29th September 2016

Responses of the Association of German Public Insurers[1] to the EIOPA Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive (IDD), 4th July 2016

General Comment

The public insurers welcome the fact that EIOPA has been timely in submitting its preliminary considerations as regards technical advice for Product Oversight and Governance, Conflicts of Interest, Inducements and Assessment of Suitability – areas in which the IDD has empowered the European Commission to flesh out the regulations by means of delegated acts. The most important thing in relation to these recommendations is that they be proportionate. Only if the principle of proportionality is faithfully and systematically applied, will small and medium-sized insurance companies and intermediaries be in a position to properly implement the IDD. If it is not, the diversity of the European insurance landscape would be in jeopardy – and that would not be in the true interests of the customers.

The following General Comment refers solely to the areas of conflicts of interest and inducements, as these are of paramount importance. The IDD is aimed at minimum harmonisation (explicitly stated in Recital No. 3 of the Directive). The commission system was the subject of intensive discussions during the trialogue negotiations, with the result that the IDD does not contain any EU-wide ban on commission. The Directive merely contains the requirement that commission should not have any detrimental impact on the customers. The IDD wording thus deliberately departs in a materially significant way from the MiFID rules. Moreover, in Art. 29(3) the IDD grants the EU Member States – and no other EU institutions – the right to impose stricter national requirements as regards commission systems (up to and including the right to prohibit commission altogether). Consequently,

[1] The Association of German Public Insurers (VöV) is the umbrella organisation of the German public insurance companies and a corporation established under public law. Founded in 1911, it represents 11 primary insurers across Germany that are deeply embedded in their regions. The group is the second-largest primary insurance provider in the German market, with almost EUR 128 billion of investments under management, thereby making a significant contribution to the European economy. The group is committed by law to support the public good. It has approximately 50 million insurance contracts and pays out EUR 17 billion each year to its clients.

The public insurers employ 30,000 people. Through around 19.000 branch offices of the public insurers, the Savings Banks and further affiliated partners nationwide, they offer advice and protection across most insurance sectors (health, life, pension, motor, indemnity, fire, etc.) for private clients of all income groups and for small and medium-sized companies.

The Association of German Public Insurers represents the interests of its members at the national and the European level through its head offices in Düsseldorf and Berlin and its liaison office in Brussels.

the IDD regulations differ considerably from the MiFID, a fact that also reflects the material differences between the insurance industry and the investment sector.

The IDD deliberately grants each EU Member State leeway to regulate commission systems differently, and this scope must not be restricted after the fact. Delegated acts are designed to make Level-1 legislation more specific, not to contradict it. In the present paper, however, EIOPA imposes stricter requirements, which would in fact lead to a Europe-wide prohibition of commission systems in their accustomed, tried-and tested form. This, however, is neither consistent with the IDD, nor do we consider it to be appropriate or even necessary. The delegated acts must respect both the framework given at Level 1 and adhere to the meaningful diversity of structures across the EU Member States.

From the public insurers' standpoint, there are a number of different points to which special attention should be given during the consultation process:

- We believe it much more appropriate to formulate principles-based regulations, rather than the detailed provisions that appear in many instances throughout the consultation paper. Individual aspects are always the result of viewing things in isolation, and are of only limited informational value because they often do not adequately reflect actual practice in the insurance industry. The focus must always fall on the service as a whole. Individual aspects of this kind can be found, in particular, in the negative list drafted by EIOPA, which should not be included in either the Technical Advice or the delegated acts. If, despite all reservations, EIOPA insists on a negative list, it is then absolutely necessary to include a non-exhaustive positive list in the Technical Advice as well. However, the points in the positive list included in the consultation paper are inadequate and do not reflect the features of appropriate, customer-oriented insurance practice.

- EIOPA asserts that conflicts of interest typically arise in certain situations. It is worth noting that conflicts of interest do *not* typically arise in the circumstances given, but only in exceptional cases. The list of situations in which EIOPA assumes a conflict of interest is far too long:

    - It is inexplicable to assert that a conflict of interest arises when the distributor has an interest in selling insurance products from his/her own group. In particular, the tied intermediaries that play such a central role in the insurance industry are subject to a conscious and sensible contractual obligation to sell precisely these products. Art. 19 of the IDD makes detailed prescriptions of what information distributors have to provide to customers (e.g. their status as an intermediary, any holdings they have in insurance companies, etc.). That information already puts the customer in a position to make an informed decision to his/her own benefit.

    - EIOPA assumes a conflict of interest when a distributor gains financially from the sale of insurance products. This assumption does not reflect the realities of the insurance market. A commission paid to the distributor is primarily intended to cover the latter's costs, i.e. appropriate remuneration for the services rendered to the customer. What is more, in the case of pension insurance products, the distributor has to provide the

majority of his/her consultation/support service when the contract is concluded. Service of this nature justifies payment of corresponding remuneration at the time the costs are incurred. Multi-year cancellation liability periods help to avoid any conceivable conflicts of interest between distributors, on the one hand, and customers/insurers, on the other.

- EIOPA does not consider the potential conflicts of interest posed by other forms of consultation, e.g. fee-based consultation. Remuneration based on the time spent advising the customer can also create incentives that result in consultation that is neither purely customer-oriented nor in line with the latter's requirements.

- The consultation paper incidentally leaves aside the socio-politically positive aspect of the commission system. In a system with an insurance infrastructure for everyone consultation is carried out in accordance with the needs and wishes of the customer and without any financial risk for the individual. The scope and intensity of the support provided do not depend on whether the customer ultimately concludes a contract or not, nor on what contract volume or amount of commission is attached to it. At a time when making provision for old age is of key importance only a commission-based system can ensure everyone access to adequate insurance products.

- It is problematical to link the admissible commission solely, or even predominantly, to qualitative criteria, which are, generally speaking, not objective. Only quantitative criteria can be measured objectively. In the interests of costing certainty, and to avoid economic risk for insurance companies, the remuneration paid to intermediaries – who are free to decide independently of the insurer the amount and scope of their work – must be geared to the sales they generate and thus to quantitative criteria.

At various points, EIOPA asks whether supplementary guidelines for the Directive or the delegated acts are necessary and a sensible option. As the IDD and the delegated acts already provide comprehensive regulations, we do not consider any supplementary guidelines to be needed. Otherwise, there is a danger of too much regulation and of unnecessary red tape.

As the delegated acts were formulated as guidelines to supplement MiFID, the delegated acts for the IDD should also be issued as Directive which needs to be implemented nationally. This would also accord with the spirit of the IDD, which aims to achieve a minimum of harmonisation.

Regarding the various aspects and questions of the consultation paper, we respond as follows:

Cost-benefit analysis

1. What would you estimate as the costs and benefits of the possible changes outlined in this Consultation?

It is not possible to give a reliable estimate of the direct and indirect costs that would be triggered by the proposals contained in the consultation paper. However, the additional effort they would entail should not be underestimated and would be likely to have an impact on the costs for the customers. The proposals, especially process changes at insurance companies and intermediaries, would lead to quite comprehensive changes. The changes concern nearly all corporate areas and would have consequences for distribution management, IT, product development, corporate management, etc.

In addition to the direct financial costs that the insurance collective would have to shoulder, considerable human resources would be needed to implement all of EIOPA's proposals. This entails, in particular, the additional administrative burden for activities such as drawing up conflict-of-interest policies and documenting that the commission systems/components are unobjectionable, for recurring additional case reviews and for more stringent reporting obligations on the part of distribution partners. These comprehensive requirements become evident in the following examples, which admittedly represent only one part of the additional burden that would be caused by the EIOPA proposals:

- All manufacturers of insurance products are supposed to maintain, administer and regularly review product oversight and governance (POG) arrangements. These arrangements are to include adequate measures and procedures targeting the design, monitoring, review and distribution of retail insurance products. Measures also have to be taken with respect to products, which could be detrimental to consumers.
- Before a product is launched in the market, when the target market changes or when an existing product is modified, the manufacturer is expected to carry out appropriate checks in order to assess whether the product corresponds to the needs of the target market over its life cycle.
- Distributors, too, will have to establish a control or management body to assist in the setting up, implementation and subsequent review of the POG arrangements, to ensure internal compliance with them and to bear ultimate responsibility.
- If a distributor determines that a product does not match the interests, needs or characteristics of the target market or that it raises the risk of detriment to the customer, the distributor must inform the product manufacturers of this without undue delay.
- Insurance companies and intermediaries are supposed to assess whether they have a different interest in the insurance distribution than the customer. Further, conflicts of interest between the customers themselves have to be identified.

- Insurance companies and intermediaries are to set down in writing principles for dealing with conflicts of interest and put these into lasting practice.
- In future, insurance companies and intermediaries will have to assess each and every inducement and document it on a permanent data carrier.
- Insurance companies and intermediaries are expected to obtain from customers the information required to understand their salient characteristics so that they can reasonably assume that their personal recommendations match the customers' investment goals, risk tolerance and financial situation.
- Insurance companies and intermediaries are called upon to take adequate steps to ensure that the information they collect on the customer is reliable.

Particularly for small and medium-sized companies/intermediaries, this could entail a prohibitive amount of extra work – work they are unable to carry out. It is therefore once again indispensable to strictly observe the principle of proportionality when it comes to EIOPA's proposals and the delegated acts based on them.

Product Oversight & Governance

2. Do you agree that the policy proposals above provide sufficient detail on product oversight and governance arrangements?

In principle, the German public insurers support the new requirements concerning product oversight and governance (POG) that have been included in the IDD. However, EIOPA's proposed POG guidelines need to be amended: they are far too detailed and go well beyond the requirements of the IDD. This does not respect the principle of proportionality neither the European level one legislation nor its national implementation. The resources that would be required for companies to implement all these rules are disproportionately large and cannot be afforded neither by small and medium-sized companies (manufacturers) nor by intermediaries. Small-scale intermediaries – some with only a single administrative employee on their payroll – would be ruined if they were obliged, for example, to establish their own dedicated administrative, management or oversight body. The ideas put forward by EIOPA are neither appropriate nor balanced, and do not take distribution realities into account. Apart from that, it is not clear whether and, if so, how such requirements would really serve to benefit customers. In the present paper, EIOPA fails to provide convincing arguments for this proposal.

Conflicts of Interest

9. Are there any other elements which you would consider appropriate in order to specify the regulatory requirements on conflicts of interest as laid down in Article 27 and Article 28 IDD? If possible, please specify in detail.

Regulations concerning conflicts of interest must be based on principles

There are further elements that are appropriate and suitable for specifying the regulatory requirements as regards conflicts of interest. As a general rule, EIOPA should formulate regulations that are based on principles and not attempt to draft detailed regulations for individual cases. This would lead to over-regulation in areas that do not require additional rules. In some cases, the options the IDD deliberately grants EU Member States have been retracted for no apparent reason, other IDD regulations have been made more severe (in some cases unreasonably so), the freedom of businesses to make their own decisions has been substantially curtailed, and the negative effects on consumers of stricter regulation incorrectly assessed.

The concept of conflict of interest is defined too broadly and is thus inappropriate

EIOPA assumes that conflicts of interest "typically" arise in certain situations. It is imperative to note that conflicts of interest do *not* typically arise in the referenced situations. This would rather be the case in *exceptional* situations only rather than typically. The examples of situations in which a conflict of interest could arise are far too broad and take account of certain aspects only that are not conclusive when viewed in isolation. The focus must always be on the service as a whole.

- The assertion that a conflict of interest typically arises when the distributor has an interest in selling insurance products from his/her own group (p. 44, No. 6, 1st bullet point) is incomprehensible. In particular, tied intermediaries, i.e. distributors who have only products of their employer, principal or insurance partner to sell, are subject to a conscious and sensible contractual obligation to sell precisely these products. The advantage of this for customers is that the consultants have a very thorough knowledge of the products they are selling and are thus particularly suited to meeting the customers' needs. Further, in such situations the insurance company, too, shoulders part of the responsibility as regards training, consultation know-how, appropriate choice of products, fast administration and the customer services associated with distribution. The tied intermediary is a long standing sales channel in the insurance world and must be preserved. This sales channel also results in a finely meshed local supply network for private pension and insurance products across Germany. Even if the IDD is made more specific through the formulation of delegated acts, that must not result in certain sales channels being discriminated against.

  Art. 19 of the IDD already states that, in the interests of transparency, the intermediary must provide precise information before the conclusion of an insurance contract, e.g. whether it has a direct or indirect holding in an insurance company, and must further inform the customer whether it is contractually obliged to transact insurance distribution for a single insurance

company only. A conflict of interest is ruled out once such holdings or the intermediary's links to a particular insurance company have been revealed and the customer has been provided with unambiguous information about the intermediary. That puts the customer in a position to make an informed decision. As the IDD has formulated clear rules in this area, it is unnecessary for EIOPA to tighten these rules, nor is there any justification for doing so. It adds no recognisable value for the customer.

- According to the EIOPA consultation paper, a conflict of interest arises when a distributor receives remuneration for selling insurance products (p. 44, No. 6, 2nd bullet point; p. 45, No. 2c) or when a distributor makes a financial gain "at the expense of the customer" (p. 45, No. 2a) – although it remains unclear what the latter precisely means. This assumption does not reflect the realities of the insurance market. In fundamental terms, the distributor's financial gain constitutes remuneration for the costs incurred in providing consultation and/or customer service – also throughout the entire term of the insurance contract following its conclusion – and thus represents the distributor's economic livelihood. Apart from that, cost transparency as regards calculated acquisition costs has already been achieved in every insurance proposal (including commission and remuneration). A financial gain does not necessarily trigger a conflict of interest. It could constitute a problem only if it were inappropriately high. By the same token, an inappropriately low level of income would be critical from the customer's point of view because it could result in the distributor not taking enough time for the customer and thus not providing thorough and proper advice. If intermediaries were no longer remunerated for their consultation services, that could have negative consequences for large swathes of consumers/customers; in a worst-case scenario, they would be excluded from receiving the consultation that is so necessary in socio-political terms. The private pension cover that is urgently required to avoid poverty in old age must not be left solely to the personal initiative of the consumer. To this extent, distribution activities are in the customers' own interests as they help them to face the consequences of demographic change and make adequate provision for it through private pension cover.

  Further, companies rely on making a profit and, under the solvency requirements currently in place in Europe, are expected to do so. In view of this fact, too, it is unreasonable to assume that every insurance product and every sale poses a conflict of interest.

  By contrast, EIOPA does not consider the potential conflicts of interest posed by other forms of consultation, e.g. fee-based consultation. We should not overlook the danger that fee-based consultation could be unnecessarily drawn out in order to obtain higher remuneration from the customer, that the customer feels compelled to conclude an insurance contract after having paid a large sum of money for consultation, that there is no provision for reimbursing the fees if the insurance contract is later cancelled by the customer, or that consumers with low incomes are unable to afford consultation in the first place and thus would not get the insurance coverage they need.

  Claiming that a financial gain "at the expense of the customer" is a conflict of interest is furthermore a misinterpretation of the nature of voluntary exchange relationships in a market economy. *In theory,* a customer would indeed pay less if the intermediary did not receive

commission. But, in practical terms, that is not an option as the intermediary would then not supply the service at all. Both sides must benefit, and it is in the nature of the market economy that voluntary transactions come about only when both parties derive benefit from them. Like other manufacturers in a market economy, insurance companies, too, need planning certainty in order to develop products. Only thus is it possible to manufacture profitable products for customers. Setting the benefit of one party against that of another ignores the nature of such exchange relationships, namely that the benefits of both parties are interconnected.

- On page 45, No. 2d, a conflict of interest is assumed if a distributor/intermediary is involved in the development of an insurance product. In reality, there is *no* conflict of interest in such a situation. Customers stand only to benefit if people who are particularly well-informed about their needs, wishes and interests play a part in developing suitable products for them – even if such people are not the manufacturer.

The phrasing chosen in the consultation paper unjustifiably casts suspicion on the entire concept of inducements and thus contradicts the intentions of the EU's legislative bodies as expressed in the trialogue negotiations on the IDD. It would result in a reversal of the onus of proof: it should not be necessary to prove that inducements *do not* constitute conflicts of interest; rather, it must be demonstrated, where necessary, that it constitutes a conflict of interest *in exceptional cases*.

The IDD already includes numerous rules for dealing with and disclosing conflicts of interest

The EIOPA consultation paper contains extensive requirements concerning conflicts of interest policies and the disclosure of unavoidable conflicts of interest. However, we need to take account of the fact that the IDD already comprises numerous requirements not already included in the IMD, the purpose of which is to enhance the transparency of customer consultation and to avoid, deal with and, where applicable, disclose conflicts of interest:

- *Art. 3(6)* demands disclosure of the identities of shareholders or members that have a holding in the intermediary that exceeds 10%, and the amounts of those holdings.
- *Art. 17(1)*: Insurance distributors must always act honestly, fairly and professionally in accordance with the best interests of their customers.
- *Art. 17(2)*: Information addressed by the insurance distributor to customers shall be fair, clear and not misleading.
- *Art. 17(3)*: Member States shall ensure that insurance distributors are not remunerated or do not remunerate or assess the performance of their employees in a way that conflicts with their duty to act in accordance with the best interests of their customers. In particular, an insurance distributor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs.

- *Art. 19* includes detailed requirements regarding the information to be provided to the customer prior to conclusion of an insurance contract, including whether the distributor:
  - has a holding in a certain insurance company or insurance intermediary;
  - is a tied or independent intermediary;
  - is working for a fee, a commission or some other kind of remuneration.
- *Art. 20(1)*: Prior to the conclusion of an insurance contract, the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision.
- *Art. 20(4)* stipulates that, prior to the conclusion of a contract, the insurance distributor shall provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of customer.

On a European level, we must also take account of the fact that the individual Member States already have mechanisms in place, either at industry level or enforced by national regulators that are effective in avoiding and/or managing conflicts of interest. The German insurance industry, for instance, has voluntarily undertaken to adhere to the *Code of Conduct of the Insurance Industry*, under which high-quality consultation is guaranteed. Applying stringent standards, independent auditors ascertain on a regular basis whether insurance companies are complying with the Code.

The above-mentioned, very comprehensive IDD standards and the additional precautions taken at the level of the EU Member States are, in essence, geared to the avoidance and/or proper management of conflicts of interest. For this reason, we consider more far-reaching requirements for conflict-of-interest policies on the basis of Art. 27 and Art. 28 of the IDD to be necessary only in exceptional cases and within a very limited scope.

10. Do you agree that the policy proposals do not need further specification of the principle of proportionality and allow sufficient flexibility to market participants to adapt the organisational arrangements to existing business models? If you do not agree, please explain how the principle of proportionality could be elaborated further from your point of view?

We agree in general that the principle of proportionality (or reasonableness) does not need to be specified further. The principle of proportionality is one of the most important principles and should form the foundation of all rules relating to delegated acts. In particular, account should be taken of the size of the company and the nature of the insurance intermediary. This principle must not be eroded or suppressed in particular instances. This is crucial, for example, in the context of the conflicts of interest policy (see p. 45 et seq.). Small-scale distribution units or distributors with only a single employee, for example, simply cannot cope with or implement the proposed comprehensive

requirements. In particular, Point 9 on page 47, which provides for special review and documentation measures, no longer complies with the principle of proportionality. Ad-hoc complaint management on the part of the insurance company and the distributor would be a more sensible and practicable solution. However, the rules in the IDD are already sufficient to deal with these points. As in other instances, EIOPA does not need to formulate rules that are more far-reaching.

Inducements

11. Do you agree with the proposed high-level principle to determine whether an inducement has a detrimental impact on the relevant service to the customer?

No, we don't agree. The payment of commission in itself does not justify the automatic assumption of a high risk of detriment to the corresponding customer service. For a start, the main purpose of commission is to remunerate the intermediary for costs incurred – it is not some special form of inducement. Commission is simply the appropriate recompense for the work done by the intermediary in providing customer advice and ongoing customer support. As a result, the payment of commission rules out later expenses for the customer. Before concluding an insurance contract, the customer must be informed about the type of payment the intermediary is receiving. That puts the customer in a position to make a free and informed decision about whether or not to conclude the contract. In addition, it is already the case that the costs to be charged to the customer's contract are calculated in euros and disclosed to the customer prior to conclusion of the contract. No detrimental effect on the customer is discernible in the payment of commission.

In addition to high-quality advice that is centred firmly on the needs of the customer, a wide-ranging network of consultants is in place that ensures on-the-spot consultation for all concerned (insurance infrastructure for everyone), even for those that cannot afford, or do not want to pay for, fee-based consultation. Consultation is carried out in accordance with the needs and wishes of the customer and without any financial risk for the individual, given that payment is not due until after the contract has been concluded. Customers concluding policies for modest sums receive the same comprehensive, high-quality advice as those who want to spend more money on their insurance policy. This situation can only be maintained through the commission system. Commission thus also has a socio-politically positive aspect, as it grants everyone access to adequate insurance products at a time when making provision for old age is of key importance and rightly promoted by EIOPA and the European Commission. In a variety of ways, commission-based payment is precisely in the interests of both customers and society, and does *not* run counter to them.

Incidentally, the IDD has been quite deliberately and explicitly conceived as an attempt at minimal harmonisation. Art. 29(3) grants Member States the right to impose stricter requirements as regards fees, commissions or non-monetary benefits. It is sensible to entrust this decision to the individual Member State rather than the European Commission. European legislators expressly wanted to grant

each Member State broad freedom to decide on its own level of regulation; this freedom must not be restricted by means of delegated acts. That is why the IDD wording as regards commission departs materially significantly and deliberately from the MiFID rules on the same subject. In the present paper, however, EIOPA has already tightened the provisions to such an extent that they would result in a *de facto* prohibition of commission from the European standpoint. As the IDD expressly allows the payment of commission, EIOPA's plans contradict the IDD. EIOPAs proposals are thus not in line with the specific conditions and circumstances of the insurance markets of the individual EU Member States, each of which has its own long-established distribution landscape that is worth preserving.

In contrast to the EIOPA paper, the IDD does not generally use the word "inducements", opting instead mainly for "fees", "third party payments" or "commissions" – that is to say, terms that are more neutral than "inducements". In our opinion, this word implies a negative stance, which is not the case with the other terms mentioned above.

12. Are there any further inducements which entail the high risk of leading to a detrimental impact and should be added to the list in paragraph 4 of the draft Technical Advice above?

No, there are no such inducements. We do not consider a negative list to be the right approach, and the Technical Advice should not contain such a list. A negative list takes account of individual aspects only, which lack meaning when viewed in isolation and do not adequately reflect actual practice. It is always necessary to evaluate the situation as a whole. Lists of this kind cannot keep pace with the latest developments and are often outdated very quickly, making their practical application impossible. Point 3 on page 54, which determines that all activities must always be geared to the customer's best interests, is already perfectly adequate as a "high-level principle". As a general rule, EIOPA should formulate rules that are based on principles and not attempt to draft detailed provisions.

In Point 15 on page 51, EIOPA states that the proposals set down in the negative list are not meant to constitute a *de facto* prohibition of commission. Whereas at the start of the very comprehensive negative list (p. 54, Point 4), it is stated that the inducements given in the list harbour "a high risk" of running counter to the interests of the customer. Point 18 on page 53 states then that all of the items in the negative list are "detrimental from the outset" and cannot be justified even by the measures contained in the positive list (p. 52f., no. 17). Point 18 thus clearly contradicts both Point 15 and the introduction to the negative list. Despite EIOPA's contrary statement, this would result in a *de facto* prohibition of commissions.

Regardless of the fact that we reject a negative list on principle, advocating instead a principles-based regulatory approach, we feel that numerous individual points in the list given in the consultation paper warrant criticism. If such a list is included in the final version despite the fact that a principles-based approach would be more appropriate, a non-exhaustive positive list would also have to be included in the Technical Advice. The Technical Advice must be balanced and must not favour one of the lists over the other.

We wish to emphasise in particular the following detailed remarks on the negative list (see p. 54, Point 4) and suggest them to be given due consideration:

- Point 4a considers a detrimental impact when a product is offered or recommended when a different product exists which would better meet the customer's needs: It must be specified here that these can only be products that are actually available to the distributor. A tied intermediary – i.e. a distributor that may sell only products that an employer, principal or insurance partner places at its disposal – is contractually obliged to distribute precisely those products. As the tied-intermediary sales channel is a long-established one in the insurance world and ought to be preserved, this aspect must be given corresponding consideration. In addition, Art. 20 of the IDD already contains precise provisions as to how the consultation process should be structured in order to be to the customer's advantage, while Art. 19 contains precise provisions as to what must be disclosed to the customer prior to conclusion of an insurance contract. Thus, customers are correspondingly informed in advance when they are dealing with a tied intermediary.

- Points 4b and 4c consider a detrimental impact when the inducement is solely or predominantly based von quantitative commercial criteria or when the value of the inducement is disproportionate when considered against the value of the product: Qualitative criteria are generally not objective; only quantitative criteria can be measured objectively and stand the test of time. If, for instance, *general* customer satisfaction is taken as a qualitative criterion, that has no effect on individual cases. Similarly, there is no evidence from practice that commission typically impairs the quality of the consultation service. What is more, we need to take account of the fact that insurance companies cannot completely determine the scope and intensity of their intermediaries' distribution activities; that lies in the nature of their status as free intermediaries. This means that the amount of business generated depends primarily on the individual intermediary and varies greatly between intermediaries. In the interests of costing certainty, and to avoid economic risk, the remuneration paid to intermediaries *must* therefore be closely geared to the sales they generate and thus to quantitative criteria. This is also appropriate from the intermediaries' point of view as the main purpose of the commission is to remunerate them for consultation and intermediation work.

- Point 4d considers a detrimental impact when the inducement is entirely or mainly paid upfront when the product is sold: Commission harbours no heightened risk for the customer (see also our response to Question 11). Commission is the appropriate remuneration for the customer service rendered by the consultant and for the expenses/costs incurred in the process. Pension insurance products differ from property insurance in that, with the former, the distributor has to provide the majority of his/her consultation/support service when the contract is concluded. Service of this nature justifies payment of corresponding remuneration at the time the costs are incurred and is uncritical due to the five-year cancellation liability period (see 4e).

- Point 4e considers a detrimental impact when inducements will not be refunded if the product lapses or is surrendered at an early stage: Customers may withdraw from a contract within 14 days – with life insurance policies the withdrawal period is even 30 days. During this period, the contract can be unwound entirely. The intermediary is also obliged to repay commission during the five-year cancellation liability period. It is thus in the intermediary's own interest to provide professional consultation that is tailored to the customer's needs. This is an effective instrument in countering conflicts of interest. It is not right for the insurance company to receive no compensation if the customer cancels the contract after expiry of the five-year period. At the very least, the company has organisational expenses that need to be compensated in monetary terms. A disincentive for the sale would thus exist if customers were to get their money back in full after five years of payments without any compensation for the insurance company. In practice, the customer would not run any major risk in concluding the contract. Once again, the EIOPA proposal would result in over-regulation of an area that requires no additional rules.
- Point 4f considers a detrimental impact when the inducement scheme entails a threshold which is unlocked by attaining a sales target based on volume or value of sales: Volume targets are calculated on the basis of market conditions and analyses of corresponding market potential. The targets are geared to customer demand, which is determined by objective means. At a time when private pension planning is hugely important, demand for such products is correspondingly high, making access to appropriate insurance products essential. It is justifiable to pay remuneration for the distribution of appropriate insurance products that meet customers' needs. That entails no detriment to customers. In fact, the remuneration is what makes the entire process – i.e. the required needs-oriented consultation for customers, and the intermediaries' willingness to invest in the ongoing professionalisation of business processes, in new employees to continue supporting customers into the future, and in further training – possible in the first place.

13. To which extent are inducements which are considered bearing a high risk of detrimental impact part of existing business and distribution models? Please specify your answer and describe the potential impact of these proposals (if possible, with quantitative data).

See our response to Question 11.

14. Are there any further organisational measures or procedural arrangements which you would consider important to monitor whether and to ensure that inducements have no detrimental impact on the relevant service to the customer and do not prevent the professional from complying with their obligation to act honestly, fairly and in accordance with the best interests of their customers?

Yes, there are other points that need to be taken into account in the design of the delegated acts.

As a general rule, key basic principles for the sale of insurance should be elaborated, not particular details. If a principles-based approach is taken, neither a negative list nor a positive list is necessary. Lists of this kind take account of individual aspects only, which lack meaning when viewed in isolation and do not adequately, reflect actual practice. It is always necessary to view the situation as a whole. Lists of this kind cannot keep pace with the latest developments and are often outdated very quickly, making them impossible to apply in actual practice.

If the Technical Advice is nevertheless to include such lists, then a positive list would be preferable to a negative list. If both types of list are to be included, it is essential to have a positive list in the Technical Advice. This is especially necessary given that the Commission specifically requested examples of situations in which inducements are acceptable and the IDD contains no general prohibition of commission. The positive list should always be open-ended and non-exhaustive. However, EIOPA's proposals for a positive list (see p. 52, Point 17) do not meet the needs. All they do is turn the points in the (far too restrictive) negative list into *supposedly* positive ones. As a result, the content of the list is neither appropriate, nor does it serve its purpose.

We do not consider it useful for EIOPA to formulate additional details and guidelines in a separate paper.

Assessment of suitability and appropriateness and reporting to the customer

17. In practice, what information do you expect to collect for the assessment of suitability and appropriateness in addition to the demands and needs?

In general, there is no question of the need to interview customers in order to determine their personal financial situation, their goals, wishes and needs when it comes to insurance.

It is decisive, however, to take account of the differences that exist between the investment sector and the insurance industry. The investment risk with insurance products is far lower than with dedicated investment products. Insurers deliver on the guarantees to customers that are typically involved in their products. With the aid of model calculations, customers are shown before they purchase an insurance product what they will have to pay and what commitments are being made in return. Therefore, customers know from the very outset what they are letting themselves in for and are able to make a conscious decision to purchase an insurance product or not. It is not possible to offer customers this same level of assurance in the investment sector. The risk for customers is substantially lower with insurance products than with direct investments. That is why assessments of suitability and appropriateness must always be geared to the products and to the guarantees granted.

In several instances, the EIOPA paper adopts rules from the investment sector without verifying whether such aspects play a role in the insurance market at all and consequently need to be regulated in that sector. No rules should be set down for the insurance industry regulating matters that do not exist in that industry. The result would otherwise be over-regulation, unnecessary administrative expense and an obligation to implement things that are impossible in practice.

Similarly, it is necessary to take into account the fact that there are also differences between the individual EU Member States and that some of them already have additional instruments in place to protect customers. In Germany, for example, “Protektor” has been established. The goal of “Protektor” is to safeguard the insured persons’ amassed savings against the consequences of insurer insolvency. In the event of insolvency, the customers’ contracts remain in force in order to preserve their benefits. It is thus virtually impossible for a customer to suffer financial losses with a guarantee product – and correspondingly unnecessary in such cases to determine the customer’s ability to sustain losses.

The Association of German Public Insurers (VöV) will be readily available for any further discussion regarding the appropriate specification of the IDD, in the form decided upon by the European legislators.

Association of German Public Insurers

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