In view of the above wording and taking into account that the Directive provides for minimum harmonisation (see recital 2 of the IDD), Member States are entitled to impose stricter requirements in respect of all matters covered in Article 29(1) and (2) IDD. This includes, in particular, the prohibition or restrictions of the payment of commissions and other forms of inducements by the insurer providing an insurance-based investment product to the intermediary distributing the product.

Finally, the term “third parties” in Article 29(3), second sentence IDD has to be understood as meaning any party outside the relationship between the customer and the insurance intermediary or insurance undertaking distributing the insurance-based investment product and providing insurance advice. Having that in mind, insurance undertakings providing the insurance-based investment product are to be considered as third parties within the meaning of Article 29(3), second sentence IDD when they are not involved in the distribution and provision of insurance advice to the customer.

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 prejudice the position that the European Commission might take before the Union and national courts.