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Final Report

on

Public Consultation on the draft technical advice on Conflicts of Interest in direct and intermediated sales of insurance-based investment products

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1. Executive summary

On 1 October 2014, EIOPA launched a Public Consultation on the draft technical advice on Conflicts of Interest in direct and intermediated sales of insurance-based investment products. The consultation period ended on 1 December 2014. The revised technical advice was adopted by the Board of Supervisors and finally sent to the Commission.

This final report sets out a summary of the comments received in the Public consultation and the main conclusions EIOPA has taken in view of the feedback, the revised draft technical advice (Annex I), the Impact Assessment (Annex II) and the Comments and Resolution Table (Annex III).

2. Feedback statement

General comments

Although the majority of respondents agreed that conflicts of interest arise in the context of the distribution of insurance-based investment products and supported harmonised rules, some respondent expressed strong concerns to implement organisational rules of MiFID, which were designed to address situations specific to investment banking, but not to the insurance sector. This would be the case with regard to the specific criteria to identify conflicts of interest[1] as well as the specific organisational measures and procedures to manage conflicts of interest[2].

In particular, respondents criticized that a conflict of interest would be assumed in cases where standard commissions or fees are paid and where the distributor is involved in the product development or management. Furthermore, they argued that the Technical Advice would lead to legal uncertainty as the practical implementation of the proposed rules would be unclear. In addition, the rules would be disproportionate, especially for small and medium sized firms.

With regard to the proposal on inducements some respondents questioned the legal basis, argued that EIOPA would go beyond its mandate and pointed to the ongoing negotiations on IMD2 which would entail a different (less strict) approach.

Other respondents explicitly welcomed a close alignment with the MiFID rules for the sake of consumer protection and a level playing field.

Some respondents even expressed their disappointment that the Advice would not deal with remuneration and requested a stricter approach on inducements.

[1] Article 21 letter (a) - (e) of the MiFID Implementing Directive

[2] Article 22 (3) of the MiFID Implementing Directive

2.1. Appropriate criteria for the identification of conflicts of interest

a. Findings

The clear majority of respondents agreed that conflicts of interest arise in the context of the distribution of insurance-based investment products and deemed it necessary that insurance intermediaries and insurance undertakings take the appropriate organisational measures and procedures to manage conflicts of interest appropriately.

Many respondents referred to the necessity to harmonise rules across the different financial sectors for the sake of consumer protection and to establish a level playing field for reasons of fair competition. The majority supported EIOPA's proposal to introduce requirements, similar to those set out in Article 21 of the MiFID Implementing Directive, for the insurance sector.

Some respondents argued that the specific situations under Article 21 (a), (b), (c), (d) or (e) would be too abstract and it would not be sufficiently clear what they mean in the retail distribution of insurance-based investment products.

Some respondents criticised with regard to the proposed wording based upon Article 21 (e) of the MiFID Implementing Directive that the deletion of the half sentence "other than the standard commission or fee for that service" would discredit intermediaries accepting commissions in the context of their distribution activities. Furthermore they denied that conflicts of interest would arise in cases where only standard commissions or fees would be paid.

Some respondents were also concerned that the inclusion of entities involved in the development and management of insurance-based investment products would require intermediaries to exercise oversight of insurance undertakings whose products the intermediaries recommend.

Other respondents supported EIOPA's assumption that conflicts of interest would arise with regard to third party payment independent from the question whether the payment would be a standard commission or fee. Some respondents urged to state explicitly that third party payments would be the most important source of conflict of interest arising in the context of the distribution of insurance-based investment products. In addition to the circumstances listed in Article 21 of the MiFID Implementing Directive it was proposed to add excessive sales targets and performance measures as further instances where conflicts of interest typically arise.

b. EIOPA resolution

The feedback EIOPA has received from market participants and stakeholders has generally confirmed EIOPA's assumption outlined in the Consultation Paper that the instances described in the provisions are of broad and abstract nature, such that they can be applied very broadly across the different sectors of the financial services.

In view of the responses EIOPA is of the opinion that the wording of Article 21 of the MiFID Implementing Directive should be clarified in order to emphasize that the list of specific instances is non-exhaustive and that other conflicts of interest may occur depending on the individual circumstances and business models of the respective entities.

For that purpose, EIOPA proposed to introduce a general description of the basic elements of a conflict of interest. Additionally, EIOPA considers it appropriate to list instances where conflicts of interest may arise which should provide guidance to insurance undertakings and insurance intermediaries when assessing their individual business models for conflicts of interest.

EIOPA is aware of the fact that the specific situations in Article 21 (a) - (e) of the MiFID Implementing Directive were originally established to address conflicts of interest that primarily arise in the context of investment banking activities. Having in mind the variety of business models and expanding areas of business activities insurance intermediaries and insurance undertakings are pursuing, EIOPA considers the instances listed in Article 21 (a) - (e) of the MiFID Implementing Directive as being of relevance for the insurance sector, too. This is also justified as EIOPA believes that insurance intermediaries and insurance undertakings should take a holistic approach when identifying conflicts of interest. It should be considered that conflicts of interest not only arise at the point of sale, but may also arise during the entire lifetime of a product or duration of an insurance based investment contract.

For example, the situation described in Article 21 (a) of the MiFID Implementing Directive should be taken into consideration in cases where life insurance contracts are terminated prematurely and possibly are resold to other customers. Another example would be that insurance undertakings are interested, because of severe structural changes in the market, to terminate insurance based investment contracts and to replace it with other contracts (e.g. contracts with a guaranteed high interest rate are replace with contracts with lower interest rates).

As the rationale of Article 21 (b) of the MiFID Implementing Directive is used to describe what a conflict of interest consist of in the first paragraph, from EIOPA point of view there is no need for replication; therefore EIOPA proposes not to replicate Article 21 (b).

EIOPA believes that the situation described in Article 21 (c) of the MiFID Implementing Directive may occur in cases where the policyholder and beneficiary of the insurance based investment contract are not the same person (and the beneficiary like a credit institution providing a mortgage to the customer is of the same group like the insurer). Therefore, this situation should be transferred (now Article 21 (b)).

Regarding Article 21 (d) of the MiFID Implementing Directive many respondents emphasized that this kind of situation would not exist in the insurance sector and would create legal uncertainty if introduced. Against this background EIOPA propose to delete it stressing that the catalogue should comprise situations which may arise in practice, but not only in theory. However, it should be clear that insurance intermediaries and insurance undertakings are required to identify any conflict of interest which arise in the context of their distribution activities, independent from the question whether it is a typical situation or resulting from their very individual business model.

Regarding Article 21 (e) of the MiFID Implementing Directive (now Article 21 (c)), from EIOPA's point of view it is important to state that conflicts of interest may arise from any kind of third party payments, including standards commissions and fees. In this context EIOPA would like to stress that the pure financial interest an entity has in earning a commission or fee leads to a situation in which the interest of the customers might be adversely affected. This corresponds with the approach CESR (predecessor of ESMA) has taken in

the Recommendations regarding Inducements under MiFID which were published in May 2007[3]. There, CESR explicitly came to the conclusion that "the possibility of a receipt of a standard commission or fee is of a nature to give raise to conflicts with the duty owed to clients". The same rational applies in the insurance sector. This conclusion has to be distinguished from the question which organisational measures or procedures the entities should subsequently take in order to appropriately manage the conflicts of interest.

Regarding the amended Article 21 (d), EIOPA is of the opinion that entities which are involved in the development and management of the insurance-based investment products they distribute should assess whether their involvement gives rise to conflicts of interest with their customers. The intention is not to require the entities to exercise oversight of the manufacturer of the insurance-based investment products, but to assess whether their own involvement leads to conflicts of interest with their customers and if so, how to address these conflicts of interest (e.g. clear separation of responsibilities).

2.2. Conflicts of interest policy

a. Findings

Even though the clear majority of respondents shared the view that Article 22 (1) and (2) of the MiFID Implementing Directive would entail general principles also being of relevance for insurance undertakings and insurance intermediaries, respondents had diverging views on the question whether the specific criteria listed in Article 22 (3) thereof could be transferred to the insurance sector.

Some respondents did not support the draft Technical Advice and argued that the circumstances listed in Article 22 (3) of the MiFID Implementing Directive would be designed to address situations common to investment banking activities, but would not be of relevance for the insurance sector. This would raise the question how these criteria should be applied with regard to distribution activities. Respondents expressed their concern about the legal uncertainty which could result from an ambiguous understanding of the requirements the entities would be supposed to fulfil.

Some respondents also stated their preference for a genuine high-level approach which they thought would be more adequate in order to take into account the variety of business models of insurance intermediaries and insurance undertakings.

Respondents also argued that the small intermediaries would not be able to fulfil the requirements as set up in this article in view of their seize and limited capacities urging to further elaborate on the principle of proportionality.

Other respondent strongly supported the proposal to introduce equivalent rules as laid down in this article 22 referring to the need of a level playing field and to have the similar level of costumer protection across the different financial sectors.

[3] http://www.esma.europa.eu/system/files/07_228b.pdf

b. EIOPA resolution

Taking into consideration the concerns expressed by stakeholders and market participants EIOPA has redrafted the wording of Article 22 (3) of the MiFID Implementing Directive in order to emphasize that the high level principle endorsed in that provision requires insurance undertakings and insurance intermediaries to implement the appropriate procedures and to adopt the appropriate measure necessary to ensure that the activities are carried out in accordance with the best interest of the customers and are not biased by conflicting interests of the insurance undertaking, the insurance intermediaries or another customer.

EIOPA acknowledges that the specific organisational measures and procedures listed in Article 22 (3) were originally designed to address conflicts of interest arising in the context of investment banking. Nevertheless, EIOPA believes that the measures and procedures are of importance in the insurance sector, too.

From EIOPA's point of view, the restriction of exchange of information as required under Article 22 (3) (a) could be considered between business units concluding distribution agreements with product manufacturer and business units which provide distribution services such as advice to the individual customers (in order to prevent the exchange of information on the commission paid by the insurer for the distribution of its products which may influence the advice provided to the customers). Another example would be the functional separation from distribution units from units which are responsible for complaints handling or the Compliance Function.

A separate supervision as required under Article 22(3) (b) comes into play where persons represent different interests that may conflict, including those of the firm. This is may be the case for employees of the Legal Unit that have to decide (in the entity's interest) whether a customer is entitled for claims.

In EIOPA's view, Article 22(3) (c) comes into play if the remuneration of employees working in the complaints handling unit is linked to the quantitative success of the distribution activities.

In EIOPA's view, Article 22(3) (e) comes into play if the employee providing advice on insurance based investment products would be responsible to decide whether a customer complaint is on solid ground.

EIOPA emphasizes that the list of organisational measures and procedures listed in paragraph 3 of this article is non-exhaustive and is deemed to give guidance to insurance undertakings and insurance intermediaries which organisational measures and procedures should principally be taken into consideration to manage conflicts of interest the entities have identified. Because of the variety of business models this does not mean that the proposed measures and procedures are of relevance for all insurance intermediaries and insurance undertakings and have to be implemented. EIOPA acknowledges that entities may come to the conclusion that the measures and procedures listed in paragraph 3 may not be appropriate, especially for small intermediaries and their limited scope of business, and alternative measures and procedure may be more adequate to manage conflicts of interest efficiently. In EIOPA's view, the crucial point is that the organisational measures and procedures which the individual insurance undertaking or insurance intermediary has chosen ensure that the distribution activities are provided impartially in accordance with the best interest of the customers.

The responses to EIOPA's Consultation Paper have proven that there are uncertainties with regard to the organisational measures and procedures insurance undertakings and insurance intermediaries are supposed to implement to adequately address conflicts of interest arising in the course of distribution activities. The Technical Advice gives guidance in presenting a non-exhaustive list of organisational measures and procedures. Alternative procedures and measures may be taken in consideration. Evolving business models may require new approaches.

Against this background, EIOPA considers it important to be empowered to issue guidelines, if necessary, in order to respond in the future in a flexible way to new developments or in cases where market participants require more guidance on the application of the general principle.

2.3. Remuneration and inducements

a. Findings

Respondents had diverging views with regard to EIOPA's proposal to introduce specific requirements addressing conflicts of interest arising from the receipt of third party payments (inducements).

Most respondents shared EIOPA's opinion that the amendments to the IMD made clear that commission-based distribution models should not be rendered impossible either through an explicit ban or through a de facto ban.

Many respondents from the industry pointed out that a ban of inducement would have severe consequences for many small intermediaries depending on commissions for their income; they stated that a ban on commission could force many entities to give up their business which could consequently lead to less competition and impair services for customers.

Some respondents raised concerns regarding the legal basis for introducing implementing measures on inducements requesting EIOPA to abstain from providing Technical Advice on this specific issue.

Some respondents pointed out that the general approach of the Council in the European legislative procedure to revise the IMD would entail provisions setting legal requirements for the receipt of third party payments. In their view, in contrast to the general approach, the proposed Technical Advice would follow a stricter approach.

Many respondents agreed that third party payments would create a conflict of interest and supported EIOPA's approach.

Many respondents emphasized the need for consistent rules and a level playing field across the different sectors of the financial market and asked to further align the Technical Advice with ESMA's work for the implementing measures for MiFID II to avoid regulatory arbitrage and consumer detriment.

Several respondents also expressed their disappointment that the Technical Advice would only address conflicts of interest resulting from third-party payments, but not address in more detail issues arising vis-à-vis remuneration which is paid to the employees of insurance undertakings or insurance intermediaries, in particular regarding variable remuneration.

Some respondents stressed the view that organisational requirements would not be sufficient to address the conflict of interest resulting from inducements and argued in favour of a ban on inducements.

b. EIOPA resolution

EIOPA supports the view expressed by several respondents that in the context of the distribution of insurance-based investment products payments which are provided to an insurance undertaking or insurance intermediary by a third party not acting on behalf of the customer is a very important source of a potential conflict of interest entailing the risk of customer detriment.

From a consumer protection perspective, EIOPA therefore considers it of utmost importance that specific organisational measures and procedures are introduced in order to appropriately address conflicts of interest resulting from the receipt of third party payments or non-monetary benefits, to ensure strict compliance with the principle of acting in the best interests of the customer.

Regarding the concerns expressed by some respondents with regard to the legal basis and the empowerment of EIOPA to provide recommendations on this, EIOPA would like to emphasize that the Commission has explicitly requested EIOPA in its mandate to elaborate on this specific issue.

EIOPA acknowledges that for investment firms rules on the legitimacy of inducements have already been introduced under MiFID I in 2006 and were subsequently reaffirmed in the legislative procedure for MiFID II, including a relocation of certain implementing measures to Level 1 in order to give them greater force. EIOPA notes that ESMA's Technical Advice on inducements for MIFID II thoroughly builds upon this development and presents a solution, which carefully takes into account the specificities of the market for financial instruments, its participants and own distribution models.

EIOPA notes that similar risks of consumer detriment through conflicts of interest can arise, depending on the market, in the distribution of insurance-based investment products as with financial instruments, such that the an alignment in the basic approaches can be envisaged.

EIOPA notes, however, the predominance in many insurance markets of distribution models where the intermediary relies solely on commissions and non-monetary benefits received from insurance undertakings. In some markets tied-agents are predominant, where such agents will only conduct business for a single insurance undertaking.

EIOPA underlines that the amendments to the IMD exclude measures that would amount to a de facto ban on such business models. EIOPA underlines however that tied-agents operating under such models must ensure, pursuant to the same amendments, necessary steps are taken so they can act in the best interest of the customer.

While EIOPA recognises that similar issues arise also in some markets in relation to the distribution of financial instruments, EIOPA concludes that in further specifying regulatory measures intended for the insurance sector, specific attention might be aimed at clarifying the application of the overarching principles to such business models.

However, given the uncertainty over upcoming negotiations on the revision of the IMD, and given the revised mandate from the Commission also in view of

this uncertainty, EIOPA shall limit its recommendations at this stage to these general remarks.

From EIOPA's perspective, the proper management of conflicts of interest resulting from third party payments would entail looking at measures in three areas, as also identified by ESMA for the distribution of financial instruments:

- Firstly, measures that the insurance undertaking or intermediary should take to ensure the inducements are for the benefit of the customers and do not lead to detriment for the customer, including the ability to demonstrate this to national competent authorities;
- Secondly, measures to ensure strict compliance with the requirement that inducements do not impair compliance with the insurance undertaking's or insurance intermediary's duty to act in accordance with the best interest of the customers; and
- Thirdly, measures to ensure the inducements are clearly disclosed to the customer.

EIOPA considers the achievement of a convergent and harmonised approach of great importance, though EIOPA also notes that regulation of distribution in the insurance sector has so far been less harmonised at Union level than distribution of financial instruments. EIOPA recommends therefore measures should be developed to set out a non-exhaustive list of circumstances where inducements can be taken to be for the benefit of the customer. These should be considered also in the context of the different business models in the insurance sector, so as to ensure sufficient clarity for insurance undertakings and intermediaries throughout the EU.

Any list of circumstances would be non-exhaustive, and would need to be carefully calibrated from both a positive perspective (that is, in terms of what it permits) and a negative one (that is, in terms of what it does not permit).

In EIOPA's opinion, it would also be useful to include a definition of "inducement" comprising any monetary or non-monetary benefits (including commissions) insurance undertakings and insurance intermediaries receive or pay in connection with the provision of insurance distribution activities from any party except the customer or a person on behalf of the customer, especially in order to make a clear distinction between inducements (third party payments) and remuneration (internal payments to employees of an insurance undertaking or insurance intermediary). Therefore, remuneration has to be distinguished from inducements and should be addressed separately.

EIOPA considers Article 26 (b) (i) of the MiFID Implementing Directive because of its abstract and high-level nature as appropriate disclosure rule to be transferred to the insurance sector.

EIOPA acknowledges that conflicts of interest may also arise with regard to remuneration paid by insurance undertakings or insurance intermediaries to their employees, which are involved in the distribution activities, especially if the remuneration is variable and based upon quantitative criteria. As EIOPA has pointed out in the Consultation Paper, further analysis is required in this regard in terms of how best to coordinate national approaches to the mitigation of these conflicts. This analysis is already underway.

2.4. Proportionality

a. Findings

Views of the respondents were split whether the principle of proportionality should be clarified in the implementing measures and whether EIOPA should issue further guidance (such as examples of the practical application) at a later stage, if necessary.

Some respondents stressed the importance of the principle of proportionality, especially with regard to small and midsized intermediaries, and argued in favour of reiterating the principle in the implementing measures for legal certainty.

Some respondents spoke against further guidance by EIOPA arguing that the national regulators would be better placed to assess proportionality taking into account the specificities of the national markets.

Other respondents outlined that the principle of proportionality would be an overall concept applicable to all measures (and already mentioned in Level 1).

Some respondents shared EIOPA's concerns outlined in the Consultation Paper that a reiteration or specification would bear the risk that the application of the general principle becomes unclear or that the objectives of the new requirements are not achieved.

b. EIOPA resolution

EIOPA acknowledges the importance of the principle of proportionality, especially with regard to the impact new organisational requirements may have for small and midsize intermediaries. Because of the risk of creating loopholes and ways of circumvention EIOPA strongly rejects the idea of establishing exemptions for predefined market participants or of providing examples showing the minimum standard EIOPA is expecting which would ultimately create a safe harbour for all market participants.

Having taken into considerations the responses to the Consultation Paper EIOPA has modified its Technical Advice on the organisational measures and procedures for the proper management of conflicts of interest (see Chapter 4 of the technical advice). Where the proposed specific organisational measures and procedures are not appropriate to manage and prevent conflicts of interest from damaging the interests of the customer, entities must demonstrate that alternative measures or procedures ensure that the distribution activities are carried out in accordance with the best interest of the customers and are not biased by conflicting interests of the insurance undertaking.

2.5. Investment Research

a. Findings

The responses to EIOPA's Consultation Paper have affirmed EIOPA's assumption that investment research does not belong to the typical business activities insurance undertaking and insurance intermediaries pursue.

b. EIOPA resolution

Therefore, EIOPA does not consider it necessary to introduce specific organisational measures in this regard. Nevertheless, EIOPA would like to emphasize that the general rules on conflicts of interest apply in the unlikely event that insurance undertakings or insurance intermediaries produce investment research. In this case, EIOPA would expect that the entities take into consideration, when defining the organisational measures and procedures required under the general rules, the specific organisational requirements for investment firms which can be found in Article 24 and 25 of the MiFID Implementing Directive as general guidance.

3. Annexes

Annex I: Technical Advice on Conflicts of Interest in direct and intermediated sales of insurance-based investment products

Technical Advice on Conflicts of Interest in direct and intermediated sales of insurance-based investment products

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Executive Summary

The European Insurance and Occupational Pensions Authority (hereinafter "EIOPA") received a formal request (mandate)4 from the Commission on 19 May 2014 to provide technical advice to assist the Commission on the possible content of the delegated acts based upon Article 13c (3) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (hereinafter "IMD")5. According to this article the Commission is empowered to adopt delegated acts in order to:

- define the steps that insurance intermediaries or insurance undertakings might be reasonably be expected to identify, prevent, manage and disclose conflicts of interest when carrying out insurance distribution activities;

- establish appropriate criteria for determining the types of conflicts of interest whose existence may damage the interests of customers or potential customers of the insurance intermediary or insurance undertaking.

The Technical Advice which is provided to the Commission takes into account the feedback EIOPA received in response to its Consultation Paper which was published on 1 October 2014. The Technical Advice contains summaries of the responses received, the conclusion EIOPA has taken on its findings and the recommended policy options which should be the basis for the delegated acts to be adopted by the Commission. The Technical Advice entails policy recommendations with regard to the identification of conflicts of interest arising in the course of the distribution of insurance based investment products, and appropriate measures to manage these conflicts of interest. Finally, in addition to the Technical Advice, this paper provides reflections on third party payments (inducements).

For a better understanding EIOPA recommends to read the Technical Advice together with the Consultation Paper published on 1 October 2014 to have a complete picture of the rationale and underlying reasons of EIOPA's policy recommendations.

1. Introduction

On 14 January 2014, the European Parliament and the European Council reached a political agreement with regard to the revision of Directive 2004/39/EC6 (hereinafter "MiFID I"). Subsequent to the political agreement, the final legislative proposals of the new Directive 2014/65/EU7 (hereinafter "MiFID II") and Regulation (EU) No 600/20148 were approved by the European Parliament on 15 April 2014 and by the European Council on 13 May 2014. Both were published on 12 June 2014 in the Official Journal of the European Union and entered into force on 2 July 2014.

The majority of the new rules concern the regulation of the markets for financial instruments and the participants in these markets. In order to strengthen investor protection and to further develop a level playing field for different types of investments and taking into account the timeline of the revision of the IMD, MiFID II also included amendments to the IMD addressing insurance intermediaries and

[4] "Formal Request to EIOPA for technical advice on possible delegated acts concerning Directive 2002/92/EC on insurance mediation, as amended by the Directive on Markets in Financial Instruments repealing Directive 2004/39/EC (MiFID (EC) NO XX/2014)" (Ref. Ares(2014)1622155 - 19/05/2014): http://ec.europa.eu/internal_market/securities/docs/isd/mifid/140514-mandate-eiopa_en.doc.pdf

[5] OJ L 9, 15.1.2003, p. 3.

[6] OJ L 145, 30.4.2004, p. 1.

[7] OJ L 173, 12.6.2014, p. 349.

[8] OJ L 173, 12.6.2014, p. 84.

insurance undertakings. These amendments can be found in Article 91 of MiFID II, which introduces into the IMD, for the sale of insurance-based investment products, certain elements of the conduct of business rules contained within MiFID I. Insurance-based investment products are defined in the amendments, and cover life-insurance contracts which have a "maturity or surrender value [that] is wholly or partially exposed, directly or indirectly, to market fluctuations"9.

In particular, the amendments in Article 91 of MiFID II introduce new organisational requirements for insurance intermediaries and insurance undertakings with regard to conflicts of interest. For that purpose, the IMD has been amended by a new Article 13b which requires insurance undertakings and insurance intermediaries to take all reasonable steps to prevent conflicts of interest from adversely affecting the interests of their customers and by a new Article 13c, specifying how to identify and manage conflicts of interest that arise in the course of carrying out insurance distribution activities. Article 13c (3)(a) and (b) empower the Commission to adopt delegated acts to further define the steps insurance undertakings and insurance intermediaries have to take to identify, prevent, manage and disclose conflicts of interest, as well as to establish criteria for determining the types of conflict of interest that may damage the interests of the customers.

EIOPA received a formal request (mandate) from the Commission on 19 May 2014 to provide technical advice to assist the Commission on the possible content of the delegated acts.

For the purposes of cross-sectorial consistency, the Commission has invited EIOPA to consider the existing conflicts of interest framework under Commission Directive 2006/73/EC10 (hereinafter "MiFID Implementing Directive") and to develop a similar framework for insurance intermediaries and insurance undertakings distributing insurance-based investment products. EIOPA was asked to work together with ESMA to achieve as much as consistency as possible in the conduct of business standards for insurance-based investment products.

In order to provide stakeholders with an early orientation on issues that will need to be addressed in the technical advice to the Commission and to gather feedback from the market, EIOPA published a Discussion Paper on 21 May 2014.

Many respondents to the Discussion Paper emphasized that the rules on conflict of interest which can be found in the MiFID Implementing Directive should carefully be adapted to the specificities of the insurance sector. Furthermore, many argued in favour of clarification that the principles of proportionality should be applicable to avoid excessive administrative burden and costs, especially with regard to small undertakings and sole traders11. Many respondents also expressed concerns that too far-reaching implementing measures on inducements could lead to a de facto ban on

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[9] The amended IMD includes in Article 2 (13) a definition of "insurance-based investment products" comprising insurance products which offer a maturity or surrender value, where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations and shall not include:

(a) non-life insurance products as listed in Annex I of Directive 2009/138/EC (Classes of Non-life Insurance);
(b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
(c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitles the investor to certain benefits;
(d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC;
(e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.

[10] OJ L 241, 2.9.2006, p. 26.

[11] Sole Trader in this context is a natural person, in other words a person who runs a business by himself/herself.

commission-based business models. A number mentioned, however, the crucial importance of such measures in their view from the perspective of the customer.

Having taken account of the feedback received from stakeholders, EIOPA prepared a Consultation Paper which presented, in more detail, the recommendations that EIOPA considered including in its Technical Advice to the Commission. Interested parties were invited to comment on these proposals. The consultation period closed on 1 December 2014 and EIOPA received more than 30 responses. Responses which were not designated confidential will be published on EIOPA website. A summary of the feedback to each policy options can be found below.

2. Legal Background

The additional customer protection requirements for insurance intermediaries and insurance undertakings in relation to insurance-based investment products can be found in the new Chapter IIIA of the amended IMD, those in particular with regard to conflicts of interest in Article 13b and Article 13c of this chapter.

"Article 13a - Scope

Subject to the exception in the second subparagraph of Article 2 (3), this Chapter lays down additional requirements on insurance mediation activities and to direct sales carried out by insurance undertakings when they are carried out in relation to the sale of insurance-based investment products. Those activities shall be referred to as insurance distribution activities.

Article 13b - Prevention of conflicts of interest

An insurance intermediary or insurance undertaking 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 in Article 13c, from adversely affecting the interests of its customers.

Article 13c - Conflicts of interests

1. Member States shall require insurance intermediaries and insurance undertakings to take all appropriate steps to identify conflicts of interest between themselves, including their managers, employees and tied insurance intermediaries, or any person directly or indirectly linked to them by control and their customers or between one customer and another that arise in the course of carrying out any insurance distribution activities.

2. Where organisational or administrative arrangements made by the insurance intermediary or insurance undertaking in accordance with Article 13b to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose to the customer the general nature and/or sources of conflicts of interest before undertaking business on its behalf.

3. The Commission shall be empowered to adopt by means of delegated acts, in accordance with Article 13f, the following measures:

(a) to define the steps that insurance intermediaries or insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when carrying out insurance distribution activities;

(b) to establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking.

Article 13d - General principles and information to customers

1. Member States shall ensure that, when carrying out insurance distribution activities, an insurance intermediary or insurance undertaking acts honestly, fairly and professionally in accordance with the best interests of its customers.

2. All information, including marketing information, addressed by the insurance intermediary or insurance undertaking to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

3. Member States may prohibit the acceptance or receipt of fees, commissions or any monetary benefits paid or provided to insurance intermediaries or insurance undertakings, by any third party or person acting on behalf of a third party in relation to the distribution of insurance-based investment products to customers.

Article 13e - Exercise of delegation

1. The power to adopt a delegated act is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt a delegated act referred to in Article 13c shall be conferred on the Commission for an indeterminate period of time from 2 July 2014.

3. The delegation of powers referred to in Article 13c may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 13c shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council."

3. Appropriate criteria for the identification of conflicts of interest

3.1. The Commission's request for advice

"EIOPA is invited to provide technical advice on the empowerment of the Commission to establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking.

With a view to establishing appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of insurance-based investment products, EIOPA has been invited to verify to what extent the criteria in the MiFID Implementing Directive, need to be adapted and/or supplemented for insurance-based investment products.

Different products as well as different distribution channels might present different conflict of interest risks. EIOPA should also consider the timeframe of insurance-based

investment products – notably what the conflict of interest issues are at the point of sale as well as during the products' lifetime."

3.2. Analysis

3.2.1. Findings

The clear majority of respondents agreed that conflicts of interest arise in the context of the distribution of insurance-based investment products and deemed it necessary that insurance intermediaries and insurance undertakings take the appropriate organisational measures and procedures to manage conflicts of interest appropriately.

Many respondents referred to the necessity to harmonise rules across the different financial sectors for the sake of consumer protection and to establish a level playing field for reasons of fair competition. The majority supported EIOPA's proposal to introduce requirements, similar to those set out in Article 21 of the MiFID Implementing Directive, for the insurance sector.

Some respondents argued that the specific situations under Article 21 (a), (b), (c), (d) or (e) would be too abstract and it would not be sufficiently clear what they mean in the retail distribution of insurance-based investment products.

Some respondents criticised with regard to the proposed wording based upon Article 21 (e) of the MiFID Implementing Directive that the deletion of the half sentence "other than the standard commission or fee for that service" would discredit intermediaries accepting commissions in the context of their distribution activities. Furthermore they denied that conflicts of interest would arise in cases where only standard commissions or fees would be paid.

Some respondents were also concerned that the inclusion of entities involved in the development and management of insurance-based investment products would require intermediaries to exercise oversight of insurance undertakings whose products the intermediaries recommend.

Other respondents supported EIOPA's assumption that conflicts of interest would arise with regard to third party payment independent from the question whether the payment would be a standard commission or fee. Some respondents urged to state explicitly that third party payments would be the most important source of conflict of interest arising in the context of the distribution of insurance-based investment products. In addition to the circumstances listed in Article 21 of the MiFID Implementing Directive it was proposed to add excessive sales targets and performance measures as further instances where conflicts of interest typically arise.

3.2.2. Assessment and conclusion

The feedback EIOPA has received from market participants and stakeholders has generally confirmed EIOPA's assumption outlined in the Consultation Paper that the instances described in the provisions are of broad and abstract nature, such that they can be applied very broadly across the different sectors of the financial services.

In view of the responses EIOPA is of the opinion that the wording of Article 21 of the MiFID Implementing Directive should be clarified in order to emphasize that the list of specific instances is non-exhaustive and that other conflicts of interest may occur depending on the individual circumstances and business models of the respective entities.

For that purpose, EIOPA proposed to introduce a general description of the basic elements of a conflict of interest. Additionally, EIOPA considers it appropriate to list instances where conflicts of interest may arise which should provide guidance to insurance undertakings and insurance intermediaries when assessing their individual business models for conflicts of interest.

EIOPA is aware of the fact that the specific situations in Article 21 (a) - (e) of the MiFID Implementing Directive were originally established to address conflicts of interest that primarily arise in the context of investment banking activities. Having in mind the variety of business models and expanding areas of business activities insurance intermediaries and insurance undertakings are pursuing, EIOPA considers the instances listed in Article 21 (a) - (e) of the MiFID Implementing Directive as being of relevance for the insurance sector, too. This is also justified as EIOPA believes that insurance intermediaries and insurance undertakings should take a holistic approach when identifying conflicts of interest. It should be considered that conflicts of interest not only arise at the point of sale, but may also arise during the entire lifetime of a product or duration of an insurance based investment contract.

For example, the situation described in Article 21 (a) of the MiFID Implementing Directive should be taken into consideration in cases where life insurance contracts are terminated prematurely and possibly are resold to other customers. Another example would be that insurance undertakings are interested, because of severe structural changes in the market, to terminate insurance based investment contracts and to replace it with other contracts (e.g. contracts with a guaranteed high interest rate are replace with contracts with lower interest rates).

As the rationale of Article 21 (b) of the MiFID Implementing Directive is used to describe what a conflict of interest consist of in the first paragraph, from EIOPA point of view there is no need for replication; therefore EIOPA proposes not to replicate Article 21 (b).

EIOPA believes that the situation described in Article 21 (c) of the MiFID Implementing Directive may occur in cases where the policyholder and beneficiary of the insurance based investment contract are not the same person (and the beneficiary like a credit institution providing a mortgage to the customer is of the same group like the insurer). Therefore, this situation should be transferred (now Article 21 (b)).

Regarding Article 21 (d) of the MiFID Implementing Directive many respondents emphasized that this kind of situation would not exist in the insurance sector and would create legal uncertainty if introduced. Against this background EIOPA propose to delete it stressing that the catalogue should comprise situations which may arise in practice, but not only in theory. However, it should be clear that insurance intermediaries and insurance undertakings are required to identify any conflict of interest which arise in the context of their distribution activities, independent from the question whether it is a typical situation or resulting from their very individual business model.

Regarding Article 21 (e) of the MiFID Implementing Directive (now Article 21 (c)), from EIOPA's point of view it is important to state that conflicts of interest may arise from any kind of third party payments, including standards commissions and fees. In this context EIOPA would like to stress that the pure financial interest an entity has in earning a commission or fee leads to a situation in which the interest of the customers might be adversely affected. This corresponds with the approach CESR (predecessor of ESMA) has taken in the Recommendations regarding Inducements under MiFID which were published in May 200712. There, CESR explicitly came to the conclusion that "the possibility of a receipt of a standard commission or fee is of a nature to give raise to conflicts with the duty owed to clients". The same rational applies in the insurance sector. This conclusion has to be distinguished from the question which organisational measures or procedures the entities should subsequently take in order to appropriately manage the conflicts of interest.

[12] http://www.esma.europa.eu/system/files/07_228b.pdf

Regarding the amended Article 21 (d), EIOPA is of the opinion that entities which are involved in the development and management of the insurance-based investment products they distribute should assess whether their involvement gives rise to conflicts of interest with their customers. The intention is not to require the entities to exercise oversight of the manufacturer of the insurance-based investment products, but to assess whether their own involvement leads to conflicts of interest with their customers and if so, how to address these conflicts of interest (e.g. clear separation of responsibilities).

Against this background EIOPA provides the following Technical Advice.

3.3. Technical advice

Identification of conflicts of interests

For the purpose of identifying the types of conflict of interest that arise in the course of carrying out any insurance distribution activities and which entail the risk of adversely affecting the interests of a customer, insurance intermediaries and insurance undertakings should assess whether they, including their managers, employees and tied insurance intermediaries, or any person directly or indirectly linked to them by control, have an interest related to the insurance distribution activities which is distinct from the customer's interest and which has the potential to influence the outcome of the services at the detriment of the customer.

This shall at least be assumed in situations including the following:

a. the insurance intermediary, insurance undertaking or linked person is likely to make a financial gain, or avoid a financial loss, at the expense of the customer;

b. the insurance intermediary, insurance undertaking or linked person has a financial or other incentive to favour the interest of another customer or group of customers over the interests of the customer;

c. the insurance intermediary, insurance undertaking or linked person receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer.

d. the insurance intermediary, persons working in an insurance undertaking responsible for the distribution of insurance-based investment products or linked person are involved in the management or development of the insurance based-investment products.

4. Conflicts of interest policy

4.1. The Commission's request for advice

"EIOPA is invited to provide technical advice on the empowerment of the Commission to define the steps that insurance intermediaries or insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when carrying out insurance distribution activities.

EIOPA is also invited to base its technical advice, primarily, on existing conflict of interest rules, as laid down in Commission Directive 2006/73/EC, while at the same time ensuring regular consultation with ESMA as regards ESMA’s work on its technical advice on Article 23(4) (a) and (b) of MiFID II. In this respect, the EIOPA advice should be in line with the MiFID II provisions as much as possible, in so far as it is consistent with the amended IMD.

In particular, EIOPA should also consider the existing conflicts of interest framework under Commission Directive 2006/73/EC and to develop a similar framework for insurance intermediaries and insurance undertakings distributing insurance-based investment products."

4.2. Analysis

4.2.1. Findings

Even though the clear majority of respondents shared the view that Article 22 (1) and (2) of the MiFID Implementing Directive would entail general principles also being of relevance for insurance undertakings and insurance intermediaries, respondents had diverging views on the question whether the specific criteria listed in Article 22 (3) thereof could be transferred to the insurance sector.

Some respondents did not support the draft Technical Advice and argued that the circumstances listed in Article 22 (3) of the MiFID Implementing Directive would be designed to address situations common to investment banking activities, but would not be of relevance for the insurance sector. This would raise the question how these criteria should be applied with regard to distribution activities. Respondents expressed their concern about the legal uncertainty which could result from an ambiguous understanding of the requirements the entities would be supposed to fulfil.

Some respondents also stated their preference for a genuine high-level approach which they thought would be more adequate in order to take into account the variety of business models of insurance intermediaries and insurance undertakings.

Respondents also argued that the small intermediaries would not be able to fulfil the requirements as set up in this article in view of their seize and limited capacities urging to further elaborate on the principle of proportionality.

Other respondent strongly supported the proposal to introduce equivalent rules as laid down in this article 22 referring to the need of a level playing field and to have the similar level of costumer protection across the different financial sectors.

4.2.2. Assessment and conclusion

Taking into consideration the concerns expressed by stakeholders and market participants EIOPA has redrafted the wording of Article 22 (3) of the MiFID Implementing Directive in order to emphasize that the high level principle endorsed in that provision requires insurance undertakings and insurance intermediaries to implement the appropriate procedures and to adopt the appropriate measure necessary to ensure that the activities are carried out in accordance with the best interest of the customers and are not biased by conflicting interests of the insurance undertaking, the insurance intermediaries or another customer.

EIOPA acknowledges that the specific organisational measures and procedures listed in Article 22 (3) were originally designed to address conflicts of interest arising in the context of investment banking. Nevertheless, EIOPA believes that the measures and procedures are of importance in the insurance sector, too.

From EIOPA's point of view, the restriction of exchange of information as required under Article 22 (3) (a) could be considered between business units concluding distribution agreements with product manufacturer and business units which provide distribution services such as advice to the individual customers (in order to prevent the exchange of information on the commission paid by the insurer for the distribution of its products which may influence the advice provided to the customers). Another example would be the functional separation from distribution units from units which are responsible for complaints handling or the Compliance Function.

A separate supervision as required under Article 22(3) (b) comes into play where persons represent different interests that may conflict, including those of the firm. This is may be the case for employees of the Legal Unit that have to decide (in the entity's interest) whether a customer is entitled for claims.

In EIOPA's view, Article 22(3) (c) comes into play if the remuneration of employees working in the complaints handling unit is linked to the quantitative success of the distribution activities.

In EIOPA's view, Article 22(3) (e) comes into play if the employee providing advice on insurance based investment products would be responsible to decide whether a customer complaint is on solid ground.

EIOPA emphasizes that the list of organisational measures and procedures listed in paragraph 3 of this article is non-exhaustive and is deemed to give guidance to insurance undertakings and insurance intermediaries which organisational measures and procedures should principally be taken into consideration to manage conflicts of interest the entities have identified. Because of the variety of business models this does not mean that the proposed measures and procedures are of relevance for all insurance intermediaries and insurance undertakings and have to be implemented. EIOPA acknowledges that entities may come to the conclusion that the measures and procedures listed in paragraph 3 may not be appropriate, especially for small intermediaries and their limited scope of business, and alternative measures and procedure may be more adequate to manage conflicts of interest efficiently. In EIOPA's view, the crucial point is that the organisational measures and procedures which the individual insurance undertaking or insurance intermediary has chosen ensure that the distribution activities are provided impartially in accordance with the best interest of the customers.

The responses to EIOPA's Consultation Paper have proven that there are uncertainties with regard to the organisational measures and procedures insurance undertakings and insurance intermediaries are supposed to implement to adequately address conflicts of interest arising in the course of distribution activities. The Technical Advice gives guidance in presenting a non-exhaustive list of organisational measures and procedures. Alternative procedures and measures may be taken in consideration. Evolving business models may require new approaches.

Against this background, EIOPA considers it important to be empowered to issue guidelines, if necessary, in order to respond in the future in a flexible way to new developments or in cases where market participants require more guidance on the application of the general principle.

4.3. Technical advice

Conflicts of interest policy

1. Insurance intermediaries and insurance undertakings should establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business. Where the insurance intermediary or insurance undertaking is a member of a group, the policy must also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph 1 should include the following content:

(a) it must identify, with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of adversely affecting the interests of one or more customers;

(b) it must specify procedures to be followed and measures to be adopted in order to manage and prevent such conflicts from damaging the interests of the customer of the insurance intermediary or insurance undertaking, appropriate to the size and activities of the insurance intermediaries or insurance undertaking and of the group to which they belong, and to the materiality of the risk of damage to the interests of customers.

3. For the purpose of paragraph 2(b), the procedures to be followed and measures to be adopted shall include, where appropriate, in order to ensure that the distribution activities are carried out in accordance with the best interest of the customers and are not biased by conflicting interests of the insurance undertaking, the insurance intermediary or another customer, the following:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may damage the interests of one or more customers;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out insurance distribution activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in insurance distribution activities where such involvement may impair the proper management of conflicts of interest.

If insurance intermediaries and insurance undertakings demonstrate that those measures and procedures are not appropriate to ensure that the distribution activities are carried out in accordance with the best interest of the customers and are not biased by conflicting interests of the insurance undertakings, the insurance intermediaries or another customer, insurance intermediaries and insurance undertakings must adopt adequate alternative measures and procedures for that purpose.

4. Insurance intermediaries and insurance undertakings should ensure that disclosure, pursuant to Article 13c (2) of Directive 2002/92/EC, is a step of last resort that can be used only where the effective organisational and administrative measures established by insurance intermediaries and insurance undertakings to prevent or manage conflicts of interests in accordance with Article 13b thereof are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the customer will be prevented.

5. Insurance intermediaries and insurance undertaking should make that disclosure to customers, pursuant to Article 13c (2) of Directive 2002/92/EC, in a durable medium. The disclosure should include sufficient detail, including the risks to the customer that arise as a result of the conflict and the steps undertaken to mitigate these risks, to enable that customer to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

6. Insurance intermediaries and insurance undertakings should assess and periodically review – at least annually – the conflicts of interest policy established in accordance with this article and to take all appropriate measures to address any deficiencies.

7. Without prejudice to the provisions of this article, EIOPA may develop guidelines in relation to the procedures and measures referred to in paragraph 2. The guidelines should specify the respective risk addressed and explain the appropriateness of the proposed measures or procedures.

5. Remuneration and inducements

5.1. The Commission's request for advice

"EIOPA is invited to consider the existing conflicts of interest framework under the MiFID Implementing Directive and to develop a similar framework for insurance intermediaries and insurance undertakings distributing insurance-based investment products.

EIOPA should consider identifying remuneration or commissions arrangements that lead to harm for the customers' interests and ways of avoiding these, or where avoiding these it not possible, examine monitoring, or placing conditions or limitations on conduct that aim to limit harm to the customers' interest."

5.2. Analysis

EIOPA is aware that the general approach of the Council and the report of the European Parliament on the revision of the IMD are addressing the revision of the IMD in its entirety. As the final outcome of the negotiations between the European Parliament and the Council is unclear, EIOPA has decided, in view of the explicit request of the Commission, to provide some provisional recommendations on addressing conflicts of interest arising from third party payments.

EIOPA acknowledges that the recommendations may need some redrafting once a final agreement in the negotiations to revise the IMD has been found. If this should be the case, EIOPA stands ready to support the Commission with further advice.

5.2.1. Findings

Respondents had diverging views with regard to EIOPA's proposal to introduce specific requirements addressing conflicts of interest arising from the receipt of third party payments (inducements).

Most respondents shared EIOPA's opinion that the amendments to the IMD made clear that commission-based distribution models should not be rendered impossible either through an explicit ban or through a de facto ban.

Many respondents from the industry pointed out that a ban of inducement would have severe consequences for many small intermediaries depending on commissions for their income; they stated that a ban on commission could force many entities to give

up their business which could consequently lead to less competition and impair services for customers.

Some respondents raised concerns regarding the legal basis for introducing implementing measures on inducements requesting EIOPA to abstain from providing Technical Advice on this specific issue.

Some respondents pointed out that the general approach of the Council in the European legislative procedure to revise the IMD would entail provisions setting legal requirements for the receipt of third party payments. In their view, in contrast to the general approach, the proposed Technical Advice would follow a stricter approach.

Many respondents agreed that third party payments would create a conflict of interest and supported EIOPA's approach.

Many respondents emphasized the need for consistent rules and a level playing field across the different sectors of the financial market and asked to further align the Technical Advice with ESMA's work for the implementing measures for MiFID II to avoid regulatory arbitrage and consumer detriment.

Several respondents also expressed their disappointment that the Technical Advice would only address conflicts of interest resulting from third-party payments, but not address in more detail issues arising vis-à-vis remuneration which is paid to the employees of insurance undertakings or insurance intermediaries, in particular regarding variable remuneration.

Some respondents stressed the view that organisational requirements would not be sufficient to address the conflict of interest resulting from inducements and argued in favour of a ban on inducements.

5.2.2. Assessment and conclusion

EIOPA supports the view expressed by several respondents that in the context of the distribution of insurance-based investment products payments which are provided to an insurance undertaking or insurance intermediary by a third party not acting on behalf of the customer is a very important source of a potential conflict of interest entailing the risk of customer detriment.

From a consumer protection perspective, EIOPA therefore considers it of utmost importance that specific organisational measures and procedures are introduced in order to appropriately address conflicts of interest resulting from the receipt of third party payments or non-monetary benefits, to ensure strict compliance with the principle of acting in the best interests of the customer.

Regarding the concerns expressed by some respondents with regard to the legal basis and the empowerment of EIOPA to provide recommendations on this, EIOPA would like to emphasize that the Commission has explicitly requested EIOPA in its mandate to elaborate on this specific issue.

EIOPA acknowledges that for investment firms rules on the legitimacy of inducements have already been introduced under MiFID I in 2006 and were subsequently reaffirmed in the legislative procedure for MiFID II, including a relocation of certain implementing measures to Level 1 in order to give them greater force. EIOPA notes that ESMA's Technical Advice on inducements for MIFID II thoroughly builds upon this development and presents a solution, which carefully takes into account the specificities of the market for financial instruments, its participants and own distribution models.

EIOPA notes that similar risks of consumer detriment through conflicts of interest can arise, depending on the market, in the distribution of insurance-based investment

products as with financial instruments, such that the an alignment in the basic approaches can be envisaged.

EIOPA notes, however, the predominance in many insurance markets of distribution models where the intermediary relies solely on commissions and non-monetary benefits received from insurance undertakings. In some markets tied-agents are predominant, where such agents will only conduct business for a single insurance undertaking.

EIOPA underlines that the amendments to the IMD exclude measures that would amount to a de facto ban on such business models. EIOPA underlines however that tied-agents operating under such models must ensure, pursuant to the same amendments, necessary steps are taken so they can act in the best interest of the customer.

While EIOPA recognises that similar issues arise also in some markets in relation to the distribution of financial instruments, EIOPA concludes that in further specifying regulatory measures intended for the insurance sector, specific attention might be aimed at clarifying the application of the overarching principles to such business models.

However, given the uncertainty over the upcoming negotiations on the revision of the IMD, EIOPA limits its recommendations at this stage to these general remarks.

From EIOPA's perspective, the proper management of conflicts of interest resulting from third party payments would entail looking at measures in three areas, as also identified by ESMA for the distribution of financial instruments:

- Firstly, measures that the insurance undertaking or intermediary should take to ensure the inducements are for the benefit of the customers and do not lead to detriment for the customer, including the ability to demonstrate this to national competent authorities;
- Secondly, measures to ensure strict compliance with the requirement that inducements do not impair compliance with the insurance undertaking's or insurance intermediary's duty to act in accordance with the best interest of the customers; and
- Thirdly, measures to ensure the inducements are clearly disclosed to the customer.

EIOPA considers the achievement of a convergent and harmonised approach of great importance, though EIOPA also notes that regulation of distribution in the insurance sector has so far been less harmonised at Union level than distribution of financial instruments. EIOPA recommends therefore measures should be developed to set out a non-exhaustive list of circumstances where inducements can be taken to be for the benefit of the customer. These should be considered also in the context of the different business models in the insurance sector, so as to ensure sufficient clarity for insurance undertakings and intermediaries throughout the EU.

Any list of circumstances would be non-exhaustive, and would need to be carefully calibrated from both a positive perspective (that is, in terms of what it permits) and a negative one (that is, in terms of what it does not permit).

In EIOPA's opinion, it would also be useful to include a definition of "inducement" comprising any monetary or non-monetary benefits (including commissions) insurance undertakings and insurance intermediaries receive or pay in connection with the provision of insurance distribution activities from any party except the customer or a person on behalf of the customer, especially in order to make a clear distinction between inducements (third party payments) and remuneration (internal payments to employees of an insurance undertaking or insurance intermediary). Therefore,

remuneration has to be distinguished from inducements and should be addressed separately.

EIOPA considers Article 26 (b) (i) of the MiFID Implementing Directive because of its abstract and high-level nature as appropriate disclosure rule to be transferred to the insurance sector.

EIOPA acknowledges that conflicts of interest may also arise with regard to remuneration paid by insurance undertakings or insurance intermediaries to their employees, which are involved in the distribution activities, especially if the remuneration is variable and based upon quantitative criteria. As EIOPA has pointed out in the Consultation Paper, further analysis is required in this regard in terms of how best to coordinate national approaches to the mitigation of these conflicts. This analysis is already underway.

6. Proportionality

Views of the respondents were split whether the principle of proportionality should be clarified in the implementing measures and whether EIOPA should issue further guidance (such as examples of the practical application) at a later stage, if necessary.

Some respondents stressed the importance of the principle of proportionality, especially with regard to small and midsized intermediaries, and argued in favour of reiterating the principle in the implementing measures for legal certainty.

Some respondents spoke against further guidance by EIOPA arguing that the national regulators would be better placed to assess proportionality taking into account the specificities of the national markets.

Other respondents outlined that the principle of proportionality would be an overall concept applicable to all measures (and already mentioned in Level 1).

Some respondents shared EIOPA's concerns outlined in the Consultation Paper that a reiteration or specification would bear the risk that the application of the general principle becomes unclear or that the objectives of the new requirements are not achieved.

EIOPA acknowledges the importance of the principle of proportionality, especially with regard to the impact new organisational requirements may have for small and midsize intermediaries. Because of the risk of creating loopholes and ways of circumvention EIOPA strongly rejects the idea of establishing exemptions for predefined market participants or of providing examples showing the minimum standard EIOPA is expecting which would ultimately create a safe harbour for all market participants.

Having taken into considerations the responses to the Consultation Paper EIOPA has modified its Technical Advice on the organisational measures and procedures for the proper management of conflicts of interest (see Chapter 4). Where the proposed specific organisational measures and procedures are not appropriate to manage and prevent conflicts of interest from damaging the interests of the customer, entities must demonstrate that alternative measures or procedures ensure that the distribution activities are carried out in accordance with the best interest of the customers and are not biased by conflicting interests of the insurance undertaking.

7. Investment Research

The responses to EIOPA's Consultation Paper have affirmed EIOPA's assumption that investment research does not belong to the typical business activities insurance undertaking and insurance intermediaries pursue. Therefore, EIOPA does not consider

it necessary to introduce specific organisational measures in this regard. Nevertheless, EIOPA would like to emphasize that the general rules on conflicts of interest apply in the unlikely event that insurance undertakings or insurance intermediaries produce investment research. In this case, EIOPA would expect that the entities take into consideration, when defining the organisational measures and procedures required under the general rules, the specific organisational requirements for investment firms which can be found in Article 24 and 25 of the MiFID Implementing Directive as general guidance.

Annex II: Impact assessment

Impact Assessment

for

EIOPA's Technical Advice

in response to the formal request of the European Commission

concerning Directive on Insurance Mediation (2002/92/EC) as amended by the Directive on Markets in Financial Instruments (2014/65/EU)

1. Procedural issues and consultation of interested parties

EIOPA received a formal request (mandate) from the Commission on 19 May 2014 to provide technical advice on a possible Delegated Act concerning Directive 2002/92/EC on Insurance Mediation amended by the Directive on Markets in Financial Instruments repealing Directive 2004/39/EC (Directive 2014/65/EU).

In order to provide market stakeholders with an early orientation on issues that are addressed in the Technical Advice to the Commission and to gather feedback from the market, EIOPA published a Discussion Paper on 21 May 2014.

On 1 October EIOPA published a Consultation Paper giving stakeholders the possibility to comment on EIOPA's considerations how to respond to the Commission's request for Technical Advice. In the Consultation Paper on Conflicts of Interest in direct and intermediated sales of insurance-based investment products, EIOPA raised specific questions related to the impact asking stakeholders, in particular how they would estimate the costs and benefits of the policy proposals presented.

Most respondents pointed out that it would be difficult to assess the exact costs and benefits for different options. However many respondents from the industry were concerned that the policy proposal would have severe impacts, especially for small and medium sized entities. Therefore they strongly advised that special attention should be given to the principle of proportionality and the questions whether the new requirements would not only result in administrative burden, but would also offer tangible benefits for the customers.

They also noted that the real impact may differ from Member State to Member State having in mind that some Member States such as Belgium would have already introduced for the insurance sector equivalent or similar requirements to those in the MiFID Implementing Directive, while others have not. Others pointed out that some insurance undertakings and insurance intermediaries would have, on a voluntary basis, implemented organisational measures and procedures to manage conflict of interest and would be obliged to adapt their internal procedures. Areas where additional costs could be expected would comprise among others, Legal services to assist the implementation of the new rules, Compliance services to monitor the application of the new rules, the establishment of new IT-systems, as well as staff training to educate employees with regard to the new requirements.

In the long term, respondents predicted that the new rules could reduce their revenue streams and in their view could impair competition as in their view fewer competitors would enter the market and while some competitors might exit the business due to increased administrative costs potentially resulting in a reduced choice for consumers. Some respondents also expressed their concerns that financial advice could become unaffordable for many customers if they would be charged (higher) fee as consequence of the additional administrative burden entities would have to bear. . Others pointed out that the cumulative effect of costs of regulation should be considered and referred to parallel legislative procedures such as the ongoing revision of the Insurance Mediation Directive, the PRIIPS Regulations as well as Solvency II.

As benefits for customers respondents mentioned increased transparency which would enable customers to make better informed decisions. Referring to several cases of mis-selling some respondent emphasized that the current legal framework would have failed to sufficiently protect customers, and emphasized the need for more stringent rules. Respondents highlighted the need for harmonized rules from a consumer protection perspective, arguing that the same set of principles should apply for

products which would be substitutable. Aligning the rules would help to mitigate competitive distortions as well as regulatory arbitrage.

2. Problem definition

The revision of the Directive 2004/39/EC of the European Parliament and of the Council on Markets in Financial Instruments (hereafter "MiFID") introduced new amendments to the Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (hereafter "IMD").

The amendments comprise new organisational requirements for insurance undertakings and insurance intermediaries with regard to conflicts of interests that arise in the context of the distribution of insurance-based investment products. The amended Article 13b IMD requires insurance undertakings and insurance intermediaries to take all reasonable steps to prevent conflicts of interest from adversely affecting the interests of their customers. The amended Article 13c IMD requires insurance undertakings and insurance intermediaries to identify and manage conflicts of interest that arise in the course of carrying out insurance distribution activities. The amended Article 13c (3)(a) and (b) empowers the Commission to adopt delegated acts to further define the steps insurance undertakings and insurance intermediaries have to take to identify, prevent, manage and disclose conflicts of interest, as well as to establish criteria for determining the types of conflict of interest that may damage the interests of the customers.

An equivalent set of rules for investment firms providing investment services in financial instruments has already been introduced through MiFID in 2004. These provisions have been specified by the Directive 2006/73/EC implementing Directive 2004/39/EC of the European Parliament and of the Council as regards the organisational requirements and operating conditions for investment firms (hereafter "MiFID Implementing Directive").

The underlying rationale of the amendments of IMD is that insurance-based investment products are often made available to customers as potential alternatives or substitutes to financial instruments. In order to provide consistent protection for customers and ensure a level playing field between similar products, it is important that the distribution of insurance-based investment products is subject to comparable regulatory requirements. Therefore, the objective pursued by the European legislator is to address the issue of an uneven playing field across the different financial sectors hindering fair competition in the market, as well as to abolish regulatory inconsistencies leading to a patchwork of consumer protection.

As outlined above, the amendments of IMD require insurance undertakings and insurance intermediaries to take all reasonable steps to prevent conflicts of interest from adversely affecting the interests of their customers. This is justified by the fact that conflicts of interest, independent from the question whether they arise in the context of the provision of investment services or the distribution activities of insurance intermediaries and undertakings, raise concerns about consumer detriment. In the case of a conflict of interest, there is the inherent risk that the conflict is inappropriately managed and resolved to the disadvantage of the customer.

The amendments of IMD dealing with conflicts of interest neither specify which criteria should be applied for the identification of conflicts of interest that may arise with regard to the distribution activities of insurance undertakings and insurance intermediaries, nor stipulate organisational measures to be considered for the management of conflicts of interested identified by insurance undertakings and insurance intermediaries.

Different from the regulatory regime under MiFID and its implementing Directive as circumscribed above, the new provisions of IMD, due to their abstract wording, would leave a broad discretion to National Competent Authorities (NCAs) and regulated entities as to how these requirements are applied in practice. This would result in a divergent implementation and application contrary to the objective to foster a level playing field.

In order to avoid regulatory arbitrage and to contribute to a homogenous application of the new organisational requirements for insurance undertakings and insurance intermediaries it is therefore necessary to specify these requirements through implementing measures.

As the data provided by stakeholders in response to the EIOPA's Consultation Paper on Conflicts of Interest is not sufficiently representative to allow a reliable assessment of the quantitative impacts, the following analysis will focus on the qualitative impacts following from the Technical Advice.

With respect to studies mandated by the Commission, which have addressed the question of how the application of the rules of conduct and the organisational requirements of MiFID would impact the insurance sector the following analyses are of particular importance:

- Impact Assessment accompanying the Commission's Proposal to recast the Directive on Markets in Financial instruments (published on 20 October 2011): http://ec.europa.eu/internal_market/securities/docs/isd/mifid/SEC_2011_1226_en.pdf

- Study on the Costs and Benefits of Potential Changes to Distribution Rules for Insurance Investment Products and other Non-MIFID Packaged Retail Investment Products (published on 29 October 2010): http://ec.europa.eu/internal_market/consultations/docs/2010/prips/costs_benefits_study_en.pdf

- Impact Assessment accompanying the Commission's Proposal to recast the Directive on Insurance Mediation: http://ec.europa.eu/finance/insurance/docs/consumers/mediation/20120703-impact-assessment_en.pdf

Baseline

When analysing the impact of alternative proposed policies, the impact assessment methodology uses a baseline scenario as the basis for comparing policy options. This helps to identify the incremental impact of each policy option considered.

The aim of the baseline scenario is to explain how the current situation would evolve without additional regulatory intervention.

The baseline is based on the current situation of the market, which is considered to be composed of the content of the amended Insurance Mediation Directive and in particular Article 13c IMD.

3. Objective pursued

The empowerment of the Commission to adopt delegated acts to specify the organisational measures insurance undertakings and insurance intermediaries should take in order to identify and manage conflicts of interests was introduced in the

Insurance Mediation Directive (IMD) through Article 91 of Directive 2014/65/EU (MiFID II), which introduced general rules of conducts in relation to insurance-based investment products. The empowerment did not appear in the original legislative proposal by the Commission for the revision of Directive 2004/39/EC (MiFID I), but was only introduced at a later stage of the legislative procedure by way of amendment. Therefore, no indication about the objectives pursued can be found in the original legislative proposal of the Commission.

The Recitals of Directive 2014/65/EU (MiFID II) indicate that the objectives of the legislator are to deliver consistent protection for retail clients and to ensure a level playing field between similar products. Against this background the objectives of the Technical Advice are:

- to encourage consistent application of the organisational measures insurance undertakings and insurance intermediaries should take to manage conflicts of interest that arise in the course of carrying out distribution activities in insurance-based investment products;
- to foster a level playing field regarding the distribution of financial products, which compete with each other and are substitutable from a consumer point of view;
- to enhance consumer protection through provisions addressing conflicts of interest arising in the context of the distribution of insurance-based investment products and potentially creating the risk of consumer detriment.

4. Policy Options

The policy considerations were essentially governed by the Commission's request to achieve as much coherence and consistency as possible between the Technical Advice EIOPA is supposed to provide to the Commission and the regulatory framework under MiFID, especially the organisational requirements to be found in the Implementing Directive of MiFID (2006/73/EC).

In order to meet these predefined specifications, EIOPA's analysis focused on the question whether the requirements of the Implementing Directive of MiFID could be transferred and if so, to which extent modifications would be necessary to meet the specificities of the insurance sector.

For the Technical Advice on the possible content of the delegated acts EIOPA has considered the Policy Options outlined below. The delegated acts the Commission is empowered to adopt pursuant to Article 13c (3) of the Insurance Mediation Directive as amended by MiFID II shall

- define the steps that insurance intermediaries or insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when carrying out insurance distributions activities; and
- establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking.

Policy Issue 1: With regard to the Commission's request to establish appropriate criteria for the identification of conflicts of interest

With regard to Commission's request to establish appropriate criteria for the identification of conflicts of interests EIOPA has considered the following options:

- **Policy Option 1**: To implement Article 21 of the MiFID Implementing Directive defining the criteria regulated entities are required to apply for the identification of conflicts of interests.

Article 21 of the MiFID Implementing Directive reads as follows:

"Member States shall ensure that, for the purposes of identifying the types of conflict of interest that arise in the course of providing investment and ancillary services or a combination thereof and whose existence may damage the interests of a client, investment firms take into account, by way of minimum criteria, the question of whether the investment firm or a relevant person, or a person directly or indirectly linked by control to the firm, is in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise:

(a) the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;

(b) the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;

(c) the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;

(d) the firm or that person carries on the same business as the client;

(e) the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service."

- **Policy Option 2**: To modify Article 21 of the MiFID Implementing Directive in order to mirror two additional instances where EIOPA believes that conflicts of interest may arise (see amendments in letter (c) and letter (d)).

This Policy Option reads as follows:

"For the purpose of identifying the types of conflict of interest that arise in the course of carrying out any insurance distribution activities and which entail the risk of adversely affecting the interests of a customer, insurance intermediaries and insurance undertakings should assess whether they, including their managers, employees and tied insurance intermediaries, or any person directly or indirectly linked to them by control, have an interest related to the insurance distribution activities which is distinct from the customer's interest and which has the potential to influence the outcome of the services at the detriment of the customer.

This shall at least be assumed in situations including the following:

a. the insurance intermediary, insurance undertaking or linked person is likely to make a financial gain, or avoid a financial loss, at the expense of the customer;

b. the insurance intermediary, insurance undertaking or linked person has a financial or other incentive to favour the interest of another customer or group of customers over the interests of the customer;

c. the insurance intermediary, insurance undertaking or linked person receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer.

d. the insurance intermediary, persons working in an insurance undertaking responsible for the distribution of insurance-based investment products or linked person are involved in the management or development of the insurance-based investment products."

Policy Issue 2: With regard to the Commission's request to define steps insurance undertakings and insurance intermediaries should take to manage conflicts of interest.

With regard to Commission's request to specify the organisational measures insurance undertakings and insurance intermediaries should take in order to manage conflicts of interest EIOPA has considered the following options:

- **Policy Option 1**: To introduce the general principle of Article 22 of the MiFID Implementing Directive obliging insurance undertakings and insurance intermediaries to establish an effective conflicts of interest policy in writing in order to ensure that the relevant activities are provided at an appropriate level of independence without specifying concrete organisational measures undertakings should consider for that purpose.

- **Policy Option 2:** To implement Article 22 of the Implementing Directive specifying the organisational measures and procedures regulated entities should take to manage conflicts of interest.

Article 22 of the MiFID implementing Directive reads as follows (wording would have to be aligned to the insurance vocabulary, e.g. "client" has been replaced by "customer"):

"1. Member States shall require investment firms to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the firm and the nature, scale and complexity of its business. Where the firm is a member of a group, the policy must also take into account any circumstances, of which the firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

(a) it must identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the investment firm, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients;

(b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.

3. Member States shall ensure that the procedures and measures provided for in paragraph 2(b) are designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in paragraph 2(a) carry on those activities at a level of independence appropriate to the size and activities of the investment firm and of the group to which it belongs, and to the materiality of the risk of damage to the interests of clients. For the purposes of paragraph 2(b), the procedures to be followed and

measures to be adopted shall include such of the following as are necessary and appropriate for the firm to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out investment or ancillary services or activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest.

If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, Member States shall require investment firms to adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

4. Member States shall ensure that disclosure to clients, pursuant to Article 18(2) of Directive 2004/39/EC, is made in a durable medium and includes sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the investment or ancillary service in the context of which the conflict of interest arises".

- **Policy Option 3**: To modify Article 22 of the MiFID Implementing Directive in order to allow insurance undertakings and insurance intermediaries to demonstrate that alternative measures and procedures are appropriate to ensure that the distribution activities are carried out in accordance with the best interest of the customers and are not biased by conflicting interests.

  This Policy Option reads as follows:

  "1. Insurance intermediaries and insurance undertakings should establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business. Where the insurance intermediaries or insurance undertaking is a member of a group, the policy must also take into account any circumstances, of

which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph 1 should include the following content:
(a) it must identify, with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of adversely affecting the interests of one or more customers;
(b) it must specify procedures to be followed and measures to be adopted in order to manage and prevent such conflicts from damaging the interests of the customer of the insurance intermediary or insurance undertaking, appropriate to the size and activities of the insurance intermediaries or insurance undertaking and of the group to which they belong, and to the materiality of the risk of damage to the interests of customers.

3. For the purpose of paragraph 2(b), the procedures to be followed and measures to be adopted shall include, where appropriate, in order to ensure that the distribution activities are carried out in accordance with the best interest of the customers and are not biased by conflicting interests of the insurance undertaking, the insurance intermediaries or another customer, the following:
(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may damage the interests of one or more customers;
(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;
(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out insurance distribution activities;
(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in insurance distribution activities where such involvement may impair the proper management of conflicts of interest.

If insurance intermediaries and insurance undertakings demonstrate that those measures and procedures are not appropriate to ensure that the distribution activities are carried out in accordance with the best interest of the customers and are not biased by conflicting interests of the insurance undertaking, the insurance intermediaries or another customer, insurance intermediaries and insurance undertakings must adopt adequate alternative measures and procedures for that purpose.

4. Insurance intermediaries and insurance undertaking should ensure that disclosure, pursuant to Article 13c (2) of IMD, is a step of last resort that can be used only where the effective organisational and administrative measures established by insurance intermediaries and insurance undertakings to prevent or manage conflicts of interests in accordance with Article 13b of IMD are not

sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the customer will be prevented.

5. Insurance intermediaries and insurance undertaking should make that disclosure to customers, pursuant to Article 13c (2) of IMD, in a durable medium. The disclosure should include sufficient detail, including the risks to the customer that arise as a result of the conflict and the steps undertaken to mitigate these risks, to enable that customer to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

6. Insurance intermediaries and insurance undertakings should assess and periodically review – at least annually – the conflicts of interest policy established in accordance with this article and to take all appropriate measures to address any deficiencies.

7. Without prejudice to the provisions of this article, EIOPA may develop guidelines in relation to the procedures and measures referred to in paragraph 2. The guidelines should specify the respective risk addressed as well explain the appropriateness of the proposed measures or procedures."

5. Analysis of Impacts

Impacts of Policy Options outlined in Chapter 4.

As the Policy Options with regard to the Policy Issue 1 and Policy Issue 2 outlined in Chapter 4 are closely linked and complementary to each other, it is appropriate and necessary to analyse their impacts all together. This is supported by the fact that the respective Policy Options differ only slightly and the following analysis focus on the qualitative aspects, only.

Benefits

For insurance undertakings and insurance intermediaries, the Policy Options with regard to Policy Issues 1 and 2 as outlined in Chapter 4 could provide the following benefits:

- Enhanced corporate governance: The Policy Proposal will enhance corporate governance mechanisms by which regulated entities are controlled and directed.
- Prevention of customer detriment and legal actions: The Policy Proposal will lower the risk of consumer detriment resulting from an improper management of conflict of interests and consequently lower the risk that costumers take legal action because of damages suffered.
- Increased customer confidence and decreased reputational risks: As outlined, the Policy Proposal will lower the risk of consumer detriment which simultaneously increase the customers' confidence and decrease reputational risks.
- Prevention of Regulatory arbitrage: Harmonised rules ensure equal treatment of entities located in different Member States (regulatory arbitrage with regards of entities of different origin) as well as alike treatment of entities distributing products different with regard to legal nature and regulation (cross sectorial regulatory arbitrage).

For customers, the Policy Options with regard to Policy Issues 1 and 2 as outlined in Chapter 4 could provide the following benefits:

- Enhanced consumer protection: The Policy Proposal aims to ensure that insurance undertakings and insurance intermediaries provide their services in the best

interest of their customers and conflicts of interest are not improperly resolved, to the detriment of the customer.
- Counterbalance to the customer's paucity of information: The Policy Proposal aims to counterbalance the customer's paucity of information since customers do not generally have the full picture of the extent to which insurance undertakings and insurance intermediaries are facing conflicts of interest.

For National Competent Authorities, the Policy Options with regard to Policy Issues 1 and 2 as outlined in Chapter 4 could provide the following benefits:

- Enhanced legal certainty: Implementing measures facilitate the application and understanding of Level 1 - requirements

Costs

For insurance undertakings and insurance intermediaries, the Policy Options with regard to Policy Issues 1 and 2 as outlined in Chapter 4 could involve the following costs:

- One-off costs as insurance undertakings and insurance intermediaries are required to take organisational and procedural measures for implementation (e.g. costs associated with project management and/or engagement with external consultants, the identification of conflicts of interest, the development or revision of conflicts of interest policies, the introduction of new IT systems, staff training).
- Ongoing costs as insurance undertakings and insurance intermediaries are required to periodically review and adapt their organisational measures and procedures, if necessary (including the periodic identification of conflicts of interest and revision of conflicts of interest policies, if necessary).

For customers, the Policy Options with regard to Policy Issues 1 and 2 as outlined in Chapter 4 could involve the following costs:

- Additional costs insurance undertakings and insurance intermediaries have to bear in order to implement the new regulatory requirements may be transferred to the customers rendering services and products more expensive.

For NCAs, the Policy Options with regard to Policy Issues 1 and 2 as outlined in Chapter 4 could involve the following costs:

- The need to supervise and enforce new rules.

Comparison of Options

- **Policy issue 1:**
  With regard to **Option 1** and **Option 2** EIOPA considers it generally appropriate to make recourse to Article 21 of the MiFID Implementing Directive and to transfer its principles in order to define appropriate criteria for the identification of conflicts of interest that may arise in the course of carrying out insurance distribution activities.

  Even though the wording in Article 21 of the MiFID Implementing Directive addresses investment firms only, EIOPA notes that the instances circumscribed in the provision are of a broad and abstract nature, such that they, in principle, can be applied very broadly across the different sectors of the financial services. The instances rather describe situations where conflicts of interest commonly arise when a commercial activity is pursued and the interests of clients are at stake. The

interest to make a financial gain at the expense of the clients is a good example. Consequently, EIOPA considers that the principles as laid down in Article 21 (a) – (e) MiFID Implementing Directive are also relevant for insurance intermediaries and insurance undertakings in the course of carrying out insurance distribution activities.

Nevertheless, EIOPA is of the opinion that Article 21 should be modified in order to address the following issues.

Firstly, a general circumscription of conflict of interest should be introduced to facilitate the understanding and application of the provision. This clarifies that the specific instances listed in letter (a) - (d) are only of exemplary nature and insurance undertakings and insurance intermediaries should focus on the general question whether they pursue interests which are distinct from the customers' interests and which have the potential to influence the services rendered at the detriment of the customer.

Secondly, it should be clarified that conflicts of interest may also arise if the distributors are involved in the development or management of products. For example, conflicts of interest arise where an intermediary exercises influence over how distribution costs that benefit the intermediary are embedded in the design of a product or where an intermediary is rewarded with a percentage of the management costs.

Thirdly, it should be clarified that conflicts of interest arise whenever the insurance intermediary receives a commission or fee paid by a third party, independent from the question whether the commission or fee corresponds with the market standard or not. This follows from the intermediary’s own interest to make a financial gain when providing services to the customers.

Against this background, **Option 2** seems to offer the preferable solution from EIOPA's point of view.

The aligned wording reads as follows:

"For the purpose of identifying the types of conflict of interest that arise in the course of carrying out any insurance distribution activities and which entail the risk of adversely affecting the interests of a customer, insurance intermediaries and insurance undertakings should assess whether they, including their managers, employees and tied insurance intermediaries, or any person directly or indirectly linked to them by control, have an interest related to the insurance distribution activities which is distinct from the customer's interest and which has the potential to influence the outcome of the services at the detriment of the customer.

This shall at least be assumed in situations including the following:

a. the insurance intermediary, insurance undertaking or linked person is likely to make a financial gain, or avoid a financial loss, at the expense of the customer;

b. the insurance intermediary, insurance undertaking or linked person has a financial or other incentive to favour the interest of another customer or group of customers over the interests of the customer;

c. the insurance intermediary, insurance undertaking or linked person receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer.

d. the insurance intermediary, persons working in an insurance undertaking responsible for the distribution of insurance-based investment products or linked person are involved in the management or development of the insurance-based-investment products."

- **Policy Issue 2:**
  Option 1 would offer insurance undertakings and insurance intermediaries a broad discretion and flexibility how to implement the organisational requirements. In addition to that, **Option 2** would require the entities to consider whether a catalogue of proposed measures [see Article 22 (3) of the MiFID Implementing Directive] is necessary and appropriate in order to manage conflicts of interest properly and ensure the prerequisite independence. EIOPA believes that the measures of Article 22 (3) do not only apply for investment firms, but have also a particular relevance to manage conflicts of interest arising in the context of the insurance distribution activities; for example "measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries … services or activities" may play a role in the relationship between a sales manager and employees advising customers with regard to insurance-based investment products.

  If the entities come to the conclusion and can demonstrate that the proposed measures and procedures are not appropriate, the entities are entitled, under **Option 3**, to adopt alternative measures to ensure that the services provided are not biased by conflicting interests of those entities. From EIOPA's perspective **Option 3** therefore offers the most appropriate solution.

Annex III: Resolution of comments

Summary of Comments on Consultation Paper - EIOPA-CP-14/041 Consultation Paper on Conflicts of Interest in direct and intermediated sales of insurance-based investment products	EIOPA-BoS-15-011 7 January 2015

EIOPA would like to thank Allianz SE, ANASF, Association of British Insurers (ABI), ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU, Association of Professional Financial Advisers, Assuralia, Austrian Insurance Association (VVO), BEUC, The European Consumer Organisation, BIPAR, Bund der Versicherten (BdV), BVI, CNCIF, EFAMA, European Federation of Financial Advisers and Fina, European Savings and retail Banking Group (ESBG), Fédération Française des Sociétés d'Assurances (, Federation of Finnish Financial Services, Federation of German Consumer Organisations, Finance Norway, Financial Services Consumer Panel, Financial Services User Group (FSUG), French Banking Federation (FBF), German Insurance Association, Groupement des Entreprises Mutuelles d'Assurance, Institute and Faculty of Actuaries, Insurance Europe, IRSG, Nordic Financial Unions (NFU), and Test Achats.

No.	Name	Reference	Comment	Resolution
1.	Allianz SE	General Comment	Allianz appreciates the opportunity to comment on the EIOPA Consultation Paper on Conflicts of Interest in direct and intermediated sales of insurance-based investment products (PRIIPs). Generally, Allianz agrees that conflicts of interest may exist in insurance distribution. They may take many forms and may have adverse effects on customers. Allianz also agrees that they need to be sufficiently mitigated to minimize adverse outcomes for customers. Fortunately, there are many measures to successfully avoid or mitigate such conflicts of interest and effectively ensure a	EIOPA takes note that already today insurance undertakings and insurance intermediaries are employing measures and procedures to manage conflicts of interest arising in the course of the distribution of insurance investment products. Because of the variety

			positive outcome for the customer. Allianz also supports an approach in line with recital (87) of MiFID II, which requests that the customer protection requirements should be applied equally to insurance PRIIPs, but to use a revision of IMD (rather than MiFID II) to "adequately reflect different market structures and product characteristics". This asks for a sufficiently differentiated approach in the design of rules, not just an identical adoption of MiFID rules. Typically, the potential for conflicts of interest in the insurance industry is already lower than in other businesses: ☐ The long-term character of distribution relationships supports alignment of interests between customers and distributors via reputation effects and mutual interest in the relationship. ☐ In the ordinary course of business there are typically no situations where an intermediary or insurance company has to position itself on the opposing side of a transaction, such as may be the case in M&A situations, proprietary trading or issuance of research. ☐ Insurance-based investment products are typically bought by the customer and are designed to be held to maturity. ☐ The insurance aspect of the products primarily focuses on coverage of external risks (such as longevity risks), which are outside the influence of all parties (insurer, intermediary and customer), so the core aspect of the transaction cannot be influenced by any conflict of interest.	of business models and conflicts of interest may arise EIOPA generally supports a principle-based approach. Nevertheless it seems appropriate to specify general principles in order to give guidance re EIOPA regulatory expectations. It should also be considered that the general principles are already laid down in the amended Insurance Mediation Directive ("Level 1") and EIOPA has been requested by the Commission to provide technical advice how these rules could be further specified.

			In addition, Allianz (and many other insures and distributors) already successfully employ many measures to address any remaining conflicts of interest, e.g. via its sales compliance principles, remuneration principles, product design principles and various supporting initiatives. Regarding adequate management of conflicts of interest, Allianz supports an effectiveness-oriented and principles-based approach to adequately address conflicts of interest with the customer's interest in mind as priority. Effectiveness: While conflicts of interest may pose serious risks, what matters most from the customer's point of view is, that the outcome of the advice or service he or she receives is overall beneficial. This effective result should take into account all positive and negative aspects, i.e. the potential risks for the customer's interest resulting from conflicts of interest as well as the costs and potential losses of any kind. This also includes costs associated with overly tight, partial or otherwise misguided rules. In addition, the rules have to follow the principle of proportionality (see also answer to Question 8). This effectiveness-oriented approach is consistent with Art. 13b of the amended IMD asking for "effective" arrangements and taking "all reasonable steps" to prevent conflicts of interest or otherwise create a sufficient level of transparency to allow the customer to take an informed decision. Principles-based approach: Allianz supports a principles-based approach that leaves sufficient room for a variety in the acceptable measures on Member State and company level to address the potentially adverse results from conflicts of	

			interest. In many cases, several different approaches can successfully avoid or mitigate the adverse potential arising from conflicts of interest. In practice, insurers, intermediaries, supervisors or legislators of Member States have successfully developed many such solutions that ensure a beneficial outcome for the customer. These solutions very often already take into account the fact that the burden or cost of any measure to mitigate conflicts of interest ultimately has to be borne by the customer. This can take the form of a higher product price or the loss of access to beneficial offers. The burden for the customer can be reduced if a variety of different arrangements for mitigation of conflicts of interest remain permissible, i.e. the prescriptions on a European level are not overly detailed. Another advantage of this approach is that it can equally be applied to distributors of all sizes (incl. sole traders, for more detail see Question 6 below). The principles-based approach is consistent with the wording of Art. 13a - 13d of IMD1.5 where wording such as "effective" and "sufficient", "all appropriate steps" or "reasonable expectations" indicate the intent of the legislator to permit a variety of measures and steps as adequate. This may also include disclosure as a measure (for more detail see answer to Question 7). By contrast, an extreme position that focuses on avoidance / mitigation of conflicts of interest in isolation and at any cost could be overly restrictive, in effect preventing many beneficial arrangements for customers. In particular, a blanket categorization of certain arrangements (such as certain remuneration structures) as problematic per se does not take a sufficiently holistic, effectiveness-driven perspective to act in the customer's overall best interest (see also answers to Questions 9 and 10). Allianz also supports the allocation of the primary responsibility for handling conflicts of interest risks to the distributor, which in turn should have enough flexibility to	

			ensure the design of effective arrangements for a solution. This is in line with Art. 13b which allocates ultimate responsibility (and liability) for adequate solutions to the distributor. This is adequate, given that the distributor typically has most knowledge about the immediate customer, the interaction and best access to successfully handle any adverse developments. In consequence, the distributor should be entrusted with the responsibility and means to make use of this knowledge and to design and implement an effective solution within certain bounds. This can best be achieved with broad "guardrails", principles-based requirements to calibrate conduct within these bounds and procedural safeguards to ensure implementation (e.g. including a conflicts-of-interest policy and effective organizational safeguards).	
2.	Association of British Insurers (ABI)	General Comment	The ABI welcomes the opportunity to respond to EIOPA's consultation paper 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 that 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 are; Consistency: The ABI supports applying general principles at a pan-European level; especially if this is on the basis that it will be consistent with the future revised Insurance Medication Directive (IMD 2). We welcome the fact that EIOPA will also take into account Member States such as the UK who have already carried across and implemented Markets in Financial Instruments Directive (MiFID) I conflicts of interest rules. In order to achieve this consistency with IMD 2 however, there needs to be sufficient flexibility in the proposed approach to allow Member States to apply the MiFID I rules in a way that best suits their market.	EIOPA is aware that some Member States such as the UK have already implemented rules on conflicts of interest for insurance intermediaries on the basis of MiFID I. As EIOPA has pointed out in its Consultation Paper and Technical Advice to the Commission that the rules on conflicts of interest of MIFID I are principally appropriate, but should be amended in order to take account specificities of the insurance sector and

			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 rules. Furthermore the level 2 provisions should be sufficiently clear at the Level 2 text and not need further guidance. If further guidance is necessary, it should be handled at the national supervisor's level. The amendments to IMD as laid down in Article 91 of MiFID 2 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 identifying, controlling and reviewing conflicts of interest. Under the Retail Distribution Review (RDR), which came into force in 2012, a ban on commission payments was introduced as a measure to address potential conflicts of interest relating to advised sales of insurance based investment products. . 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	to provide an approach as much as compatible and coherent with MiFID I as possible.

			inducements. This guidance is a good example of national supervisors taking action to address specific market developments. Furthermore whilst not addressed through the questions in the consultation paper, reference is made in section 7 to proposals in ESMA's consultation on MiFID II, to specify the details that firms have to periodically disclose to their clients with regard to third party payments. We agree that such payments should be transparent and be fully disclosed at the point of sale. We consider the relevant and the appropriate time for such disclosure is in advance of concluding contracts of insurance, so that the customer is able to make an informed decision on what may be a long term commitment. If EIOPA are considering whether to adopt similar requirements to those recommended by ESMA for periodic statements of such payments it is important to give proper consideration to the costs and benefits and the purpose they would serve given the pre-sale disclosure and the commitment made by the customer.	
3.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	General Comment	AILO welcomes the opportunity to respond to EIOPAs consultation paper on conflicts of interest in direct and intermediated sales of insurance-based investment products. Our responses reflect the difficulties met by distributors and providers who wish to avail themselves of the freedom to provide services cross border, not least due to the use of minimum harmonisation Directives. A further concern also voiced by Insurance Europe, is that there is currently no alignment between the draft IMD2 text and the PRIIPs Regulation so that is there is the danger of duplication or conflicting disclosure requirements and confusion rather than clarity for customers.	The decision to introduce a minimum harmonisation through the Insurance Mediation Directive has been made by the European legislative bodies. In its Technical Advice EIOPA pursues the goal to further harmonise the rules on conflicts of interest on an European level (not only cross-

				sectorial, but also cross-border).
4.	Association of Professional Financial Advisers	General Comment	1. The Association of Professional Financial Advisers (APFA) is the representative body for the financial adviser profession in the UK. There are approximately 14,000 adviser firms employing 81,000 people. 40% of investment and protection products are sold through financial advisers, with annual revenue estimated at £3.8 billion (£2.2 billion from investment business, £1.2 billion from general insurance and £400 million from mortgages). Over 50% of the population rank financial advisers as one of their top three most trusted sources of advice about money matters. As such, financial advisers represent a leading force in the maintenance of a competitive and dynamic retail financial services market. 2. APFA is a member of BIPAR, the European Federation of Insurance Intermediaries. It groups 52 national associations in 32 countries. Through its national associations, BIPAR represents the interests of insurance intermediaries (agents and brokers) and financial intermediaries in Europe. More information on BIPAR can be found on: www.bipar.eu 3. APFA welcomes this opportunity to respond to the EIOPA consultation on conflicts of interest in direct and intermediated sales of insurance-based investment products. Our response focusses on those questions that relate directly to the financial advice market in the UK. 4. We are also supportive of the representations made separately by BIPAR on behalf of the wider European insurance intermediary community.	Regarding the scope of the Technical Advice EIOPA would like to emphasize that Art. 13a – 13e of the amended IMD (including the empowerment of the Commission to adopt delegated acts) do only apply with regard to insurance-based investment products. Consequently, EIOPA's Technical Advice does only concern these products.

			5. The EIOPA draft technical advice refers to insurance distribution activities by intermediaries and insurers. In order to avoid confusion, it should be clarified throughout the text that the technical advice is about the distribution of insurance-based investment products. 6. The Commission's "Think small first" principle requires European legislation to take SME's interests into account and the Regulatory Fitness and Performance Programme ("REFIT") aims to make EU law simpler and to reduce regulatory costs. APFA hopes that EIOPA's technical advice to the European Commission will reflect these overarching principles and consider the impact on smaller businesses when making its recommendations. APFA's responses to the specific questions are set out below.	
5.	Assuralia	General Comment	The principles of articles 21, 22 and 26 of the MiFID implementing directive have been introduced in Belgian legislation by the Act of 30 July 2013 and have entered into force on 30 April 2014. This fact should by no means be understood as an ex ante approval of the MiFID2 level 2 measures on conflicts of interest, inducements and remuneration that ESMA is currently developing for banking products and investment funds. Insurance-based investment products and the distribution models used for them are not taken into account by ESMA when developing the MiFID2 level 2 measures on conflicts of interest (CP ESMA/2014/549).	EIOPA is aware of the fact that Belgium has already introduced the rules on conflicts of interest of MiFID for the insurance sector.
6.	Austrian Insurance Association (VVO)	General Comment	1. In the interest of workability rules based upon Articles 21 - 23 of Directive 2006/73/EC can't be applied sic et	EIOPA has amended its Technical Advice in

			simpliciter to the insurance sector. As stipulated by the European legislator in Directive 2014/65/EU (recital 87) the market structure and the characteristics of products in the insurance sector differ substantially from those in the securities sector. Replacing any references to 'investment services' with 'insurance distribution' will be largely insufficient. 2. Any rules on remuneration would exceed the empowerment of the European Commission to adopt delegated acts under Art 91 of Directive 2014/65/EU. 3. Self-employed insurance intermediaries in Austria are predominantly one-man businesses. Therefore organisational measures to manage conflicts of interest shall take a proportionate approach.	order to take account of the specificities of the insurance sector. As outlined in the Consultation Paper EIOPA thinks that the proposed rules entail general principles which do not only apply to the securities sector, but also to the insurance sector. Inducements give rise to conflicts of interest. As the mandate of the Commission asks to provide Technical Advice on conflicts of interest arising in the context of the distribution of insurance based investment products, EIOPA deems it necessary that the Technical Advice also addresses the conflicts of interest which result from inducements.
C 7.	Confidential response			
8.	BEUC, The European Consumer	General Comment	Firstly, BEUC would like to thank EIOPA for consulting stakeholders on conflicts of interest arising in direct and intermediated sales of insurance-based investment products.	Noted.

	Organisation		In general, conflicts of interest remain rampant in the provision of financial services and deserve adequate regulatory scrutiny. Concerning insurance-based investment products, BEUC has always emphasized that provisions governing life insurance should be fully in line with similar MiFID (II) provisions in order to achieve a level playing field between (substitutable) investment products. If not, competition distortions and regulatory arbitrage will remain, inducing more miss-selling cases and consumer detriment in the future. Hence, we strongly urge Eiopa to align its work on conflicts of interest with ESMA, which is in a similar process of tackling conflicts of interest, according to its mandate stemming from the revision of MIFID.	
9.	BIPAR	General Comment	BIPAR Register ID number: 58041461167-22 BIPAR is the European Federation of Insurance Intermediaries. It groups 52 national associations in 32 countries. Through its national associations, BIPAR represents the interests of insurance intermediaries (agents and brokers) and financial intermediaries in Europe. More information on BIPAR can be found on: www.bipar.eu Most intermediaries are small or micro-enterprises, located	EIOPA would like to point out that Article 12 of IMD requires entities only to disclose specific information to their customers. Under the new rules of the amended IMD entities will have to take further steps to

			near the customer. They render personalised services to mostly local private clients and smaller to mid-sized businesses. Some intermediaries operate internationally and contribute significantly to EU net exports. All intermediaries operate their businesses in a highly competitive environment with intense competition from alternative forms of distribution. Hundreds of thousands of small and medium-sized insurance intermediaries employing over one million people across the Member States and millions of consumers will be directly affected by the IMD I as amended by MIFID and later by the IMD II. Insurance intermediaries play a key role: o They help clients identify the risks they face; o They help clients in understanding and coping with the complexities of the insurance marketplace and reduce the clients' search costs by helping them to find the most appropriate insurance policy; o They may help clients obtain better terms on their policies due to the higher business volume they bring to insurance companies; o They help insurance companies reach potential clients without having to develop fully-fledged distribution networks; o They help insurance companies overcome their imperfect knowledge of the precise risk profile of each potential client. Because reputation is an important business asset of insurance intermediaries, they have every incentive to deliver	manage conflicts of interests appropriately. From a legal point of view EIOPA does not consider it important to clarify the scope of the Technical Advice as the underlying Level 1 provisions of the amended IMD (Art. 13a – 13e) do refer to insurance-based investment products, only.

			a quality service to the client, while presenting the risk being underwritten in a balanced and professional manner to the insurance companies. Insurance intermediaries help clients overcome potential market failures arising from high search costs and asymmetric information, provide some countervailing power to the large insurance companies and facilitate entry into the market by new insurance companies which do not have to develop fully-fledged distribution networks. Thus, intermediaries contribute to the competitiveness of their clients by ensuring that risk is transferred in the most cost-efficient manner. Intermediaries also play an important role in designing new and innovative solutions to risks to which their clients are exposed. It is also important to bear in mind that consumers have the choice to use or not to use intermediaries: they can find insurance without intermediaries and the competition from alternative distribution channels is growing. Consumers can switch intermediaries without switching the insurer. Insurers have the choice to use or not to use intermediaries. BIPAR welcomes the opportunity provided by EIOPA to comment on its "Consultation paper on Conflicts of interest in direct and intermediated sales of insurance-based investment products (PRIIPS)". BIPAR supports initiatives aimed at reinforcing consumer confidence and protection across the European Union. BIPAR	

			supports initiatives that bring clear and tangible benefits for consumers. BIPAR believes that it is essential that insurance intermediaries put in place reasonable and proportional systems to identify, manage and mitigate conflicts of interest. In this context it should be noted that IMD I already covers the issue of conflict of interests. With its Article 12, the IMD already addresses the issue, though not using the term "conflict of interest". The IMD requires intermediaries, on a contract-by-contract basis, to tell the customer whether they are giving advice based upon a fair analysis, or whether they have contractual obligations with one or more insurers. As a result, customers know where they stand at the outset of the relationship. In addition, the intermediary has to state in writing the reasons for any advice on a given insurance product and all this is supervised and controlled by the national supervisory authorities. The EIOPA draft technical advice refers to insurance distribution activities by intermediaries and insurers. In order to avoid confusion, it should be clarified throughout the text that the technical advice is about the distribution of insurance-based investment products. BIPAR would like to refer to the European "Think small first" principle that requires European legislation to take SME's interests into account and the European Commission's Regulatory Fitness and Performance Programme ("REFIT") that aims at making EU law simpler and at reducing regulatory costs. BIPAR hopes that the EIOPA technical advice to the European Commission concerning amendments related to conflicts of interest in Article 91 of the MIFID II to	

			the IMD, will request that implementing measures are "fit for purpose" through the effective use of smart regulation tools.	
10.	Bund der Versicherten (BdV)	General Comment	The Bund der Versicherten (German Association of Insured) would like to thank EIOPA for consulting stakeholders on conflicts of interest arising in direct and intermediated sales of insurance-based investment products.	Noted
11.	BVI	General Comment	We fully support the comprehensive alignment of conflict of interest standards relating to the distribution of insurance-based investment products with the provisions applicable under the MiFID regime. Such measure proposed by EIOPA is very much in line with the underlying idea of the EU PRIIPs initiative which is based on the recognition that product wrappers used to repackage investment propositions for retail investors are mostly interchangeable at the point of sale. Distribution of PRIIPs in general follows similar patterns and features similar conflicts of interest regardless of whether a product is attributable to the banking, insurance or asset management sector. Hence, it is in the very interest of effective investor/consumer protection that the key standards of proper conduct of business are consistently valid for all channels involved in the PRIIPs distribution. This applies in particular to rules governing the provision and reception of inducements as well as to other requirements for proper management of conflicts of interest. Since the inception of the PRIIPs initiative, BVI has been committed to promoting the idea of PRIIPs. Thus, we welcome the approach suggested by EIOPA for implementation of Articles 13b and 13c of the amended IMD as an important	Noted

			step towards a level playing field and effective protection of the consumer interests in the area of insurance distribution.	
12.	CNCIF	General Comment	The Chambre Nationale des Conseillers en Investissements Financiers (« CNCIF ») is a self-regulated organization in charge of the representation and defence of financial investment advisors. Financial investment advisors may provide insurance mediation services in the area of life-insurance and are very sensitive to the existence of a harmonized set of rules and requirements among their activities. Members of the CNCIF are usually in direct contact with end-user customers of financial products or services including insurance-based investment products and are therefore particularly well suited to provide their views on the questions raised by the EIOPA consultation paper on conflicts of interest in direct and intermediated sales of insurance-based investment products. In the time available it has not been possible to respond in depth to every aspect of the consultation paper but the CNCIF will be happy to contribute to the further development of the ideas in the paper.	Noted
13.	EFAMA	General Comment	EFAMA welcomes the opportunity to respond to EIOPA's Consultation Paper on Conflicts of Interest in direct and intermediated sales of insurance-based investment products. We fully support the alignment of conflict of interest standards between the distribution of insurance-based investment products under IMD and of financial instruments under MiFID. Generally speaking, the distribution of any form of packaged retail and insurance-based investment products (PRIIPs) is exposed to similar conflicts of interest, regardless of whether the product provider is in the banking, insurance or asset management sector. Hence, it is very much in the interest of effective investor protection that standards for proper conduct of business not only exist, but are consistent for all PRIIPs	Noted

			distribution channels. This applies in particular to the rules governing the provision and reception of inducements, as well as to other requirements for proper management of conflicts of interest. Since the inception of the PRIIPs initiative, EFAMA has been committed to supporting its successful delivery. Thus, we welcome the approach suggested by EIOPA for implementation of Articles 13b and 13c of the amended IMD as an important step towards a level playing field and effective protection of consumer interests in the area of insurance-based PRIIP distribution. Lastly, we would like to stress that a common approach on the issue of quality enhancement by EIOPA and ESMA is needed to ensure a level-playing field and therefore avoid potential conflicts in application of the rules for all types of PRIIPs.	
14.	European Federation of Financial Advisers and Fina	General Comment	1. Existing and pending legislation already allows retail investors - before buying a PRIIPs - to be fully aware of the fact that the insurance intermediary receives a commission or a fee paid by a third party. In most cases retail investors receive in advance and in written form the costs of the insurance product including the costs of advice. In view of the above, we are of the opinion that it should not be the role of EIOPA to decide on a standard rate of commissions and fees: such a system would prevent any form of free competition between operators and would not best serve consumers' interests. 2. An explicit reference to the principle of proportionality in the implementing measures for the amended IMD is absolutely necessary. FECIF members need and expect legal certainty for their daily business. 3. We ask for an accurate wording of the criteria of "quality enhancement". EIOPA's approach that quality	EIOPA would like to emphasize that it should be distinguished between the assumption that conflicts of interest arise when (standard) commissions / fees are paid by a third party and the question which measures / procedures should be applied to manage those conflicts of interest appropriately.

			enhancement could be assumed where intermediaries are able to show that inducements are used for the benefit of customers – that is, inducements are used in the interest of the customers, not only in the intermediary's interest – seems to be a good starting point. 4. A case-by-case assessment by the national supervisors to prove effective management of conflicts of interest is not practicable. Neither NCAs nor intermediaries would have enough resources to deal with such a degree of red-tape. 5. Level 2 should not do what is expected from level 1. We do think that EIOPA should help us to be compliant to level 1, not to complicate the situation with the remuneration model.	
15.	Fédération Française des Sociétés d'Assurances (	General Comment	26 boulevard Haussmann 75311 Paris - Cedex 09 FRANCE The French Federation of Insurance Companies (FFSA) has 240 member companies representing together 90% of the French insurance market, and close to 100% of the French insurance market internation business. It brings together French insurance companies, mutual insurance societies and the branch office of foreign insurance and reinsurance companies The FFSA would like to thank EIOPA for providing a feedback of the responses to its discussion paper as this feedback points out concerns that French insurance market entirely shares. We would like to stress, however, that these concerns are still remaining, especially in the context of the compulsory advised sales system in France.	EIOPA would like to emphasize that the COM has explicitly mandated EIOPA to address conflicts of interest resulting from inducements being aware that the IMD2 negotiations are ongoing. Once these negotiations will be terminated, it has to be decided whether the proposals of the Technical Advice need any alignment to be compatible with the outcome of IMD2.

			As we have already pointed out in our previous response to the discussion paper, delegated acts should be consistent with the final text of IMD2. For example , concerning conditions for inducements , the Council text of IMD2 proposes another criterion than the quality enhancement criterion of article 26 of the MIFID implementing directive. This issue is now addressed at the European legislator level and there is no reason why it should also be discussed in the context of level two measures. We agree that general principles could be an appropriate basis for EIOPA technical advice, as far as these principles are clear enough and make sense in the context of insurance products distribution. In this respect, we do believe it is crucial that the text of the level 2 measures is appropriate enough to be implemented by Member states without requiring further interpretation at EiOPA level. In any case issues addressed through these principles should remain within the limits of the delegation of article 13c para 3 of IMD.5. Even if the principle of proportionality is laid down in the Treaty and IMD.5, the FFSA considers that it should also be reflected in the wording of the delegated acts. Requiring from natural persons or small and medium sized intermediaries internal written policies and procedures would prove quite disproportionate . Heavy onerous burden should be avoided in a moment when Europe is looking for lifting growth, job creation and productivity.	
16.	Federation of Finnish Financial	General Comment	As a result of IMD 1.5 and on–going negotiation process on IMD2, there is a risk of two different sets of regimes for the	EIOPA would like to emphasize that the

	Services		selling practices of insurance-based investment products, entering into force one after another in a short timeframe. Even though IMD 1.5 rules might be revoked by IMD2 rules, there might be a transitional period of ½ to 1 years when IMD 1.5 would be applied. The regulators should now have the priority aim to avoid disparity and overlaps in the regulation of insurance PRIIPs. The FFI is in favour of increasing the clarity and transparency of insurance sales, as well as making it easier for customers to understand and compare the products. The administrative burden of service providers should not, however, be further increased without sound reasons. Regulation should seek to avoid over-regulation and sufficiently acknowledge the differences between different sales channels and insurance products, their complexity and risks. The FFI supports the uniform conduct of business regulation of similar investment products that is insurance PRIIPs and other investments under the MiFID regime. However, there are certain insurance specificities which need to be taken into account when formulating the rules on insurance PRIIPs. These specificities relate to the specific structure of insurance PRIIPs (a two-level structure with a wrapper and underlying funds). A simple copy pasting of MiFID2 rules into insurance PRIIPs would not be sufficient and the aim should be to create a coherent set of selling rules for insurance PRIIPs products. We also like to point out that level playing field requirement works in both ways. Insurance products should not be regulated more tightly than other PRIIPs products under MiFID regime. This might happen if IMD 1 and 1.5 rules are applied at the same time.	COM has explicitly mandated EIOPA to specify the new organisational rules under IMD 1.5 being aware that the IMD2 negotiations are ongoing. Once these negotiations will be terminated, it has to be decided whether the proposals of the Technical Advice need any alignment to be compatible with the outcome of IMD2.
17.	Federation of German Consumer Organisations	General Comment	Firstly, the vzbv (Federation of German Consumer Organisations) would like to thank EIOPA for consulting stakeholders on conflicts of interest arising in direct and intermediated sales of insurance-based investment products.	Noted.

			In general, conflicts of interest remain rampant in the provision of financial services and deserve adequate regulatory scrutiny. Concerning insurance-based investment products, the vzbv has always emphasized that provisions governing life insurance should be fully in line with similar MiFID (II) provisions in order to achieve a level playing field between (substitutable) investment products. If not, competition distortions and regulatory arbitrage will remain, inducing more miss-selling cases and consumer detriment in the future. Hence, we strongly urge EIOPA to align its work on conflicts of interest with ESMA, which is in a similar process of tackling conflicts of interest, according to its mandate stemming from the revision of MIFID.	
18.	Finance Norway	General Comment	Finance Norway welcomes the opportunity to provide our views on the conflicts of interest rules in direct and intermediated sales of insurance-based investment products. Based on Finance Norway representing the whole of the financial sector, our basic position is that to improve investor protection, and to further develop a level playing field, it is important to avoid regulatory arbitrage between insurance-PRIIPs and other investment products. The clients and the purpose of the delegated acts - to prevent conflicts of interests – are the same, and many of the products are often exchangeable. This should be reflected in a proper balance between the different parts of the legislation, i.e. MiFID II, IMD II and PRIIPs. It is not uncommon that banks are the main channels for the distribution of insurance-PRIIPs and investment products. Indeed, in some northern European countries this is the rule. Crafting the conflicts of interests-rules in IMD on the MiFID is therefore welcome and will pre-empt regulatory arbitrage in	Noted.

			this area. However, Finance Norway would support a clarification in the level 2-text that the principle of proportionality should be applicable.	
19.	Financial Services User Group (FSUG)	General Comment	The Financial Services User Group (FSUG) is the expert group set up by the European Commission following the core objective "to secure high quality expert input to the Commission's financial services initiatives from representatives of financial services users and from individual financial services experts". The FSUG welcomes this opportunity to respond to EIOPA's consultation on conflicts of interest in direct and intermediated sales of insurance-based investment products. The members of the FSUG have followed the discussions around the drafting of the revised Markets in Financial Instruments Directive and its application to insurance-based investment products with close interest. This is a piece of legislation that deals with some issues at the heart of consumer protection in financial services, especially the issue of conflicts of interest and inducements. We agree with EIOPA's aim to achieve wide-ranging alignment between the regulatory regimes for investment products and insurance-based investment products and welcome several of the proposals in the paper in this regard. However, we have also identified potential gaps in this alignment and general shortcomings in the provisions of MiFID II, particularly with regard to the treatment of inducements. In our view, the provision of monetary and non-monetary inducements is the most relevant source of conflicts of interest with regard to harm caused to retail clients. Everything should therefore be done to avoid the creation of situations in which such conflicts could arise. We believe that the new regulatory regime is still at risk of allowing such	Noted. Noted. Noted. Noted.

			situations and have in our response highlighted additional measures which should be taken to prevent this from happening.	
20.	French Banking Federation (FBF)	General Comment	Identification number: 09245221105-30 French banks offer their customers a wide range of product lines and services to best meet their expectations concerning everyday banking, the financing of their projects, the investment of their savings and their insurances. Through their various activities, French banks have always fought for a greater coherence between the regulatory texts for efficiency reasons and for the interests of customers. Although we understand the aim sought by Article 91 of MiFID2 (Namely the alignment of the rules laid down in MIFID 1 for investment insurance products, through the modification of IMD 1), its implementation is quite surprising. It is strange to edit a text (IMD1) which is itself currently under review (IMD2). At the same time reference is made, for this modification, to measures of MiFID, which have been modified with MiFID 2 and MIFIR, themselves subject to clarification which will be made by delegated acts for which the technical advice of ESMA are not even yet finalized. This uncertainty penalizes companies in defining their development plans, unable to fully understand the legal environment in which they evolve or worse forced to change their organization at high frequency to track the successive regulatory developments. Thus, it seems better to wait for the stabilization of the IMD2 text and the publication of the delegated acts of MIFID2.	Noted. Noted. Noted. EIOPA would like to refer to the mandate of the Commission to align the Technical Advice with the MiFID rules for the sake of a level playing field. EIOPA would like to emphasize that EIOPA has been requested by the Commission to provide Technical Advice despite the ongoing IMD 2 negotiations.
21.	German Insurance Association	General Comment	Wilhelmstr. 43G, 10117 Berlin (ID Number 6437280268-55) The prevention and adequate management of conflicts of interest are key requirements for any long-term relationship built on trust between insurance undertakings or	EIOPA would like to stress that its intention is not to anticipate the IMD2 outcome, but to

			intermediaries and their customers. Moreover, effective consumer protection is being guaranteed this way. When drafting proposals on Level 2 provisions regarding Article 91 of MiFID2, Article 13c(3) of IMD1, EIOPA should focus on its function as supervisory authority and take account of the following issues: - The recast of the Insurance Mediation Directive (IMD2) has not yet been completed. For this reason, it is not yet apparent what additional measures regarding the management of conflicts of interest will be adopted in IMD2. Recommendations submitted to the EU Commission on the admissibility of commissions, in particular, must not undermine the provisions stipulated by the European Parliament on this issue, since this would mean an anticipation of the final regulation in IMD2. Moreover, EIOPA measures should be covered by the empowerment. All significant aspects need to be set out in the basic legislative act. - Contradiction to the intention of the European Parliament The European Parliament has decided to refrain from stipulating a ban on commissions in IMD2. Member States shall rather have the possibility to stipulate and maintain a ban on commissions with respect to the distribution of insurance-based investment products at national level. The Council had already agreed on such a principle within the scope of the still ongoing consultations on IMD2 under Greek Presidency. Both decisions are to be seen in the light of the agreement on Article 91 of MiFID2, Article 13d(3) of IMD (IMD1.5), in which the Member State option has been stipulated by law. It is contrary to the understanding of democracy if EIOPA explicitly disregards the desire expressed	respond to the request of the Commission to recommend how the new rules of IMD 1.5 could be specified further. EIOPA's work and the scope of the Technical Advice have been defined by the mandate.

			by the legislator. Any other provision – if it may lead to a ban on certain commissions through Levels 2 and 3 – would exceed the threshold set out in the basic act. - Undue anticipation of IMD2 provisions Apart from that, the proposal made by EIOPA is an undue anticipation of the regulation on IMD2, which has not yet been completed, since the provision suggested by EIOPA with respect to Level 2 corresponds to the proposal stipulated in the first subparagraph of Article 24(10), which is currently being discussed by the Council. Whether and in what form this proposal will be adopted in the final IMD2 depends on the course of the trilogue negotiations. On the one hand, the issue of a ban on commissions has also been debated vigorously among the Member States (cf. the controversial discussions prior to the agreement of the Council on a general approach at the beginning of November 2014). On the other hand, the European Parliament explicitly rejected a ban on commissions in its decision on IMD2. German insurers support the decision of the European Parliament in this respect and call upon EIOPA to comply with the future basic act. Only this way, the already declared intention of the co-legislators to refrain from stipulating a ban on commissions at European level will be fully taken into account. - Going beyond the authorization With the introduction of a concrete criterion regarding quality enhancement for commission-based advice, EIOPA goes beyond the authorization by the Commission mandate. The wording of the mandate does not stipulate the creation of such a criterion. Excessive criteria on the admissibility of commissions are leading to a de-facto ban on commission-	

			based advice. The intention of the legislator to refrain from stipulating a ban on commissions at European level in IMD 1.5 is being undermined by means of the conflicts of interest issue. - Potential conflicts of interest differ significantly according to the nature and size of the intermediary. The conflicts of interest of intermediaries which mainly act as sole traders usually differ from the conflicts of interest of insurance undertakings and large intermediaries. For provisions at Level 2 to be appropriately applicable in practice, they should not only be designed as high level principles but also take account of the principle of proportionality. In this respect, EIOPA must also consider whether there might be any amendments to Article 13c or Article 13d of IMD1 within the scope of the trilogue on IMD2, which would require an adjustment of the recommendation (see also the general approach of the Council, Article 22a of IMD2). - The Consultation Paper has obviously been based on the assumption of EIOPA that commission-based advice always involves the risk of potential conflicts of interest (page 11 and section 7 on pages 21-25 of the Consultation Paper, for instance). From our point of view, this assumption is not correct since it does not take account of the following: - Due to their design, commission-based models can also be very beneficial to customers. Customers will not be burdened with any costs until they actually take out a policy that suits their needs. Customers will obtain expert advice by an intermediary, the outcome of which can also be that no contract is being concluded. In that case, customers obtain	

			expert advice and the commitment of the intermediary in terms of time without being obliged to provide a counterpart for this service in return. As compared to a fee-based approach, this approach enables the customer to be provided with cost-effective guidance and advice on several options available. - The commission-based model can serve different interests involved: intermediaries rely on long-term customer relationships and loyal customers. A good relationship between intermediaries and customers is indispensable for this purpose. However, it can only be good if there is an honest and constructive relationship between intermediaries and their customers. Commissions and good advisory services are therefore by no means opposed to each other. Moreover, intermediaries are subject to liability in case of near-term cancellation ("Stornohaftung"). Short-term maximization of commissions does therefore not provide a sustainable benefit to intermediaries. Hence, intermediaries can only be successful in the long term if their customers are satisfied. It is therefore in the own interest of the intermediary to act/provide advice in the interest of the customer in order to maintain the customer relationship in the long term. - If there is a reason to actually give advice, agents as well as brokers have already been obliged by law to provide advice to customers which is in the customers' interest. Insurance brokers are subject to this obligation due to a direct contract with the customer (broker agreement), while intermediaries are subject to the obligation due to German law (each based on IMD1). Recommendations by intermediaries that are contrary to the obvious interests of their customers result in the fact that customers might claim compensation from the intermediaries.	

			- Moreover, the proposed provisions remain vague and indefinite at many points. There are concerns with respect to the requirement of certainty. Instead, reference is being made to future guidelines and good practice reports by EIOPA, which have not been provided for in the basic act. Better clarifying the intentions at the cornerstones at Level 2 would generally provide greater legal certainty. The guidelines also give rise to some questions with respect to the timeframe and consideration in case of implementation within a specified period of time respectively.	
22.	Groupement des Entreprises Mutuelles d'Assurance	General Comment	GEMA welcomes the opportunity to contribute to the discussion on conflicts of interest in direct and intermediated sales of insurance-based investment products. GEMA is an association of mutual insurers. It provides a mutualist vision for economic, legal and social problems of the insurance and reinsurance market. GEMA's 69utual mainly distribute insurance products by mean of direct sales. Among them, a minority distribute insurance-based investment products through intermediaries. GEMA is surprise to be anew confronted with such a consultation, since we consider that it is premature to work on possible delegated acts on conflicts of interests as long as discussions are still ongoing on IMD2 and particularly on chapter VII of the draft directive.	EIOPA does not intend to impinge on the ongoing negotiations to review IMD, but to respond to the explicit mandate of the COM.

23.	Institute and Faculty of Actuaries	General Comment	The IfoA has three specific comments on the draft: ☐ The IfoA welcomes EIOPA's approach to dealing with conflicts of interest by having a focus on principles, rather than on proposing detailed rules. The wide ranging nature of these products would make the implementation of detailed rules impossibly difficult; therefore, enabling Member States to apply the principles in the most appropriate manner is likely to be the best approach. ☐ The IfoA welcomes EIOPA's view that the implementation of any measures should be proportionate. ☐ There are broad similarities between investment products within the remit of the Markets in Financial Instruments Directive (MiFID) and insurance-based products that lie within the scope of the Insurance Mediation Directive (IMD). As a consequence, any measures that consider conflict of interest should be consistent across both sets of products to ensure a level playing field.	EIOPA agrees.
24.	Insurance Europe	General Comment	Insurance Europe welcomes the opportunity to comment on EIOPA's consultation paper on conflicts of interest in direct and intermediated sales of insurance-based investment products. We would like to stress, however, that discussions are still ongoing on IMD 2 and trialogue negotiations have yet to take place, which will have a significant impact on the rules applicable to insurance-based investment products. EIOPA should therefore avoid tackling issues that are neither within the remit of the IMD 1.5 provisions, nor are certain to be included in the final IMD 2 text, such as a quality enhancement criterion or a disclosure of inducements criterion. To do so would be to seriously undermine the political decisions taken by the European co-legislators. We would support a recognition of the need to take into	EIOPA does not intend to impinge on the ongoing negotiations to review IMD, but to respond to the explicit mandate of the COM. Re the principle of proportionality EIOPA would like to point out that the wording of the Technical Advice has been modified to emphasise the application of this principle.

			account the principle of proportionality. Many distributors of insurance products are small and medium sized enterprises and in some cases are run by one self-employed individual, where a separation of functions would simply not be possible, so any measures developed should not give rise to an onerous regulatory burden for SMEs. National regulators are best placed to assess proportionality, as 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 in corporate governance regimes and practices. In many Member States, SMEs are involved in the distribution of complex products, many of which are managed by one person. A separation of functions requirement, as introduced in asset management in order to manage conflicts of interest, would put a heavy burden on the market and force SMEs to cooperate with other SMEs or just stop their business. Insurance Europe also wishes to express its concerns at the number of instances where EIOPA is seeking to elaborate on the MiFID implementing measures by means of guidelines or opinions. There should be an important role for national supervisors when it comes to tailoring these general rules to the particular circumstances of local consumers. We do not agree, however, that there should be further specification of these principles in the form of EIOPA guidelines. It is crucial to find an appropriate and suitable wording in the text of the Level 2 measures that enshrines clarity and precision, and does not require further interpretation at a later date.	Re guidelines EIOPA disagrees and believes that guidelines can be an appropriate instrument in order to respond to future market developments in a flexible way or in cases where market participants require more guidance on the application of general principles.
25.	IRSG	General Comment	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.	Noted.

			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. The IRSG believes that it is essential that insurance intermediaries and insurers have reasonable and proportional systems to prevent conflicts from adversely affecting the interests of its customers. 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.	
26.	Nordic Financial Unions (NFU)	General Comment	Nordic Financial Unions (NFU) is the voice of the employees in the Nordic financial sectors. We are an organisation for co-operation between trade unions in the banking, finance and insurance sectors of the Nordic countries. Through our eight affiliated unions in Denmark, Sweden, Norway, Finland and Iceland we represent 150 000 members – a vast majority of the employees in the Nordic financial sectors.	Noted.
27.	Test Achats	General	Test-Achats, the Belgian consumer organization representing	EIOPA agrees that

		Comment	350.000 consumers, would like to thank EIOPA for consulting stakeholders on conflicts of interest arising in direct and intermediated sales of insurance-based investment products. In general, conflicts of interest remain rampant in the provision of financial services and deserve adequate regulatory scrutiny. Concerning insurance-based investment products, Test-Achats, aswel as its European federation BEUC, has always emphasised that provisions governing the distribution of life insurance should be fully in line with provisions governing the distribution of financial instruments in order to achieve a level playing field between (substitutable) investment products. If not, competition distortions and regulatory arbitrage will remain, inducing more miss-selling cases and consumer detriment in the future.	regulatory arbitrage can lead to consumer detriment. EIOPA aims to further enhance the level playing field and proposes rules which are compatible and consistent with other regulation.
C 28.	Confidential response			
29.	Allianz SE	Question 1	It is difficult to assess the exact costs and benefits of the proposed changes, in particular, since critical issues and possible remedies remain abstract. In addition, it can probably be expected that costs and benefits from the changes of the "IMD1.5" rules will not materialize in isolation but together with effects from other legislative acts in the topic areas, namely IMD2, the PRIIPs Regulation or even Solvency II. In any case, the impact on the insurance distribution landscape could be profound and possibly prohibitive for some formats. In any case, any cost or impact assessment for the proposed rules should take a broad view, e.g. not just consider out-of-pocket expenses but also indirect and opportunity costs. In addition, a sensitivity analysis seems adequate to ensure robustness of any estimates with respect to critical assumptions.	Noted. Re indirect and opportunity costs EIOPA recognises the difficulty to assess the exact amount of costs the proposals will entail. Therefore EIOPA has decided to emphasize the qualitative aspects of the impact assessment.

30.	ANASF	Question 1	As a general remark, the benefits of the changes outlined in this Consultation derive from better harmonization between the different sectors of the financial markets. Indeed, a level playing field among sectors provides the basis for investor protection, as it enables customers to make informed investment decisions. Furthermore, better harmonization may foster the development of investment research activities also in the case of insurance activities, especially if we consider insurance-based investment products (cf. our response to Question 13).	EIOPA shares the opinion that harmonisation will enhance costumer protection and aims for a level playing field.
31.	Association of British Insurers (ABI)	Question 1	The amendments laid down in Article 91 MiFID II are broadly consistent with the current conflict of interest standards applied in the UK. Therefore as the UK has a regime in place, the majority of costs have already been absorbed.	Noted.
32.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	Question 1	AILO is a representative body of cross border life insurers only some of whom distribute through employees or tied agents. Therefore it is not in a position to quantify costs of individual distributors, but costs would be expected in the following areas: 1. Increased Compliance burden / staff – ongoing overhead 2. Legal review of current practices to obtain advice of action required– once off 3. Opportunity cost of time spent on more compliance matters – ongoing 4. Reduced revenue streams – potential to close smaller/ medium sized intermediaries, or increase costs to consumers – on-going 5. Increased cost of entry/ setting up a business – fewer new entrants 6. Host state rules applicable – likely to be different in	Noted. Re point 6 (barrier for cross-border business) EIOPA would like to point out that the Technical Advice aims to foster a level playing field (not only cross sectorial, but also cross border) and therefore to remove barriers resulting from diverging national implementation. Re point 7 (reduced consumer choice) EIOPA would like to point out that EIOPA does not intend to ban

			each state, therefore a barrier to the internal market for cross-border business, both for insurers and intermediaries. 7. Reduced consumer choice – fewer advisers (See for example research by Acuity Consultants on behalf of AILO on implications for consumers of a commission ban under PRIPs – May 2012) / Advice gap (See for example the Heath Report on the consequences of RDR in the UK; Unbiased.co.uk – average intermediary fee £150 per hour and initial reviews fee £500– Will a consumer who wishes to create a pension pot saving say £100 a month pay that? And Plan research, one fifth of clients not commercially viable – International Adviser 24 November 2014) / Fewer new asset selections. 8. Payment of fees rather than commission remuneration may lead to taxation consequences through a charge to VAT which will increase distributors' administration and an increase in charges to the customer. In addition any payments back to the customer may create income tax liabilities. Benefits to consumers: 1. Transparency 2. Better Informed decisions	commissions. Re point 8 EIOPA would like to point out that taxation is a matter of national competence.
33.	Association of Professional Financial Advisers	Question 1	In the timeframe of this consultation it is difficult to meaningfully estimate the costs and benefits of the possible changes outlined in the consultation paper. These costs could be significant and will depend on the scale of the operations carried out. They are likely to be more severe for SMEs. Further, the cumulative effect of the costs of regulation has to be assessed in the context of existing and recent EU and national legislation. Research conducted in November 2013 by NMG Consulting on behalf of APFA showed that 47% of financial advisers had turned away clients during 2013 following the implementation of the Retail Distribution Review, as they felt the cost of their service had become	Noted. EIOPA would like to point out that it neither has proposed nor intends to ban commissions in the context of providing insurance distribution activities. Therefore it does not seem appropriate to refer to the results of an investigation/research which examined the

			disproportionately high for some clients' needs. Of these, 40% confirmed that they had turned away five or more clients in the year. Based on this research, APFA estimated that nearly 60,000 customers had been turned away by financial advisers in the period between January and November 2013. Therefore anything that adds to the cost of advice increases the likelihood that regulated financial advice becomes unaffordable for many consumers.	impacts of the RDR in the UK. The legal frameworks are too different to transfer the findings.
34.	Assuralia	Question 1	The CP proposes in essence to introduce the articles of the MiFID1 implementing directive with regard to conflicts of interest and inducements for the insurance sector, with some modifications of the wording and with the prospect of giving detailed guidance by means of guidelines. The CP proposes in particular that insurance undertakings and intermediaries should perform an internal assessment of the conflicts of interest that may adversely affect the interests of clients (similar to the art. 21 and 22 MiFID1 implementing directive). It also states that third party payments should be disclosed and must enhance the quality of the service to the client (similar to art. 26 MiFID1 implementing directive). The Belgian market is not in a position to provide quantitative data with regard to the costs that this proposal will entail. It is reasonable however to assume that these costs will largely depend on the extent to which the proposed changes compare in terms of depth and scope to the existing national legislation and practices. The costs will therefore in reality vary substantially between member states, undertakings and intermediaries. The principles of articles 21, 22 and 26 of the MiFID implementing directive have been introduced in Belgian legislation by the Act of 30 July 2013 and have entered into force on 30 April 2014. To the extent that the end results on the work floor of the EIOPA proposal do not depart from the practical changes demanded by the articles 21, 22 and 26 of	EIOPA recognizes that the costs undertakings and intermediaries will have to bear will differ depending to which extent the national jurisdictions have already implemented equivalent rules based on MiFID I. Re possible guidelines in the future EIOPA would like to point out that EIOPA would be required to analyse the potential costs and benefits resulting from guidelines separately (pursuant to Art. 16 of the EIOPA Regulation 1094/2010).

			the MiFID1 implementing directive, the additional costs for the Belgian life savings and investment market are expected to be fairly limited. The probability that IMD1.5 leads to different end results than MiFID1 on the work floor increases with the level of detail that EIOPA wants to bring by means of guidelines. The more detailed the specific prescriptions for insurance based investment products, the more difficult it will be for markets that have already introduced MiFID1 to avoid unnecessary implementation costs with no or limited added value. We would therefore advise EIOPA to refrain from developing detailed guidelines on this issue.	
35.	Austrian Insurance Association (VVO)	Question 1	Regulatory changes always come at a cost and should be kept within reasonable limits. Therefore we call for coherency with the delegated act on management of conflicts of interest under the future Insurance Distribution Directive (IDD).	EIOPA takes note of this comment, but would like to emphasise that the legislative procedure of IMD 2 is still ongoing.
36.	BIPAR	Question 1	BIPAR strongly regrets that no impact assessment of the proposed changes has been carried out before they were proposed by EIOPA. In the timeframe of this consultation it is difficult to meaningfully estimate the costs and benefits of the possible changes outlined in the EIOPA paper. The costs are to be seen and assessed in the cumulative effect that they will have when added to existing and recent EU and national legislation. These costs will be significant and will depend on the scale of the operations carried out. They are likely to be more severe for SMEs (costs of new IT systems, new staff, additional training, costs of compliance with new rules on recording, organisational requirements, etc.).	EIOPA would like to point out that the IMD2 negotiations are still ongoing. Once the negotiations have been terminated it has to be assessed whether the EIOPA's Technical Advice needs any modifications / alignment.

			In this context, it is important to bear in mind that the IMD II (and in particular its chapter VII) is still under discussion and may apply from early 2017. The IMD II 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.	
37.	Bund der Versicherten (BdV)	Question 1	As a consumer organisation (NGO) our members get advice related to all issues of private insurances. As we do not sell any insurances, there are no conflicts of interest. That is the reason why instead of calculating an estimation of costs and benefits of the possible changes outlined in this Consultation, we would like to stress the significance of two major examples related to life insurances: The UK has experienced large scale mis-selling of Payment Protection Insurance products by some of the country's largest banks. Many consumers were often required to pay via a single premium that was added to the loan; faced significant barriers to switching; were not eligible to claim; were captive and unable, or unwilling, to search for alternative products; and/or were pressurised into buying the product. The resultant regulatory action has led to a substantial compensation scheme amounting to £12bn (as of June 2013; cf. Joint Position of the European Supervisory Authorities on Manufacturers' Product Oversight & Governance Processes, Nov. 2013). In Germany, contract clauses used by life insurers relating to cancellation fees and loading acquisition costs onto initial premium payments were ruled ineffective by the Federal High Court of Justice, since these clauses put the consumer at an inappropriate disadvantage or lacked transparency (Bundesgerichtshof, four judgements in 2012; cf. Consumer Protection Aspects of Financial Service, Study by London Economics, February 2014, presented at European Parliament	EIOPA is conscious that misbehaviour in the insurance sector can lead to significant consumer detriment. The proposed rules aim to strengthen investor protection further.

			Committee IMCO in October 2014). Following to the claiming consumer organisation, Verbraucherzentrale Hamburg, the compensation scheme will possibly amount to Euro 1bn. Additionally the immense impact of not fully disclosed fees and charges on life insurances as well as on investment funds and on other savings has recently been shown by a study of the European consumer organisation Better Finance For All: Pension Savings – The Real Return, Brussels September 2014.	
C 38.	Confidential response			
39.	European Federation of Financial Advisers and Fina	Question 1	The costs of the proposed regulation will be substantial, particularly for smaller and medium enterprises. The benefits, on the other hand, seem largely questionable. The majority of the procedures results only in administrative burden with no tangible benefits for customers. Experience with MiFID shows that the costs of compliance often reach 20% of the annual turnover of an investment firm. One-off costs for developing a compliance and risk-management regime range from €20,000 to €30,000 mainly for consulting specialised auditing companies. One-off costs for implementation vary depending on the seize and nature of business models. Therefore it is crucial to respect the proportionality principle to tailor the rules. In Austria, payroll costs for a qualified compliance manager are at a bottom line of €82,500 Euros p.a.; for a compliance clerk payroll costs stand at a minimum of €46,000 Euros p.a. In France, a part-time external service costs between €15,000 and €70,000, depending on the tasks. Following the principle of proportionality, it might be that a small insurance distribution company does not need its own compliance officer but can engage external specialists at an average rate of €200 (excl. VAT) per hour.	EIOPA disagrees. The benefits resulting from enhanced consumer protection will outweigh the costs undertakings and intermediaries have to bear for implementation. The new rules aim to address conflicts of interest which arise in the course of distribution activities. These conflicts pose a major risk for consumer detriment from EIOPA's point of view. Findings from MiFID I cannot easily be transferred as the scope of regulation of MiFID I is much broader and not only

			Another solution would be to allow the manager in the SME to be the compliance officer or to have full responsibility. It seems to be possible for ESMA and it is the case in a number of countries that still have specific rules about compliance. Control of application forms in small companies can probably be organised together with compliance, also following the proportionality principle. For a large distribution network with dozens or even hundreds of employees and intermediaries (e.g. operating in different member states with different regulation) costs will be far more substantial. They will also need an internal audit which, e.g. in Austria ranges from €10,000 Euros (excl. VAT) to €30,000 Euros (excl. VAT) p.a. Probably risk-management according to MiFID will not be necessary in an insurance distribution company. But this very much depends on the extent of necessary documentation. If MiFID were a 100% benchmark it would encompass all client data such as age, profession, previous experience with investments, financial breakdown, risk profile and awareness, objectives and investment horizon. However, small and big entities will bear significant costs for archiving and documentation including claims management which depends on the number of applications and the type of services offered to customers. For instance, in Austria the NCA stipulates that Compliance, Risk Management and Revision have to be done by three employees of the investment firm, acting totally independent from each other. The needed manpower would be the biggest obstacle for SME-sized insurance intermediaries. Also, development of IT costs in MiFID regulated entities went through the roof, increasing at rates between 70% and 200%. Minimum one-off costs in small investment firms have been €5,000 for IT providers plus the costs incurred for their own staff during half a year of implementation. It has to be mentioned that, in general, increasing MiFID costs are distributed unequally between small and big companies. For instance, for a SME having their	limited to rules on conflicts of interest.

			own compliance officer means a huge increase in payroll costs, while for a bank this increase is hardly perceivable. Without a proportional approach SMEs and sole traders would be put at a severe disadvantage compared to big players.	
40.	Fédération Française des Sociétés d'Assurances (	Question 1	It is difficult at this stage to estimate the costs associated with the possible changes outlined in this consultation. Nevertheless, consideration must be given to the fact that the costs will depend on the market player concerned – the costs faced by natural person and SMEs insurance intermediaries, for example, would be more significant and burdensome in relative terms than for large companies. This may lead to a reduction in the number of natural persons and SMEs intermediaries offering insurance-based investment products, and thus the number of points of sale, to the detriment of consumers who will have reduced choice of providers. This may also run contrary to the European Commission's aim to "improve the business environment for SMEs, to allow them to realise their full potential" as "a key driver for economic growth, innovation, employment and social integration". With regard to the overall costs, there will be significant costs involved in transforming existing IT systems, additional training costs (e.g. of agents), and adapting contracts and business models.	EIOPA is aware that the costs for natural persons and SMSs may be relatively more burdensome. For that reason EIOPA has reiterated, in its Technical Advice, the principle of proportionality.
41.	Federation of Finnish Financial Services	Question 1	Regarding the costs of IMD 1.5 rules, the biggest risk lies in the two different regimes for insurance PRIIPs (IMD 1.5 and IMD 2), entering into force in a different timetable, one after another. This would create unnecessary administrative costs for the market players, create risks for legal compliance and legal uncertainty (training of staff regarding quickly changing rules etc.) and would not ease the ability of consumers to understand the constantly changing selling practices. When assessing the costs of IMD 1.5, we are of the opinion	Noted.

			that the costs and other effects should be assessed in total, taking into account other pieces of financial services legislation, which are to be implemented around the same time. This would mean taking into account of the effects of IMD2 and PRIIPs regulation as well. The growing requirements on documentation and material, internal strategies and guidance, training and on corporate governance have a strong impact on the costs relating to IT-systems and administration (material, training costs, changing business models etc.). We might expect benefits of the regulation related to clearer selling processes and fewer customer disputes, or disputes which are easier and quicker to handle because of the specific documentation of the selling process.	
42.	Financial Services User Group (FSUG)	Question 1	We do not have access to this type of data, as we do not represent the industry. However, we are concerned that this method of evidence collection has the potential to give rise to biased policy decisions. The financial services industry has the resources to quantify costs. Consumer groups do not have the resources to estimate benefits (which are often harder to quantify anyway). Therefore there is a very serious risk that the outcome will favour the industry due to the lack of data on potential benefits of policy measures. In our view, regulators should not ask open questions about costs and benefits. They should carry out their own data collection and produce an estimate of costs and benefits and consult on the calculation method.	EIOPA recognises the difficulty to collect reliable data to quantify the impact (especially re potential benefits for consumers).
43.	French Banking Federation (FBF)	Question 1	It is impossible at this stage to estimate the costs associated with the possible changes outlined in this consultation. Nonetheless, any new regulatory framework will entail IT, organizational and training costs.	Noted.

44.	German Insurance Association	Question 1	It is impossible to provide specific estimates on the costs of the possible changes outlined in this consultation. The costs would primarily arise from whether and to what extent measures regarding the management of conflicts of interest have already been implemented. Where no measures corresponding to MiFID1 have already been stipulated at national level (such as in Germany, for instance), insurance undertakings as well as larger intermediaries, in particular, have usually already implemented internal compliance rules which also cover the issue of conflicts of interest. For these undertakings, IMD1.5 provisions will probably result in a huge need for adjustment even though the newly demanded provisions do not guarantee a more effective management of conflicts of interest. On the other hand, there is a huge number of sole traders with no or only a small number of employees (more than 200,000 in Germany). Due to their structure, they are usually expected not to have taken any measures. They are likely to face huge implementation efforts even though the benefits expected by the Commission and EIOPA will probably not provide an actual value added to the customers. This is due to the fact that the proposed measures regarding the management of conflicts of interest require a certain degree of independence of persons in charge of particular functions within intermediary companies in order to be effective. Tied intermediaries are able to guarantee the required formal or organisational independence since the insurance undertaking on whose behalf the tied intermediary is acting makes sure that the necessary measures regarding the management of conflicts of interest are taken. For this reason, there should only be a limited respective obligation for tied intermediaries. The insurance undertaking can provide the tied intermediaries with respective means for managing conflicts of interest for this purpose.	EIOPA disagrees that the costs of the implementation are likely to be absolutely disproportionate to the benefits. Conflicts of interest arising in the context of the distribution of insurance based investment products are a major source of risk of consumer detriment. It is therefore appropriate to introduce measures which address these risks appropriately. EIOPA agrees that the impacts for small undertakings may be in relative terms more substantial than for large undertakings.

			Thus, most of the costs would have to be paid by the insurance undertaking. The anticipated costs of the implementation are likely to be absolutely disproportionate to the benefits. This is mainly due to the fact that the provisions of the MiFID1 Implementing Directive, which have simply been adopted, are based on the traditional distribution channels of MiFID products. These are not micro and small-sized enterprises, but the vast majority is large undertakings and maybe some medium-sized undertakings. Despite any concerns regarding possibly occurring supervisory arbitrage, the size of the insurance intermediaries, in particular, must therefore be adequately taken into account. An effective mitigation of possible constellations with conflicts of interest should be the main benchmark against which the provisions are measured in this context. Against this background, the focus shall be on the impact rather than on formal criteria or tools. This has also been reflected in Article 22a of the Council's general approach on IMD2, which was adopted at the beginning of November 2014 and which appropriately supplements Article 91 of MiFID2, Article 13b of IMD1, insofar as it addresses the "nature of the distributor". The proposals of EIOPA do not consider this at all.	
45.	Insurance Europe	Question 1	Insurance Europe believes that when 84utual84li the costs associated with the changes outlined in this consultation, consideration must be given to the fact that the costs will depend on the market player concerned – the costs faced by sole traders and SMEs, for example, would be more significant and burdensome in relative terms than for large companies. This may lead to a reduction in the number of sole traders and SMEs offering insurance-based investment products, and thus the number of points of sale, to the detriment of consumers	EIOPA agrees that the impacts for small undertakings may be in relative terms more substantial than for large undertakings. The respective impact will highly depend on the individual business

			who will have reduced choice of providers. This may also run contrary to the European Commission's aim to "improve the business environment for SMEs, to allow them to realise their full potential" as "a key driver for economic growth, innovation, employment and social integration". With regard to the overall costs, there will be significant costs involved in transforming existing IT systems, additional training costs (e.g. of agents), and adapting contracts and business models. The cumulative effect of these costs should also be taken into account, as there will be further changes introduced under IMD 2 that will bring with them their own associated costs. As these two initiatives are working to different timelines, this will therefore create a situation where companies potentially have to make significant changes to their systems twice within the space of a year, which will give rise to additional cost that will be passed on to policyholders.	model and the risks resulting from that model.
46.	IRSG	Question 1	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. 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. 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	Noted.

			etc.).	
C 47.	Confidential response			
48.	Allianz SE	Question 2	While the broadly worded criteria of Art. 21 MiFID Implementing Directive (2006/73/EC) can act as a meaningful starting point for the development of insurance-specific criteria, they are understandably designed to address issues arising for capital market-related companies and their specific business. Therefore, while using the MiFID wording in many cases would not directly cause much harm, it is sometimes difficult to find relevant practical examples in application for insurance PRIIPs. In addition, there are some instances, where a missing fit with the insurance business may increase ambiguity or even give rise to (unintended) misinterpretation. It therefore seems to be clearly preferable to adapt the wording to insurance distribution. (For details see answer to Question 3).	In order to facilitate the understanding of this provision in the context of the distribution of insurance based investment products EIOPA proposed to introduces a general description of the basic elements of a conflict of interest in addition to the specific criteria.
49.	ANASF	Question 2	Yes, we do. We agree with the need to apply the same general principles across the different sectors of the financial services. Specifically, we believe that Article 21 of the MiFID Implementing Directive may provide the basis for EIOPA technical advice relating to insurance distribution activities. Further specification through future EIOPA guidelines is also advisable.	EIOPA takes note.
50.	Association of British Insurers (ABI)	Question 2	The ABI agrees with EIOPA that the instances circumscribed in Article 21 are of a broad and abstract nature, such that they can be applied across different sectors, including the insurance sector. The abstract wording of article 21 encompasses many circumstances across the EU. It is for this reason that we do not feel it is necessary to produce further guidelines as these general principles should be appropriate without the need for further interpretation. Further guidance could lead to inflexibility and not take	Noted.

			sufficiently account of different markets and different types of conflicts of interests. Giving individual examples would be too prescriptive, would create legal uncertainty and could not incorporate all possible circumstances and situations. The general principles should be sufficient in and of themselves, without the need for further guidance. If further guidance is considered to be necessary, this should be carried out by national supervisors who are best placed to identify and tackle specific types of conflict of interest that arise at local level and within the firms that they supervise. This is especially important when taking into account how diverse and different the insurance markets are.	
51.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	Question 2	In Principle, "yes", however we do not see the relevance of Article 21(d). We consider that there is a need for guidelines to draw a distinction between "inducements" and "remuneration". As proposed it can be argued that the wording ignores economic reality. The average consumer we would suggest would not consider salespersons' remuneration as an inducement whereas knowledge that there was another financial interest or other benefit would. A sales situation for any product or service has to involve disparate goals of the seller and the customer. The latter pays the seller directly or indirectly and in almost all non-financial sales situations will have no idea of how much is paid. So long as the distributor acts in the best interests of the customer then disclosure of remuneration is an added potential customer benefit to enable negotiation. It is considered that concentrating upon improving the professional knowledge and ability of distributors which also includes such matters as ethics, is a more appropriate means to attain better customer outcomes.	Re Article 21 letter (d) EIOPA agrees that it entails a situation not typical for the insurance sector. Therefore, letter (d) has been deleted. EIOPA acknowledges that conflicts of interest do not only arise with regard to inducements, but may also with regard to internal payments, but would like to point out that this issue needs further analysis.
52.	Association of Professional Financial Advisers	Question 2	We agree 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. However the specificities of the insurance-based	EIOPA has modified the wording of Art. 21 in order to align it appropriately with the

			investment products must be recognised and a simple copy and paste of Article 21 of MiFID Implementing Directive may not allow these specificities to be taken into account. MiFID covers both retail and wholesale investment markets. By seeking to apply all the scenarios to insurance-based investment products, it implies that they must be relevant to such products/activities and could therefore occur. However this is clearly not the case. For example, situations € and (d) cited in the paper would seem to be intended to apply to wholesale investment activities, and do not translate well into insurance-based investment product distribution activity. To include them therefore risks creating confusion and legal uncertainty as firms seek to interpret them in the context of their activities. We therefore suggest that the advice needs to be drafted in such a way that it only includes situations that could, in practice, apply in the context of the distribution of insurance-based investment products. We are also concerned about the statement on page 11: " Furthermore, EIOPA believes that conflicts of interest may arise whenever the insurance intermediary receives a commission or fee paid by a third party, independent from the question whether the commission or fee corresponds with the market standard or not". It must be recalled that MiFID 1 implementing Directive made a clear exception for "standard commissions or fees for that service". This should not be interpreted as "corresponding with the market standard" as presented by EIOPA but as "ordinary commission". This is important as it illustrates very well the initial philosophy behind the inducement rules at the time as inducements are described as being "other than standard commission". With reference to another sentence in the consultation paper on page 11, "(…) this follows from the intermediary's own interest to make a financial gain when providing services to customers", it is wrong to characterise intermediary's remuneration as being a financial gain, as the term "gain" can	specificities of the insurance sector. For example, letter d has been removed as it entails a situation typically for the investment sector, only. In its Technical Advice EIOPA has provided examples for the specific situations for explanatory purposes. Re "standard commissions and fees" EIOPA disagrees and believes that conflicts of interest arise because of the financial interest of the undertaking to earn a commission or fee.

			suggest that the intermediary is taking advantage of the customer when in fact he is simply remunerated for the services rendered.	
53.	Assuralia	Question 2	Article 21 of the MiFID1 Implementing directive sets a number of minimum criteria that companies must take into account when identifying the conflicts of interest that are relevant to them. We agree that these general principles are relevant for the distribution of insurance based investment products in our market. Article 21 of the MiFID1 implementing directive has been introduced in Belgian legislation by the Act of 30 July 2013 and has entered into force on 30 April 2014. We are very reluctant with regard to some of the changes proposed on the level of wording, on the one hand, and the prospect of detailed regulation by means of guidelines, on the other hand. (A) The delegated acts for IMD1.5 should in our view not bring unnecessary legal complexity by introducing (slightly) different concepts and wording for a market that has already implemented MiFID1 for insurance based investment products: - As article 21 of the MiFID1 Implementing directive has already been introduced in Belgian insurance legislation by the Act of 30 July 2013 and works in practice. We see no compelling need to replace the term 'client' by the word 'customer'. - The CP proposes to introduce an amendment to article 21 €, where it states that (only) insurance undertakings and intermediaries should take into account whether they "receive or will receive from a person other than the client, in the form of monies, goods or services, other than the standard commission or fee for that service". This amendment broadens the wording of criterion € for insurance-based investment products under IMD1.5 but not for the other	EIOPA has aligned the wording of Art. 21 in order to address specificities of the insurance sector. Re "standard commissions and fees" EIOPA disagrees and believes that conflicts of interest arise because of the financial interest of the undertaking to earn a commission or fee.

			packaged retail investment products that are under MiFID. We do not agree with broadening the wording of article 21 € for insurance based investment products. The rules on the identification, prevention, management and disclosure or conflicts of interest should in our view be consistently applied across all savings- and investment products (level playing field). (B) We advise EIOPA to refrain from specifying the principles of article 13c (1) IMD1.5 with regard to the identification of conflicts of interest by means of guidelines. The correct application of these principles will predominantly depend on the specifics of the actual situation at hand, specifics that are difficult to grasp in guidelines that must cover the wide variety of insurance business- and distribution models in the EU. Article 21 of the MiFID1 implementing directive is part of the general obligation of article 13c (1) IMD1.5 to take all appropriate steps in order to identify conflicts of interest in the course of insurance intermediation activities that risk to adversely affect the interests of a client. Such a broad assessment requires a view on the actual situation involved. It also serves to raise awareness within that individual insurance undertaking or intermediary (culture) and to prepare for the following ' reasonable measures' to prevent and manage the conflicts of interest of that specific entity. The principles of article 21 provide a suitable framework for such an exercise and do not necessarily need further detailed guidance on the EU level. In our view, the 'holistic' assessment of concrete situations by individual insurance undertakings and intermediaries required by article 13c (1) IMD1.5 is best done in dialogue with	

			national supervisory authorities that can act on the basis of in-depth market insight and common sense judgement of all aspects. Singling out particular elements of that broad assessment by means of European-wide guidelines may not be helpful in life insurance markets that vary significantly within the EU.	
54.	Austrian Insurance Association (VVO)	Question 2	General principles tailored to insurance will not require any guidelines. In the interest of legal certainty the text of the delegated act should speak for itself.	As the principles proposed are of abstract nature, EIOPA thinks it might be helpful for market participants to explain the practical application and the regulatory expectations by issuing guidelines setting some typical examples (a.o. re the proportionality).
C 55.	Confidential response	Question 2		
56.	BEUC, The European Consumer Organisation	Question 2	BEUC agrees that the general principles, set out in art 21 of the MIFID Implementing Directive, should also be applied to insurance distribution activities. Moreover, we strongly agree with EIOPAs view that conflicts of interest may arise whenever an insurance intermediary receives a commission or fee by a third party, independent from the question whether the commission or fee corresponds with the market standard or not. BEUC also points out that the original MIFID Implementing Directive should be revised accordingly, as we already flagged during the ESMA consultation on MIFID II.	Noted

57.	BIPAR	Question 2	General comment: The EIOPA draft technical advice refers to insurance distribution activities by intermediaries and insurers. In order to avoid confusion, it should be clarified throughout the text that the technical advice is about the distribution of insurance-based investment products. When drafting its final technical advice, EIOPA should take into account that an intermediary often works for both parties to facilitate a process. Such a situation should be clear to the parties so that they can take informed decisions. It should be recognised that such a situation is not a priori a conflict of interest to the detriment of the customer. Specific comment: BIPAR agrees that the 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. However, the specificities of the insurance-based investment products must be recognised and the EIOPA draft technical advice needs to be amended accordingly. A simple copy and paste of Article 21 of the MIFID Implementing Directive, very basically adapted to the insurance-based insurance products terminology (i.e. replacing any reference to investment services with insurance distribution activities), DOES NOT allow taking these specificities into account. It is not a valid approach. The copy-paste of MiFID provisions into the insurance (-based investment) world is causing legal uncertainty since the contexts are different: the interpretation potentially given in an insurance context is different from the original MiFID context and thus captures situations that were originally not aimed at.	Re the requested clarification that the Technical Advice refers to insurance-based investment products only, EIOPA would like to point out that the L1 empowerment of IMD 1.5 already limits the scope. Re the specificities of insurance-based investment products EIOPA would like to point out that EIOPA has modified its initial proposal to take into account this specific concern.

			It must be observed here that MIFID I was also focused on "wholesale" activities in the investment markets and on larger institutions. Financial advisers which are predominantly small and medium-sized firms were brought into the MIFID because of its coverage of investment advice. BIPAR asks EIOPA to bear this in mind when drafting its final technical advice. Its proposals will impact on such SMEs. It is important that the EIOPA technical advice does not impose unjustified, impractical and meaningless demands on insurance intermediaries. BIPAR wonders whether there is a clearly identified need for the future organisational requirements on the identification and management of conflicts of interest, to be further specified through EIOPA guidelines. If the specificities of the insurance-based investment sector are appropriately taken into account in the Implementation Directive based on the 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, should EIOPA 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 acts". It believes that ESAs' guidelines and recommendations must be based cumulatively on both parts 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". BIPAR wonders whether the proposed Guidelines would meet the two criteria.	
58.	Bund der Versicherten (BdV)	Question 2 Do you agree that general principles, s	Yes, we fully agree.	Noted.
59.	BVI	Question 2	We agree with EIOPA's assessment that the principles set out in Article 21 of the MiFID Implementing Directive describe general conflicts of interests arising in the context of a commercial activity and thus are also relevant to insurance distribution. Therefore, we support the proposed transposition of those principles to insurance intermediaries and insurance undertakings as well as the provision of further specification through EIOPA guidelines if deemed appropriate.	Noted.
C 60.	Confidential response	Question 2		
61.	CNCIF	Question 2	While the CNCIF agrees that general principles, similar to those set out in Article 21 of the MiFID Implementing Directive should also be applied to insurance distribution activities, it believes that such principles should take into account the specificities of insurance-based investment products. In particular, the EIOPA guidelines should clarify that whenever conflicts of interests cannot be avoided, appropriate disclosures are an adequate way to remedy the conflict.	Noted. EIOPA has modified its initial proposal to align the wording with the specificities of the insurance sector.

62.	EFAMA	Question 2	We agree with EIOPA's assessment that the principles set out in Article 21 of the MiFID Implementing Directive describe general conflicts of interests arising in the context of a commercial activity and are thus similarly relevant to insurance distribution. Therefore, we support the proposed transposition of those principles to insurance intermediaries and insurance undertakings.	Noted.
63.	European Federation of Financial Advisers and Fina	Question 2	FECIF in general agrees with EIOPA's proposal to take Article 21 as a reference point despite not favouring the idea that it "should apply to all commissions and fees paid by a third party". The former version seems clear and sufficient. Specification through EIOPA guidelines seems to be an appropriate way to adapt and modify MiFID provisions to the specificities of various business models of insurance distributors and manufacturers. However, guidelines should highlight the main ideas and avoid details.	Noted.
64.	Fédération Française des Sociétés d'Assurances (	Question 2	Subject to the points set out below (see our response to question 3), the FFSA agrees that general principles similar to those set out in article 21 of the MIFID1 implementing directive can be applied to insurance distribution. In any case, these principles should be self-sufficient in order to allow Member states to implement them without further interpretation.	Noted.
65.	Federation of Finnish Financial Services	Question 2	The FFI supports the uniform conduct of business regulation of similar investment products, that is insurance PRIIPs and other investments under the MiFID regime. However, there are certain insurance specificities which need to be taken into account when formulating the rules on insurance PRIIPs. It seems however that article 21 MiFID Implementing directive might be applied directly. We are not in favour of further EIOPA guidelines at a later stage, as the principles seem clear enough to be applied to insurance PRIIPs. For example, principles of product	Noted. EIOPA has modified its initial proposal to align the wording with the specificities of the insurance sector.

			governance are important and they have a role to play in preventing conflicts of interest. They should however be drafted as high level principles, as the product development and handling of the life-time of the product need to be left at the discretion of the product manufacturer.	
66.	Federation of German Consumer Organisations	Question 2	The vzbv agrees that the general principles, set out in article 21 of the MIFID Implementing Directive, should also be applied to insurance distribution activities. Moreover, we strongly agree with EIOPAs view that conflicts of interest may arise whenever an insurance intermediary receives a commission or fee by a third party, independent from the question whether the commission or fee corresponds with the market standard or not. The vzbv also points out that the original MIFID Implementing Directive should be revised accordingly, as we already flagged during the ESMA consultation on MIFID II.	Noted.
67.	Finance Norway	Question 2	Finance Norway believes that a general principle similar to those set out in Article 21 of the MiFID Implementing Directive, should also be applied to insurance distribution activities, further specified through EIOPA guidelines. This will help to further develop a level playing field for financial instruments and insurance-PRIIPS and to strengthen investor protection. Finance Norway believes that creating a more similar European regulation on sales of products, including disclosure of remuneration, information about tying/bundling of products, on execution-only etc., will help to avoid a potential national regulatory arbitrage when it comes to product selling. However, it is important that the commission-based distribution-model is not made impossible: In MiFID II,	Noted. EIOPA does not intend to render commission based business models impossible.

			investment firms are required to inform their clients of whether their advice is being provided on an independent basis or a non-independent basis. Only investment firms that provide advice on an independent basis or provide portfolio management are banned from accepting or receiving fees, commissions or any monetary benefits paid or provided by any third party in relation to the provision of the services to clients.	
68.	Financial Services Consumer Panel	Question 2	The Panel agrees that the general principles to establish what may constitute a conflict of interest as defined in the MiFID Implementing Directive should be applied to insurance distribution activities. However, we would prefer to see EIOPA include legally-binding provisions outlining situations which always present an unacceptable risk of conflict of interest, and should therefore be banned or restricted. The regime as currently proposed is too lenient, and it will be exploited by some firms to place profit-seeking ahead of the best interests of their customers. The use of non-binding guidance to address this is unlikely to provide the deterrent effect required.	EIOPA has been mandated by the Commission to develop criteria to identify conflicts of interest that may arise in the context of the distribution of insurance based investment products. EIOPA has not been requested to propose a list of situations which should be banned or restricted. A ban would also constitute a regulatory decision which would have to be taken in L1 and not L2.
69.	Financial Services User Group (FSUG)	Question 2	The members of the FSUG agree that the general principles, set out in Article 21 of the MiFID Implementing Directive, should also apply to insurance distribution activities. The 97utual97ling of life insurance products due to the existence of conflicts of interest has the potential to cause significant	Re the recommendations on inducements EIOPA would like to point out that they were made

			detriment to consumers. We also support EIOPA's proposal that the minimum criterion listed in Article 21€ of the MiFID implementing Directive should not exempt standard commissions and fees but should apply to all commissions and fees paid by a third party. In our view, the provision of monetary and non-monetary inducements is the most relevant source of conflicts of interest with regard to harm caused to retail clients. In our view, article 21 of the MiFID Implementing Directive should have been reflected this by emphasizing that conflicts of interests resulting from inducements are qualitatively different from others. Our experience is that conflicts of interest arising from inducements are on average higher in the distribution of insurance based investment products than in non-insurance based investment products because those inducements are usually higher in the former. For example, in the distribution of unit-linked insurance products, commission are paid by providers to distributors both on the insurance contract's expense ratio, and on the underlying "units (most often investment funds) own expense ratios. Therefore, EIOPA rules on conflicts of interest for these products should be at least as strict as those issued by ESMA or EBA for other retail investment products such as investment funds (UCITS and AIFs). We would also like to stress the need for binding legislation rather than just guidance in this area. It has been shown time and again that some situations, which always present an unacceptable risk of conflict of interest and which therefore should be banned. The current proposals do not take adequate account of such risks by providing firms with too much leeway to prioritise monetary gain above the interest of their clients.	with due regard to the empowerment for the Commission to adopt delegated acts, the current market structure in the various jurisdictions, the clear mandate of the Commissions, consumer protection considerations as well as the ongoing political negotiations to review IMD.

			The use of non-binding guidance to address this is unlikely to provide the deterrent effect required.	
70.	French Banking Federation (FBF)	Question 2	We consider that EIOPA goes beyond the mandate given to the Commission by MiFID 2 (article 91) : „This Chapter lays down additional requirements on insurance mediation activities and to direct sales carried out by insurance undertakings when they are carried out in relation to the sale of insurance-based investment products. […] „The Commission shall be empowered to adopt delegated acts in accordance with Article 13e to: establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking." As we see, this applies only to investment insurance products. Thus, EIOPA cannot extend its technical advice to all insurance products.	EIOPA would like to clarify that its Technical Advice concerns insurance based investment products, only.
71.	German Insurance Association	Question 2	No. Even though the approach to stipulate high level principles similar to those set out in the MiFID Implementing Directive is acceptable to guarantee a level playing field with respect to MiFID2. In this respect it is welcomed that EIOPA wants to refrain from the original idea of a non-exclusive list of examples that indicate insurance-specific conflicts of interest. Additional means of guidance, such as guidelines and good practice reports, however, are being rejected in order to take account of the characteristics of insurance-based investment products, insurance mediation-specific conflicts of interest and the diversity of national business models in sales. Major provisions should be stipulated in the basic act and be specified in delegated acts, where absolutely necessary. The required adjustment to the individual case should be carried out by national supervisory authorities or by undertakings	Noted. EIOPA disagrees and believes that guidelines are an appropriate instrument to provide further guidance to the market.

			themselves. Legitimation of extensive interventions in the principles of insurance distribution activities by means of guidelines and good practice reports, however, is legally questionable and does not enhance legal certainty. The general criticism of the Consultation Paper with respect to 100commission-based distribution systems (see page 11 of the Consultation Paper, for instance) cannot be shared either (see statements in section "General Comment" and Question 3).	
72.	Groupement des Entreprises Mutuelles d'Assurance	Question 2	As indicated in our previous answer, GEMA's 100utual are not in favour of using the MIFID Implementing Directive 2006/73/CE as a starting point for EIOPA's technical advice to the Commission. In our point of view, the existing framework for investments firms is inappropriate considering the insurances' special features. However we understand that EIOPA has been invited by the Commission to consider the existing conflicts of interest framework under the Implementing Directive 2006/73/CE and to develop a similar framework for insurance intermediaries and insurance undertakings distributing insurance-based investments products. Under these considerations, we think it is better to have general principles rather than to replace them by a more detailed approach.	Noted.
73.	Institute and Faculty of Actuaries	Question 2	As noted in our general comments, the similarities between both types of product should encourage consistent treatment in their distribution.	Noted.
74.	Insurance Europe	Question 2	Insurance Europe agrees that general principles similar to those set out in Article 21 of the MiFID implementing directive can be applied to insurance distribution activities. This article is high-level enough to capture any potential conflicts of interest related to insurance-based investment products.	EIOPA disagrees and believes that guidelines are an appropriate instrument to provide further guidance to

			We do not agree, however, that there should be further specification of these principles in the form of EIOPA guidelines. It is crucial to find an appropriate and suitable wording in the text of the Level 2 measures that enshrines clarity and precision, and does not require further interpretation at a later date.	the market.
75.	IRSG	Question 2	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. However the specificities of the insurance-based investment products must be recognized and EIOPA draft technical advice needs to be amended accordingly. A simple copy and paste of Article 21 of MIFID implementing Directive, very basically adapted to the insurance-based insurance products terminology (i.e. 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	EIOPA has modified its initial proposal to better align the wording with the specificities of the insurance market. With regard to small undertakings EIOPA points out that the principle of proportionality has been emphasized. EIOPA disagrees and believes that guidelines are an appropriate instrument to provide further guidance to the market.

			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 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.	
76.	Nordic Financial Unions (NFU)	Question 2	NFU finds it important that all financial market players are subject to the same rules and supervisory, with consideration of National culture, practice and context. NFU therefore finds it appropriate that the rules under Article 21 of MiFID Implementing Directive are adapted and applied also to the insurance-specific legal context and that it is consistent with IMD.	Noted.

			Regarding article 21 there is a problem in terms of level of conflict of interest. In the strictest sense, it may be argued that any profit on behalf of the insurance company provides conflict with consumer interest, as that profit could have been used to lower prices further. There is, however, recognition that some level of profit is acceptable. It would help facilitate better understanding if future versions could provide better insights into how much profit is considered acceptable and where to draw the line.	
77.	Test Achats	Question 2 Do you agree that general principles	Test-Achats agrees that the general principles, set out in art 21 of the MIFID Implementing Directive, should also be applied to insurance distribution activities. Moreover, we strongly agree with EIOPAs view that conflicts of interest may arise whenever an insurance intermediary receives a commission or fee by a third party, independent from the question whether the commission or fee corresponds with the market standard or not. We also points out that the original MIFID Implementing Directive should be revised accordingly, as we already flagged during the ESMA consultation on MIFID II.	Noted.
C 78.	Confidential response	Question 2		
79.	Allianz SE	Question 3	Allianz agrees with EIOPAs statement that a truly principles-based approach is preferred to an overly detailed rules-based approach (see page 11 of the Consulting Paper), since it allows a more effective application and overall better results (also see General Remarks above). Unfortunately, many of the EIOPA proposals for the Draft Technical Advice do not reflect this approach:	EIOPA has modified its initial proposal, including amendments to letters a – e of Art. 21, to better align with the specificities of the insurance sector. As outlined in the

			☐ Even though worded very generally, the MiFID criteria and the proposed EIOPA adaptation in its Draft Technical Advice in many parts do not adequately reflect specifics of the insurance markets (see detailed alternative wording proposals below). ☐ EIOPA seems to try to extend the scope of the legislation in material aspects by even broader interpretation (e.g. by including Product Oversight and Governance (POG) aspects, see page 10). This approach is not covered by Level 1 legislation for IMD1.5. If such a broadening of the scope is sought, it should have a solid foundation in the corresponding Level 1 legislation (e.g. IMD2, where the recent General Approach of the Council explicitly addresses POG in Art. 21a). ☐ EIOPA also seems to use the general principles to introduce or promote certain policy choices, e.g. a stricter regulation (or even ban) of commission-based models (see general suspicion raised against any third-party remuneration and the attempt to introduce a "quality enhancement rule" for commissions (see paragraph 2 on page 11 and section 7, esp. pages 22-23 of Consultation Paper) without empirical foundation and any adequate discussion of potential advantages of such models for customers (for details see also answers to Questions 9 and 10). Such material extension of interpretation and arbitrary interventions on a supervisory level based on assertions without sufficient empirical testing does not seem legitimate. This approach risks turning a principles-based model risks into a highly politicised supervisory model. This should be avoided. ☐ Another concern is the reluctance of EIOPA to provide more specific examples or a more specific framework but to relegate details to EIOPA "Guidelines and Opinions at a later stage" (see paragraph 2 on page 12 and last paragraph on page 20 of the Consultation Paper). The examples given for potential conflicts of interest (e.g. regarding commission-	Consultation Paper EIOPA does not intend to introduce a ban on inducements or to render the commission based business models impossible. EIOPA disagrees and believes that guidelines are an appropriate instrument to provide further guidance to the market.

			based sales in the second paragraph on page 11 of the Consultation Paper) raise the concern that EIOPA could try to implement material policy changes later through a back door (i.e. without a proper mandate and circumventing the legislative process) via such postponed Guidelines and Opinions. This should be avoided. By contrast, Allianz proposes to rely on a broad principles-based and effectiveness-oriented approach that is adequately tailored to the specifics of the insurance model. Specifically, Allianz proposes the following specific adaptations of the minimum criteria from Art. 21 of the MiFID Implementing Directive (2006/73/EC) for insurance purposes: Deletion: the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client; Alternative: the distributor (intermediary or insurer) is the direct or indirect beneficiary of the insurance contract. Rationale: The original wording primarily seems to target conflict of interests arising from trading activities in brokerage and/or proprietary trading of securities companies. Insurance PRIIP providers do not engage these kind of trading activities. On the other hand, there are potential conflicts of interest which may arise from the distributor (e.g. a distributing bank) being a possible beneficiary of the contract (e.g. in an insurance PRIIPs contract with a PPI component that is used reduce the banks' counterparty risk for a mortgage). In addition, the original wording could be interpreted to classify any profit margin for the firm as conflict-prone and	

			illegitimate. This should be avoided. (b) the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome; Remark: Wording is very open-ended and unclear: On the one hand, this could cover kick-back payments (which could cause conflicts of interest). On the other hand, it could target conflicts of interest for certain trading activities (e.g. proprietary trading of investment banks / brokerage firms). This latter protection is not needed for insurance PRIIPs due to the different setup of the business and the prudent person principle under Solvency II, which restricts short-termism and overactive trading for insurance investments. (also see remarks in General Comment) Deletion: € the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client; Rationale: For the provision of insurance PRIIPs the product provider does not match opposing orders and therefore typically does not face any directly opposing interests of its customers (e.g. as in the case of a brokerage firm, potentially matching buy and sell orders of customers, which may carry some exposure to certain conflicts of interest). In addition, there are no competing interests of customers in the issuance or allocation of insurance PRIIPs (as may be the case in the allocation of stocks in an initial or secondary public offering). Furthermore, if taken literally, this provision could be construed to constrain the proper underwriting to minimize losses for the overall benefit of the community of the insured	

			by the insurer which is explicitly required by Solvency II and other prudential regulation. Such unintended interpretation obviously needs to be avoided. Deletion: (d) the firm or that person carries on the same business as the client; Rationale: The provision is understandable in the context of competing securities firms, but is not applicable in case of distribution of retail products (such as insurance PRIIPs). € the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service. Remark: Generally analogous application, should be adapted to reflect overall wording (e.g. use of "customer" instead of "client")	
80.	ANASF	Question 3	Yes, we do. Specifically, we consider that these adjustments do not hinder the need to create a level playing field for different types of investments.	EIOPA agrees.
81.	Association of British Insurers (ABI)	Question 3	The ABI agrees with EIOPA that a principles based, rather than prescriptive approach is appropriate. However, some of the adjustments in EIOPA's draft text lack clarity; Article 21 (d) refers to a firm or person that carries on the same business as the customer; We cannot see how this is applicable to insurance. Therefore to avoid misinterpretation we request more clarity from EIOPA as how this is applicable to insurance. If it is not possible to provide such a clarity then this should be removed.	Noted. Letter (d) has been removed. Re "linked person" original MiFID wording was reintroduced.

			With regards to the specific adjustments proposed by EIOPA, we note the continued reference to a "linked person" . However the definition of a "linked person is not clear. Therefore we recomend that the original MiFID wording be retained. We also believe that giving individual examples would be too prescriptive, would create legal uncertainty and could not incorporate all possible circumstances and situations.	
82.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	Question 3	No, firstly for the reasons stated in answer to question 2. Generally, so far as points 'a', 'b' and 'e' then basic payment for the advisory service whether by fee or commission, would be deemed to be a conflict of interest. There needs to be recognition that a service provided, can be legitimately paid for. Emphasis needs to be on the recognition of the adviser's right to payment for their services, provided this is disclosed. Commission is paid through disclosed product charges, but the potential client needs to understand how much the adviser is receiving from the sale, if it proceeds. It is common in some markets (e.g. France) for the customer to negotiate down the intermediary's commission, the difference being reinvested into the policy. They can only do this if it is disclosed. Point 'a' also refers to the "expense" of the customer, whereas we assume that what is intended is an interest which is a "detriment" to the customer. Point "b" should instead refer to the firm or person being impaired from acting in the best interest of the customer, as distinct from having a different interest in that outcome to	EIOPA has modified its initial proposal to better reflect the specificities of the insurance sector. The Technical Advice provides explanations and examples in which cases the specific situations may apply.

			that of the customer. We also consider that for point "e" the words in Article 21 "other than the standard commission or fee for that service" need to be reinstated though we would favour added words which make it clear such remuneration is considered distinct from an "inducement" With these words included then we consider that for an insurance-based investment product– the intermediary should only be paid by fees directly from the client or by the third party whose product is being sold and which will be 'owned' by the Policyholder (the insurance contract). The intermediary should not be receiving payment for the sale, from any other source (e.g. recommended asset links). Only in this way can the intermediary give asset mix advice appropriate for the client, in an objective manner. So when selling: a) An insurance-based investment product – payment from the insurer b) units in a fund – payment from the fund house, But never both, in an insurance-based investment product sale context. As stated in answer to Q2 we do not see the relevance of point d; to insurance distribution.	
83.	Association of Professional Financial Advisers	Question 3	See comments in response to question 2 above	Noted.
84.	Assuralia	Question 3	Do you agree with the adjustments proposed to adapt Article 21 to take into account the specificities of insurance	Noted.

			distribution activities? Comment of Assuralia, the association of insurance companies in Belgium: We do not agree (cfr. Response to question 2).	
85.	Austrian Insurance Association (VVO)	Question 3	We disagree with lit (d) which covers a situation that does not occur in an insurance context and was tailored for securities. So far the practical need for this situation has not been demonstrated. Lit I should be aligned with the future Insurance Distribution Directive (IDD), i.e. "a person other than the client" should be replaced by "a third party".	EIOPA takes note of this comment, but would like to emphasize that the rules are supposed to address the wide variety of business models insurance undertakings and insurance intermediaries are pursuing.
C 86.	Confidential response	Question 3		
87.	BEUC, The European Consumer Organisation	Question 3	Yes, we agree. However, we would like to stress that just mentioning the typology of all possible conflict of interests, like copy-pasting the text of the proposed technical advice, is not sufficient. This is what we can read on internet sites of intermediaries e.g. in Belgium where the MiFID principles have been implemented for insurance intermediaries. We recommend to add in the draft technical advice that the intermediary must clearly and concretely identify the conflicts of interest that arise in his own practice.	Noted. For purpose of clarification a general circumscription of conflict of interest has been introduced.
88.	BIPAR	Question 3	General comment:	The scope of the

			The EIOPA draft technical advice refers to insurance distribution activities by intermediaries and insurers. In order to avoid confusion, it should be clarified throughout the text that the technical advice is about the distribution of insurance-based investment products. BIPAR disagrees with the EIOPA statement on page 11 "Furthermore, EIOPA believes that conflicts of interest may arise whenever the insurance intermediary receives a commission or fee paid by a third party, independent from the question whether the commission or fee corresponds with the market standard or not". It must be recalled that MiFID 1 implementing Directive made a clear exception for "standard commissions or fees for that service". This should not be interpreted as "corresponding with the market standard" as presented by EIOPA but as "ordinary commission". This is important as it illustrates very well the initial philosophy behind the inducement rules at the time as inducements are described as being "other than standard commission". This has been the reasoning but unfortunately this has been lost in the debates over the last couple of years. With reference to the other following sentence in the consultation paper on page 11, "(…) this follows from the intermediary's own interest to make a financial gain when providing services to customers", BIPAR believes that it is wrong to characterize an intermediary's remuneration 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. In a market economy, any insurance intermediary, like any other economic operator, needs to be remunerated for the services provided to a client for her/his businesses to be	Technical Advice is limited by the underlying L1 empowerment and the mandate by the Commission. EIOPA disagrees and believes that conflicts of interest may also arise when standard commissions or fees are paid. Another and separate question is how these conflicts have to be addressed properly. In order to clarify the application of the specific situations EIOPA has provided some explanation in its Technical Advice.

			viable. Obviously, it is in the interest of the intermediary to be remunerated for services rendered. The use of the words "financial gain" is "pejorative" as it can be interpreted as the intermediary always benefiting at the expense of a client when earning a commission or a fee from a third party. As mentioned before, the MiFID I Implementing Directive has been created with investment services in mind. For example, we do not see how the criteria referred to in (d) of the EIOPA technical advice could apply to insurance-based investment product distribution activity. A main point of confusion is that the MiFID II Rules are applicable to securities, stocks, bonds and so on. Rules are therefore provided to help against front running, scalping etc… These kinds of problems arise because of a fast moving market price and in cases where a high amount of assets are involved, interference is possible. These kinds of problems are 99 % irrelevant for the insurance-based investment market. The main meaning of the proposed technical advice is therefore lost or is reinterpreted in an unintended way. Specific comment: BIPAR 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. BIPAR does not understand in particular what the situations under b, c, d mean in the retail distribution of insurance-based investment products. What are the circumstances?	

			BIPAR can't identify them. Has EIOPA tested these situations with practical examples? We would strongly encourage EIOPA to do so before submitting its final technical advice to the Commission. An intermediary distributing insurance-based investment products will struggle to understand how these rules apply to her/his business. BIPAR 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. The effects of the PRIIPS regulation should also be taken into account. BIPAR also believes that it is important to give some leeway to the EU Member States so that they can adapt these criteria to the specificities of their respective markets. Indeed, given the very wide variety of channels of distribution of insurance based investment products, too precisely defined criteria at European level would lead to a significant rigidity, that would be prejudicial to the market. We believe that it is crucial to dwell on the distinction between conflicts of interest whose existence may damage the interests of the customers and those that do not have any impact on them. We are wondering about the meaning of some situations of conflicts of interest:	

			- Under a) it is written that a conflict of interest exists if the intermediary is likely to make a financial gain, or avoid a financial loss at the expense of the customer. In the investment world this means that you may not bet against your customer. It does not have anything to do with the remuneration of the intermediary. The intent is to prohibit advice that (by buying or selling a stock) would gain the intermediary – in addition to the remuneration- an extended advantage or disadvantage in his own shares value. - b) Is it pertinent to adopt as wide a criterion as the one of distinct interest? Distinct interests are not automatically antagonist. Only those latter should be taken into consideration - d) What is the situation covered here? Why does a customer carrying on the same business as the intermediary or the insurer needs to be protected against conflicts of interest? This protection is an issue of competition law. We would therefore ask to either delete these points, rephrase them or at least make clear that this is intended for situations where insurance-based investment products are meant in a way that there is a likelihood of the intermediary being able to "bet" against his customer.	
89.	Bund der Versicherten (BdV)	Question 3 Do you agree with the adjustments propo	Yes, we fully agree.	Noted.
90.	BVI	Question 3	We agree. In particular, we appreciate the proposed	Noted.

			modification of the wording in Article 21 € of the MiFID Implementing Directive in order to clarify that conflicts of interest may arise also in respect of standard commissions or fees charged for a service. Due to the separate evolvement of the rules on inducements under MiFID I and especially under MiFID II, the respective restriction in Article 21 € has had no particular relevance in the area of financial distribution.	
C 91.	Confidential response	Question 3		
92.	CNCIF	Question 3	The CNCIF notes that the proposed adjustments have for consequence that both insurance intermediaries and insurance undertakings are to assess whether a situation creating a potential conflict of interest arises, which makes it difficult to foresee who will be in charge of what aspect of this assessment. By extending the scope of Article 21 to the development and management of products without at the same time specifying who is to monitor the potential conflict, the proposed adjustments are likely to create unnecessary confusion and doubt.	The aim is to clarify that conflict of interest may also arise when the distributor is involved in the development or management of the products. The responsibility to take appropriate measures lies with the distributor as well as the manufacturer.
93.	EFAMA	Question 3	We agree with the proposed adjustments. In particular, we appreciate the proposed modification of the wording in Article 21€ of the MiFID Implementing Directive in order to clarify that conflicts of interest may arise also in respect of standard commissions or fees charged for a service.	Noted.
94.	European Federation of Financial Advisers and Fina	Question 3	Article 21I should be exempted. FECIF does not agree that conflicts of interest arise whenever the insurance intermediary receives a commission or fee paid by a third party. Regardless of whether the commission or fee corresponds with the market standard or not, a conflict of interest may arise only if before buying the insurance product the client:	EIOPA disagrees and refers to the reasoning in the Technical Advice.

			☐ was not fully aware of the fact that the insurance intermediary receives a commission or a fee paid by a third party, and ☐ was not aware of the total costs of the insurance product including the costs of advice. However, such situations are highly unlikely to materialise due to the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs). It provides retail investors with a Key Information Document (KID) including the costs and fees charged by the PRIIPs manufacturer together with any further costs or fees charged by intermediaries before taking any decision. Under a section titled "What are the costs?", the costs associated with an investment in the PRIIP, including both direct and indirect costs to be borne by the retail investor – e.g. one-off and recurring costs – are presented by means of summary indicators of these costs and, to ensure comparability, total aggregate costs expressed in monetary and percentage terms, to show the compound effects of the total costs on the investment. Furthermore, the key information document includes a clear indication that advisors, distributors or any other person advising on or selling the PRIIP will provide information detailing any cost of distribution that is not already included in the costs specified above, so as to enable the retail investor to understand the cumulative effect that these aggregate costs have on the return of the investment. Well ahead of the conclusion of an insurance contract, an insurance intermediary provides the customer with information: ☐ about the nature of the remuneration received in relation to the insurance contract; ☐ whether in relation to the insurance contract, it works: (i) on the basis of a fee; or (ii) on the basis of a commission	

			of any kind, that is the remuneration included in the insurance premium; or (iia) on the basis of other types of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or (iii) on the basis of a combination of any type of remuneration set out at points (i), (ii) and (iia). ☐ where the fee is payable directly by the customer, the amount of the fee or, where this is not possible, the method for calculating it. Against this background FECIF believes that a more detailed regime is hard to imagine. To the contrary, triplication of the same regime would lead to an unnecessary burden for intermediaries without creating any benefit for consumers at all. Therefore standard commissions and fees should be exempted in EIOPAs advice to the European Commission.	
95.	Fédération Française des Sociétés d'Assurances (	Question 3	We fail to understand how point (d) of the proposed equivalent of article 21 would be applicable in the context of insurance based investment products distribution. This point should be removed as it does not make sense for insurance distribution. The FFSA is deeply concerned by the adjustment that has been made to adapt point e of article 21 . Actually, when an insurer makes use of an intermediary to distribute its products, there is no reason why the remuneration provided by the insurer to this intermediary who works on behalf and under the responsibility of that insurer, should be considered per se as giving rise to conflicts of interests. Such reasoning is all the more problematic for us that insurance distribution activity in France includes advice. We would therefore request EIOPA to maintain the original wording of article 21 point e.	Letter (d) has been deleted. EIOPA disagrees and beliefs that conflicts of interest arise whenever commissions / fees are paid (independent from the questions whether the payments are of standard size).

96.	Federation of German Consumer Organisations	Question 3	Yes, we agree.	Noted.
97.	Finance Norway	Question 3	Finance Norway fails to see how MiFID I Art. 21 e) would be applicable in this context. A ban on commissions was left as a Member State option in IMD 1,5 (Article 13 d 3). A too far-reaching implementing measures on inducements may result in a de-facto ban on commission-based business models, ref. Question 2.	EIOPA does not intend to introduce a ban on commissions.
98.	Financial Services Consumer Panel	Question 3	The Panel supports the extension of the scope to cover the development and management stages to ensure that conflicts of interest that arise on either side of the point of sale are not excluded from these rules. This is particularly important because of the potential conflicts of interest already identified by EIOPA which can occur in the development and management phases. We are pleased that EIOPA proposes to include such circumstances within the general principles on identifying a conflict of interest.	Noted.
99.	Financial Services User Group (FSUG)	Question 3	We strongly agree with EIOPA's view that conflicts of interest also arise with regard to the development and management of products. We therefore support the proposal to apply the requirements of Article 21 to these pre- and post-sales processes.	Noted.

100.	French Banking Federation (FBF)	Question 3	The FBF is concerned by the adjustment made to article 21 € as it cannot be inferred from the situation where an insurer uses an intermediary to distribute/sale its products that a conflict of interest exists because of the payment of a fee/remuneration to the intermediary in consideration of the service provided to the insurer. The FBE would therefore demand to maintain the original wording of article 21 €.	EIOPA disagrees and believes that conflicts of interest may also arise when standard commissions or fees are paid.
101.	German Insurance Association	Question 3	No. ☐ It is irritating that, in contrast to Article 21 of the MiFID Implementing Directive, the relevant group of persons shall also include persons who are involved in the development and management of insurance-based investment products. Product governance provisions are currently still being discussed separately within the scope of IMD2 at Level 1. It is not apparent that the present mandate requires to also address these issues. Particularly in view of the fact that the proposed provisions remain very vague, the scope of application of the provisions should not become entirely indefinite to enable an effective implementation. ☐ Paragraphs (a) and (b) could be deleted since they are not relevant to the distribution of insurance products. They arise from the particular risk situation faced by investment firms due to their proprietary trading activities and investment transactions (e.g. mergers and acquisitions). A comparable risk situation requiring regulation cannot be identified with respect to insurance-based investment products. It is not comprehensible how an issue causing a conflict of interest could be constructed based on the payment of an insurance premium (at the expense of the customer), which is offset by the provision of insurance cover, for instance. ☐ Conversely, the two paragraphs provide room for misinterpretations if even the legitimate remuneration of	EIOPA would like to refer to the Technical Advice which provides some explanations and examples re the application of the specific instances in the context of insurance distribution activities.

			intermediaries for their services might be interpreted as "financial gain". ☐ With respect to paragraph € it is not apparent either how this might be relevant to the distribution of insurance products. In contrast to investment firms, insurers do not mediate between opposing mandates of different customers (such is the case with buy and sell orders of securities, for instance). ☐ On paragraph (d): The variation in the wording in paragraph (d) is neither clear nor justified. While it only says "that person", paragraphs (a)-(c) and € explicitly name the persons involved. Moreover, it is not clear which issue with respect to the distribution of insurance products shall actually be addressed by this provision. (Private) Customers, who shall be protected, do naturally not carry on insurance distribution activities. ☐ On paragraph €: Paragraph € should at least be narrowed since this constellation only rarely causes any conflicts of interest. The wording of the paragraph implies that there is always a conflict of interest in the context of commission-based distribution activities, which is not appropriate (see also section "General Comment"). Commissions paid on an ongoing basis as well as acquisition commissions with liability in case of near-term cancellation ("Stornohaftung"), in particular, sufficiently ensure an adequate alignment of the interests of customers and intermediaries. The expansion of the wording to any monetary and non-monetary elements of remuneration (in contrast to the initial statement of Article 21€ of the MiFID Implementing Directive, which solely focuses on "inducements"), goes too far. Conflicts of interest do usually not arise from so-called soft commissions, in particular. Services such as trainings or the provision of office equipment are typical services provided by insurers to tied	

			intermediaries and result from the legal responsibility of the insurance undertaking on whose behalf the intermediaries are acting. The same applies to independent intermediaries since they too rely on information and training provided by insurance undertakings without violating their obligations towards their customers. Politics also requires intermediaries to know the features of the products they distribute to customers. Trainings of the product providers, in particular, contribute to the acquisition of knowledge on the products. Soft commissions do therefore usually not result in disadvantages for customers, but rather improve the quality of the advice.	
102.	Groupement des Entreprises Mutuelles d'Assurance	Question 3		
103.	Institute and Faculty of Actuaries	Question 3	Other than the change in technical wording, the application of the principles to those participating in the distribution process is appropriate. The IfoA is supportive of the expanded definition in e) of all monetary and non-monetary benefits, without exclusion of standard commission and fees. Were the definition not expanded, standard fees may still act as an incentive to distribute products that may not be in the customers' best interests.	Noted.
104.	Insurance Europe	Question 3	We fail to see how point (d) would be applicable in an insurance context and believe that this requirement should either be removed or EIOPA needs to be much clearer about its intention here, so as to avoid any risk of this being misinterpreted in the future. We are also not sure of the exact meaning that should be applied to a "linked person" and would request that EIOPA remove this reference or make appropriate clarification this in the text. Similarly, we are unsure how the terms financial loss	Letter (d) has been removed. Re "linked person" the original MiFID wording was introduced. Re letter e EIOPA disagrees and believes that conflicts of interest may also arise if standard

			or gain in point (a) are relevant in an insurance context, as these are concepts more relevant to trading on financial markets. We do not support the adjustment that has been made by EIOPA to adapt point e of Article and would support the original wording of the MiFID implementing directive.	commissions or fees are paid.
105.	IRSG	Question 3	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. 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. 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. 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.	EIOPA has further modified the wording in order to better take account of the insurance specificities. The Technical Advice also provides explanatory text with regard to the application of the other instances where conflicts of interest typically arise.

			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 (i.e. adequately covered by MiFID) where customer and distributor/provider could end up on opposing sides of a transaction (e.g. in M&A situations or capital market transactions including proprietary trading of investment banks). This is almost impossible in the insurance world. With reference to the following sentence in the consultation paper on page 11, "(…) this follows from the intermediary's own interest to make a financial gain when providing services to customers", 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.	
106.	Test Achats	Question 3 Do you agree with the adjustments pro	Yes, we agree. However, just mentioning the typology of all possible conflict of interest, like copy-pasting the text of the proposed technical advice, is not sufficient. This is what we can read on Internet sites of intermediaries in Belgium where the MiFID principles have been implemented for insurance intermediaries. We recommend to add in the draft technical advice that the intermediary must clearly and concretely identify the conflicts of interest that arise in his own practice.	Noted.
C 107.	Confidential response	Question 3		
108.	Allianz SE	Question 4	It should be made clear that the EU Commission and EIOPA will not over-extend the interpretation of conflicts of interest in order to introduce material policy choices through a back	Noted.

			door, e.g. via issuance of Guidelines and Opinions instead of rules based on a proper mandate and which have been passed based on an adequate legislative process. This is particularly applicable to such rules which have been explicitly discussed and rejected in the Level 1 discussions (e.g. on commission bans, for more details see answers to Questions 9 and 10).	
109.	ANASF	Question 4	For the sake of a level playing field, we emphasize the importance of thorough harmonization between the different sectors of the financial markets.	EIOPA agrees.
110.	Association of British Insurers (ABI)	Question 4	Asides from the clarifications requested in answer 3 we propose to change the wording of point € where it refers to a "person other than the customer" and replace it with "third party" to ensure consistency.	Noted.
111.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	Question 4	No	Noted.
112.	Association of Professional Financial Advisers	Question 4	See comments in response to question 2 above	Noted.
113.	Assuralia	Question 4	Are there any additional adjustments to be made from your point of view? We do not agree (cfr. Response to question 2).	Noted.
C 114.	Confidential response	Question 4		
115.	BEUC, The European Consumer Organisation	Question 4	BEUC is convinced that conflicts of interest arising from monetary and non-monetary inducements are by far the most relevant with respect to potential harm for consumers. Therefore we ask EIOPA to consider a change in the MIFID	EIOPA has modified the wording in order to clarify that conflicts of interest may also

			Implementing directive, clearly stating that conflicts of interest related to remuneration or inducements are the most important with respect to potential harm to consumers.	arise if standard commissions or fees are paid. EIOPA is aware that conflicts of interest may further arise with regard to internal payments. This issue will be addressed separately and need further analysis, first.
116.	BIPAR	Question 4	For reasons explained above and to enable the intermediary to be remunerated for his services, BIPAR would suggest the following drafting for e): "e) the insurance intermediary, insurance undertaking, linked person or person involved in carrying out insurance distribution activities receive or will receive from a person other than the customer a monetary or non –monetary benefit in relation to the insurance distribution activities provided to the customer, other than the ordinary commission or fee for that service."	Noted.
117.	Bund der Versicherten (BdV)	Question 4 Are there any additional adjustments to	Conflicts of interest have to be considered as part of Business Conduct Risks. These are risks relating to the way in which a firm and its staff conduct themselves, and includes matters such as how consumers are treated, how products are designed and brought to market, remuneration of staff, and how firms deal with conflicts of interest or resolve similarly adverse incentives. With respect to the conduct of business, there is a link between conduct risk and governance. Therefore, conduct risks should clearly not be solved by means of additional capital requirements alone. Financial institutions should be encouraged to avoid simply factoring in possible fines for misconduct in their prices and continuing	Noted

			without internal reforms. The ultimate responsibility for conduct-of-business matters lies with the institutions' board members (cf. ESAs Joint Committee Report on Risks and Vulnerabilities in the EU Financial System, Aug. 2014).	
118.	BVI	Question 4	We do not see the need for further adjustments in this regard.	Noted.
C 119.	Confidential response	Question 4		
120.	CNCIF	Question 4	The CNCIF would suggest specifying whose burden it is to monitor and oversee potential conflicts. In particular, the notion of "link" as currently proposed, does not refer to the notion of "control" used in the MiFID Implementing Directive and seems too broad. Similarly, the difference between an "insurance intermediary" and a "person involved in carrying out insurance distribution activities" needs to be specified as is currently seems redundant. A revised draft of the proposed wording would be : For the purpose of identifying the types of conflict of interest that arise in the course of carrying out any insurance distribution activities and which may entail the risk of adversely affecting the interests of a customer, insurance intermediaries and/or insurance undertakings as the case may be should take into account, by way of minimum criteria, the question whether they or any person directly or indirectly linked to them by control or otherwise or a person involved in carrying out insurance distribution activities for the customer, including those that are involved in the development and management of insurance based investment products, or another customer are in any of the following situations, whether as a result of carrying out insurance distribution activities or otherwise: a. the insurance intermediary, insurance undertaking, or linked person or person involved in carrying out insurance	Re "linked person" the original MiFID wording was reintroduced.

			distribution activities is likely to make a financial gain, or avoid a financial loss, at the expense of the customer; b. the insurance intermediary, insurance undertaking, or linked person or person involved in carrying out insurance distribution activities has an interest in the outcome of those activities which is distinct from the customer's interest in that outcome; c. the insurance intermediary, insurance undertaking, or linked person or person involved in carrying out insurance distribution activities has a financial or other incentive to favour the interest of another customer or group of customers over the interests of the customer; d. the insurance intermediary or linked person the firm or that person carries on the same business as the customer; e. the insurance intermediary, insurance undertaking, or linked person or person involved in carrying out insurance distribution activities receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer	
121.	European Federation of Financial Advisers and Fina	Question 4	No.	Noted.
122.	Fédération Française des Sociétés d'Assurances (	Question 4	No	Noted.
123.	Federation of German Consumer Organisations	Question 4	The vzbv is convinced that conflicts of interest arising from monetary and non-monetary inducements are by far the most relevant with respect to potential harm for consumers. Therefore we ask EIOPA to consider a change in the MIFID	EIOPA has modified the wording in order to clarify that conflicts of interest may also

			Implementing directive, clearly stating that conflicts of interest related to remuneration or inducements are the most important with respect to potential harm to consumers.	arise if standard commissions or fees are paid. EIOPA is aware that conflicts of interest may further arise with regard to internal payments. This issue will be addressed separately and need further analysis, first.
124.	Finance Norway	Question 4	Trialogue negotiations on IMD II are expected to start in January 2015. The outcome of these negotiations will have impact on the rules that will apply to insurance-based investment products. It is of uttermost importance that disparity and overlaps between IMD II and these delegated acts are avoided. Finance Norway calls on both EIOPA and ESMA to align the regimes for investment products and insurance-based investment products to allow a level-playing field, while preserving the current remuneration model as decided by the legislator on level 1. A quality enhancement criteria should not be used to render a commission-based distribution model de-facto impossible.	Noted.
125.	Financial Services User Group (FSUG)	Question 4	No	Noted.
126.	French Banking Federation (FBF)	Question 4	No additional adjustment seems necessary.	Noted.
127.	German Insurance Association	Question 4	The statements on the significance of commissions do not reveal what EIOPA understands by standard commissions and fees. Commission standards, for instance, cannot be identified in the German market, standards on fees are not available due to a lack of respective provisions. Moreover, standards	From EIOPA's perspective commissions and fees comprise any payment by a third party not

			cannot evolve in view of antitrust law. Furthermore, systematic conflicts of interest during the term of insurance-based investment products cannot be identified: according to their design, insurance-based investment products (in contrast to some other investment products) do usually not require ongoing adjustments or decisions by the customer. They are rather designed for being hold until the scheduled maturity of the product ("buy and hold"). Thus, the potential risk of harmful conflicts of interest during the term is already extremely low. Moreover, the expenses for the required services, advice and adjustments during the term have usually already been included in the remuneration of the intermediaries. They can be requested by the customer at any time, for instance when customers want to change the policyholder, the beneficiary, take out a mortgage, or ask for premature or scheduled disbursement due to changes in their lives. Systematic conflicts of interest cannot be identified here either.	acting on behalf of the customer.
128.	Groupement des Entreprises Mutuelles d'Assurance	Question 4	From our point of view, the implementing measures should also take into account the provision on the service of advice. In some Member States (i.e. in France) service of advice is mandatory whatever the distribution channel. This means that insurance undertakings and intermediaries are expected to provide advice to customers in good time before the conclusion of an insurance contract. We believe the provisions on the service of advice are sufficient to avoid conflicts of interests.	Noted.
129.	Institute and Faculty of Actuaries	Question 4	We do not consider further adjustments necessary.	Noted.
130.	Insurance Europe	Question 4	As indicated in the response to Question 3, we would support the application of the original wording of the MiFID implementing directive for point €. However, we would	Re letter e EIOPA disagrees and believes that conflicts of

			propose to change the wording of point € where it refers to a "person other than the customer" and to replace it with "third party" in order to maintain consistent wording within the rest of the text.	interest may also arise with regard to standard commissions and fees.
131.	IRSG	Question 4	See answer to question 3	Noted.
132.	Nordic Financial Unions (NFU)	Question 4	Excessive sales targets emanating from performance measurements systems should be added to the basic structure within Article 21. What differs from, for example Art 21 (a), is that performance measurement systems do not have to be directly linked to a financial gain of the employee in terms of commissions or variable pay. Instead the results of the measurements can have an impact on the employee's position at the company and the future salary negotiations. Performance measurements can increase the sales pressure and the stress levels of the employees. With personal sales goals for the employees they can feel pressured to sell more products that are not in the best interest of the customers. The risk for conflicts of interest due to excessive sales targets is recognised in MiFID 2, Article 24 (10) « An investment firm which provides investment services to clients shall ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interest of its clients. In particular, it shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular financial instrument to a retail client when the investment firm could offer a different financial instrument which would better meet that client's needs. »	Noted.
133.	Test Achats	Question 4 Are there any additional	Test-Achats is convinced that conflicts of interest arising from monetary and non-monetary inducements are by far the most relevant with respect to potential harm for consumers.	EIOPA has modified the wording in order to clarify that conflicts

		adjustment	Therefore we ask EIOPA to consider a change in the MIFID Implementing directive, clearly stating that conflicts of interest related to remuneration or inducements are the most important with respect to potential harm to consumers.	of interest may also arise if standard commissions or fees are paid. EIOPA is aware that conflicts of interest may further arise with regard to internal payments. This issue will be addressed separately and need further analysis, first.
C 134.	Confidential response	Question 4		
135.	Allianz SE	Question 5	The general principles-based nature of the approaches in Art. 22 (1) and (2) of the MiFID Implementing Directive are generally adequate to address conflicts of interest. In this context it is important that an effectiveness-oriented and truly principles-based approach supplemented by general guidance rules is taken (also see General Comment). Unnecessarily narrow or inappropriate rules or even prescriptions about certain instruments carry a high risk of unintended adverse consequences. They should therefore be avoided. Any organisational rules similar to Art. 22 (3) of the MiFID Implementing Directive should be adapted to the specificities of the insurance business (for details see answer to Question 6).	Noted.
136.	ANASF	Question 5	For the sake of a level playing field, we generally agree with both the application of the general principles set out in Article 22 of the MiFID Implementing Directive and their further specification through EIOPA guidelines. We suggest considering the possibility to introduce an ad hoc regime for those professionals that distribute insurance-based	It should be taken into consideration that the IMD does not apply to persons whose principal professional activity is other than

			investment products in an incidental manner, whose typical activity is the provision of investment advice and the distribution of financial instruments and services, considering that in these cases MiFID requirements already apply.	insurance mediation (Art. 1 paragraph 2 letter d Directive 2002/92/EC ("IMD"). EIOPA is not supposed to provide Technical Advice how to broaden the scope of this Directive which would have to be dealt with in the legislative text of the Directive (but not through L2).
137.	Association of British Insurers (ABI)	Question 5	The ABI agrees with the general principle of Article 22 especially with regards to paragraph 1, 2 and 4. However paragraph 3 points (a),(b), (c) and (e) are not applicable to insurance. Therefore we would recommend that these provisions are removed or have further clarification provided at level 2.. We feel it would be more appropriate to clarify at level 2 rather than through further guidance. If the provisions are not applicable, or if further clarity at Level 2 is not possible, we suggest that it would be more appropriate to remove these provisions.	EIOPA disagrees and believes that the specific organisational measures and procedures outlined in para. 3 may also be relevant/applicable for insurance undertakings and insurance intermediaries. The Technical Advice provides examples in which cases the organisational measures may apply.
138.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	Question 5	Yes but it needs to be proportionate for smaller intermediaries, recognising that separation of duties is not always possible, and to take into consideration circumstances of outsourcing externally or within a Group.	Noted. The principle of proportionality has been emphasized.
139.	Association of	Question 5	APFA agrees with and supports the first two paragraphs of	Noted.

	Professional Financial Advisers		EIOPA draft technical advice on conflicts of interest policy. It is essential that all firms put in place reasonable and proportional systems to prevent conflicts from adversely affecting the interests of its customers. However the different situations addressed by the organisational requirements must be adapted to the distribution of insurance-based investment products. As stated previously, it is essential that any measures dealing with conflicts of interest are appropriately adapted to insurance specificities.	
140.	Assuralia	Question 5	Do you agree that general principles, similar to those set out in Article 22 of the MiFID Implementing Directive, should form the basis for the organisational requirements for insurance undertakings and insurance intermediaries on conflict of interest, further specified through EIOPA guidelines? Comment of Assuralia, the association of insurance companies in Belgium: Article 22 (1) and (2) of the MiFID1 implementing directive requires firms to establish, implement and maintain an effective conflicts of interest policy which must include the specific conflicts of interest identified and the measures taken to manage them. We agree that these general principles are relevant for the Belgian market for insurance based investment products. The Belgian market has introduced article 22 (1) and (2) of the MiFID1 implementing directive for insurance based investment products by the Act of 30 July 2013 (entry into force: 30 April 2014), specifying that disclosure of the conflict of interest is a step of last resort. It can be made in a durable medium. We are reluctant with regard to the idea of publishing detailed	Re guidelines EIOPA disagrees and believes that EIOPA should be explicitly empowered to issue guidelines, if necessary, in order to respond to future market developments in a flexible way or in cases where market participants require more guidance on the application of the general principle.

			guidelines on the European level with regard to this issue. The added value of EIOPA guidelines on how to set up the policy itself in practice is not obvious: Identifying the relevant conflicts of interest and taking appropriate measures is typically done on the level of the actual undertaking or intermediary, under the control of the national supervisory authority. The documents containing that conflict of interest policy themselves also serve the local national supervisory authority (control) and the actual potential clients concerned (information). Harmonising practical details with regard to the setting up and writing of conflict of interest policies on the level of EIOPA seems to have minimal added value, as there is no use in comparing them on a cross-border basis.	
141.	Austrian Insurance Association (VVO)	Question 5	The general principles in Art 22 (1) and (2) do not require any further guidelines.	As the principles proposed are of abstract nature, EIOPA thinks it might be helpful for market participants to explain the practical application and the regulatory expectations by issuing guidelines setting some typical examples (a.o. re the proportionality).
C 142.	Confidential response	Question 5		
143.	BEUC, The European Consumer	Question 5	Yes, we agree.	Noted.

	Organisation			
144.	BIPAR	Question 5	General comments Every EIOPA proposal should also ensure a level playing field between all participants involved in the selling of insurance-based investment products. Specific comments: BIPAR agrees with and supports the first two paragraphs of the EIOPA draft technical advice on conflicts of interest policy. BIPAR 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.	Noted.
145.	Bund der Versicherten (BdV)	Question 5 Do you agree that general principles, s	Yes, we fully agree. Because of the very different situations in which conflicts of interest may arise and the fact that business practices constantly evolve, we – like other stakeholders – argue that it would not be appropriate to come up with an exhaustive enumeration of all existing or conceivable conflicts of interests, as this would create loopholes and the risk that the rules could easily be circumvented. If any list of examples will be published, it should only be an indicative list, and we fully support EIOPA's intention, NOT to create a safe harbour provision.	Noted
146.	BVI	Question 5	We support the notion of transferring the general principles set out in Article 22 of the MiFID Implementing Directive to the context of insurance distribution in order to form the basis for implementing measures with regard to the conflict of interest policy.	Noted
C	Confidential	Question 5		

147.	response			
148.	EFAMA	Question 5	We support the notion of transferring the general principles set out in Article 22 of the MiFID Implementing Directive to the context of insurance distribution in order to form the basis for implementing measures with regard to the conflict of interest policy.	Noted
149.	European Federation of Financial Advisers and Fina	Question 5	FECIF in general agrees with EIOPA's proposal to take Article 22 as a reference point. Specification through EIOPA guidelines seems to be an appropriate way to adapt and modify MiFID provisions to the specifities of various business models of insurance distributors and manufacturers. However, guidelines should highlight the main ideas and avoid details.	Noted
150.	Fédération Française des Sociétés d'Assurances (	Question 5	The FFSA believes that the wording of paragraph 1 and 2 of article 22 of the MIFID1 implementing directive seem appropriate to be used in the insurance distribution context. By contrast, paragraph 3 (a) to (e) is quite unclear and we wonder how it is expected to be applied to insurance distribution. We would therefore ask EIOPA to demonstrate in the level 2 measures how these provisions apply to insurance distributors rather than to maintain the text as it stood and defer explanations through further guidelines.	EIOPA believes that the specific organisational measures and procedures outlined in para. 3 may also be relevant/applicable for insurance undertakings and insurance intermediaries. The Technical Advice provides examples in which cases the organisational measures may apply.
151.	Federation of Finnish Financial Services	Question 5	We believe high level principles on conflict of interest policy are sufficient and further EIOPA guidance is not needed. The principle of proportionality will need to be taken into account when assessing the requirements in this article. We feel customers will not make use of detailed information on conflict of interest policy.	Re guidelines EIOPA disagrees and believes that EIOPA should be explicitly empowered to issue guidelines, if necessary, in order to

				respond to future market developments in a flexible way or in cases where market participants require more guidance on the application of the general principle.
152.	Federation of German Consumer Organisations	Question 5	Yes, we agree.	Noted
153.	Finance Norway	Question 5	Finance Norway agrees that general principles should form the basis for the organisational requirements for insurance undertakings and insurance mediaries. These principles must be aligned with IMD II. However, we think that organisational requirements for insurance undertakings and insurance intermediaries on conflict of interest should be addressed directly in the text of Level 2 measures, as this will advance legal certainty, clarity and precision. NCAs then may not to the same extent as today, impose new obligations based on their own interpretations.	Re guidelines EIOPA disagrees and believes that EIOPA should be explicitly empowered to issue guidelines, if necessary, in order to respond to future market developments in a flexible way or in cases where market participants require more guidance on the application of the general principle.
154.	Financial Services Consumer Panel	Question 5	The Panel welcomes the requirement for insurance firms and intermediaries to establish internal organisational processes to avoid and handle conflicts of interest. The general principles set out in the MiFID Implementing Directive are, in our view, appropriate for this purpose.	Noted.
155.	Financial Services	Question 5	We agree with this proposal.	Noted.

	User Group (FSUG)			
156.	French Banking Federation (FBF)	Question 5	Transparency is an effective way to manage conflicts of interest. This should not be seen only as the last option (« last resort » in point 4). The proposed point 5 is wider than the existing in MiFID, namely « including the risks to the customer that arise as a result of the conflict and steps undertaken to mitigate these risks ».. It should stick to the text of MIFID (information of a general nature and / or the source of the conflict of interest).	Noted.
157.	German Insurance Association	Question 5	No. Even though general principles adjusted to insurance distribution activities, similar to those set out in Article 22 of the MiFID Implementing Directive, can provide sufficient scope to adjust the internal measures to the size of the undertaking, if necessary. However, they should be based on principles and outcome and should focus as little as possible on individual tools. Focussing on certain tools at pan-European level bears the risk of overly rigid provisions in individual cases. This would be contrary to the principle of proportionality, see also Question 8. Additional means of guidance, such as guidelines and good practice reports, however, are being rejected in order to take account of the characteristics of insurance-based investment products, insurance mediation-specific conflicts of interest and the diversity of national business models in sales while complying with the principle of proportionality. Major provisions should be stipulated in the basic legal act and be specified in delegated acts, where absolutely necessary. The required adjustment to the individual case should be carried out by national supervisory authorities or by undertakings themselves. Legitimation of extensive interventions in the principles of insurance distribution activities by means of guidelines and good practice reports, however, is legally	Re guidelines EIOPA disagrees and believes that EIOPA should be explicitly empowered to issue guidelines, if necessary, in order to respond to future market developments in a flexible way or in cases where market participants require more guidance on the application of the general principle.

			questionable and does not enhance legal certainty. Moreover, customers always have the possibility to have possible conflicts of interest settled by means of the external complaints-handling procedure through the national ombudsmen within the meaning of Article 13 of IMD1. These procedures are an unbureaucratic alternative that is free of charge.	
158.	Institute and Faculty of Actuaries	Question 5	The IFoA agrees with EIOPA's view that general principles should form the basis of any organisational requirements. Detailed rules would not be appropriate given the significant difference in product features across all Member States. Furthermore, even detailed rules are unlikely to be exhaustive and, therefore, risk leading to gaps in coverage. The production of a conflicts of interest policy does not appear to be excessive in terms of the organisational requirements of an organisation.	Noted.
159.	Insurance Europe	Question 5	We believe that the wording of paragraphs 1 and 2 of Article 22 seem appropriate to be used in the insurance context. However, while point (d) of paragraph 3 may also be appropriate, it is unclear how points (a), (b), (c) and (e) is expected to be applied to insurance. We would therefore request EIOPA to demonstrate in the Level 2 measures how these provisions are intended to apply to insurance, rather than to introduce further specification through guidelines, and if the provisions are not applicable they should be removed.	EIOPA believes that the specific organisational measures and procedures outlined in para. 3 may also be relevant/applicable for insurance undertakings and insurance intermediaries. The Technical Advice provides examples in which cases the organisational measures may apply.
160.	IRSG	Question 5	The IRSG agrees with and supports the first two paragraphs	Noted.

			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.	
161.	Nordic Financial Unions (NFU)	Question 5	As written under Question 2, NFU finds that a level playing field is important and support that the rules are streamlined with those of MiFID but still adapted to the insurance-specific legal context and consistent with IMD. In relation to the management of potential conflicts of interest, we believe that one of the main ways of combatting conflict of interest is to address the high sales pressure finance employees are under. One way of doing this is to introduce qualitative measures such as customer satisfaction, rather than solely quantitative measures such as the number of products sold. Currently employees often have a stressful dilemma, either to abide by the rules but not meeting their targets set by the employer, or meeting their targets but not applying the rules. We find that a reference to excessive sales targets should be included in draft advice. It should be clarified who in the organization is responsible for the support of the compliance with the policy. If the board is responsible they should ensure that policies to identify potential conflicts of interest are developed, implemented and monitored.	Noted.
162.	Test Achats	Question 5 Do you agree that general principle	Yes, we agree.	Noted.

C 163.	Confidential response	Question 5		
164.	Allianz SE	Question 6	Allianz shares the general perspective that some measures similar to those listed in Art. 22 (3) of the MiFID Implementing Directive may be relevant for insurance distribution, however in any case it should be made sure that the implementation ☐ is truly principles-based and effectiveness-oriented (for details see General Comment section) and therefore avoids formal rules or overly rigid instrumental prescriptions ☐ takes into account the specificities of the insurance business (see also Question 5) ☐ leaves Member States and companies with sufficient flexibility to develop adequate responses. The enumeration of specific instruments (as listed in Art. 22 (3) of the MiFID Implementing Directive and EIOPA's corresponding proposed Draft Technical Advice Section in the implementing measures on page 16 – 18 of the Consultation Paper) could prompt some regulators or supervisors to develop detailed prescriptions for specific instruments to be employed under certain circumstances, even though other instruments would also be sufficient. This would undermine the intended principles-based and effectiveness-oriented approach, since it does not permit sufficient flexibility in the choice of instruments. These concerns should be explicitly addressed in the wording of the delegated acts and other rules. In particular, smaller players and sole traders would find some of the measures proposed in Art. 22 (3) of the MiFID Implementing Directive very difficult or even impossible to implement and therefore prohibitive. As an example, independent sole traders by definition cannot provide	Re sole traders and small firms EIOPA would like to point out that the principle of proportionality has been emphasised and the wording of para. 3 has been modified. Nevertheless, EIOPA believes that the organisational measures may also be relevant in the insurance sector.

			organisational separation of functions. The prescription of such specific instruments therefore should only be considered if there is no acceptable alternative conceivable to achieve adequate customer protection. In other words, if other measures would also adequately address possible issues, such an explicit prescription would be overly rigid and unacceptable.	
165.	ANASF	Question 6	Yes, we do. We consider that this proposal is necessary in light of greater harmonization between the different sectors of the financial markets.	Noted.
166.	Association of British Insurers (ABI)	Question 6	The ABI does not share EIOPA's view that the situations addressed by the organisational requirements in Article 22 (3) may be relevant in the context of insurance. Only Article 22 point (d) can be loosely applied to the insurance sector. Therefore we would ask for clarification on these provisions at level 2 rather than through further guidance, and if this is not possible we suggest it would be more appropriate to remove these provisions.	EIOPA disagrees and believes that the specific organisational measures and procedures outlined in para. 3 may also be relevant/applicable for insurance undertakings and insurance intermediaries. The Technical Advice provides examples in which cases the organisational measures may apply.
167.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	Question 6	Yes but to better reflect the long term nature of a life insurance policy, ideally, there needs to be some 'quality of business' element to any remuneration guidance. Providers may offer commission structures to encourage ongoing servicing and business retention for example through unearned commission recovery provisions in event of lapse or early surrender, or staggered/ spread of payment. Such	Noted.

			elements can be less easily administered through fee based remuneration. We also presume that it is the intention of EIOPA to define "durable medium" by reference to the appropriate Article of the IMD2 text so as to include electronic communication?	
168.	Association of Professional Financial Advisers	Question 6	See comments in response to question 5 above	Noted.
169.	Assuralia	Question 6	Do you share EIOPA's view that the situations addressed by the organisational requirements in Article 22 (3) may also be relevant in the context of insurance undertakings and/or intermediaries in the course of their distribution activities? Comment of Assuralia, the association of insurance companies in Belgium: We do not see the direct practical relevance of article 22 (3) in the context of the Belgian market for insurance based investment products.	Noted. EIOPA has provided in its Technical Advice examples where EIOPA believes that the organisational measures could apply.
170.	Austrian Insurance Association (VVO)	Question 6	The organisational requirements addressed in Art 22 (3) are inappropriate for one-man businesses, particularly lit (a), (b), (c) and €. Control of exchange of information between relevant persons, separate supervision of relevant persons, remuneration of groups of relevant persons, preventing or controlling the simultaneous or sequential involvement of a relevant person – these procedures are tailored for entities exceeding one person.	EIOPA takes note of this comment.
C 171.	Confidential response	Question 6		
172.	BEUC, The	Question 6	Yes, we do.	Noted.

	European Consumer Organisation			
173.	BIPAR	Question 6	BIPAR believes that paragraph 3 and the different situations addressed by the organisational requirements may not be adapted to the distribution of insurance-based investment products. BIPAR does not believe that the situations addressed by the organisational requirements in Article 22(3) are relevant at all in the context of insurance intermediaries in the course of their distribution activities. For example, Article 22(3a) clearly has relevance to stockbroking services, unit pricing of retail funds would not be impacted by one or more intermediaries having access to information about the funds. As requested earlier EIOPA should not use elements that are irrelevant to 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. Has EIOPA tested the situations under paragraph 3 with practical examples linked to the distribution of insurance-based investment products? BIPAR fails to understand how they would be covered by the procedures under paragraph 3. 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-paste of the MiFID rules just replacing any references to "investment	EIOPA disagrees and believes that the specific organisational measures and procedures outlined in para. 3 may also be relevant/applicable for insurance undertakings and insurance intermediaries. The Technical Advice provides examples in which cases the organisational measures may apply.

			services" with "insurance distribution activities" is not the right approach.	
174.	Bund der Versicherten (BdV)	Question 6 Do you share EIOPA's view that the si	Yes, we fully agree.	Noted
175.	BVI	Question 6	Given that Article 22 (3) of the MiFID Implementing Directive depicts general measures which may be appropriate to deal with conflicts of interest in a complex organisation involving several divisions and different areas of responsibility, we believe that it should be equally relevant to the distribution activities performed by insurance undertakings and/or intermediaries.	EIOPA agrees.
C 176.	Confidential response	Question 6		
177.	EFAMA	Question 6	Given that Article 22 (3) of the MiFID Implementing Directive describes general measures which may be appropriate to deal with conflicts of interest in a complex organisation involving several divisions and different areas of responsibility, we believe that it should be equally relevant to the distribution activities performed by insurance undertakings and/or intermediaries.	EIOPA agrees.
178.	European Federation of Financial Advisers and Fina	Question 6	The situations may be relevant, but FECIF fails to see how such provisions could be implemented by the vast majority of insurance intermediaries in Europe. For example a separate supervision of relevant persons either needs delegation of a staff member or outsourcing to an independent supervisor such as e.g. an auditing company. Most of Europe's insurance intermediaries are SMEs or sole traders. Establishing a full regime as described in Art. 22/3 would cause excessive administrative burdens and costs making continuation of their	EIOPA disagrees and believes that the specific organisational measures and procedures outlined in para. 3 may also be relevant/applicable for insurance undertakings and

			business impossible. Without a proportionate approach most IMD regulated entities would find themselves in the situation of either 1. shutting down their businesses, or 2. associating themselves with bigger organisations such as banks or insurance companies in order to fulfil the needs for PRIIPs sale, or 3. stopping PRIIPs sales in order to avoid costly burdens. In each case the result would be a drastic decline in the number of insurance intermediaries offering PRIIPs to investors. It would totally contradict the intention of the European Union to enhance consumer choice.	insurance intermediaries. The Technical Advice provides examples in which cases the organisational measures may apply. Re small undertakings EIOPA would like to point out that the principle of proportionality has been emphasised.
179.	Fédération Française des Sociétés d'Assurances (	Question 6	We doubt that the situations addressed by the organisational requirements in article 22 (3) are relevant in the insurance distribution context. We would therefore require EIOPA to demonstrate in level 2 measures how these requirements apply to insurance distribution and if it turns out that they are not applicable, they should be removed.	In the Technical Advice EIOPA has provided examples of instances where the measures may apply.
180.	Federation of Finnish Financial Services	Question 6	We are not sure whether situations mentioned in article 22.3 MiFID Implementing directive are relevant in insurance specific situations.	In the Technical Advice EIOPA has provided examples of instances where the measures may apply.
181.	Federation of German Consumer Organisations	Question 6	Yes, we do.	Noted.
182.	Financial Services Consumer Panel	Question 6	The Panel welcomes the requirement for insurance firms and intermediaries to establish internal organisational processes to	Noted.

			avoid and handle conflicts of interest. The general principles set out in the MiFID Implementing Directive are, in our view, appropriate for this purpose.	
183.	Financial Services User Group (FSUG)	Question 6	Yes, we share EIOPA's view on this issue. We therefore welcome the requirement for insurance firms and intermediaries to establish internal organisational processes to avoid and handle conflicts of interest.	Noted.
184.	French Banking Federation (FBF)	Question 6	It is our view that the situations listed in article 22 (3) are not relevant in the insurance distribution context. Unless EIOPA is in a position to demonstrate in level 2 measures their relevance they should be removed.	EIOPA has provided examples of instances where the measures may apply.
185.	German Insurance Association	Question 6	Some of the organisational requirements addressed in Article 22(3) of the MiFID Implementing Directive might also be relevant in the context of distribution activities of insurance undertakings and/or insurance intermediaries. In practice, however, insurance intermediaries which act as sole traders, and in some cases without any employees, in particular, will only be able to ensure the formal and organisational independence, which is required under Article 22(3) with respect to effective measures regarding the management of conflicts of interest, to a limited extent. As a result, it is decisive that Article 22(3) leaves sufficient scope to adjust the internal measures and procedures to the size of the undertaking. The objective should always be to prevent problematic conflicts of interest effectively rather than to enforce certain formal or organisational provisions. The proposal according to which insurance intermediaries shall adopt alternative or additional measures and procedures if one or more of the measures and procedures specified in	The wording of paragraph 3 has been modified in order to address these concerns.

			Article 22(3) do not ensure the requisite degree of independence in practice, however, is not appropriate. The requisite degree of formal or organisational independence cannot be realised by sole traders, in particular, even more though if they do not have any employees. Accordingly, it will almost be impossible to implement any alternatives in this context. It is for this very reason that customers should have possible conflicts of interest settled by means of the external complaints-handling procedure through the national ombudsmen within the meaning of Article 13 of IMD1. These procedures are an unbureaucratic alternative that is free of charge. Tied intermediaries within the meaning of Article 2(7) of IMD1, in contrast, are usually able to ensure the requisite degree of formal and organisational independence since the insurance undertakings on whose behalf the intermediaries are acting make sure that the necessary measures regarding the management of conflicts of interest are taken. For this reason, there should only be a limited respective obligation for tied intermediaries. The insurance undertaking can provide the tied intermediaries with respective means for managing conflicts of interest for this purpose. The concepts mentioned cannot be implemented and are not appropriate with respect to brokers. Pursuant to German law, brokers are independent agents that are on the customer's side. Thus, their independence has already been ensured by law. Moreover, the separate supervision of relevant persons addressed by EIOPA (3(b) on page 17 of the Consultation Paper) is legally impossible when cooperating with insurance brokers due to the independence of brokers and the resulting fact that they are not subject to any directives.	

			Conflicts of interest of brokers are also prevented by the fact that such conflicts might result in compensation claims by customers and thus in a liability of the brokers under the contractual relationship with their customers.	
186.	Institute and Faculty of Actuaries	Question 6	The IFoA takes the general view that the requirements are relevant to insurance activities.	Noted.
187.	Insurance Europe	Question 6	We do not share EIOPA's view that the situations addressed by the organisational requirements in Article 22(3) are relevant in the insurance context. It is unclear how paragraph 3 (a) to (e) is expected to be applied to insurance. We would therefore request EIOPA to demonstrate in the Level 2 measures how these provisions are intended to apply to insurance, rather than to introduce further specification through guidelines, and if the provisions are not applicable they should be removed.	EIOPA disagrees and believes that the specific organisational measures and procedures outlined in para. 3 may also be relevant/applicable for insurance undertakings and insurance intermediaries. The Technical Advice provides examples in which cases the organisational measures may apply.
188.	IRSG	Question 6	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.	EIOPA disagrees and believes that the specific organisational measures and procedures outlined in para. 3 may also be relevant/applicable for insurance

			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. 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. 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. 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.	undertakings and insurance intermediaries. The Technical Advice provides examples in which cases the organisational measures may apply.

189.	Test Achats	Question 6 Do you share EIOPA's view that the	Yes, we do.	Noted.
C 190.	Confidential response	Question 6		
191.	Allianz SE	Question 7	Allianz agrees that it is acceptable to require distributors to have an adequate conflict of interest policy in place. Nevertheless, care should be taken not to overly burden the distributors with administrative and bureaucratic requirements. A formal requirement for a mandatory periodic review does not seem necessary, once there is an obligation to maintain, review and update such conflict of interest policy when necessary. Allianz does not share the view that an additional highlighting of disclosure as a measure of last resort is necessary: ☐ Art. 13c (2) states with sufficient clarity that "Where organisational or administrative arrangements … to manage conflicts of interest are not sufficient to ensure … that risks of damage to customer interests will be prevented … the … intermediary or insurance undertaking shall clearly disclose of the customer the general nature and/or sources of conflicts of interest". This sufficiently marks a preference for other measures. ☐ While over-reliance on disclosure is certainly not adequate, care should be taken not to reject disclosure as an instrument or complement to other measures prematurely. In many cases, disclosure is a low-cost, yet sufficiently effective	Noted.

			instrument to address certain conflicts of interests or aspects thereof. It would be misguided to require additional costly and cumbersome measures with no additional customer benefit. The cost would ultimately have to be paid for by the customer. An additional devaluation of disclosure as a measure could promote overly rigid regimes and jeopardize such adequate solutions.	
192.	ANASF	Question 7	Yes, we do. However, we also consider that the importance of disclosure requirements should not be underestimated.	Noted.
193.	Association of British Insurers (ABI)	Question 7	The ABI agrees as this is necessary in order to ensure that conflicts are identified and managed.	Noted.
194.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	Question 7	Yes	Noted.
195.	Association of Professional Financial Advisers	Question 7	The periodical review should take into account the proportionality principle and the individual situation of each firm. There should be no fixed system for a review.	Noted. From a consumer protection perspective it seems appropriate and not too burdensome to require undertakings to review (at least annually) their respective policy. EIOPA would also like to point out that the obligation to identify and manage conflicts of interest is perpetual.
196.	Assuralia	Question 7	Do you agree that the amendments proposed in ESMA's	Noted.

			Consultation Paper related to periodic reviews of the conflicts of interest policy and disclosure should be the basis for similar requirements for insurance undertakings and insurance intermediaries? Comment of Assuralia, the association of insurance companies in Belgium: EIOPA proposes to take on board the ESMA amendment to require firms to review their conflict of interest policies periodically and at least once a year. We agree that insurance undertakings and intermediaries should take action when their practices or commercial context change in such a way that the conflicts of interest they encounter are impacted significantly. However, life insurance undertakings and intermediaries may have long term business and commercial models that do not change very often. In such cases reviewing the conflict of interest policy every year will not add value for consumers or supervisors.	
197.	Austrian Insurance Association (VVO)	Question 7	Periodic reviews are in the interest of the insurance undertaking and insurance intermediaries. However, their frequency should be kept within reasonable limits.	EIOPA agrees.
C 198.	Confidential response	Question 7		
199.	BEUC, The European Consumer Organisation	Question 7	BEUC agrees that the amendments proposed in ESMA's consultation should be the basis for similar requirements for insurance undertakings and intermediaries. Moreover we would like to emphasise the importance of the provision that disclosure is only as step of last resort. Concerning the proposed obligation to review conflicts of interest policies, BEUC feels that these reviews should not be understood as a purely internal process of the insurance	Noted.

			undertaking or intermediary, but that they should be supplemented by an external review (by e.g. the NCAs).	
200.	BIPAR	Question 7	The periodical review should take into account the proportionality principle and the individual situation of each firm (small and medium firms would struggle to do more than one review per year). There should be no fixed system for a review.	Noted. From a consumer protection perspective it seems appropriate and not too burdensome to require undertakings to review (at least annually) their respective policy. EIOPA would also like to point out that the obligation to identify and manage conflicts of interest is perpetual.
201.	Bund der Versicherten (BdV)	Question 7 Do you agree that the amendments propos	We agree that the periodic review of conflicts of interest should be assessed at least annually, but more often if required by the NCA. But we do not agree that disclosure of conflicts of interest should only be a step of last resort. As we stressed already in our comments for EIOPA in July, there is a strong asymmetry of information between customers (often with poor knowledge on financial products) and intermediaries (who have at least high sales qualifications). That is the reason why customers ought to be informed in advance on any possible conflicts of interest by full disclosure.	Disclosure as ultima ratio means that entities should try to prevent and solve conflicts of interest, first. Entities should understand disclosure not as equivalent mean which can be used instead of a proper management.
202.	BVI	Question 7	We agree with EIOPA's suggestions for applying the standards on periodic reviews and disclosure as developed by ESMA in its consultation paper on MiFID II to the area of insurance distribution.	Noted.
C	Confidential	Question 7		

203.	response			
204.	CNCIF	Question 7	Given the investment term of most life-insurance products, the CNCIF would suggest a longer term for the periodic reviews of the conflicts of interest policy (2 years)	Noted.
205.	EFAMA	Question 7	We agree with EIOPA's suggestions for applying the standards on periodic reviews and disclosure as developed by ESMA in its consultation paper on MiFID II to the area of insurance distribution.	Noted.
206.	European Federation of Financial Advisers and Fina	Question 7	Any policy has to be reviewed periodically. However, the extent and frequency of reviews should be proportional to the size and nature of business of an insurance distributor. The rules for disclosure seem to be overly detailed and possibly burdening. Furthermore, how can an average customer judge « steps undertaken to mitigate these risks»? This is clearly overreaching and won't be of any use to average customers. With respect to this, we propose substantial revision (reduction) of paragraph no. 5. A review of the conflicts of interest policy each year does not seem to add value. Regulators do not review their own rules each year. Except in the case of new guidelines or new information or a decision from the regulator, firms should only be responsible for a correction if their policy doesn't work in a formal and proven case without any reaction on its part.	From a consumer protection perspective it seems appropriate and not too burdensome to require undertakings to review (at least annually) their respective policy. EIOPA would also like to point out that the obligation to identify and manage conflicts of interest is perpetual.
207.	Fédération Française des Sociétés d'Assurances (	Question 7	As for the new paragraph 5 of the proposed equivalent of article 22, we do not see the added value in requiring to provide information about « the steps undertaken to mitigate » the risk of conflict of interests when at the same time the conflict of interests has been disclosed to the client. Concerning the new paragraph 6 of the proposal, the FFSA considers that it would be disproportionate, burdensome and of no benefit to require insurance undertakings and	From a consumer protection perspective it seems appropriate and not too burdensome to require undertakings to review (at least annually) their respective policy. EIOPA would also like to point out that the

			intermediaries to review their conflicts of interest policy « at least annually ». We would propose instead to use a wording such as « when necessary »	obligation to identify and manage conflicts of interest is perpetual.
208.	Federation of Finnish Financial Services	Question 7	Requirements on periodic review of the conflicts of interest policy should leave necessary flexibility regarding different kinds of business models and take account of proportionality. They should not be too detailed.	Noted.
209.	Federation of German Consumer Organisations	Question 7	The vzbv agrees that the amendments proposed in ESMA's consultation should be the basis for similar requirements for insurance undertakings and intermediaries. Moreover we would like to emphasise the importance of the provision that disclosure is only as step of last resort. Concerning the proposed obligation to review conflicts of interest policies, the vzbv feels that these reviews should not be understood as a purely internal process of the insurance undertaking or intermediary, but that they should be supplemented by an external review (by e.g. the NCAs).	Noted.
210.	Financial Services Consumer Panel	Question 7	Although we accept that it is important that firms review their internal policies frequently to assess whether any changes are required, we do not believe that relying on the industry's ability to self-police is sufficient to ensure that conflict of interest policies remain fit for purpose. The extent of self-regulation that will be required under these rules has not proven effective in the past. It is necessary for internal policies and practices to be reviewed by independent experts.	EIOPA is only requested by the Commission to provide technical advice with regard to organisational measures insurance intermediaries or insurance undertakings; the review by independent

			The Panel remains of the opinion that the rules for prevention and management of conflicts of interest as proposed leave too much scope for interpretation that will in practice allow firms to allow conflicts to persist, to the detriment of the consumer.	experts is a separate issue and not covered by the mandate.
211.	Financial Services User Group (FSUG)	Question 7	We agree with the amendments proposed in the ESMA consultation paper as the basis for similar requirements for insurance undertakings and intermediaries. Moreover, we would like to emphasise the importance of the provision that disclosure is only ever a step of last resort. However, as stated in our response to the ESMA consultation, firms need to review the types of Conflicts of Interest (CoI) present and not solely materialised before the adequacy of their CoI policies can be assessed. Moreover, we also have concerns regarding the effectiveness of the self-regulatory approach proposed by EIOPA. In our view, the proposed review of firms' conflicts of interest policies, should consist of both an internal process of the insurance undertaking or intermediary, as well as an external review by an appropriate independent external body, e.g. the National Competent Authorities.	Noted.
212.	French Banking Federation (FBF)	Question 7	An annual review of the policy is not in and of itself a problem, but this issue is intimately associated with the degree of precision that will ultimately be required. If the frequency of review has to be annual, it is our view that it should consist of a re-examination of the existing policy to ascertain its relevance. It is entirely possible for a firm to maintain the same policy for several years if no major change has occurred.	EIOPA agrees.

213.	German Insurance Association	Question 7	The proposal to disclose conflicts of interest only as a means of last resort and to limit disclosure explicitly to cases in which conflicts of interest cannot be properly resolved otherwise appears to have already been taken into account adequately through the wording in Article 13c(2) of IMD1 and does not require explicit highlighting. The benchmark against which the conflicts of interest policy is evaluated should be the sufficiently effective protection of customers against the adverse effects of conflicts of interest. The principle of proportionality requires in this context the provision of evidence that adverse effects of conflicts of interest do exist in practice. Moreover, it requires equal admissibility of all measures which have demonstrably a sufficient impact to mitigate these conflicts. Sufficient flexibility should also be left to the undertakings in this context. This approach should also be adequately reflected in the delegated acts pursuant to Article 13c(3), in particular. Conversely, general preferential treatment of or discrimination against individual measures without considering the actual positive or negative effects might result in the risk of overregulation or inadequate regulation having overall more adverse effects on customers than necessary, for instance in the form of unnecessarily high costs or undersupply. In addition to situation-based advice, which is already provided today, regular reviews of the measures established by the undertakings correspond to the undertakings' own best interest with respect to customer relationships based on trust or to customer acquisition. This principle, however, does not have to be stipulated separately. Stipulation of annual intervals, in particular, is not required. General stipulation of rigid intervals is neither required nor appropriate. Insurance undertakings will rather review the measures established by them if there are any signs that such a review might be required.	Noted.

214.	Groupement des Entreprises Mutuelles d'Assurance	Question 7	As mentioned in our previous answer, GEMA's mutuals believe that the disclosure of conflicts of interest should be the final solution. The disclosure of conflicts should be a step of last resort, limited to cases where conflicts of interest may not be properly managed otherwise. GEMA's mutuals emphasise that the most important is to establish procedures beforehand in order to prevent, detect, and manage conflicts of interest. They acknowledge that these procedures should be reviewed periodically, but they would rather leave the assessment of this frequency up to each insurance undertaking or intermediary. In our view, it belongs to each insurer to adapt its procedures in accordance with its own nature, the type of products sold, its remuneration system etc. We need proportionality in the implementation of these procedures.	Noted.
215.	Institute and Faculty of Actuaries	Question 7	While regular reviews of the policy are appropriate, if the distribution model of the insurance undertaking is unchanged, it would appear dis-proportionate to require a regular (at least annual) review of the policy. However, if the distribution model were to change in any way for a sub-group of customers, the insurance firm should, at a minimum, consider whether those changes were in line with the policy, or undertake a full review of the policy.	From a consumer protection perspective it seems appropriate and not too burdensome to require undertakings to review (at least annually) their respective policy. EIOPA would also like to point out that the obligation to identify and manage conflicts of interest is perpetual.
216.	Insurance Europe	Question 7	We do not believe that the amendments proposed in ESMA's	EIOPA disagrees. From

			consultation paper regarding periodic reviews of the conflicts of interest policy and disclosure should apply to insurance undertaking and intermediaries. It would be without any benefit or added value to require companies to review their conflicts of interest policy at least annually. We would propose instead to used wording such as 'when necessary' or 'where appropriate' rather than annually. This would better reflect the principle of proportionality and would help to take into account the higher proportion of SMEs operating within the insurance sector than other financial sectors (e.g. in Austria approximately 50% of independent insurance distributors are one-man businesses, while in the German insurance market 80% of its 240,000 intermediaries consist of only one or a maximum of two employees). In addition, we do not see the value in requiring companies to provide information about the steps undertaken to mitigate the risk of conflicts of interest when at the same time the conflict of interest has been disclosed to the customer.	a consumer protection perspective it seems appropriate and not too burdensome to require undertakings to review (at least annually) their respective policy. EIOPA would also like to point out that the obligation to identify and manage conflicts of interest is perpetual.
217.	IRSG	Question 7	No as it would be unnecessarily bureaucratic. Procedures should be reviewed if the market conditions change or if it becomes mandatory under law to adjust.	Noted.
218.	Nordic Financial Unions (NFU)	Question 7	NFU agrees with EIOPA to include ESMA's amendments regarding periodical review also for insurance intermediaries and undertakings. However, subject to that, the technical advice includes that the periodical review should not only be done by management but include the trade union representatives. This in order to ensure that policies are functional and that the most practical solutions are found, bottom up. As conflict of interest policies relate to the procedures and measures carried out by the employees, and as stated, for them to act honestly, fairly and professionally.	Noted.

219.	Test Achats	Question 7	Test-Achats agrees that the amendments proposed in ESMA's consultation should be the basis for similar requirements for insurance undertakings and intermediaries. Moreover we would like to emphasise the importance of the provision that disclosure is only as step of last resort. Concerning the proposed obligation to review conflicts of interest policies, Test-Achats feels that these reviews should not be understood as a purely internal process of the insurance undertaking or intermediary, but that they should be supplemented by an effective control by the NCAs.	Noted.
C 220.	Confidential response	Question 7		
221.	Allianz SE	Question 8	Allianz agrees with EIOPA that the proportionality principle is vital in the adequate application of a conflict-of-interest regime. Allianz also agrees that the proportionality principle is generally included in the wording of the articles of the amended IMD. Whether this is sufficient or proportionality should be explicitly spelled out depends on the threats of non-application or undermination of the principle. The Consultation Paper itself sparks such concerns at several points, especially where ☐ EIOPA takes a categorical position against commission-based sales models and in favour of fee-based models without empirical foundation of the intensity of the issue or the necessity or optimality of the measures(see paragraph 2 on page 11 and section 7, esp. pages 22 - 23 of the Consultation Paper, see also more detailed comments in answers to Questions 9 and 10). The proportionality principle necessitates such empirical foundation. ☐ EIOPA proposes to relegate more specific prescriptions to "Guidelines and Opinions at a later stage" (see paragraph 2 on page 12 and paragraph 4 on page 20 of the Consultation	The wording has been modified in order to emphasis the principle of proportionality.

			Paper). EIOPA's stated policy preferences (e.g. regarding commission-based sales) raise the concern that EIOPA could try to implement material policy changes through a "back door" (i.e. without a proper legislative process) via these instruments later. In particular, EIOPA's illustrative examples for acceptable inducements (see bullet list on page 23 of the Consultation paper) could have easily been chosen to alleviate such concerns. Regrettably, this opportunity has been missed, leaving the reader guessing about EIOPA's intentions on this point. ☐ EIOPA proposes explicit inclusion or even repetition of certain controversial principles or measures, such as the enumeration for certain measures for mitigation (see comments to Question 6) and the proposal for a quality enhancement rule for commission-based sales (see also comments to Question 9). Therefore, an explicit clarification on the application of the proportionality principle without jeopardizing the material content of the protection level seems adequate, even if it may be legally redundant.	
222.	ANASF	Question 8	Yes, we do.	Noted
223.	Association of British Insurers (ABI)	Question 8	Rather than EIOPA producing further guidelines, 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 corporate governance regimes and practices.	Noted.
224.	ASSOCIATION OF	Question 8	Yes but 'proportionality' needs to be explicitly mentioned	The wording of the

	INTERNATIONAL LIFE OFFICES LUXEMBOU		where frameworks are being described In particular we note that the 6th Presidency compromise IMD2 text in Article 22a includes the words "Those arrangements shall be proportionate to the activities performed, the insurance products sold and nature of the distributor". We would like to raise some other issues that have not been raised as a specific question. These come from the fundamental differences between financial instruments and a life insurance investment contract which is; the length of the contract, the inability of the insurer to terminate the contract unilaterally, and the ability of the insured to change habitual residence during the life of the contract. This can result in a number of difficulties for insurance distributors where Host Member States are able to implement different regulation to prohibit or restrict remuneration, inducements or non-monetary benefits received during the life of the policy, their disclosure and their clawback at lapse of the policy. For example, when the contract period 'straddles' the effective date of the new conflicts rules, it may lead to interference with policy design and pre-existing contractual arrangements. We believe that where these rules impact ongoing remuneration, they could have a detrimental impact on servicing arrangements for policyholders. In addition, the prospect of clawback can be particularly problematic where early surrender penalty mechanisms are already built into product design. We would therefore propose a transitional period for in-force contracts, and also that the habitual residence of the policyholder, is not purely dynamic, as a concept. We would therefore request that EIOPA give guidance to regulators mandating some criteria.	Technical Advice has been modified in order to emphasis the principle of proportionality.

			These would be the following principles. 1. Any remuneration arrangements that complied with Host State conflicts rules on the date of the contract (including in relation to remuneration expressed to be in respect of provision of ongoing services) should be capable of continuing. 2. In the event that a policyholder or intermediary moves to another Member State, any remuneration arrangements that complied with Host State conflicts rules on the date of the contract (including remuneration expressed to be in respect of provision of ongoing services) must be capable of continuing."	
225.	Association of Professional Financial Advisers	Question 8	The proportionality principle should be an overall concept applicable to all measures. Most intermediaries are medium, smaller or micro enterprises. We therefore believe 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. We therefore suggest that EIPOA clearly reminds the European Commission of this principle in its technical advice.	The wording of the Technical Advice has been modified in order to emphasis the principle of proportionality.
226.	Assuralia	Question 8	The articles 22 and 23 provide general rules with regard to the establishment, implementation and maintenance of the conflicts of interest policy. These general rules explicitly apply the principle of proportionality (e.g. "appropriate to the size and organization of the firm and the nature, scale and complexity of its business"; "appropriate to the size and activities of the investment firm and of the group to which it belongs, and to the materiality of the risk of damage to the interest of the client"; "as are necessary and appropriate"…). The further application of the principle of proportionality depends to a great extent on the circumstances of each individual case and business model of the intermediary or insurance undertaking concerned. We suggest to allow	Noted.

			national supervisory authorities to develop sufficient practical experience with the application of the proportionality principle before reflecting on promoting convergence between markets by means of EIOPA guidelines or opinions.	
227.	Austrian Insurance Association (VVO)	Question 8	In the interest of legal certainty the text of the delegated act should speak for itself without the help of guidelines.	As the principles proposed are of abstract nature, EIOPA thinks it might be helpful for market participants to explain the practical application and the regulatory expectations by issuing guidelines setting some typical examples (a.o. re the proportionality).
C 228.	Confidential response	Question 8		
229.	BEUC, The European Consumer Organisation	Question 8	Yes, we agree.	Noted.
230.	BIPAR	Question 8	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. We therefore suggest that EIPOA clearly reminds the European Commission of this principle in its technical advice.	The wording of the Technical Advice has been modified in order to emphasis the principle of proportionality.

			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. BIPAR agrees that the principle of proportionality is dealt with in Article 13b and c. At this stage, BIPAR is not convinced about the usefulness re further guidance of EIOPA on this issue such as opinions or guidelines.	
231.	Bund der Versicherten (BdV)	Question 8 Do you agree with the proposal to addre	We strongly support EIOPA's opinion that an explicit reference to the principle of proportionality in the implementing measures for the amended IMD would not appear appropriate or necessary: "An elaborate repetition or specification of this principle in the IMD implementing measures rather bears the risk that the application of that general principle becomes unclear or that the objectives of the new provision are not achieved" (EIOPA Consultation Paper, Oct. 2014, p. 19). As EIOPA has clarified, we stress that the application of the principle of proportionality must not result in a lower level of protection at the expense of customers. That is the reason why not only "reasonable" ("geeignet") steps (article 13b) or "appropriate" ("angemessen") steps (article 13c), but "necessary" ("erforderlich") steps to prevent or to identify	Noted.

			conflicts of interest ought to be required. By issuing EIOPA Guidelines or Opinions at a later stage a sufficient Noted number of examples can be exposed reflecting the diversity of cases which may exist in practice. In doing so, EIOPA will not become a supervisor who creates his own rules to follow, as some market participants assume. Only constant jurisdiction is able to achieve legal certainty.	
232.	BVI	Question 8	We back EIOPA's view that proportionality elements are already included in the Level 1 text to an appropriate extent and thus do not need to be reiterated at Level 2. Such reiteration or further specification rather bears the risk of reducing the scope of the general principle without accounting for the whole variety of possible ways of application. In this regard, we agree with EIOPA that the potential demand for further practical guidance can be better addressed by supervisory opinions or guidelines at a later stage.	Noted.
C 233.	Confidential response	Question 8		
234.	EFAMA	Question 8	We support EIOPA's view that proportionality elements are already included in the Level 1 text to an appropriate extent and thus do not need to be reiterated at Level 2. Such reiteration or further specification raises the risk of reducing the scope of the general principle without accounting for the variety of possible ways of application. In this regard, we agree with EIOPA that the potential demand for further practical guidance can be better addressed by supervisory opinions or guidelines at a later stage.	Noted.
235.	European Federation of Financial Advisers and Fina	Question 8	FECIF is of the opinion that an explicit reference to the principle of proportionality in the implementing measures for the amended IMD is necessary, especially for the sake of SME firms' certainty. The "principle of proportionality" as laid down in Article 5(4) of the Treaty of Europe is much too general. The new Article 13b of the IMD requests to take all	The wording of the Technical Advice has been modified in order to emphasis the principle of proportionality.

			"reasonable" steps to prevent conflicts of interest from adversely affecting the interests of their customers. Article 13c requests to take "appropriate" steps to identify conflicts of interest that arise while carrying out any distribution activities. What is "reasonable" and "appropriate"? In the view of FECIF, a specification of the principle of proportionality, in addition to the measures having to be proportionate to the nature, scale and complexity of the said risks in the legal text of the implementing measures, would create huge value in terms of legal certainty. Regarding the addition of examples in the text, we agree: we are not in favour. Also, we are unsure whether Guidelines could be a good solution.	
236.	Fédération Française des Sociétés d'Assurances (	Question 8	It is crucial that the measures developed should not give rise to onerous burden. Moreover, the FFSA requires that proportionality is addressed directly in the text of the level 2 measures. Legal certainty is needed in the implementing measures themselves as regards rules which will apply to individual and SMEs intermediaries. For example, governance requirements such as written policies and procedures or separation of functions, should not apply to these intermediaries. EIOPA should also take into account that agents who work on behalf and under the responsibility of an insurance undertaking are submitted to the policies and procedures that this insurance undertaking has put in place.	The wording of the Technical Advice has been modified in order to emphasis the principle of proportionality. Because of the risk of creating loopholes EIOPA does not consider it appropriate to establish exemptions for small firms.
237.	Federation of Finnish Financial Services	Question 8	We hold it highly important to take into account the principle of proportionality and thus leave necessary flexibility to the requirements. Further guidance by EIOPA is not needed, as the national supervisors might be better placed to assess these needs.	The wording of the Technical Advice has been modified in order to emphasis the principle of proportionality.
238.	Federation of	Question 8		Noted.

	German Consumer Organisations		Yes, we agree.	
239.	Finance Norway	Question 8	Finance Norway thinks that proportionality should be addressed directly in the text of the Level 2 measures. This will enhance legal clarity and certainty.	The wording of the Technical Advice has been modified in order to emphasis the principle of proportionality.
240.	Financial Services Consumer Panel	Question 8	The Panel supports EIOPA in not enshrining a proportionality principle in the rules themselves, as in practice this may have been used as an exemption for smaller firms even though conflicts of interest may arise in businesses of all sizes.	Noted.
241.	Financial Services User Group (FSUG)	Question 8	Yes, we agree with this proposal. The size of a business is in itself not a sufficient measure to assess whether conflicts of interest arise and the appropriate steps to deal with them. Conflicts of interest may arise in businesses of all sizes.	EIOPA agrees.
242.	French Banking Federation (FBF)	Question 8	The FBF does not share the reasoning developed by EIOPA in the Consultation Paper. According to the FBF this approach creates legal uncertainty where legal certainty is necessary. It is the FBF's view that individual and SMEs intermediaries should have a clear understanding of the governance requirements they have to comply with. Pursuant to the above we strongly request that proportionality be addressed in the level 2 measures.	The wording of the Technical Advice has been modified in order to emphasis the principle of proportionality.
243.	German Insurance Association	Question 8	No. Questions arising on the practical application of the proportionality principle should not be addressed through further guidance of EIOPA, such as opinions or guidelines. The provisions stipulated at Level 2 should be interpreted by the supervisory authorities of the Member States as well as by the	Re guidelines EIOPA disagrees and believes that EIOPA should be explicitly empowered to issue guidelines, if necessary, in order to respond to future

			insurance undertakings and insurance intermediaries. High level principles leave sufficient scope to address the characteristics of insurance-based investment products, insurance mediation-specific conflicts of interest and the diversity of national business models in sales. Explicit references to the principle of proportionality in the proposals of EIOPA on implementing directives do already exist (Article 22(1) and (3)). Comparable references should also be adopted with respect to the other proposals (on Article 21, Article 22(2)) to avoid, in terms of legal systematics, the impression that the principle of proportionality would not apply to these provisions. As a matter of fact, such references are not only appropriate but also necessary. This is due to the fact that it is about the proportionality of specific measures in the undertakings and not only about proportional provisions at Level 2. Moreover, in the context of the discussion about the principle of proportionality, the clarification on page 20/21 according to which the application of this principle must not result in a lower level of protection at the expense of customers is irritating. It is not clear to which level this statement refers. In fact, the adequate level must arise from considerations about proportionality.	market developments in a flexible way or in cases where market participants require more guidance on the application of the general principle.
244.	Groupement des Entreprises Mutuelles d'Assurance	Question 8	From GEMA's mutuals' point of view, it is absolutely crucial to apply the principle of proportionality when defining the steps an insurance undertaking should take to identify, prevent, manage and disclose conflicts of interest. They would not understand that the Technical Advice to the Commission on the possible content of the delegated acts does not mention the proportionality principle. The proposal to address	The wording of the Technical Advice has been modified in order to emphasis the principle of proportionality.

			questions arising on the practical application of the proportionality principle through further guidance such as opinions or guidelines is not convincing enough. It is of the utmost importance that conflicts of interest policies and procedures do not result in disproportionate administrative burden for insurance undertakings and intermediaries. French industry is already submitted to high compliance requirements regarding consumer protection (i.e. information requirements, compulsory advice, assessment of suitability and appropriateness). Too heavy administrative procedures could be counter-productive and could result in a lower level of protection at the expense of customers.	
245.	Institute and Faculty of Actuaries	Question 8	The provision of guidance or opinions would be helpful both for national supervisors and insurance undertakings. As mentioned in our general comments, the breadth of insurance based products is too great to enable detailed rules to cover all eventualities. Examples of good, or bad, practice would be particularly useful, with the caveat that a 'good practice' example may not be adopted as 'standard practice' due to idiosyncrasies of the specific environment in which undertakings operate and/or the nature of the products they distribute.	EIOPA agrees.
246.	Insurance Europe	Question 8	We do not share EIOPA's view that questions arising on the practical application of the proportionality principle should be addressed through guidelines or opinions. It is imperative that proportionality should be addressed directly in the text of the Level 2 measures. We believe that there needs to be legal clarity in the implementing measures themselves as regards which rules exactly should apply to sole traders and SMEs, and not to leave such a crucial issue to be addressed through further guidelines or opinions which, as EIOPA often emphasises, do	Re guidelines EIOPA disagrees and believes that EIOPA should be explicitly empowered to issue guidelines, if necessary, in order to respond to future market developments in a flexible way or in cases where market participants require more guidance on the

			not have any binding effect. Many distributors of insurance products are small and medium sized enterprises and in some cases are run by one self-employed individual, where a separation of functions would simply not be possible, so the text should be clear that the measures developed should not give rise to an onerous regulatory burden for SMEs.	application of the general principle.
247.	IRSG	Question 8	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. 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 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	The wording of the Technical Advice has been modified in order to emphasis the principle of proportionality. Re guidelines EIOPA disagrees and believes that EIOPA should be explicitly empowered to issue guidelines, if necessary, in order to respond to future market developments in a flexible way or in cases where market participants require more guidance on the application of the general principle.

			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.	
248.	Nordic Financial Unions (NFU)	Question 8	The aim with introducing an EIOPA opinion or guidelines concerning conflicts of interest must be to ease and simplify the implementation of IMD and the technical advice. Smaller undertakings, as well as employees, already have difficulties with the administrative burden of the new rules. Further administrative requirements risk decreasing the quality of advice and service to customers. NFU supports the proposal to address the issue of proportionality in the suggested guidelines or opinion if it would help the undertakings and intermediaries with providing them with guidance on how to implement the rules and enhance convergence of the implementation.	Noted.
249.	Test Achats	Question 8 Do you agree with the proposal to a	Yes, we agree.	Noted.
C 250.	Confidential response	Question 8		
251.	Allianz SE	Question 9	Allianz agrees that the regulation for IMD1.5 should not be in	Regarding

			direct conflict with the MiFID framework. Nevertheless, this principle does not provide a legitimate basis for a wholesale adoption of all concepts and rules from MiFID. Allianz supports an approach in line with recital (87) of MiFID II, which requests that the customer protection requirements should be applied equally to insurance PRIIPs, but to use a revision of IMD (rather than MiFID II) to "adequately reflect different market structures and product characteristics". This asks for a sufficiently differentiated approach in the design of rules, not just an identical adoption of MiFID rules. Legally, MiFID I and MiFID II contain certain explicit rules on Level 1, which are not included on Level 1 in IMD1.5 (and may also not be included in Level 1 of IMD2 / IDD). It has to be assumed that the legislator would explicitly implement any material rule for insurance distribution in the Level 1 texts (as becomes obvious in the current proposals for IMD2). Therefore, it is not legitimate to (re)introduce rules on Level 2 that have been explicitly discussed and rejected by the legislators for Level 1. This is also in line with Art. 290 (1) of the Treaty on the Functioning of the EU (TFEU) governing delegated acts which clearly states that "A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power." [emphasis added] These perspectives are also at the core of the legitimate resistance against the introduction of a commission ban on Level 2 (instead of Level 1) proposed by ESMA in its MiFID II	inducements EIOPA strongly believes that any kind of third party payment may lead to a conflict of interest and creates the risk of customer harm. EIOPA would also like to stress that the COM has explicitly requested to address the question on how conflicts of interest resulting from inducements. At the same time, as already outlined in the Consultation Paper, EIOPA does not intend to render commission based business models impossible or ban inducements.

			Consultation Paper (see section 2.15 of the ESMA Consultation Paper on MiFID II, esp. point 10. On page 124, which is referenced in the last paragraph on page 22 of this EIOPA Consultation Paper). The general clauses to mitigate (potential) conflicts of interest should therefore ☐ not be interpreted as a delegation of arbitrary discretionary powers ("carte blanche") to Level 2 rule-givers and 175dministr ☐ not be misused as a broad "back door" for regulatory intents which did not find sufficient support on Level 1. The introduction or implementation of far-reaching rules on a lower regulatory level (e.g. Level 2 or 3 instead of Level 1) therefore must be avoided, such as the proposal of a quality enhancement rule for third-party remuneration (see also answer to Question 10) ☐ adhere to the principles explicitly stated, namely proportionality (see also answer to Question 8), which among other things calls for an adequate adaptation of rules to insurance distribution. Regarding application of IMD1.5 to inducements, the rules do not explicitly mention remuneration as an area for regulation. In particular, no explicit mention of certain types of remuneration (e.g. fees and commissions by providers) have been singled out for general or special scrutiny. An adequate approach therefore should consider and address relevant conflicts of interest, wherever they occur. In any case, they should not only be asserted, but backed up with empirical evidence. This also points back to a general principles-based approach (see also General Comments).	

			In any case, Allianz does not share EIOPA's general 176dministra vis-à-vis commission-based distribution, which seems to be accused per se to carry certain conflict-of-interest risks (see paragraph 2 on page 11 and section 7, esp. pages 22 – 24 of the Consultation Paper). In particular, their pay-per-use characteristic ("no cure-no pay") makes commission-based distribution models both attractive and objectively beneficial for potential customers, e.g. by permitting to shop around for alternatives free of charge. In addition, there are strong filters and corrective incentives in place that support the alignment of customer and intermediary interests. Those include e.g. reputation effects for intermediaries and insurers (whose brand is at risk), recurring commissions (that increase an interest in long-term relationships), cancellation rights, complaint procedures, liability for misconduct, supervision and potential 176dministrative sanctions administered by supervisory authorities etc. These measures can be expected to be further strengthened by IMD2. Additional measures (such as functional separations) may be adequate in some cases to ensure sufficiently beneficial outcomes. To assess the overall risk or benefit potential, all these aspects should be adequately taken into account. It would therefore be misguided to focus on or even reduce conflict-of-interest management to a discussion about third-party payments. All remuneration systems may contain some conflicts of interest, which should be adequately addressed. As an example, fee-based independent advisors may also face certain conflicts of interest, namely to extend duration or frequency of advisory services or advise into complex products (depending on the fee structure). Furthermore, other aspects such as the overall setup, i.e. affiliations among	

			parties involved, could also play a part.	
252.	ANASF	Question 9	Yes, we do. Indeed, we firmly believe in the need of ensuring a level playing field for different types of investments. Accordingly, we emphasize the opportunity of complete harmonization between all the sectors of the financial markets. Specifically, we agree with EIOPA's viewpoint that the quality enhancement criterion should not have the effect of rendering commission-based distribution models impossible, including for intermediaries solely or mostly dependent on commission for their income. We also agree with the view that the criterion should be understood in the context of ensuring that the steps taken by intermediaries to avoid and manage the conflicts of interest, are able, in practice, to avoid harm to customers.	Noted.
253.	Association of British Insurers (ABI)	Question 9	The ABI supports the need for a level playing field with MiFID I. However cross-sectorial consistency must not introduce a one size fits all approach. It is important that EIOPA take into consideration the differences between sectors, in particular with regards to different products and distribution channels.	Noted.
254.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	Question 9	No. AILO notes that the 6th compromise text does not fully align with MiFID with which AILO concurs as it tends to reflect the essential difference between MiFID where the customer purchases and owns an asset as a one off transaction; and IMD2 where an investment–based insurance product represents a long term contract entered into by the customer and where the assets are owned by the insurer. Thus the whole concept of the sale, needs and extent and costs of advice are different. As noted above AILO considers it important to differentiate "inducement" and "remuneration" (of course we recognise that differing remuneration for different products could result in a conflict and possibility of actions not in the best interest of the customer).It is important to recognise a principle that services provided must be paid for. In this respect it is also	Noted.

			noted that Article 24.10 in the 6th compromise text has also removed reference to a requirement to enhance the quality of the service (which appears to be a difficult and subjective concept) leaving the requirements not to have a detrimental impact on the quality of the relevant service to the customer and to act in customers best interest. The distribution across borders of investment- based insurance products is hindered by the disparate nature of local remuneration rules due to the minimum harmonisation nature of legislation. Absent any requirement for enhancement of the quality of service, then the distributor should fully disclose costs (as also required both by IMD2 draft text and the PRIIPs Regulation) and avoid actions which could have a detrimental impact on the service provided and to act in the best interests of the customer. Thus for example any "good and bad practice" guidance could indicate examples of benefits (as noted in answer to Qu 3 above payments from fund providers and Qu 12 below certain non-monetary benefits). AILO shares the concern of Insurance Europe that IMD2 and the PRIIPs Regulation may not be aligned and lead to duplication of information required by distributors and inconsistent information to customers.	
255.	Association of Professional Financial Advisers	Question 9	Disclosure can play an important role in tackling conflicts from commission payments or third party payments. We believe that for insurance based investments there is a need for transparency of all costs which may have an impact on the return of the investment. In insurance mediation, commission is the core income received by insurance intermediaries. It is not an ancillary payment that can be used to finance additional services. We therefore agree with EIOPA, "the quality enhancement criterion should not have the effect of rendering commission-based distribution models impossible, including for intermediaries solely or mostly dependent on commission for	Noted.

			their income. "	
256.	Assuralia	Question 9	The Belgian market has introduced article 26 of the MiFID1 implementing directive for insurance based investment products by the Act of 30 July 2013 (entry into force: 30 April 2014). We would like to point out that promoting a level playing field between insurance based investment products and other investment products would necessarily imply that EIOPA would adhere to the CESR interpretation of article 26 with regard to third party payments for tied agents in its report nr. 49 on "Inducements: good and poor practices", where it says that "compensation of a tied agent can be seen as an internal payment within the firm which does not fall within the inducements rules".	EIOPA agrees re the importance of a level playing field, but disagrees re the interpretation of payments for tied agents.
257.	Austrian Insurance Association (VVO)	Question 9	The empowerment of the European Commission to adopt delegated acts in Art 91 of Directive 2014/65/EU (MiFID II) covers the management of conflicts of interest. Recital 88 of this Directive requires an alignment of Directive 2002/92/EC (IMD 1). Conflicts of interest are regulated in Chapter II Section 4 of Directive 2006/73/EC (MiFID I) which does not cover rules on inducements. Moreover the future Insurance Distribution Directive (IDD) will confirm subsidiarity for any rules on remuneration. In order to comply with the political decision of the European legislator the delegated Directive shall abstain from imposing rules on remuneration at European level. Inducements give rise to conflicts of interest. As the mandate of the Commission asks to provide Technical Advice on conflicts of interest arising in the context of the distribution of insurance based investment products, EIOPA deems it necessary that the Technical Advice also addresses the conflicts of interest which result from inducements paid for	EIOPA has been requested by the Commission to provide Technical Advice how to address conflicts of interest resulting from inducements.

			the distribution of insurance based investment products.	
C 258.	Confidential response	Question 9		
259.	BEUC, The European Consumer Organisation	Question 9	As questions 9-11 all relate to inducements, BEUC prefers to provide a single comment covering all those questions, for the sake of clarity. Principally, BEUC has advocated for a complete ban on inducements in the field of investment products in the past, and we are still convinced that inducements are very hard to match with an investment's firm duty to act in the best interest of the client. The mere difficulty in setting up criteria for inducements that are quality enhancing strengthens this belief. However, in the absence of a complete ban on inducements (following the MIFID II outcome) that we respect, BEUC largely agreed to the quality enhancing principles set out in ESMA's consultation. For our full position please refer to http://www.esma.europa.eu/consultation/Consultation-Paper-MiFID-IIMiFIR Therefore we strongly feel that EIOPA should minimally follow the proposed advice as set in ESMAs consultation. Unfortunately, we note that the current EIOPA wording is much weaker than the ESMA draft. More specifically we regret the absence of negative criteria (ESMA consultation paper 2.15§10) , including the provision that "an inducement that is used to pay or provide goods or services that are essential for the recipients' firm in its ordinary course of business" can never be regarded as designed to enhance the quality of the relevant service to the client. BEUC would like to stress that such a quality enhancement criterion would not have the effect of rendering commission-based distribution models impossible. Instead, such a	Taking into account the specificities of the insurance market, the ongoing negotiations to review IMD, the importance to strengthen consumer protection and to establish a level playing field EIOPA proposes a solution which address appropriately conflicts of interest arising from inducements and which is compatible with the approach taken by ESMA.

			provision would only deter business models which basically tie sellers to a small numbers of product providers. BEUC strongly feels that such business models are never able to act in the best interests of their clients when providing investment products. Once again, BEUC would like to repeat in this regards that a different approach for investment products under MIFID (II) and insurance-based investment products would lead to more regulatory arbitrage, and uneven playing field and ultimately more consumer detriment. Finally, BEUC would like to express its disappointment that EIOPA has not explicitly tackled the question of (variable) remuneration within insurance undertakings or banc assurance groups in this consultation paper (unlike ESMA in this field), which is also a key element when reducing conflicts of interest at the point of sale. BEUC feels that commercial targets should not have more than a minor impact on the remuneration, which should in general product neutral. Beyond ESMAs proposals in this regard (e.g. criteria for the design of remuneration policies, better governance,…) BEUC has also pointed to criteria for the performance assessment and collective remuneration schemes as a potential source for conflicts of interest. Please refer again to http://www.esma.europa.eu/consultation/Consultation-Paper-MiFID-IIMiFIR for full coverage of this item.	
260.	BIPAR	Question 9	General comments: Disclosure can play an important role in tackling conflicts from commission payments or third-party payments. We believe that for insurance-based investments there is a need for transparency of all costs which may have an impact on the return of the investment, and this on a level playing field basis. BIPAR is of the opinion that every intermediary has the right	Noted. From EIOPA's point of view disclosure is important but not sufficient to address conflicts of interest arising from inducements. As already outlined in the Consultation Paper

			to be fairly remunerated for his or her services. This is also to the benefit of the consumer. A pure fee-based market, for example, would exclude many people from access to any level of advice or assistance in their search for an appropriate insurance product, as has been the practical experience in Member States that have prohibited commission payment approaches. The prohibition of payment and remuneration by insurers would be an obstacle to free market principles of fair remuneration for services rendered. Indeed, it would become impossible for intermediaries to require insurers to pay intermediaries for the work they do on their behalf (and which is work that is done also in the interest of the client). It cannot be stressed enough that consumers and SMEs are much less likely to shop around for the insurance of an investment product which best meets their needs in a fee-only based environment as they will have to pay a fee each time they interact with an intermediary – whether or not they decide to follow the advice or buy the product. The remuneration of intermediaries being in principle commission-based with the possibility to agree fees has been and continues to be a major contributing factor in the successful development of insurance markets all over the world. Any other situation would ignore the fact that the insurance intermediary typically renders services to both sides of the contract, the client and the insurance company: as with any commercial relationship both kinds of services have to be remunerated by the beneficiary. It would also deprive consumers of the choice between business models. It is always in the best interest of consumers to be provided with adequate information so that they can make an informed decision. This is the "raison d'être" of insurance intermediaries. This goes to the very heart of the intermediaries' role. Insurance intermediaries are mostly SME-style operations,	EIOPA does not intend to render commission based business models impossible. The quality enhancement criterion has been removed and be replaced by the criterion that the inducements are used for the benefit of the client.

			employing many thousands of people locally. It is important to ensure that any future European policy on conflict of interests for intermediaries mediating insurance PRIPS does not have any unintended side effects, does not result in less choice for consumers and does not jeopardize intermediaries' activities and business models. On page 21, the description of potential conflicts of interests is very theoretical and does not correspond to the activities carried out by insurance intermediaries. EIOPA states in its consultation paper that « the intermediary has an interest in distributing products for which he is just paid higher charges or where a package of benefits overall offers the strongest return to him". This is a short-term approach. Insurance intermediaries have a long-term relationship with their clients and their interest is their satisfaction in the long term. Specific comments In insurance mediation, commission is the core income received by insurance intermediaries. It is not an ancillary payment that can be used to finance additional services. BIPAR believes that the IMD I as amended by MIFID II does not include a quality enhancement criterion and the delegated act is in any case limited to Article 13c. EIOPA should therefore not advise on remuneration and inducements and should not introduce a quality enhancement criterion in the IMD I as amended by MIFID II since there is no legal basis for it. The same reasoning actually applies to disclosures. The mandate does not include (and neither do the articles of the IMD 1.5) reference to disclosure. Therefore the EIOPA advice should not contain a heading on disclosure either (see p 22 of the paper).	

			We also believe that quality enhancement is not a valid way of tackling conflicts of interest. The ESMA proposal (Consultation Paper dated May 2014) that is referred to in the EIOPA consultation paper, is a very restrictive approach which fails to take account of standard business practices and the link between various inputs used by investment firms to enhance their quality of services overall which, in turn, enhances the specific quality of a particular service to a particular client because of better market intelligence, knowledge, etc. In other words, the proposed ESMA approach (Consultation Paper dated May 2014) ignores that the overall quality of a firm's services is intrinsically linked with the quality of a specific service provided to a particular client. In fact, without a high overall level of quality, it is not possible to provide a high quality individual service. The ESMA proposal (Consultation Paper dated May 2014) is not taking account of the intrinsic links between the general quality of the services provided by a firm and the specific quality of a particular service. The creation of a negative, but non-exhaustive, list of non-permissible circumstances and situations would be a highly intrusive intervention in the commercial relationships between investment firms and their suppliers and would not take account of how businesses actually operate. We agree with EIOPA, "the quality enhancement criterion should not have the effect of rendering commission-based distribution models impossible, including for intermediaries solely or mostly dependent on commission for their income. "	
261.	Bund der Versicherten (BdV)	Question 9	Yes, we fully agree. Only an alignment with the MiFID I contributes to the objective to build up consistent rules where	Noted.

		Do you agree that the rules governing c	appropriate, so as to thereby create a level playing field between the different sectors of the financial markets, whilst taking sector specificities into account only where relevant.	
262.	BVI	Question 9	On this point we entirely agree. Rules governing the legitimacy of inducements are critical for the attractiveness of investment products to non-independent intermediaries. Hence, it is of utmost relevance that the provision of inducements follows the same rules in relation to all PRIIPs. Such an approach is also in line with the express will of the EU legislator enshrined in recital 87 of MiFID II which reads as follows: "Investments that involve contracts of insurance are often made available to customers as potential alternatives or substitutes to financial instruments subject to this Directive. To deliver consistent protection for retail clients and ensure a level playing field between similar products, it is important that insurance-based investment products are subject to appropriate requirements. Whereas the investor protection requirements in this Directive should therefore be applied equally to those investments packaged under insurance contracts, their different market structures and product characteristics make it more appropriate that detailed requirements are set out in the ongoing review of Directive 2002/92/EC rather than setting them in this Directive. Future Union law regulating the activities of insurance intermediaries and insurance undertakings should thus appropriately ensure a consistent regulatory approach concerning the distribution of different financial products which satisfy similar investor needs and therefore raise comparable investor protection challenges. […]"	Noted.
C 263.	Confidential response	Question 9		

264.	CNCIF	Question 9	The CNCIF agrees with the proposal, but stresses out that the ESMA proposal contained in its Consultation Paper for MiFID II on how to enhance investor protection is firmly disputed by the CNCIF and a number of industry players. In particular, the CNCIF has expressed its concerns about paragraphs 10 and 11 of the draft technical advice which are particularly unclear. EIOPA is therefore invited to proceed with utmost caution and to exercise its discretion and judgement before replicating ESMA's proposals.	Noted.
265.	EFAMA	Question 9	On this point we agree completely. Rules governing the legitimacy of inducements are critical for the unbiased marketing of investment products to retail investors. Hence, it is of utmost relevance that the provision of inducements follows the same rules in relation to all PRIIPs. Such an approach is also in line with the express will of the EU legislator enshrined in recital 87 of MiFID II which reads as follows: "Investments that involve contracts of insurance are often made available to customers as potential alternatives or substitutes to financial instruments subject to this Directive. To deliver consistent protection for retail clients and ensure a level playing field between similar products, it is important that insurance-based investment products are subject to appropriate requirements. Whereas the investor protection requirements in this Directive should therefore be applied equally to those investments packaged under insurance contracts, their different market structures and product characteristics make it more appropriate that detailed requirements are set out in the ongoing review of Directive 2002/92/EC rather than setting them in this Directive. Future Union law regulating the activities of insurance intermediaries and insurance undertakings should thus appropriately ensure a consistent regulatory approach concerning the distribution of different financial products which satisfy similar investor	Taking into account the specificities of the insurance market, the ongoing negotiations to review IMD, the importance to strengthen consumer protection and to establish a level playing field EIOPA proposes a solution which address appropriately conflicts of interest arising from inducements and which is compatible with the approach taken by ESMA.

			needs and therefore raise comparable investor protection challenges. […]"	
266.	European Federation of Financial Advisers and Fina	Question 9	FECIF is in line with the PRIIPs regulation and the presidency proposal to disclose the nature of remuneration and the total costs of the insurance product in good time before clients make investment decisions. We are concerned about ESMA's and EIOPA's approach to toughen European legislation through the clause of "quality enhancement". Such a criterion could have the effect of rendering commission-based distribution models impossible whilst today a vast majority of customers prefer their intermediaries to be remunerated on a success-related basis by the insurance company. FECIF therefore asks for an accurate wording of the criteria for "quality enhancement". EIOPAs approach that a quality enhancement could be assumed where intermediaries are able to show that inducements are used for the benefit of customers, namely, the inducements are used also in the interest of the customers, not only in the intermediary's interest, seems to be a good starting point. FECIF agrees with EIOPAs proposals that, following its approach, the inducements could be used, for example, with regard to: ☐ The range of services provided (for example, to finance additional services); ☐ The range of products offered (for example, to offer a broader range of products); and/or ☐ For the provision of high-quality services to the customers (for example, to finance training of employees). We consider that this is a non-exhaustive list. EIOPAs approach that 500,000 intermediaries in Europe should case-by-case consult their national supervisors to prove effective management of conflicts of interest is not practicable. Neither NCAs nor intermediaries would have enough resources to deal with such a degree of red tape. If an	The quality enhancement criterion has been removed and be replaced by the criterion that the inducements are used for the benefit of the client. Taking into account the specificities of the insurance market, the ongoing negotiations to review IMD, the importance to strengthen consumer protection and to establish a level playing field EIOPA proposes a solution which address appropriately conflicts of interest arising from inducements and which is compatible with the approach taken by ESMA.

			insurance distributor in agreement with its clients decides to use fees, commissions or non-monetary benefits to pay for maintenance of essential goods and services this clearly enhances the quality and continuity of those services for their clients. Level 2 should not do what is expected from level 1. We do think that EIOPA should help us to be compliant to level 1, not to complicate the situation with the remuneration model. The discussion with and publicly inside ESMA shows another example shouldn't be forgotten: ongoing advice or what we could call "year after year taking care" of clients. This is a major point.	
267.	European Savings and retail Banking Group (ESBG)	Question 9	The European Savings and Retail Banking Group welcomes the opportunity offered by EIOPA to provide our views on the conflicts of interest rules in direct and intermediated sales of insurance-based investment products. ESBG represents retail banking institutions which are often the main channels for the distribution of insurance-based investment products and investment products, and in some European countries this is the rule. It is therefore paramount that both conflicts of interests' regimes are aligned. On the particular topic of inducements ESBG welcomes EIOPA's approach to respect the legislators' acknowledgements on level 1 and their expressed opinion that the quality enhancement criteria shall not be used to render commission-based distribution models impossible. ESBG acknowledges that while ESMA's approach detailed in its consultation paper leads to a de facto ban of inducements, EIOPA's approach leaves the current inducement-based models preserved. In this context, ESBG fears a distortion of competition between financial and insurance products if the distribution of	Noted. Taking into account the specificities of the insurance market, the ongoing negotiations to review IMD, the importance to strengthen consumer protection and to establish a level playing field EIOPA proposes a solution which address appropriately conflicts of interest arising from inducements and which is compatible with the approach taken by ESMA.

			insurance products has a framework more flexible than the MiFID-regulated investment products. The different definitions of the quality enhancement criteria by ESMA and EIOPA could lead to an incentive to favour insurance products over other financial products in the future because of the different distribution models. ESBG does not see any reason for ESMA having a different approach to EIOPA's. The clients and the primary aim of the legislator - to prevent conflicts of interests - are the same and financial and insurance products are often exchangeable. ESBG therefore calls on both EIOPA and ESMA to align the regimes for investment products and insurance-based investment products to allow a level-playing field, while preserving the current remuneration model as decided by the legislator.	
268.	Fédération Française des Sociétés d'Assurances (	Question 9	Delegated acts for IMD.5 make no mention of inducements criteria. Moreover, this issue is now addressed at the European legislator level and there is no reason why it should also be discussed in the context of level two measures.	EIOPA has been explicitly requested by the Commission to address this issue.
269.	Federation of Finnish Financial Services	Question 9	We would like to stress that regulation of inducements and remuneration has not been included in the Commission´s request for advice from EIOPA. In this sense, EIOPA is going further than what is requested in the mandate of IMD 1.5. Instead, the future IMD2 will regulate inducements and remuneration questions. It seems that EIOPA proposal is not in line with the current negotiating positions of the Council or European Parliament. As stated before, we believe it utmost important to have only one set of rules applied to insurance PRIIPs in the future regulation. The question of regulating inducements and remuneration should be left to be decided in level 1 directive, IMD2.	EIOPA disagrees. EIOPA has been explicitly requested by the Commission to address this issue.

			However, we feel EIOPA´s interpretation of the quality enhancement criterion is basically right – the criterion itself should not have the effect of rendering commissions impossible. Article 13 d.3 (MiFID2) explicitly states that Member States have the option of prohibiting the receipt of fees, commissions etc. Thus, level 2 measures should only provide guidance on the interpretation of level 1 rules.	
270.	Federation of German Consumer Organisations	Question 9	As questions 9-12 all relate to inducements, the vzbv prefers to provide a single comment covering all those questions, for the sake of clarity. Principally, the vzbv has advocated for a complete ban on inducements in the field of investment products in the past, and we are still convinced that inducements are very hard to match with an investment's firm duty to act in the best interest of the client. The mere difficulty in setting up criteria for inducements that are quality enhancing strengthens this belief. However, in the absence of a complete ban on inducements (following the MIFID II outcome) that we respect, the vzbv largely agreed to the quality enhancing principles set out in ESMA's consultation. For our full position please refer to http://www.esma.europa.eu/consultation/Consultation-Paper-MiFID-IIMiFIR Therefore we strongly feel that EIOPA should minimally follow the proposed advice as set in ESMAs consultation. Unfortunately, we note that the current EIOPA wording is much weaker than the ESMA draft. More specifically we regret the absence of negative criteria (ESMA consultation paper 2.15§10) , including the provision that "an inducement that is used to pay or provide goods or services that are essential for the recipients' firm in its ordinary course of business" can never be regarded as designed to enhance the quality of the	Taking into account the specificities of the insurance market, the ongoing negotiations to review IMD, the importance to strengthen consumer protection and to establish a level playing field EIOPA proposes a solution which address appropriately conflicts of interest arising from inducements and which is compatible with the approach taken by ESMA. EIOPA agrees that conflicts of interest may also arise with regard to internal payments (remuneration) and would like to stress that this issue needs

			relevant service to the client. The vzbv would like to stress that such a quality enhancement criterion would not have the effect of rendering commission-based distribution models impossible. Instead, such a provision would only deter business models which basically tie sellers to a small numbers of product providers. The vzbv strongly feels that such business models are never able to act in the best interests of their clients when providing investment products. Once again, the vzbv would like to repeat in this regards that a different approach for investment products under MIFID (II) and insurance-based investment products would lead to more regulatory arbitrage, and uneven playing field and ultimately more consumer detriment. Finally, the vzbv would like to express its disappointment that EIOPA has not explicitly tackled the question of (variable) remuneration in this consultation paper (unlike ESMA in this field), which is also a key element when reducing conflicts of interest at the point of sale. The vzbv feels that commercial targets should not have more than a minor impact on the remuneration, which should in general product neutral. Beyond ESMAs proposals in this regard (e.g. criteria for the design of remuneration policies, better governance,…) the vzbv has also pointed to criteria for the performance assessment and collective remuneration schemes as a potential source for conflicts of interest. Please refer again to http://www.esma.europa.eu/consultation/Consultation-Paper-MiFID-IIMiFIR for full coverage of this item.	further scrutiny and analysis.
271.	Finance Norway	Question 9	Finance Norway supports EIOPAs argumentation. In order to secure the uniform and consistent regulation of financial customer protection in similar investment products, Finance Norway thinks that the rules governing conflicts of interest should be aligned with MiFID, in order to secure a level playing field.	Noted. The quality enhancement criterion has been removed and replaced by the criterion "for the benefit of the

			However, the quality enhancement criterion should not have the effect of rendering commission-based distribution models impossible, ref. Question 2.	customer".
272.	Financial Services Consumer Panel	Question 9	The Panel believes that inducements frequently present a significant risk of conflicts of interest by incentivising an intermediary to pursue the sale of inappropriate products for their own benefit but to the detriment of the customer. The prevention of inappropriate inducements that create conflicts of interest should be an overriding priority and thus the main focus of these proposed rules. Managing or disclosing inducements should not be options open to intermediaries if the payments in question by their nature impair the duty to act in accordance with the best interests of the customers. Instead, such an inducement should be prohibited from being made. Accordingly, we believe the MiFID rules on inducements which EIOPA is proposing to adapt do not go far enough in preventing conflicts of interest. The 'quality enhancement' test in article 26 of the Implementing Directive is difficult to apply in practice and provides firms with significant room for manoeuvre to continue accepting commission that presents a real risk of mis-selling. In this regard, we also wish to express our concern that the revised Insurance Mediation Directive currently under negotiation between the European Parliament and Council will not be in line with the 'quality enhancement' test used in MiFID 2, but instead oblige firms to ensure that commission does not cause detriment to the service provided. This is an even lower standard to test whether third-party payments present a conflict of interest.	From EIOPA's point of view, the prohibition of inducements would not be covered by the legal text of the revised Insurance Mediation Directive. The approach proposed in the CP seems adequately balanced taking into account the current market conditions.

273.	Financial Services User Group (FSUG)	Question 9	We have combined our answers for questions 9 and 10 as they both relate to the issue of inducements. The FSUG is a supporter of a complete ban on inducements in the field of investment products, as inducements constitute a significant obstacle to the fulfilment of an investment firm's duty to act in the best interest of the client. This has been shown in past misselling scandals where inducements have often played a pivotal role in incentivising an intermediary to pursue the sale of inappropriate products to customers. However a complete ban should include the other types of inducements received by the distributing arm of "banc assurance" groups which typically distribute only in house group products. In that case, inducements are more difficult to identify as they occur between the asset management and insurance affiliates of the group on the one hand and the retail bank on the other hand. Such inducements are not identifiable at the individual distributor level. Not catching these inducements in an overall ban would result in only banning inducements for the small share of multi-provider financial advisors in Continental Europe. We believe that this is also further highlighted by the difficulty encountered by the supervisory authorities when deciding on a set of criteria for inducements that are quality enhancing. The 'quality enhancement' test in article 26 of the Implementing Directive is at best difficult to apply in practice, and at worst leaves significant room for interpretation by firms. This in turn will require very proactive monitoring and enforcement by the NCAs which may require resources beyond the ones currently at the disposal of some NCAS. We therefore see a real risk for continuing misselling under the guise of compliance with article 26.	Taking into account the specificities of the insurance market, the ongoing negotiations to review IMD, the importance to strengthen consumer protection and to establish a level playing field EIOPA proposes a solution which address appropriately conflicts of interest arising from inducements and which is compatible with the approach taken by ESMA.

			In our view, firms should not be given the option to manage or disclose such inducements which impair their duty to act in accordance with the best interests of the customers. Instead, firms should be prohibited from accepting such inducements outright. However, we are aware that MiFID II does not contain a complete ban of inducements and it is therefore of utmost importance that the proposed standards focus on the prevention of forms of inducements that have the potential to create conflicts of interest in the advice and sales process. Such prevention may require firms to adjust their business models. As a first step we suggest a closer alignment of the EIOPA proposal with the response of the FSUG to the ESMA consultation paper on MiFID/MiFIR in this regard (question 81) http://ec.europa.eu/internal_market/finservices-retail/docs/fsug/opinions/20140522-esma-mifid2-mifir-reply_en.pdf The treatment of investment products and insurance based investment products should be aligned as much possible to avoid the creation of an uneven playing field and the resulting potential for regulatory arbitrage. We would also like to stress that the creation of loopholes with regard to the acceptance of inducements must be avoided at all cost. The ESMA consultation paper set out a list of criteria (page 124, para. 10) that should be used in determining that	

			the quality enhancement test had not been met. Although we are of the view that the list could have been improved upon, especially with regard to language, it does provide a framework for regulators to work with. However, paragraph 11 on the same page immediately undermines this approach and creates loopholes. We also disagree with the view set out by EIOPA in this consultation paper that "inducements might be used for enhancement purposes are not limited to the core services of sale of insurance-based investment products and advice in this regard, but comprise all insurance distribution activities such as introducing, proposing or carrying out other work preparatory to the sale or of assisting in the administration and performance of such products." We are concerned that this type of interpretation will lead to loopholes and behaviour that distorts the market and leads to sales of less suitable or unsuitable products to consumers. For example, models, which describe the key features and simulate the life-cycle of the product, and which are provided by insurance companies to intermediaries as a "technical assistance tool" are aimed at driving sales of the product by increasing the perceived sophistication of the product to consumers. However, the provision of such simulation models might be regarded as an inducement which benefits the intermediaries as they are not forced to study the product and test it by themselves in order to be sure, that they are selling the "right" product to consumers. Exploiting the consumer biases arising from the principal-agent problem might create a typical conflict of interest even foreseen by MIFID (article 21 b) and e)).	

			Provision of such models to intermediaries is aimed at increasing the sales of the product by presenting visually attractive features to the client at the point of sale. But the client is in many cases not aware of the methodology and technique on which such models were based and whether it fits the reality or not. At the same time, most of the clients are not eligible for obtaining the reports from such models as these models are deemed to be "internal" tools of an intermediary. In our view, this is an example where an inducement could superficially be classified as enhancing the service to the consumer but could in actual fact cause bias in both the seller and consumer and result in inappropriate sales. Additionally, we are of the view that it would have been beneficial if the issue of variable remuneration had been addressed in more detail in this consultation paper as it is directly related to the reduction of conflicts of interest at the point of sale.	
274.	French Banking Federation (FBF)	Question 9	The MIFID implementing Directive deals with "inducements" in Article 26 in Chapter 3 "operating conditions for investment firms. "Thus, by including in its consultation the theme of "remuneration and inducements "considering that they are a source of conflict of interest, EIOPA adopts a broad interpretation of the article on conflicts of interest and goes beyond its mandate. Furthermore, EIOPA anticipates ongoing discussions within IMD2.	EIOPA disagrees and would like to point out that the COM has explicitly mandated to address inducements.

			Therefore, questions 9 to 13 do not have their place in this consultation	
275.	German Insurance Association	Question 9	No. This proposal disregards the provisions set out by the European Parliament in IMD2. It anticipates the final regulation in IMD2 and goes beyond any respective authorization. - Contrary to the intention of the European Parliament The European Parliament has decided to refrain from stipulating a ban on commissions in IMD2. Member States shall rather have the possibility to stipulate and maintain a ban on commissions with respect to the distribution of insurance-based investment products at national level. The Council had already agreed on such a procedure within the scope of the still ongoing consultations on IMD2 under Greek Presidency. Both decisions are to be seen in the light of the agreement on Article 91 of MiFID2, Article 13c(3) of IMD (IMD1.5), in which the Member State option has been stipulated by law. It is contrary to the understanding of democracy if EIOPA explicitly disregards the desire expressed by the legislator. Any other provision – if it may lead to a ban on certain commissions through Levels 2 and 3 – would exceed the threshold set out in the basic act. - Undue anticipation of IMD2 provisions Apart from that, the proposal made by EIOPA is an undue anticipation of the regulation on IMD2, which has not yet been completed, since the provision suggested by EIOPA with respect to Level 2 corresponds to the proposal stipulated in	EIOPA would like to emphasise that the COM has explicitly requested to address conflicts of interest arising from third party payments. EIOPA does not intend to impinge on the ongoing negotiations to review IMD. At the same time, EIOPA does not intend to ban commissions or to render commission based business models impossible. The quality enhancement criterion has been removed and has been replaced by the criterion "for the benefit of the customer". Taking into account the specificities of the insurance market, the ongoing negotiations to review IMD, the importance to strengthen consumer protection and to establish a level playing field EIOPA

			the first subparagraph of Article 24(10), which is currently being discussed by the Council. Whether and in what form this proposal will be adopted in the final IMD2 depends on the course of the trilogue negotiations. On the one hand, the issue of a ban on commissions has also been debated vigorously among the Member States (cf. the controversial discussions prior to the agreement of the Council on a general approach at the beginning of November 2014). On the other hand, the European Parliament explicitly rejected a ban on commissions in its decision on IMD2. German insurers support the decision of the European Parliament in this respect and call upon EIOPA to comply with the basic act. Only this way, the already expressed desire of the legislator to refrain from stipulating a ban on commissions at European level will be fully taken into account. - Going beyond the authorization With the introduction of a concrete criterion regarding quality enhancement for commission-based advice, EIOPA goes beyond the authorization by the Commission mandate. The wording of the mandate does not stipulate the creation of such a criterion. Excessive criteria on the admissibility of commissions are leading to a de-facto ban on commission-based advice. The intention of the legislator to refrain from stipulating a ban on commissions at European level in IMD 1.5 is being undermined by means of the conflicts of interest issue. Moreover, commission-based advice does not per se indicate the occurrence of conflicts of interest. See statements on the General Comment and Question 3.	proposes a solution which address appropriately conflicts of interest arising from inducements and which is compatible with the approach taken by ESMA.

			The disclosure of fees, commissions and benefits does not provide any significant value to customers. The amount of remuneration does not inevitably indicate a potential conflict of interest. Disclosing the exact amount of remuneration does not provide any value added to customers that is crucial to their decisions. Consumers cannot draw any conclusions on whether the intermediary might face a conflict of interest simply based on the amount of remuneration. Moreover, in practice, there is the problem that the exact amount of remuneration is usually not known during the course of the advisory process. Upon conclusion of a contract, intermediaries are often not able to state the exact amount of remuneration for their services. They often get to know the actual remuneration not until a later point in time. It is to be considered in this context that in Germany intermediaries are subject to legal or contractual liability in case of near-term cancellation ("Stornohaftung"), which can ultimately have an impact on the remuneration. Thus, the intermediary's remuneration is actually not earned until a later point in time (usually after five years or later at present). Different intermediaries are usually paid different remunerations for the same product. Customers, however, are always charged the same costs. Information which also take account of the remuneration and provide value added by enabling the customer to make an informed decision can be provided to the customer. Disclosing the acquisition and distribution costs included in the calculation of the premium helps the customer to identify and compare the resulting actual cost burden. This information may be supplemented by some information about the reduction in yield (RIY) to which the costs that are included in the price of the product will lead. This would also allow for a comparison with products that are subject to MiFID across products, providers and	

			industries. Respective details should be drafted in the upcoming specification with respect to the key investor document (KID) of the PRIIPs Regulation.	
276.	Groupement des Entreprises Mutuelles d'Assurance	Question 9	GEMA's mutuals call for vigilance when aligning insurance distribution rules with rules under MiFID 1. In their point of view, a copy paste of MiFID 1 provisions would not fit insurance distribution as these provisions have been created for financial instruments. We also believe that it is premature to work on this subject as long as IMD2 is not definitely adopted.	Noted.
277.	Institute and Faculty of Actuaries	Question 9	Yes, we agree.	Noted.
278.	Insurance Europe	Question 9	We would wonder about the legal basis for the introduction of a quality enhancement criterion, particularly as the delegated acts for IMD 1.5 make no mention of any such criterion. Moreover, while trialogue negotiations still have to take place on IMD 2, none of the positions of the European Commission, the Parliament or the Council introduce a quality enhancement criterion under IMD 2. EIOPA is clearly going beyond any mandate or competence it may have in attempting to introduce such a provision in the insurance context where none of the European co-legislators have sought to do so. In addition, a ban on commissions was clearly left as a Member State option in IMD 1.5, as a result of the trialogue agreement reached under MiFID 2. This is also the approach that was adopted in the European Parliament after much	EIOPA has been explicitly asked by the COM to provide Technical Advice re the proper management of conflicts of interest arising from inducements. EIOPA does not intend to impinge on the ongoing negotiations to review IMD, but to respond to the explicit mandate of the COM.

			deliberations on this issue. We are concerned that the direction being taken by EIOPA with regard to inducements will effectively bypass the political decisions that have already been reached.	
279.	IRSG	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. The consultation paper does not contain any empirical market or consumer testing that would constitute a basis for such intervention.	EIOPA has been explicitly asked by the COM to provide Technical Advice re the proper management of conflicts of interest arising from inducements. EIOPA does not intend to impinge on the ongoing negotiations to review IMD, but to respond to the explicit mandate of the COM.

280.	Nordic Financial Unions (NFU)	Question 9	NFU agrees that the rules governing conflicts of interest resulting from inducements should be aligned for the financial sectors in order to create a level playing field. Concerning the parts written by EIOPA on 'remuneration', we however propose to only speak about 'variable remuneration'. In our view, fixed remuneration for employees is usually not a concern for conflicts of interest or for negative incentives. We note that EIOPA writes on page 24 that targets and performance measures related to variable pay already is included in the draft Technical Advice. As written above, we also find it important that the concept of inducements covers not only variable remuneration but also excessive sales targets in general. There is a risk if solely the remuneration comes under scrutiny and not negative non-financial incentives linked to sales targets which also have implications for staff's career prospects. It must also be stressed that the EU secures social partners the right to negotiate pay via collective agreements as set down in article 153.5 of the Treaty (TFEU). The European Union and EU rules on pay cannot interfere with this right.	EIOPA would like to point out that the issue of remuneration needs further analysis and therefore will be address separately at a later stage.
281.	Test Achats	Question 9 Do you agree that the rules governing	As questions 9-12 all relate to inducements, Test-Achats prefers to provide a single comment covering all those questions, for the sake of clarity. MiFID II allows inducements that comply with several conditions. The mere difficulty in setting up criteria for inducements that are quality enhancing strengthens this belief. The same criteria should be adopted for both type of investment products, investment life insurances or financial instruments. Once again, Test-Achats would like to repeat that a different approach for investment products under MIFID (II) and insurance-based investment products would lead to more	Taking into account the specificities of the insurance market, the ongoing negotiations to review IMD, the importance to strengthen consumer protection and to establish a level playing field EIOPA proposes a solution which address appropriately conflicts of interest arising from

			regulatory arbitrage, and uneven playing field and ultimately more consumer detriment. Regarding the interpretation of the quality enhancing condition, Test-Achats largely supports the quality enhancing principles set out in ESMA's consultation on level 2 measures implementing MiFID II. The distribution of life insurances goes quite often with bad practices like contingent commissions or contingent soft inducements (e.g. linked with volume of contracts or premiums). Abnormally high commissions or soft inducements, are proposed by some insurance undertakings, allowing high risky products to be proposed to consumers by less scrupulous intermediaries. In our view, such inducements do not comply with the MiFID requirements and should not be considered as "specificities" of the life-insurance context justifying some adaptation of the MiFID rules. Finally, Test-Achats would like to express its disappointment that EIOPA has not explicitly tackled the question of (variable) remuneration in this consultation paper (unlike ESMA in this field), which is also a key element when reducing conflicts of interest at the point of sale. Test-Achats feels that commercial targets should not have more than a minor impact on the remuneration, which should in general product neutral. Beyond ESMAs proposals in this regard (e.g. criteria for the design of remuneration policies, better governance,…) Test-Achats has also pointed to criteria for the performance assessment and collective remuneration schemes as a potential source for conflicts of interest.	inducements and which is compatible with the approach taken by ESMA. EIOPA would like to point out that the issue of remuneration needs further analysis and therefore will be address separately at a later stage.
C 282.	Confidential response	Question 9		

283.	Allianz SE	Question 10	There is no adequate legal basis for a quality enhancement rule in the amended IMD. The pure symmetry argument with respect of MiFID lacks legitimacy (see Question 9). EIOPA denies its intention to mandate a blanket ban of commissions (see page 23), yet its proposals do not help to ease the concern regarding a very restrictive regulatory intent: ☐ ESMA has tried to use the explicit quality enhancement rule of Art. 24 (9) MiFID II (i.e. Level 1) to implement an outright ban of commissions on Level 2 (see section 2.15 of the ESMA Consultation Paper on MiFID II, esp. point 10. on page 124) ☐ EIOPAs also expresses categorical scepticism regarding commission-based sales (see paragraph 2 on page 11 and section 7, esp. pages 22 - 24 of the Consultation Paper) ☐ The proposed examples for legitimate quality enhancement criteria (see bullet list on page 23 of Consultation Paper) does not contain any profit margin element and therefore can be understood to deny the distributor any profit margin. This would threaten the existence of any commission-based distribution model, which is not acceptable. The proposal for a "quality enhancement rule" does not contribute to clarity, but opens the door to a politicised debate on several legislative and supervisory levels. This should be avoided. In particular, the expression "benefit of the customer" itself is an undefined legal term which requires extensive interpretation. This interpretation may differ substantially: ☐ Allianz takes the position that there are many valid reasons why commission-based sales models typically are	Re the legal basis EIOPA would like to stress that EIOPA has been explicitly asked by the COM to provide Technical Advice re the proper management of conflicts of interest arising from inducements. The quality enhancement criterion has be replaced by the criterion "for the benefit of the client".

			"quality enhancing" for customers in many dimensions: In particular, the pay-per-use characteristic ("no-cure no pay") of commission-based models promotes customer access and choice by facilitating shopping-around by customers free of charge. In addition the commission model limits the fixed cost of product providers, which supports advisory networks with higher reach into lower income segments as well as less densely populated areas thereby promoting access to and advice on insurance for all consumer segments (not just the higher income segments in densely populated areas). ☐ Based on its general sceptical positioning towards commission-based distribution (see above), it is improbable that EIOPA shares this view. In addition, it is doubtful whether the "quality enhancement rule" meets the proportionality principle of IMD1.5 (see also answer to Question 8). Such a far-reaching intervention would have to be proven not only sufficient but also necessary by robust empirical studies (consumer / market testing where possible), not just assertions or theoretical arguments. Such a study probably would also have to cover other remuneration models as well as an assessment of the adverse effects of the more specific prescriptions intended. Such analysis or proof is not provided in the Consultation Paper. The proposed "quality enhancement rule" should therefore also be rejected for lack of compelling empirical evidence regarding its necessity and therefore compatibility with the proportionality principle.	
284.	ANASF	Question 10	Yes, we do. Specifically, we believe that the inducements that are used for the benefit of the customer may enhance the quality of the service.	The enhancement would be one possibility to use the inducements for the benefit of the customers, from EIOPA's point of view.

285.	Association of British Insurers (ABI)	Question 10	The ABI agrees where an inducement that can benefit the customer, the potential conflict of interest is addressed automatically. For example the training of advisers will benefit the adviser but also the customer when they are giving advice.	Noted.
286.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	Question 10	Subject to comments about remuneration then "yes" – see above – but wording needs to be careful to state ' customers in general' – not just the one in front of the distributor at that point.	Noted.
287.	Association of Professional Financial Advisers	Question 10	See comments in response to question 9 above	Noted.
288.	Assuralia	Question 10	Do you agree that a conflict of interest arising from inducements provided to distributors might be addressed where these inducements are used for the benefit of the customer? /	
289.	Austrian Insurance Association (VVO)	Question 10	The empowerment of the European Commission to adopt delegated acts in Art 91 of Directive 2014/65/EU (MiFID II) covers the management of conflicts of interest. Recital 88 of this Directive requires an alignment of Directive 2002/92/EC (IMD 1). Conflicts of interest are regulated in Chapter II Section 4 of Directive 2006/73/EC (MiFID I) which does not cover rules on inducements. Moreover the future Insurance Distribution Directive (IDD) will confirm subsidiarity for any rules on remuneration. In order to comply with the political decision of the European legislator the delegated Directive shall abstain from imposing rules on remuneration at	Noted.

			European level. Inducements give rise to conflicts of interest. As the mandate of the Commission asks to provide Technical Advice on conflicts of interest arising in the context of the distribution of insurance based investment products, EIOPA deems it necessary that the Technical Advice also addresses the conflicts of interest which result from inducements paid for the distribution of insurance based investment products.	
C 290.	Confidential response	Question 10		
291.	BEUC, The European Consumer Organisation	Question 10	See question 9	Noted.
292.	BIPAR	Question 10	See above BIPAR answer to question 10	Noted.
293.	Bund der Versicherten (BdV)	Question 10 Do you agree that a conflict of interest	It is not quite evident, why there should be a conflict of interest, if inducements are used for the benefit of the customer? For example, if an intermediary proposes to a family a whole / term life insurance ("Risikolebensversicherung") with a higher insured sum in case of death, than a conflict of interest does not inevitably emerge from this proposal. The intermediary receives a higher commission, the customer has to pay higher premiums. The necessary condition is of course that a fair and personal analysis of the risks and of the financial conditions of that family had been made in advance. The urgency of this necessary condition is even much higher, if a PRIIP is proposed to that family. We fully support the idea that transparency should be	Noted.

			appropriately enhanced to allow customer to make an informed investment decision. From a customer's perspective it would be essential that information would be provided about the status of an intermediary (independent or tied) as well as how the costs influence the return of a product. Regarding the question how information should be disclosed to the customers, we stress that the information should be understandable and appropriate to the target group.	
294.	BVI	Question 10	Yes, we share EIOPA's opinion that the use of inducements for the benefit of the customer is the key element of proper treatment of conflicts of interest. In this regard, we believe that the approach suggested in the consultation paper, namely to ask whether inducements are also used in the interest of the customers in combination with an indicative list of examples of such use, represents a feasible and fair solution to the issue. Indeed, a positive indication of situations which are assumed to facilitate the customers' interests and hence can regularly be regarded as fulfilling the "quality enhancement" requirement is very helpful for the practical application of the inducements standards under both IMD and MiFID II. We have advocated a similar approach in the context of the upcoming MiFID II Level 2 measures and would like to encourage EIOPA to cooperate with ESMA on this issue in order to achieve a consistent regulatory outcome for all PRIIPs.	EIOPA agrees.
C 295.	Confidential response	Question 10		
296.	CNCIF	Question 10	Yes.	Noted.
297.	EFAMA	Question 10	Yes, we share EIOPA's opinion that the use of inducements for the benefit of the customer is the key element of proper treatment of conflicts of interest. In this regard, we believe that the approach suggested in the consultation paper, namely to ask whether inducements are also used in the interest of the customers, in combination with an indicative	EIOPA agrees.

			list of examples of such use, represents a feasible and fair solution to the issue. Indeed, a positive indication of situations which are assumed to facilitate the customers' interests and hence can regularly be regarded as fulfilling the "quality enhancement" requirement is very helpful for the practical application of the inducements standards under both IMD and MiFID II. We have advocated a similar approach in the context of the upcoming MiFID II Level 2 measures and would encourage EIOPA to cooperate with ESMA on this issue in order to achieve a consistent regulatory outcome for all PRIIPs.	
298.	European Federation of Financial Advisers and Fina	Question 10	We do support the quality enhancement (QE) condition. If inducements are used for the benefit of the customer there is no conflict of interest. Therefore no additional information is necessary.	EIOPA disagrees re disclosure which is an important element to address conflicts of interest arising from third party payments.
299.	Fédération Française des Sociétés d'Assurances (	Question 10	See question 9	Noted.
300.	Federation of German Consumer Organisations	Question 10	See question 9	Noted.
301.	Financial Services Consumer Panel	Question 10	The Panel believes that inducements frequently present a significant risk of conflicts of interest by incentivising an intermediary to pursue the sale of inappropriate products for their own benefit but to the detriment of the customer. The prevention of inappropriate inducements that create conflicts of interest should be an overriding priority and thus the main focus of these proposed rules. Managing or	See comment on Q9.

			disclosing inducements should not be options open to intermediaries if the payments in question by their nature impair the duty to act in accordance with the best interests of the customers. Instead, such an inducement should be prohibited from being made. Accordingly, we believe the MiFID rules on inducements which EIOPA is proposing to adapt do not go far enough in preventing conflicts of interest. The 'quality enhancement' test in article 26 of the Implementing Directive is difficult to apply in practice and provides firms with significant room for manoeuvre to continue accepting commission that presents a real risk of mis-selling. In this regard, we also wish to express our concern that the revised Insurance Mediation Directive currently under negotiation between the European Parliament and Council will not be in line with the 'quality enhancement' test used in MiFID 2, but instead oblige firms to ensure that commission does not cause detriment to the service provided. This is an even lower standard to test whether third-party payments present a conflict of interest.	
302.	Financial Services User Group (FSUG)	Question 10	Please see our answer to question 9	Noted.
303.	French Banking Federation (FBF)	Question 10	Questions 9 to 13 do not have their place in this consultation. The mandate relates with conflict of interest. Assuming that all remuneration or non-monetary benefit paid by a third party is the source of a conflict of interest, EIOPA takes the liberty to include the issue of remuneration and inducements in its technical opinion. This does not comply with the mandate issued and anticipates ongoing discussions under	EIOPA disagrees and would like to point out that EIOPA has been explicitly asked by the COM to provide Technical Advice re the proper

			IMD2.	management of conflicts of interest arising from inducements.
304.	German Insurance Association	Question 10	No. The proposed quality enhancement rule goes far beyond the authorisation and does not enhance legal certainty. The quality enhancement rule is a controversial criterion which has been stipulated in MiFID2 at Level 1 (Article 24(9) of MiFID2). It is also controversially discussed in a slightly modified way with respect to IMD2 at Level 1 (cf. first subparagraph of Article 24(10) of the general approach). In view of that it is not appropriate to derive the principle from a general provision on conflicts of interest. Moreover, it is obvious that the principle is not sufficiently definite. This might result in very broad interpretation attempts, such as has been the case within the course of the MiFID2 consultation where ESMA suggested to derive a general ban on commissions from it (see section 2.15 of the ESMA Consultation Paper on MiFID2). This has rightly been rejected by other EU institutions as well (respective reference can be found on pages 22-24 of the EIOPA Consultation Paper). A quality enhancement rule (if desired) therefore requires legitimation at Level 1. (see also Question 9)	The quality enhancement criterion has been replaced by the criterion "for the benefit of the customer". Taking into account the specificities of the insurance market, the ongoing negotiations to review IMD, the importance to strengthen consumer protection and to establish a level playing field EIOPA proposes a solution which address appropriately conflicts of interest arising from inducements and which is compatible with the approach taken by ESMA.

305.	Institute and Faculty of Actuaries	Question 10	It is possible to derive customer benefits from disclosing inducements with their interests in mind; for example, it may be beneficial when comparing the inducements available for selling different products, or products from different providers. However, introducing a requirement for disclosure of remuneration does not remove the potential for conflict; particularly where different insurers provide different levels of remuneration. Furthermore, we do not believe that disclosure of this information would necessarily ensure that the intermediary acts in the best interest of the customer.	EIOPA agrees that the disclosure of third party payments is not sufficient to address conflicts of interest arising from inducements appropriately.
306.	Insurance Europe	Question 10	We would wonder about the legal basis for the introduction of a quality enhancement criterion, particularly as the delegated acts for IMD 1.5 make no mention of any such criterion. Moreover, while trialogue negotiations still have to take place on IMD 2, none of the positions of the European Commission, the Parliament or the Council introduce a quality enhancement criterion under IMD 2. EIOPA is clearly going beyond any mandate or competence it may have in attempting to introduce such a provision in the insurance context where none of the European co-legislators have sought to do so.	EIOPA has been explicitly asked by the COM to provide Technical Advice re the proper management of conflicts of interest arising from inducements.
307.	IRSG	Question 10	See answer to question 9	Noted.
308.	Test Achats	Question 10 Do you agree that a conflict of int	See question 9	Noted.
C 309.	Confidential response	Question 10		
310.	Allianz SE	Question 11	See answer to Question 10.	Noted.

311.	ANASF	Question 11	All the instances that have been mentioned in the Consultation Paper should be considered to benefit customers. Inducements could be used to expand the range of services and products offered to customers and enhance the quality of the service (for example, to finance training of the staff). Accordingly, inducements may be used to provide the best possible solution to customers. Finally, we consider that this is also the case of business models which are mostly or purely financed by third party payments.	EIOPA shares the view that business models which are financed by third party payments would still be possible under the new rules.
312.	Association of British Insurers (ABI)	Question 11	In the UK a firm must make their own judgement on what is appropriate evidence of consumer benefits. However in these instances a tangible benefit must be explained with the underlying reasoning documented.	Noted.
313.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	Question 11	Skills & knowledge enhancement / technology enhancement. Fund rebates used to benefit customer (note this can be by different methods depending upon the systems of the provider and possibly the tax rules in the Member State).	Noted.
314.	Association of Professional Financial Advisers	Question 11	See comments in response to question 9 above	Noted.
315.	Assuralia	Question 11	From your perspective, which instances might be regarded as being for the benefit of the customer, including in the context of business models which are mostly or purely financed by third party payments?	

			/	
316.	Austrian Insurance Association (VVO)	Question 11	The empowerment of the European Commission to adopt delegated acts in Art 91 of Directive 2014/65/EU (MiFID II) covers the management of conflicts of interest. Recital 88 of this Directive requires an alignment of Directive 2002/92/EC (IMD 1). Conflicts of interest are regulated in Chapter II Section 4 of Directive 2006/73/EC (MiFID I) which does not cover rules on inducements. Moreover the future Insurance Distribution Directive (IDD) will confirm subsidiarity for any rules on remuneration. In order to comply with the political decision of the European legislator the delegated Directive shall abstain from imposing rules on remuneration at European level. Inducements give rise to conflicts of interest. As the mandate of the Commission asks to provide Technical Advice on conflicts of interest arising in the context of the distribution of insurance based investment products, EIOPA deems it necessary that the Technical Advice also addresses the conflicts of interest which result from inducements paid for the distribution of insurance based investment products.	Noted.
C 317.	Confidential response	Question 11		
318.	BEUC, The European Consumer Organisation	Question 11	See question 9	Noted.
319.	BIPAR	Question 11	See BIPAR answer to question 10	Noted.

320.	Bund der Versicherten (BdV)	Question 11 From your perspective, which instances	Benefit of consumer will be fostered most effectively, if the distribution remuneration mechanisms shift from "quick sale" to long-term customer relationship. In insurance business, it should become obligatory to measure success in sales by how long-term the policy holders will be tied to the contract. Although high acquisition commissions and incentives may guarantee success in the short term, they are also very costly. The objective should be to allow insurance intermediaries to participate in the success or failure of the insurance contracts they have brokered (cf. German Federal Financial Supervisory Authority (BaFin), Incentives in sales - Recommendations, November 2013). Following to the Life Insurance Reform Act ("Lebensversicherungsreformgesetz") of summer 2014, some German life insurers started changing their commission systems. Less commission will be paid at the point of sale ("Abschlussprovision"), more commission will be paid related to the duration of the contract ("Bestandsprovision"). From a consumer's perspective we approve these changes, because they are - at least - a first step of the quality enhancement criterion exposed by MIFID. This criterion can only be implemented if services which are necessary for the maintenance of the contract by the customer are remunerated on a much higher level (such as adjustments of the personal situation of the insured, advice for damage report etc.). By these new remuneration mechanisms only those intermediaries will gain who succeed in maintaining a long-term customer relationship by "helping and supporting". Focussing only on quick sale would be punished on the contrary. At least the period, in which large parts of the acquisition commission have to be paid back in case of cancellation of the contract ("Stornohaftungszeit"), has to be prolonged from five to ten years. But as a consumer organisation we do not only stress the	Noted.

			necessity of changes in the current commission remuneration system, but there has to be developed a level playing field among different types of remuneration systems including a fee based system. This is especially the case for the financial services in Germany, where the so-called "Honorarberatung" (a fee based advice - no sale of any product) was - until now - completely overridden by the existing commission system. Only full transparency of any kind of commissions, inducements, incentives or fees will allow the customers to make an informed investment decision.	
321.	BVI	Question 11	In line with our response to the ESMA consultation on MiFID II Level 2 measures, we would like to suggest that a third-party payment or another monetary or non-monetary benefit should be generally regarded as being for the benefit of the customer if: ☐ It provides for an additional or higher quality service above the regulatory requirements provided to the end user client; ☐ it provides a tangible benefit or value to the recipient's end user client; ☐ it enables the client to receive access to a wider range of financial instruments; ☐ it enables an efficient and high-quality infrastructure for services with regard to financial instruments including the qualification of the investment firm's employees; it enables the client to receive access to the provision of non-independent advice on an on-going basis; or ☐ in particular in relation to an on-going inducement, it is related to the provision of an on-going service to an end user client. We consent that such a list of alternatives in terms of quality enhancement should be of a purely indicative and non-	EIOPA agrees that a possible list of instances should be non-exhaustive. EIOPA shares the view that inducements should not impair compliance with the insurance undertaking's duty to act in accordance with the best interest of the customer.

			exhaustive nature. Moreover, it should be understood that a third-party payment or another monetary or non-monetary benefit should only be considered acceptable as long as a distribution service is provided without bias or distortion as a result of the reception of such a benefit.	
C 322.		Question 11		
323.	CNCIF	Question 11	The most frequent instance where inducements are used for the benefit of the customer is when such inducements reduce the overall cost of service for the customer. Inducement, provided their principle is clearly disclosed to customers, are not by themselves to be banned or condemned.	Noted.
324.	EFAMA	Question 11	In line with our response to the ESMA consultation on MiFID II Level 2 measures, we suggest that a third-party payment or another monetary or non-monetary benefit should be generally regarded as being for the benefit of the customer if: - it provides for an additional or higher quality service above the regulatory requirements provided to the end user client; or - it provides a tangible benefit or value to the recipient's end user client; or - it enables the client to receive access to a wider range of financial instruments; or - it enables an efficient and high-quality infrastructure for services with regard to financial instruments including the qualification of the investment firm's employees; or - it enables the client to receive access to non-independent advice on an on-going basis; or - in particular in relation to an on-going inducement, it is related to the provision of an on-going service to an end user client.	EIOPA agrees that a possible list of instances should be non-exhaustive. EIOPA shares the view that inducements should not impair compliance with the insurance undertaking's duty to act in accordance with the best interest of the customer.

			We agree that such a list of possible instances of quality enhancement should be of a purely indicative and non-exhaustive nature. Moreover, it should be understood that a third-party payment or another monetary or non-monetary benefit should be considered acceptable only as long as a distribution service is provided without bias or distortion as a result of the reception of such a benefit.	
325.	European Federation of Financial Advisers and Fina	Question 11	Inducements can take the form of training or other forms of educational support, provision of software or computer backing, AML and other compliance functions, secretarial and other administrative assistance, etc. all of which in turn will benefit the consumer. Inducements enhance the quality when: ☐ they enable clients to reach instruments otherwise unavailable to them; ☐ they enable the services to be provided in a local/timely manner otherwise unavailable to the client; ☐ they enable the clients to be provided with ancillary/complementary financial services, otherwise unavailable to them (i.e. complex financial planning); ☐ they tangibly provide benefits for clients in the administrative follow-up procedures (i.e. significantly reduced order processing time, above-standard reporting, more sophisticated continuous services etc.) ☐ they enable ongoing advice or an indisputable care towards the client.	Noted.
326.	Fédération Française des Sociétés d'Assurances (	Question 11	See question 9	Noted.
327.	Federation of	Question 11	We feel the high level examples on quality enhancement in	Noted.

	Finnish Financial Services		insurance services is basically right – they might relate to the range of services or products provided, or to the quality of the services provided.	
328.	Federation of German Consumer Organisations	Question 11	See question 9	Noted.
329.	Financial Services Consumer Panel	Question 11	We would argue that the principles on conflicts of interest resulting from inducements should be strengthened to include an explicit ban on certain types of third-party payments that could lead an intermediary to sell products that are unsuitable for their customers. Many of the examples listed by EIOPA on page 17 of the discussion paper that preceded this consultation are clear examples of inducements that present an unacceptable risk of a conflict of interest. These include notably: ☐ Contingent commissions, profit shares, or volume over-riders; ☐ Soft commissions such as corporate hospitality and gifts; ☐ Remuneration linked to volume of sales; ☐ Minimum levels of sales being required by an insurer from an intermediary. The Panel believes that inducements such as these are never acceptable and should be banned explicitly, rather than left to firms to decide whether they constitute a conflict of interest on a case-by-case basis.	See comment on Q9.
330.	Financial Services User Group (FSUG)	Question 11	We have combined our answers to question 11 and 12. Inducements by their nature do not tend to benefit the	EIOPA is not empowered to ban

			consumer. The basic role of inducements is to further the business relationship between two financial services firms with the aim to increase revenue. Therefore, inducements are not created with the interest of the consumer mind. There is therefore a need, in our view, to ensure that the principles on conflicts of interest resulting from inducements should be strengthened to include an explicit ban on certain types of third-party payments that could lead an intermediary to sell products that are unsuitable for their customers. In our view EIOPA listed a number of examples of such sources of conflicts of interests in its discussion paper. The following are in our view of particular relevance: ☐ Contingent commissions, profit shares, or volume over-riders; ☐ Soft commissions (corporate hospitality and gifts, soft loans, training support, administrative support); ☐ Remuneration linked to volume of sales; ☐ Minimum levels of sales being required from an intermediary in order to be accepted as an intermediary by the insurer. We regard all of these as types of inducements that are never acceptable and they should therefore be banned. Firms should not be given the option to decide whether they constitute a conflict of interest on a case-by-case basis.	commissions, but to propose measures and procedures for the management of conflict of interest arising from inducements. EIOPA is of the opinion that a ban on inducements would be a political decision to be made in Level 1 through the European legislator because of its possible impacts on existing market structures.
331.	French Banking Federation (FBF)	Question 11	Questions 9 to 13 do not have their place in this consultation. The mandate relates with conflict of interest. Assuming that all remuneration or non-monetary benefit paid by a third party is the source of a conflict of interest, EIOPA takes the	EIOPA disagrees and points out that the COM has explicitly mandated EIOPA to

			liberty to include the issue of remuneration and inducements in its technical opinion. This does not comply with the mandate issued and anticipates ongoing discussions under IMD2.	address this issue.
332.	German Insurance Association	Question 11	See Questions 9 and 10	Noted.
333.	Institute and Faculty of Actuaries	Question 11	Whilst we cannot comment on specific instances as requested, we would welcome a commitment from EIOPA to undertake research that examines the role of third party payments in financing business models that are for the benefit of the customer. We would suggest that this relationship is underexplored and EIOPA is well placed to investigate whether third party payments are integral to customer-centric business models and explore best practice across different Member States.	Noted.
334.	Insurance Europe	Question 11	We would wonder about the legal basis for the introduction of a quality enhancement criterion, particularly as the delegated acts for IMD 1.5 make no mention of any such criterion. Moreover, while trialogue negotiations still have to take place on IMD 2, none of the positions of the European Commission, the Parliament or the Council introduce a quality enhancement criterion under IMD 2. EIOPA is clearly going beyond any mandate or competence it may have in attempting to introduce such a provision in the insurance context where none of the European co-legislators have sought to do so.	EIOPA has been explicitly asked by the COM to provide Technical Advice re the proper management of conflicts of interest arising from inducements. EIOPA does not intend to impinge on the ongoing negotiations to review IMD, but to respond to the explicit mandate of the COM.
335.	IRSG	Question 11	See answer to question 9	Noted.

336.	Nordic Financial Unions (NFU)	Question 11	Inducements that are used for the benefits of the customers could for example be qualitative measurement systems instead of having sales target that create stress for the employees. The qualitative measures could for example cover customer satisfaction, rather than solely quantitative measures such as the number of products sold.	EIOPA agrees.
337.	Test Achats	Question 11 From your perspective, which instan	See question 9	Noted.
C 338.	Confidential response	Question 11		
339.	Allianz SE	Question 12	See answer to Question 10.	Noted.
340.	ANASF	Question 12	We consider that inducements are not for the benefit of the customer if the application of purely commercial criteria hinders the fair treatment of clients, the quality of services and, more broadly, compliance with relevant regulations.	Noted.
341.	Association of British Insurers (ABI)	Question 12	Examples of instances where the inducement is detrimental to the consumer could be extreme hospitality or where distributors are making profits from articles included in their publications. The FCA have conducted work with financial services firms which does identify detrimental inducements; http://www.fca.org.uk/firms/being-regulated/meeting-your-obligations/firm-guides/systems/risks-to-customers-from-financial-incentives	Noted.
342.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	Question 12	Examples of inducements not to the benefit of the customer and so might be detrimental include: i) Reward schemes where 'reward ' results in no increase in	Noted. EIOPA agrees that a list of instances where inducements are not used for the

			professional skills / knowledge or technology. ii)Reward schemes where sole aim is to bring volume without suitability to client needs (without quality factor – suitable for product type/ accessibility or target market) – e.g. trail for promoting a particular fund link which may be inappropriate for particular consumers, or inappropriate on its own (non-diversified) iii) Any medium / long-term loans to intermediary from product providers.	benefit of the customer might also be useful.
343.	Association of Professional Financial Advisers	Question 12	See comments in response to question 9 above	Noted.
344.	Assuralia	Question 12	In which instances do you think inducements would not be for the benefit of the customer? /	
345.	Austrian Insurance Association (VVO)	Question 12	The empowerment of the European Commission to adopt delegated acts in Art 91 of Directive 2014/65/EU (MiFID II) covers the management of conflicts of interest. Recital 88 of this Directive requires an alignment of Directive 2002/92/EC (IMD 1). Conflicts of interest are regulated in Chapter II Section 4 of Directive 2006/73/EC (MiFID I) which does not cover rules on inducements. Moreover the future Insurance Distribution Directive (IDD) will confirm subsidiarity for any rules on remuneration. In order to comply with the political decision of the European legislator the delegated Directive shall abstain from imposing rules on remuneration at European level. Inducements give rise to conflicts of interest. As the mandate	Noted.

			of the Commission asks to provide Technical Advice on conflicts of interest arising in the context of the distribution of insurance based investment products, EIOPA deems it necessary that the Technical Advice also addresses the conflicts of interest which result from inducements paid for the distribution of insurance based investment products.	
C 346.	Confidential response	Question 12		
347.	BEUC, The European Consumer Organisation	Question 12	Next to inducements that basically tie sellers to a small number of product providers (as outlined in our response to question 9), we believe that the following types of inducements are particularly detrimental for consumers: ☐ Contingent commissions, profit shares, or volume over-riders; ☐ Soft commissions (corporate hospitality and gifts, soft loans, training support, administrative support); ☐ Remuneration linked to volume of sales; ☐ Minimum levels of sales being required from an intermediary in order to be accepted as an intermediary by the insurer.	Noted.
348.	BIPAR	Question 12	See BIPAR answer to question 10	Noted.
349.	Bund der Versicherten (BdV)	Question 12 In which instances do you think induc	To make it clear from the outset: any kind of inducement which would not be for the benefit of the costumer must be forbidden and sanctioned. In its new Delegated Regulation on Solvency II (10 October 2014) the European Commission developed a System of	Noted. EIOPA agrees that the rules of SII entail requirements on remuneration; whereas the Technical Advice on IMD 1.5

			Governance (Chapter IX), in which "Fit and Proper Requirements" for the management as well as principles of Remuneration Policy are fixed. Article 275 states that "…the remuneration policy and remuneration practices shall be established, implemented and maintained in line with … the long-term interests and performance of the undertaking as a whole and shall incorporate measures aimed at avoiding conflicts of interest; (…) there shall be clear, transparent and effective governance with regard to remuneration, including the oversight of the remuneration policy". Part 2 of the same article underlines that "…where remuneration schemes include both fixed and variable components, such components shall be balanced so that the fixed or guaranteed component represents a sufficiently high proportion of the total remuneration to avoid employees being overly dependent on the variable components and to allow the undertaking to operate a fully flexible bonus policy, including the possibility of paying no variable component". As a consumer organisation we fully agree with these principles and we emphasize their relation with the "fit and proper" requirements: "assessment of the person's professional and formal qualifications, knowledge and relevant experience within the insurance sector" as well as "assessment of that person's honesty and financial soundness based on evidence regarding their character, personal behaviour and business conduct including any criminal, financial and supervisory aspects relevant for the purposes of the assessment" (article 273). Additionally we stress that corporate governance, risk management and internal audit function have to be separated clearly. The management board must be responsible for the implementation of these principles and requirements at every level of its distribution organization. Excessive sales targets,	addresses conflicts of interest arising from third party payments for the sake of consumer protection.

			sales pressure, sales contests, performance measurement systems, sales incentives and after-sale transactions as well as "churning" in order to generate commissions (e.g. excessive switching of funds) are completely incompatible with these principles. It has to be obligatory for the board members to communicate that there is a different corporate culture to sales. The principles have to be explained to intermediaries in regular training sessions to highlight this issue and its importance for the corporate culture. Intermediaries need to understand that if the insurance company's reputation suffers, this also negatively impacts their own business. In addition a strict system of sanctions has to be introduced and implemented for any case of mis-selling which will occur nevertheless.	
350.	BVI	Question 12	Clearly, inducements should not be regarded as being for the benefit of the customer if they cannot be associated with a tangible benefit or value on the customer's part. More importantly, we do not see added value in providing a negative list of situations in which the "quality enhancement" requirement is not fulfilled. A negative list would not allow firms to assess whether they are in compliance with the rules. Further, it would be difficult to analyse for all circumstances in practice how positive and negative criteria would interact. Generally, we believe that the conflict of interest rules cover the objectives for which a negative list could be designed.	Noted.
C 351.	Confidential response	Question 12		
352.	CNCIF	Question 12	Inducements would not be for the benefit of the customers any time they are hidden, so that the customer does not know the total (and real) cost of service. The issue at stake is access to the information. In order for inducements to be acceptable, their existence need to be disclosed to the customer.	EIOPA agrees that the disclosure is one important element to address conflicts of interest resulting from inducements; but disclosure as such

				does not mean that the inducements are used for the benefit of the customer.
353.	EFAMA	Question 12	Clearly, inducements should not be regarded as being for the benefit of the customer if they cannot be associated with a tangible benefit or value on the customer's part. More importantly, we do not see added value in providing a negative list of situations in which the "quality enhancement" requirement is not fulfilled. A negative list would not allow firms to assess whether they are in compliance with the rules. Further, it would be difficult to analyse for all circumstances in practice how positive and negative criteria would interact. Generally, we believe that the conflict of interest rules cover the objectives for which a negative list could be designed.	Noted.
354.	European Federation of Financial Advisers and Fina	Question 12	Inducements would not benefit customers: ☐ If the client was not made aware of the total costs of the PRIIPs including inducements well ahead of closing the contract; ☐ If the client does not receive an ongoing assessment of the suitability of the financial instruments recommended. Most advisers take initial commission from the Life policy and trail commission on the investment funds. This incentivises good advisers to build long term, post-sales service relationships with their clients. Trail commission should follow the "rucksack" principle, paid only to those intermediaries who perform ongoing maintenance. This would also help clients who want (or have) to change their distributors. At the moment this might be impossible. Who would take the risk and do the work without the chance of payment for their service? In this context FECIF wants to shed a light on to the fact that any commission usually is not subject to VAT whilst professional fees are taxed without exception. It is therefore	Noted.

			in the interest of PRIIPs customers to pay for maintenance through commissions, otherwise the costs of service would increase by up to 25% without any benefit at all.	
355.	Fédération Française des Sociétés d'Assurances (	Question 12	See question 9	Noted.
356.	Federation of Finnish Financial Services	Question 12	Inducements paid by third parties to insurance brokers, who represent their customers independently from any insurance companies, would not be for the benefit of their customers. The Finnish Insurance Mediation Act stipulates that an insurance broker may only receive remuneration from his/her customer. The objective of the commission ban is to prevent insurance brokers having ties to insurance companies which would threaten their independence and impartiality. This ensures that the broker will always act in the best interests of his/her customer, instead of directing the customer's business to the company that pays the highest remuneration.	EIOPA is not empowered to ban commissions, but to propose measures and procedures for the management of conflict of interest arising from inducements. EIOPA is of the opinion that a ban on inducements would be a political decision to be made in Level 1 through the European legislator because of its possible impacts on existing market structures.
357.	Federation of German Consumer Organisations	Question 12	Next to inducements that basically tie sellers to a small number of product providers (as outlined in our response to question 9), we believe that the following types of inducements are particularly detrimental for consumers: ☐ Contingent commissions, profit shares, or volume over-riders;	Noted.

			☐ Soft commissions (corporate hospitality and gifts, soft loans, training support, administrative support); ☐ Remuneration linked to volume of sales; ☐ Minimum levels of sales being required from an intermediary in order to be accepted as an intermediary by the insurer.	
358.	Financial Services Consumer Panel	Question 12	We would argue that the principles on conflicts of interest resulting from inducements should be strengthened to include an explicit ban on certain types of third-party payments that could lead an intermediary to sell products that are unsuitable for their customers. Many of the examples listed by EIOPA on page 17 of the discussion paper that preceded this consultation are clear examples of inducements that present an unacceptable risk of a conflict of interest. These include notably: ☐ Contingent commissions, profit shares, or volume over-riders; ☐ Soft commissions such as corporate hospitality and gifts; ☐ Remuneration linked to volume of sales; ☐ Minimum levels of sales being required by an insurer from an intermediary.	See comment on Q9.

			The Panel believes that inducements such as these are never acceptable and should be banned explicitly, rather than left to firms to decide whether they constitute a conflict of interest on a case-by-case basis.	
359.	Financial Services User Group (FSUG)	Question 12	Please see our answer to question 11	Noted.
360.	French Banking Federation (FBF)	Question 12	Questions 9 to 13 do not have their place in this consultation. The mandate relates with conflict of interest. Assuming that all remuneration or non-monetary benefit paid by a third party is the source of a conflict of interest, EIOPA takes the liberty to include the issue of remuneration and inducements in its technical opinion. This does not comply with the mandate issued and anticipates ongoing discussions under IMD2.	EIOPA disagrees. EIOPA has been explicitly asked by the COM to provide Technical Advice re the proper management of conflicts of interest arising from inducements.
361.	German Insurance Association	Question 12	See Questions 9 and 10	Noted.
362.	Institute and Faculty of Actuaries	Question 12	The IFoA believes that detailed research of the various models in use across the EU may provide useful information around the success, or otherwise, of the inducement models.	Noted.
363.	Insurance Europe	Question 12	We would wonder about the legal basis for the introduction of a quality enhancement criterion, particularly as the delegated acts for IMD 1.5 make no mention of any such criterion. Moreover, while trialogue negotiations still have to take place on IMD 2, none of the positions of the European Commission, the Parliament or the Council introduce a quality enhancement criterion under IMD 2. EIOPA is clearly going beyond any mandate or competence it may have in attempting to introduce such a provision in the insurance context where none of the European co-legislators have sought to do so.	EIOPA has been explicitly asked by the COM to provide Technical Advice re the proper management of conflicts of interest arising from inducements. EIOPA does not intend to

				impinge on the ongoing negotiations to review IMD, but to respond to the explicit mandate of the COM.
364.	IRSG	Question 12	See answer to question 9	Noted.
365.	Nordic Financial Unions (NFU)	Question 12	Performance measurement systems for employees work as inducements and can be counterproductive to customer protection and qualified advice. As the employee feels pressured to reach his/her targets it is likely that what is sold to customers may not be based on objective and sound advice from the employee. Personal goals on commissions-based products can create high pressure selling and increase the risk of breaking standards of ethics in the distribution system. The sales pressure at a company can also lead to a bad company climate/culture where the sales results between colleagues are made public and focus is placed solely on reaching sales targets. Extensive monitoring of employees also risks creating distrust between employers and employees. Instead employees should be measured by the quality of their work, overall results and customer relations. Research done on performance measurement systems in Norway suggests that performance measured at team level is less likely to create perverse incentives than measuring at the individual level. Introducing team based measurements to replace individual performance measurements will reduce the risk of negative impact. There is also a need to introduce long-term rather than short term incentives. This can be done by ensuring that remuneration policies must be based on benchmarks, such as sales, not only from last year but as an average over a period of five to ten years.	EIOPA agrees that conflicts of interest may also arise with regard to internal payments / remuneration, but would like to point out that this issue needs further analysis.

366.	Test Achats	Question 12 In which instances do you think induc	Next to inducements that basically tie sellers to a small number of product providers (as outlined in our response to question 9), we believe that the following types of inducements are particularly detrimental for consumers: ☐ Contingent commissions, profit shares, or volume over-riders; ☐ Soft commissions (corporate hospitality and gifts, soft loans, training support, administrative support); ☐ Staff remuneration or benefits in kind linked to volume of sales; ☐ Minimum levels of sales being required from an intermediary in order to be accepted as an intermediary by the insurer.	Noted.
C 367.	Confidential response	Question 12		
368.	Allianz SE	Question 13	Yes. A separate regulation of research seems not to be necessary for insurers and insurance intermediaries. Insurers and insurance intermediaries generally do not issue investment research, i.e. a general, non-personal assessment or recommendation regarding certain asset classes or securities which are not marketing material. In fact they typically provide advice (i.e. information, including personal recommendations) to their customers, where the stricter rules on advice apply. The recommendations in the sale of an insurance-based investment product are also typically not related to individual capital market instruments.	EIOPA agrees.
369.	ANASF	Question 13	No, we don't. Preliminarily, it is necessary to consider that: i) the insurance sector is increasingly becoming more complex	So far, EIOPA is of the opinion that the

			and diversified; ii) there exists a process of convergence across different sectors of the financial markets. As a general remark, this convergence provides the rationale for a level playing field. More specifically, as market complexity increases, the production and dissemination of investment research is more and more necessary also for insurance activities (especially in the case of insurance-based investment products) and increasingly similar to the investment research provided for financial services and instruments (MiFID). Moreover, the recognition of investment research also in the case of insurance activities represents a preliminary step to its further development.	production and arrangement of investment research on financial instruments has not yet become a relevant business for insurance undertakings and insurance intermediaries. Therefore, there is no need to introduce specific regulatory provisions. The general rules on conflict apply.
370.	Association of British Insurers (ABI)	Question 13	We share EIOPA's view that the dissemination of investment research, is not relevant or applicable to the insurance sector.	Noted.
371.	ASSOCIATION OF INTERNATIONAL LIFE OFFICES LUXEMBOU	Question 13	Yes, provided it is construed in its technical sense.	Noted.
372.	Association of Professional Financial Advisers	Question 13	In relation to Article 24 & 25 relating to investment research, we do not believe that they should be applied to insurance distribution activities. The term investment research should be dealt with 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.	Noted.
373.	Assuralia	Question 13	Do you share the general observation that insurance undertakings	Noted.

			and intermediaries are principally not involved in the production and dissemination of investment research? Comment of Assuralia, the association of insurance companies in Belgium: We agree with the observation that insurance undertakings and intermediaries are principally not involved in the production and dissemination of investment research.	
374.	Austrian Insurance Association (VVO)	Question 13	Yes, therefore Articles 24 and 25 are not applicable.	EIOPA takes note.
C 375.	Confidential response	Question 13		
376.	BIPAR	Question 13	BIPAR agrees with the EIOPA proposal. In relation to Articles 24 & 25 relating to investment research, we do not believe that they should be applied to insurance distribution activities. The term "investment research" should be dealt with carefully in an insurance context. 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.	Noted.
377.	Bund der Versicherten (BdV)	Question 13 Do you share	No, we do not share this observation. Not intermediaries, but insurers are often owners of capital and asset allocation companies which sell investment funds to retail investors.	So far, EIOPA is of the opinion that the production and

		the general observation t	These investment funds and other securities may even be included in unit-linked contracts or in PRIIPs offered by the same insurer. That is the reason why the provisions in articles 21 and 22 of MiFID on identifying and establishing a conflicts of interest policy have fully to be applied in order to analyse meticulously the combination of investment research and of distribution channels of the same insurer.	arrangement of investment research on financial instruments has not yet become a relevant business for insurance undertakings and insurance intermediaries. Therefore, there is no need to introduce specific regulatory provisions. The general rules on conflict apply.
C 378.	Confidential response	Question 13		
379.	CNCIF	Question 13	Yes.	Noted.
380.	European Federation of Financial Advisers and Fina	Question 13	FECIF agrees with EIOPA's general observation.	Noted.
381.	Fédération Française des Sociétés d'Assurances (	Question 13	Concerning the production and dissemination of investment research, the FFSA agrees that this is not applicable to the insurance sector.	Noted.
382.	Federation of Finnish Financial Services	Question 13	We share EIOPA´s view on investment research.	Noted.
383.	Financial Services User Group (FSUG)	Question 13	It depends on the structure of the company. In certain cases, insurance undertakings own 100 % asset management affiliates. In those cases the relationships between the asset management affiliate and its research activities on the one	Noted.

			hand and the insurance arm itself should be subject to review to determine whether they are "arm's length" or not.	
384.	French Banking Federation (FBF)	Question 13	Questions 9 to 13 do not have their place in this consultation. The mandate relates with conflict of interest. Assuming that all remuneration or non-monetary benefit paid by a third party is the source of a conflict of interest, EIOPA takes the liberty to include the issue of remuneration and inducements in its technical opinion. This does not comply with the mandate issued and anticipates ongoing discussions under IMD2.	Noted.
385.	German Insurance Association	Question 13	German insurers share the opinion of EIOPA according to which the specific organisational requirements which have been set out in Articles 24-25 of the MiFID Implementing Directive are of minor importance with respect to the distribution activities of insurance undertakings and intermediaries. EIOPA's intention to refrain from recommending to the Commission to implement similar rules in the context of the revised Insurance Mediation Directive is being welcomed.	Noted.
386.	Groupement des Entreprises Mutuelles d'Assurance	Question 13	Concerning this question, we share EIOPA's general observation. GEMA's 236utual are not involved in the production and dissemination of investment research.	Noted.
387.	Institute and Faculty of Actuaries	Question 13	The IFoA agrees with this observation.	Noted.
388.	Insurance Europe	Question 13	With regard to the production and dissemination of investment research, we share the view of EIOPA that this is not relevant or applicable for the insurance sector.	Noted.

389.	IRSG	Question 13	The IRSG agrees with EIOPA proposal. In relation to Article 24 & 25 relating to investment research, we do not believe that they should be applied to insurance distribution activities. 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.	Noted.
C 390.	Confidential response	Question 13		

Annex IV: Extracts of the MiFID Implementing Directive

Article 21 - Conflicts of interest potentially detrimental to a client

Member States shall ensure that, for the purposes of identifying the types of conflict of interest that arise in the course of providing investment and ancillary services or a combination thereof and whose existence may damage the interests of a client, investment firms take into account, by way of minimum criteria, the question of whether the investment firm or a relevant person, or a person directly or indirectly linked by control to the firm, is in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise:

(a) the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;

(b) the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;

(c) the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;

(d) the firm or that person carries on the same business as the client;

(e) the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service.

Article 22 - Conflicts of interest policy

1. Member States shall require investment firms to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the firm and the nature, scale and complexity of its business.

Where the firm is a member of a group, the policy must also take into account any circumstances, of which the firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

(a) it must identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the investment firm, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients;

(b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.

3. Member States shall ensure that the procedures and measures provided for in paragraph 2(b) are designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in paragraph 2(a) carry on those activities at a level of independence appropriate to the size and activities of the investment firm and of the group to which it belongs, and to the materiality of the risk of damage to the interests of clients.

For the purposes of paragraph 2(b), the procedures to be followed and measures to be adopted shall include such of the following as are necessary and appropriate for the firm to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out investment or ancillary services or activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest.

If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, Member States shall require investment firms to adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

4. Member States shall ensure that disclosure to clients, pursuant to Article 18(2) of Directive 2004/39/EC, is made in a durable medium and includes sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the investment or ancillary service in the context of which the conflict of interest arises.

Article 26 - Inducements

Member States shall ensure that investment firms are not regarded as acting honestly, fairly and professionally in accordance with the best interests of a client if, in relation to the provision of an investment or ancillary service to the client, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following:

(a) a fee, commission or non-monetary benefit paid or provided to or by the client or a person on behalf of the client;

(b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:

(i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service;

(ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service to the client

and not impair compliance with the firm's duty to act in the best interests of the client;

(c) proper fees which enable or are necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients.

Member States shall permit an investment firm, for the purposes of point (b)(i), to disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that it undertakes to disclose further details at the request of the client and provided that it honours that undertaking.