

Comments Template on DP-14-IMD Discussion Paper on Conflicts of Interest in direct and intermediated sales of insurance-based investment products (PRIIPs)		Deadline 22 July 2014 18:00 CET
Name of Company:	Association of British Insurance (ABI)	
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Reference	Comment	
General Comment	Introduction The ABI welcomes the opportunity to respond to EIOPA’s discussion paper (DP) on conflicts of interest. We strongly support the need for firms to address and manage conflicts of interest. Strong conflicts of interest management is important in fostering high levels of consumer protection. Firms in the UK actively identify and manage potential conflicts of interest which might have a detrimental impact on their customers and take this responsibility seriously. The ABI’s two key areas of focus within the discussion paper	

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are the following;

- Consistency: We caveat our support for general principles on a pan-european level, on the basis that they must be consistent with the future revised Insurance Medication Directive (IMD 2) and they must have negligible impact in terms of making any minor adjustments for those Member States such as the UK who have already carried across and implemented Markets in Financial Instruments Directive (MiFID) 1 conflicts of interest rules. In order to achieve this consistency, there needs to be sufficient flexibility in the proposed approach.
- Flexibility: This is needed to allow national supervisors to tackle specific types of conflicts of interest that arise at a national level. This has worked well in the UK especially on conflicts of interest and inducements where our national authority has used its supervisory powers to meet the needs of the national market on the basis of a common EU framework.

Conflicts of interest:

The amendments laid down in Article 91 MiFID 2 to IMD are broadly consistent with the current conflict of interest standards being applied in the UK. Insurance based investments are subject to extensive Financial Conduct Authority (FCA) Conduct of Business (COBS) Rules) in conjunction with high level principles that are designed to mitigate the risk of poor consumer outcomes by managing conflicts of interest. Principle 8 of the FCA Principles for Business requires firms to manage conflicts of interest fairly and sets out specific rules regarding their identification and management. Additional rules are also set down in the Systems and Controls (SYSC) framework informing senior management about their responsibilities in this area, including requirements for

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identifying, controlling and reviewing conflicts of interest.

Inducements:

Under the Retail Distribution Review (RDR), which came into force in 2012, conflicts of interest relating to advised sales of insurance based investment products are managed by a ban on commission payments.. In addition, there are a number of existing rules around suitability of advice for insurance based investment products, for the delivery of non-advised sales and also guiding high level principles governing the behaviour of senior management as discussed above. The FCA is currently carrying out an on-going review of the RDR, and has produced further and more detailed guidance on inducements. Firms must now be able to demonstrate that a payment that they have either made or received will enhance the quality of the service to the client. If a firm is not able to demonstrate this then the payment cannot be made or received. This guidance is a good example of national supervisors taking action to address specific market developments.

Proportionality:

We are pleased with the inclusion in Article 22 MiFID regarding the principle of proportionality in regards to organisational structure particularly of sole traders and small intermediaries. These particular firms will not have the organisational structure to be able to manage conflicts of interest through separation of functions or via a remuneration committee. Instead we believe that national regulators are best placed to assess proportionality, since they will already be closely monitoring the risk management approach in the firms they supervise. They will also be better placed to take account of the extensive variation in legal forms and incorporation structures and, importantly, in

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	<p>corporate governance regimes and practices.</p> <p>As for transparency, while the the ABI agrees that consumers need good disclosure to help them compare between products, we do not believe this measure in itself is enough to manage conflicts of interest. As discussed above, effective management of conflicts of interest is addressed much more effectively through firms' internal systems and controls, and through national supervisory vigilance.</p> <p>Finally, while we understand the need for ESMA and EIOPA to work closely together to ensure consistent protection standards and regulatory approach, this cross-sectoral consistency must not introduce a one size fits all approach. The insurance and asset management sectors are different, having different products and different distribution channels, which in turn will present different conflicts of interest. If EIOPA are wanting to go further than MiFID 1 with more specific recommendations then these sectoral differences must be reflected in the final EIOPA guidelines.</p>	
Q1.	<p>The UK financial services conduct regulator, the FCA, conducted work with financial services firms in 2011, which does identify some potential conflicts of interest: http://www.fca.org.uk/firms/being-regulated/meeting-your-obligations/firm-guides/systems/risks-to-customers-from-financial-incentives</p> <p>You can also find some information about the impact of incentives on outcomes for consumers when the FCA began to discuss their plans for the Retail Distribution Review.</p>	
Q2.	<p>There are a range of different types of conflicts and not all can be dealt with the in the same way. As the discussion paper outlines not all conflicts of interest produce poor outcomes for consumers. EIOPA should focus on those that are demonstrated as being detrimental to consumers. For example, the potential for conflicts of interest related to</p>	

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	<p>commission paid to independent advisors may arguably have a greater impact than a potential conflict of interest resulting from two people working in the insurance industry who have a personal connection. The varying levels of impact of these different potential conflicts will be more easily judged at firm level, and supervised via the national regulatory who has an ongoing relationship and oversight of the firm.</p>	
Q3.		
Q4.	Trail commission was one of the things addressed by the FCA in the wake of the RDR.	
Q5.	<p>Article 21 introduces general EU principles on conflicts of interest and in turn captures the wide range of conflicts. However, including a non-exhaustive list could lead to inflexibility and not sufficiently take into account the different markets and therefore the different conflicts of interest. In our view, national supervisors are the best placed to tackle specific types of conflicts of interest that arise at local level and within the firms that they currently supervise. In our view national supervisors are best placed to tackle national issues because of the very different nature of national markets at their current stage of developments. This is particularly important when tackling specific types of conflicts of interest that arise at a local level and within the firms that they currently supervise, For example, the UK regulator recently conducted a review of financial incentives within firms, working in direct cooperation and dialogue with firms. They published the conclusions of their review, which included good and poor practice, and as a result, many financial services firms have reviewed their financial incentive structures and in some cases replaced them. Maintaining Article 21 as it currently stands will allow flexibility for such innovative solutions to be tested for effectiveness at national level before being used to inspire EU-level rules. It will also ensure a higher degree of regulatory alignment.</p>	
Q6.	<p>As mentioned in Question 5, we feel that Article 21 is broad enough to capture the wide range of conflicts of interest, while at the same time being flexible enough to support the on-going work by national supervisors. Most – if not all – of the potential conflicts of interest identified by CEIOPS would fall under one or more of the categories listed in Article 21.</p>	

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Q7.		
Q8.	In our view there is no need for specific and additional measures for SMEs and sole traders. We believe that national supervisors are best placed to assess proportionality, since they will already be closely monitoring the risk management approach in the firms they supervise.	
Q9.	As with conflicts of interests, we believe that further clarification on third party payments should be dealt with at a national supervisor level. In the UK, there is a ban on third party payments for advised sales.	
Q10.		
Q11.	Any disclosure to consumers should be considered as a last resort, and should be as simple and understandable as possible. If considered as a regulatory tool, consumer research should be conducted to ensure it will actually have a positive impact on consumer outcomes.	
Q12.		
Q13.	These provisions already apply to the insurance industry in the UK.	
Q14.		
Q15.		
Q16.	Benefits to distributors can include better internal control and management information.	
Q17.		
Q18.		