



## EIOPA Technical Advice

The transposition of the Insurance Distribution Directive (“IDD”) into national law, which should occur until February 23<sup>rd</sup>, 2018, will introduce changes to the insurance mediation landscape with a main focus on behavioral supervision, on consumer protection and on the extension of its scope to all activities and distribution channels, affecting business strategies and operating models.

This new regulation introduces amendments to the current legal framework of insurance distribution, which will have significant impact on the following areas: (i) product design and maintenance; (ii) customer segmentation and profiles; (iii) mandatory information and communications with customers; (iv) commercial training; (v) compensation models and inducements and (vi) standard of conduct, policies and procedures.

On February 24<sup>th</sup>, 2016, EIOPA has received a formal Request for Advice by the European Commission to provide technical advice on delegated acts to further specify the following provisions of the IDD:

- A. **Product Oversight and Governance** (Article 25);
- B. **Conflicts of Interest** (Articles 27 and 28);
- C. **Inducements** (Article 29 (2));
- D. **Assessment of suitability and appropriateness and reporting** (Article 30).

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Only the delegated act related to product oversight and governance can be extended to the distribution of all types of insurance products and services, while the remaining delegated acts will develop the additional requirements related to the trading of “IBIPs” (insurance-based investment products), regarding which EIOPA undertakes to achieve the goal of maximum harmonisation with the MiFID II regime.

In this context, on February 1<sup>st</sup>, EIOPA published the Final Report of the referred Technical Advice, presenting clarifications on the above mentioned four provisions.

We highlight the main clarifications produced by EIOPA in its technical advice.

## A. Product Oversight and Governance

### a. Purpose of the measures to be adopted

- To ensure that the interests of customers are taken into consideration throughout the life cycle of a product, namely the process of designing and manufacturing the product, while **it is not intended to introduce a price control.**

### b. The insurance intermediary as manufacturer of insurance products

- According to EIOPA, the insurance intermediary is a manufacturer of insurance products whenever he has a decision-making role in the design and development of insurance products, in particular, where the insurance intermediary **autonomously determines the essential features and main elements of an insurance product, including the coverage, costs, risks, target market or compensation and guarantee rights of the insurance product.**
- On the other hand, personalisation and adaptation of existing insurance products in the course of insurance distribution activities to the individual customer, as well as the design of tailor made contracts at the request of one customer shall not be considered as manufacturing.
- EIOPA also determines the need to formalize, in a written agreement, the conditions of this collaboration between the insurance undertaking issuing the product and the manufacturer distributor, including the procedures through which the two parties agree on the identification of the target market.
- Notwithstanding this formalisation of the distribution of tasks, the insurance undertaking issuing the insurance product remains fully responsible before the customer for the coverage provided, while both remain independently responsible for complying with the product oversight and governance arrangements of a manufacture.
- Finally, after considering the costs and benefits of several possible options, both for the market and for consumers, EIOPA reveals that the Commission should **define a general and non-exhaustive criteria, to be used to determine the intermediary’s role as manufacturer on a case by case basis, always based on an overall analysis of the concrete case.**



## B. Conflicts of Interest

### a. Criteria to identify conflicts of interest – MiFID II with amendments

- In relation to this issue, EIOPA considers that, in general it is appropriate to make use of what is set forth in **Article 33 of the MiFID II Delegated Regulation**, however, it should be modified as follows:
  - i. to introduce a **general circumscription** to facilitate the understanding and application of the provision, clarifying that the instances listed in the subparagraphs are only of exemplary nature;

- ii. to clarify that **conflicts of interest may also arise if the distributors are substantially involved in the development or management of products**; and
- iii. to clarify that **conflicts of interest arise whenever the insurance intermediary receives a commission or fee paid by a third party, regardless of the question whether the commission or fee meets market standards or not**.

**b. Disclosure of conflict of interest – step of last resort**

- EIOPA clarifies that the **disclosure of conflict of interest** should be understood as step of last resort to be used only in cases where the organisational and administrative measures are not sufficient to effectively prevent and manage conflicts of interest.

**C. Inducements**

**a. Clarification of the definition of “inducement” and of “inducement scheme”**

- **Inducement** is any fee, commission or any other monetary or non-monetary benefit which is paid or provided to, or by, any party other than the customer (or a person who acts in the customer’s name) related to the distribution of an insurance-based investment product or by the provision of an ancillary service. **Inducement scheme** is the set of rules which govern the payment of inducements. In general, it includes the criteria used for the respective payment.
- In accordance with EIOPA’s understanding, the rules on inducements are extensible to all distributors, including the so called “tied agents” which were considered to be an autonomous category in the last mediation directive<sup>ii</sup>.



**b. Methodology and criteria to assess the detrimental impact on the service quality**

- With the reference that it is not an exhaustive list and **it is not intended to ban the use of inducements**, EIOPA defines the following **six criteria** or indicators for assessing the substantial increase of the risk of detrimental impact on the quality of the service being provided in a way which is not in accordance with the customer’s best interests:
  - i. if the inducements encourage the offer or recommendation of an insurance product or service to a customer, when the distributor could, from the outset, propose a different available product or service which would better meet the customer’s needs;
  - ii. if the inducements are mostly based on a quantitative commercial criteria and they do not take into account qualitative criteria related to the compliance with the applicable regulations or the quality of services provided to customers;
  - iii. if the value of the inducement is disproportionate when considered against the value of the product and the services provided in relation to the product;
  - iv. if the inducement is entirely or mainly paid upfront without any appropriate refunding mechanism, in case the product lapses or is surrendered at an early stage;
  - v. if the inducement scheme does not provide for a refunding mechanism, in case the product lapses or is surrendered at an early stage;

- vi. if the inducement scheme entails any form of variable or contingent threshold, or any other kind of value accelerator which is unlocked by attaining a sales target based on volume or value of sales.

### c. Organisational requirements

- The insurance undertakings and intermediaries shall establish, implement and maintain organisational arrangements and procedures which allow to assess on an ongoing basis if the inducements paid for a particular insurance contract, as well as the inducement schemes, comply with Article 20, (2) of IDD and this assessment shall be duly documented and filed.
- In its technical advice, EIOPA also foresees that inducements and inducement schemes shall be approved by the senior management of the insurance intermediaries and undertakings and that part of the conflict of interest policy to be adopted by the distributors shall include rules on the acceptance of gifts and benefits and the consequences of their breach.



### D. Assessment of the Suitability and Appropriateness of IBIPs

- In line with rules established in MiFID II, on this matter, EIOPA essentially proposes the following development of the assessment of the suitability and appropriateness of IBIPs' requirements foreseen in Article 30 of IDD:
  - a. EIOPA clarifies that the appropriateness test shall not be carried out when the IBIP is classified as "non-complex" (EIOPA releases a list of criteria for this classification) for purposes of what is set forth in Article 30, (3), a) of IDD if it is sold on an execution-only basis, without advice.
  - b. On one hand, the insurance intermediary or undertaking shall define the extension of the information to collect from the customer, considering all **features of the advice** to be provided to the customer, in order to ensure that the **recommended product meets the demands and needs of the customer** regarding insurance products (drawing a parallel with Article 20 (1) of IDD).
  - c. On the other hand, the insurance distributors must obtain the necessary information (the level of information to be collected shall be appropriate to the type of product or service) to understand the essential facts related to the customers and to ensure that the advice complies reasonably with the following criteria:
    - i. it meets the **customer's objectives**, including its risk tolerance level (and, when relevant, information on the length of time for which the customer wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment);
    - ii. it meets the **customer's financial situation** (the source and extent of his regular income, assets and investments); and
    - iii. it is in line with the **knowledge and experience** that the customer needs to have in the investment field to understand the type of product and service.
- EIOPA also requires that the insurance undertaking and intermediary are required to inform the customers, clearly and simply, that the reason for assessing suitability is to enable them to act in the customer's best interest and that they do not create any ambiguity regarding their responsibilities in this assessment.

In relation to the automated advice of insurance products (the so called “robo-advice”), EIOPA argues that the same requirements must apply and that the responsibility to carry out the tests of the investment suitability and appropriateness shall lie with the insurance undertaking or intermediary providing the service.

### **Draft Implementing Technical Standards concerning a standardised presentation format for the Insurance Product Information Document (“IPID”)**

Finally, it should also be noted that, on February 7<sup>th</sup>, EIOPA presented to the European Commission its Draft Implementing Technical Standards and impact assessment concerning a standardised format for the IPID, in accordance with Article 20, (5) to (9) of IDD.

The goal of the referred Document is to ensure that the customer has access to the relevant information about a non-life insurance product to allow him to easily compare between different product offers and to make a duly informed decision about whether or not to purchase the product.

Source: <https://eiopa.europa.eu/publications/submissions-to-the-ec>

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<sup>i</sup> Directive (EU) 2016/97, of the Parliament and of the Council, of January 20<sup>th</sup>, 2016.

<sup>ii</sup> Directive 2002/92/EC, of the Parliament and of the Council, of December 9<sup>th</sup>, 2002.