



[EIOPA-IRSG-15-05](#)

IRSG Opinion on Joint Committee Consultation Paper on Guidelines for cross-selling practices

Executive Summary

The Insurance and Reinsurance Stakeholder Group (IRSG) welcomes the opportunity to comment on ESAs Joint Committee Consultation Paper on the proposal for Guidelines for cross-selling practices.

The European Securities and Markets Authority (ESMA), the European Banking Authority (EBA), and the European Insurance and Occupational Pensions Authority (EIOPA) – the 'ESAs', through the Joint Committee, are developing these draft guidelines addressed to competent authorities, based on Article 16 of the ESAs Regulations. The guidelines aim at indicating to competent authorities, through high-level principles and practical examples, ways to ensure that firms can comply with the general conduct of business standards toward customers that are expected of firms in the context of cross-selling practices.

The IRSG recognises the importance of dialogue on the challenges that customers may face from joint purchases of different products or services, generally known as cross-selling practices.

A general overview of the comments received points out that the IRSG is not convinced that ESAs Joint Committee Guidelines for cross-selling practices are the right instruments at the right time.

General Remarks

The IRSG welcomes the recognition by the Joint Committee that the text of IMD 2 is still being discussed in the legislative process and subject to further changes, as well as the commitment to amend the proposed guidelines in order to ensure a full alignment with the final provisions of IMD 2. Having said that, the IRSG feels that there is a risk of pre-empting ongoing discussions on Level 1 texts, notably IMD2, which also discusses the exact same issue (see Art. 21 IMD2/IDD).

It is also important to ensure a coherent approach and avoid going beyond the scope and requirements of the relevant primary legislation. The guidelines should therefore refrain from addressing issues and requirements that are not specific to cross-selling practices, but rather apply to the sale of all financial products (e.g. advice, disclosures, training and remuneration).

Cross-selling Guidelines issued by ESAs respond to the mandate to ESA (in collaboration with ESMA and EIOPA) in Art. 24(11) of MiFID2. In this text, cross-selling is defined as the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package. As a result, in the insurance industry, such guidelines should only apply to 'insurance-based investment products' that are the only ones covered by MiFID2. To extend the scope to other insurance products would mean to exceed the legal habilitation.

Answers

Q1: Do you agree with the general description of what constitutes the practice of cross-selling?

The IRSG would like to stress out the importance of recognising the fact that insurance products which cover several risks (multi-risk products) are not considered as a 'package' of combined products (footnote 7 on page 19 refers only to "certain" multi-risk insurance policies). Therefore, the IRSG would welcome a clearer recognition of multi-risk products in the main text of the guidelines, which would ensure a closer alignment with IMD 2.

Also, clarification should be introduced in the guidelines in the sense that the obligation on providers is to inform the customer about whether the different components of a 'package' are offered for sale separately by that same provider. In other words, it should not be understood that there is an expectation on providers to have a full knowledge of all the different products that are available on the market, in general.

Q2: Do you agree with the identified potential benefits of cross-selling practices?

Indeed, the IRSG agrees with the potential benefits of cross-selling practices that have been identified in this consultation paper. Cross-selling practices have many positive beneficial effects for both provider and consumer, which include cost savings through economies of scope, better risk management, reduced transaction costs, and a 'one-stop-shop' effect.

In addition, within the insurance sector, multiple risk coverage allows insurers to diversify and pool together risks which may otherwise prove too expensive for consumers, or too risky for insurers, as stand-alone coverage. For instance, the coverage of natural disasters, where available, is often combined with more standard risks under the one extended policy. Such multi-risk insurance policies enhance the availability of cover for risks which could otherwise be purely uninsurable or simply not affordable for a client, and so lead to better overall risk management for the provider and a more effective price for the consumer.

Q3: Do you agree with the identified potential detriment associated with cross-selling practices?

While the IRSG agrees that the identified practices can cause potential detriment, this is not entirely representative of all cross-selling practices. For example, with regard to the limitation of mobility in para 10 on page 13, it is important to point out that there are many insurance products which are long-term in nature that provide benefits to consumers, despite any potential limitations on mobility.

There are a number of behavioural drivers of potential detriment identified that are not specific to cross-selling and are covered under general sales rules (e.g. remuneration, information disclosure, suitability / appropriateness).

Q4: Please comment on each of the five examples above, clearly indicating the number of the example to which your comment(s) relate.

While the general principles behind the examples can be easily understood and applied to many products, many of the examples do not adequately take into account the particular character of insurance products, for example (a) the potential for (or avoidance of) adverse selection by bundling certain product components (especially example 1) and (b) potential for overlaps in coverage (as could be understood from example 5).

Ad (a) example 1 seems to imply simple additivity of prices of the components with the same "features". This is no fair assumption if the separation of a component (e.g. a special cover) would lead to an adverse selection against that product, i.e. would lead only high-risk costumers to

sign on. This may lead to the need to increase prices for this component further and ultimately to the impossibility to offer this cover. Therefore the total cost of a cover may differ substantially from the sum of some partial covers. This vulnerability of insurance products to adverse selection is typical and well-documented.

Ad (b) the idea to avoid overlaps in coverage altogether is problematic for insurance products. Coverage may be defined in many different dimensions, therefore the identification of overlaps itself is not always straightforward. In addition, the extreme position of a rigorous obligation to avoid all overlaps (as opposed to tolerating minor overlaps) may be prohibitively costly. In consequence, there should at least be a holistic assessment with respect to the materiality of potential overlaps and adequate thresholds for relevance.

Question 5: Please comment on the proposed guidelines 1 and 5 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

The IRSG is of the opinion that the proposed requirement in Guideline 1 (para 13, page 22) goes beyond what is being proposed under any of the Level 1 texts on cross-selling (e.g. IMD 2, MiFID 2, Payment Accounts Directive), as it contains an obligation to provide the consumer with the price for both the overall package of products and for each of the component products, irrespective of whether the component products are available for sale separately or not. It should be made clear in the guidelines that the obligation only applies when the components in the package are also offered or sold by the firm separately.

Question 6: Please comment on the proposed guidelines 2, 3, 4 and 6 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 2 states that all relevant costs of the package and its components should be made available in good time. It should be made clear, however, that this refers to the price/premium and any additional costs, and does not entail an obligation to provide the consumer with a breakdown of detailed information on all the cost elements contained in the premium. Such detailed information on costs would go further than any proposed provisions on IMD 2. The most relevant information for the consumer is the price he will pay for the package and the price that he would pay for the individual components in the event that they can be bought separately.

Q7: Please comment on the proposed guideline 7 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

While the IRSG fully supports the provision of clear information to consumers, it is worth pointing out the potential consumer detriment that may result from setting the default options as 'No', requiring consumers to actively select insurance coverage components and to make a conscious decision to buy them. In this case, there is a danger that by having to 'opt-in' to the various different components, a consumer may unwittingly fail to cover himself against certain risks, thereby resulting in gaps in coverage and the level of protection.

Moreover, the risk of double coverage may arise when a consumer has to seek out each individual aspect of insurance coverage from different providers, each offering their own different products.

Q8: Please comment on the proposed guideline 8 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 8 deals with the assessment of demands and needs, and suitability/appropriateness, all of which are dealt with under the respective primary legislation. As such, there is no benefit in issuing specific guidance for the case of cross-selling.

In the second illustrative example for Guideline 8 (page 27), concerning how the interaction of different components may modify the risks of the package, the reference to 'risks' is not appropriate in the insurance context, where insurance is taken out to provide cover against risk and thus has a very different meaning to risk in the banking or investment context.

Q9: Please comment on the proposed guidelines 9 and 10 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 9 proposes to introduce requirements regarding adequate training for relevant staff. However, the issue of training is already provided for under IMD 2 for persons involved in insurance distribution.

Guideline 10 proposes to introduce requirements regarding conflicts of interest in the remuneration structures of sales staff distributing tied or bundled packages. However, requirements with regard to remuneration are currently being discussed and decided upon by the co-legislators, and will be included in the Level 1 text of IMD 2 and apply to the sale of all insurance products. It is therefore not appropriate for the guidelines to introduce provisions concerning remuneration structures for the specific case of cross-selling.

Q10: Please comment on the proposed guideline 11 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

With regard to the post-sale splitting of products that had been purchased as part of a package (para 29, page 28), the IRSG feels that it should be made very clear that this is not intended to enable consumers to circumvent the fact that they have purchased a package. Otherwise, some consumers may subsequently seek out cheaper products in order to replace one of the items in the package and continue to enjoy the beneficial rate of the remaining item, despite the fact that it is the very nature of the overall package that allows for the beneficial rate to be offered in the first place.

Q11: Please provide any specific evidence or data that would further inform the analysis of the likely cost and benefit impacts of the guidelines.

The guidelines need to be fully aligned and consistent with IMD 2, which is still in the process of being negotiated and so is yet to be finalised, as each and every change to the legal regime causes additional costs to companies, which may ultimately end up being passed on to consumers.