

**DRAFT Comments Template on  
Consultation Paper on Conflicts of Interest  
in direct and intermediated sales of insurance-based investment products**

**Deadline  
1<sup>st</sup> December 2014  
18:00 CET**

Name of Company: IRSG	
Disclosure of comments:	Please indicate if your comments should be treated as confidential: <input type="checkbox"/> Public <input type="checkbox"/>
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ Do <b>not</b> change the numbering in the column "reference"; <b>if you change numbering, your comment cannot be processed by our IT tool</b></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, <u>in Word Format</u>, to <a href="mailto:CP-102-IMD@eiopa.europa.eu">CP-102-IMD@eiopa.europa.eu</a> . Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the questions refers to the Consultation Paper on Conflicts of Interest in direct and intermediated sales of insurance-based investment products.</p>	
Reference	Comment
General Comment	<p>The Insurance and Reinsurance Stakeholder Group (IRSG) welcomes the opportunity provided by EIOPA to comment on EIOPA consultation paper on conflicts of interest in direct and intermediated sales of insurance-based investment products.</p> <p>EIOPA draft technical advice refers to the insurance distribution activities by intermediaries and insurers. In order to avoid confusion, it should be clarified everywhere in the text that the technical advice is about the distribution of insurance-based investment products.</p> <p>The IRSG believes that it is essential that insurance intermediaries and insurers have</p>

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	<p>reasonable and proportional systems to prevent conflicts from adversely affecting the interests of its customers.</p> <p>Training and education in the financial sector regarding conflicts and potential conflicts of interest in the context of EU and Member State Regulation are an important component in protecting both the consumer and the sales person. To ensure that there is a homogeneous approach in this area there must of necessity be some level of harmonisation of training/education at an EU level. Increased emphasis on training/education will, in part, address sales being influenced by profitability rather than consumer interest and will improve the quality of advice.</p>	
Question 1	<p>The costs and benefit of the possible changes outlined in EIOPA consultation are to be seen and assessed in the cumulative effect that they will have when added to existing and recent legislation.</p> <p>It is important to bear in mind that the IMD2 (or IDD) (and in particular its chapter VII) is still under discussion and may apply from early 2017. The IMD2 rules on this issue should be fully consistent with those in the IMD1.5. Otherwise this would result in firms having to make significant changes to their systems twice within the space of some months, with no added benefit for the customer, and additional cost that will be passed on to policyholders.</p> <p>These costs will be significant and will depend on the scale of the operations carried out. They are likely to more severe (and possibly prohibitive) for SMEs (costs of new IT system, new staff , new training, costs of compliance with new rules etc.).</p>	
Question 2	<p>The IRSG agrees that general principles, similar to those set out in Article 21 of the MIFID Implementing Directive, can be applied to the distribution activities of insurance-based investment products.</p> <p>However the specificities of the insurance-based investment products must be recognized and EIOPA draft technical advice needs to be amended accordingly. A</p>	

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simple copy and paste of Article 21 of MIFID implementing Directive, very basically adapted to the insurance-based insurance products terminology ( ie. replacing any reference to investment services with insurance distribution activities), DOES NOT allow to take these specificities seriously into account. It is not a valid approach.

It must be recalled here that MIFID I was primarily focused on “wholesale” activities in the investment markets and on larger institutions.

Financial advisers and insurance intermediaries which are predominantly small and medium-sized firms, were brought within the MIFID because of its coverage of investment advice.

The IRSG asks EIOPA to bear this in mind when it will draft its final technical advice. Its proposals will impact on such SMEs. It is important that EIOPA technical advice does not impose unjustified, unpractical, meaningless and unnecessarily strict demands on financial and insurance intermediaries.

The IRSG wonders whether there is a need for the future organisational requirements on the identification and management of conflicts of interest, to be further specified through EIOPA guidelines. If, as requested by the IRSG, the specificities of the insurance-based investment sector are appropriately taken into account in the implementation Directive based on EIOPA technical advice, no further guidance should be required.

In order to avoid too many unnecessary, detailed rules at European level and to take into consideration national characteristics or distribution structures, differences between conflicts of interest between the different channels of distribution should be addressed at national and firm level. Only if it should turn out -over time- after careful assessment of the need that there is a necessity for guidance, then EIOPA can consider such an initiative.

In its report on the functioning of the ESAs, the European Commission states that the “use of the ESAs’ powers must be solidly grounded on the legal basis covering their

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	acts". It believes that ESAs' guidelines and recommendations must be based cumulatively on both limbs of Article 16 of the founding EU Regulation, that is to say the measures must establish "consistent, efficient and effective supervisory practices "AND must ensure "the common, uniform and consistent application of Union Law". The IRSG wonders whether the proposed Guidelines would meet the two criteria.	
Question 3	<p>The IRSG believes that the adjustments proposed by EIOPA to adapt Article 21 DO NOT take into account the specificities of the distribution activities of insurance-based investment products.</p> <p>While the IRSG supports the principles-based approach proposed by EIOPA, the specific situations under a, b, c, d or e are too abstract and it is not clear what they mean in the retail distribution of insurance-based investment products. What are the circumstances? The IRSG can't identify them. Has EIOPA tested and validated these situations with practical examples? We would strongly encourage EIOPA to do so before submitting its final technical advice to the Commission. It is not sufficient to point to guidelines and opinions to be issued at a later stage, which could open a back door for legal uncertainty and inappropriate discretion.</p> <p>The IRSG understands how some of these situations could perhaps apply to the activities related to the underlying funds in an insurance based investment product but the situation is unclear with regard to the "activity of mediation" in insurance based investment products.</p> <p>The IRSG believes that it would not be logical to apply the above mentioned situations to the retail world and fails to understand why EIOPA is proposing to apply such situations to the distribution activities of insurance-based investment products.</p> <p>With reference to the situations under a) and the reference to "gain made .... at the expense of the customer", the IRSG believes that this wording makes sense in some situations in the investment world (ie. adequately covered by MiFID) where customer and distributor/provider could end up on opposing sides of a transaction (e.g. in M&amp;A situations or capital market transactions including proprietary trading of investment</p>	

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	<p>banks). This is almost impossible in the insurance world.</p> <p>With reference to the following sentence in the consultation paper on page 11, "(...) <i>this follows from the intermediary's own interest to make a financial gain when providing services to customers</i>", the IRSG believes that the wording is much too broad. Any intermediary remuneration could be interpreted as being a financial gain, as the term "gain" can suggest that the intermediary is taking advantage of the customer when in fact he is simply remunerated for the services rendered. Any wording therefore should be sufficiently precise to capture truly problematic situations while leaving space for legitimate remuneration (including profit margins) for intermediaries.</p>	
Question 4	See answer to question 3	
Question 5	The IRSG agrees with and supports the first two paragraphs of EIOPA draft technical advice on conflicts of interest policy. The IRSG believes that it is essential that insurance intermediaries and insurers put in place reasonable and proportional systems to prevent conflicts from adversely affecting the interests of its customers.	
Question 6	<p>The IRSG believes that paragraph 3 and the different situations addressed by the organizational requirements may not be adapted to the distribution of insurance-based investment products in many cases. Despite the limitation to "necessary and appropriate" measures, the enumeration may suggest or invite Member states to require certain overly strict safeguards, even where they are neither necessary nor appropriate.</p> <p>As requested earlier EIOPA should make sure that it does not use elements that are not relevant for the activity of intermediaries and therefore impossible for the latter to address. The proposed text would create legal uncertainty as it is unclear what situations are referred to. Perhaps some examples may be applicable to activities related to the underlying funds of insurance based investment products but not to the insurance based investment product itself.</p>	

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	<p>Has EIOPA tested the situations under paragraph 3 with practical examples linked to the distribution of insurance-based investment products? The IRSG fails to understand how they would be covered by the procedures under paragraph 3.</p> <p>As requested previously, it is essential that any measures dealing with conflicts of interest are appropriately adapted to insurance specificities. It is clear that a copy-pasted of the MiFID rules just replacing any references to "investment services" with "insurance distribution activities" is not the right approach.</p> <p>The IRSG favours a truly principle-based approach as a more suitable alternative to a detailed direct or indirect prescriptions of certain instruments. An adequate approach should primarily aim at the main goal of the regulation: taking "necessary and appropriate" steps to address conflicts of interests. There typically is a multitude of ways how such issues can be addressed in any practical situation. Suitable solutions should not be ruled out, inappropriately rejected or exceeded by overly detailed instrumental prescriptions.</p>	
Question 7	<p>No as it would be unnecessarily bureaucratic.</p> <p>Procedures should be reviewed if the market conditions change or if it becomes mandatory under law to adjust.</p>	
Question 8	<p>Most insurance intermediaries are medium, smaller or micro enterprises. We therefore do believe that it is important that their nature and size, in light of the principle of proportionality, should be taken into account in the measures that the European Commission will adopt on conflicts of interests.</p> <p>EIOPA seems to be convinced that the proportionality principle is sufficiently addressed directly and indirectly in several places in the articles and Art. 5(4) of the Treaty of the European Union. While this may be legally sufficient, some policy proposals seem overly detailed or far-reaching (for examples see also comments to questions 6 and 9). Therefore, the IRSG would prefer clear (re)statements of the proportionality principle as a safeguard against overly strict application (even it may</p>	

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be legally redundant).  
The proportionality principle should be an overall concept applicable to all measures. This is the approach chosen by most of the EU Member States in their policy on conflicts of interest for insurance intermediaries. As stated in the consultation paper, these measures must, in practice, be proportionate to the nature, scale and complexity of the risks of consumer detriment related to conflicts of interest inherent in the business of an insurance or reinsurance undertaking or an insurance intermediary when dealing with insurance based investment products.

The IRSG is not convinced about the usefulness re further guidance of EIOPA on this issue such as opinions or guidelines. Local regulators (and supervisors) are typically in a better position to assess the adequacy of certain measures regarding their effectiveness and adequacy to reach the consumer protection goals. The issuance of pan-EU guidelines (even with a formally non-binding “comply or explain” approach) risks to impose an overly uniform set of rules that may not be suitable for the local market.

Question 9

The IMD I as amended by MIFID II does not include a quality enhancement criterion neither a disclosure of inducements amount criterion and the delegated acts is in any case limited to article 13c.

The Commission proposal, the EP report and Council general approach on the IMD II do not include a quality enhancement criterion

EIOPA should therefore not advise on remuneration and inducements and should not introduce a quality enhancement criterion nor a disclosure of inducements amount criterion in the IMD I as amended by MIFID II since there is no legal basis for it.

An extensive (over)interpretation of general conflict of interest rules to issue far-reaching restrictions on remuneration structures would extend beyond the mandate given on Level 1, which would be the appropriate level for material policy decisions. In addition, according to the proportionality principle (see also comments to question 8), such far-reaching prescriptions would have to be proven necessary to reach the goal.

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	The consultation paper does not contain any empirical market or consumer testing that would constitute a basis for such intervention.	
Question 10	See answer to question 9	
Question 11	See answer to question 9	
Question 12	See answer to question 9	
Question 13	<p>The IRSG agrees with EIOPA proposal.</p> <p>In relation to Article 24 &amp; 25 relating to investment research, we do not believe that they should be applied to insurance distribution activities.</p> <p>The term investment research should be dealt carefully in an insurance context. The investment research in a context of insurance-based investments tends to be of a more generic nature (the state of the markets, the economy, prospects for different assets, sectors, growth, etc. ) than in a MIFID context. In addition, most insurance products contain personalized advice which would be covered by the stricter rules on advice and therefore need not to be covered by rules on the impersonal investment research.</p>	