	Comments Template on DP-14-IMD Discussion Paper on Conflicts of Interest in direct and intermediated sales of insurance-based investment products (PRIIPs)	Deadline 22 July 2014 18:00 CET
Name of Company:	Allianz SE	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. *Please indicate if your comments on this DP should be treated as confidential, by deleting the word* ***Public*** *in the column to the right.*	Public
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Reference	**Comment**	
General Comment	Allianz appreciates the opportunity to comment on the EIOPA 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 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 lowerthan in other businesses. The long-term character of many distribution relationships supports alignment of interests between customers and distributors via reputation effects and mutual interest in the relationship. Furthermore, 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. Also, 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. In addition, Allianz already successfully employs 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 effective management of conflicts of interest, Allianz supports an outcome-oriented	

	and principles-based approach to effectively addressing conflicts of interest with the customer's interest in mind as priority. Outcome orientiation: 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, e.g. associated with overly tight, partial or otherwise misguided rules of any kind. In addition, the rules have to follow the principle of proportionality. This outcome-oriented approach is consistent with Art. 13b of IMD1.5 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, many 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 that the burden or cost of any measure to mitigate conflicts of interest ultimately has to be borne by the customer, either as part of the product price or the loss of access to beneficial offers. This burden can be reduced if 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 Q8 below). The principles-based approach is consistent with the wording of Art. 13a - 13d of IMD1.5 where open 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 Q11). By contrast, an extreme position that focuses on avoidance / mitigation of conflicts of interest in isolation and at any cost would 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, outcome-driven perspective to act in the customer's overall best interest. 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 interaction and access to means to successfully handle any adverse developments. In consequence, the distributor should therefore 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 be best achieved with broad prescriptive hard "guardrails", principles-based requirements (supported by guidance) to calibrate conduct within these bounds and procedural safeguards to ensure implementation (e.g. including a conflicts-of-interest policy and organizational safeguards).	
Q1.	The EIOPA discussion paper already lists a very long list of potential conflicts of interest. Additionally, the general criteria of Art. 21 MiFID Implementing Directive (Directive 2006/73/EC) are sufficently broad to capture all relevant aspects (but see also comment to Q6).	
Q2.	The most important conflicts of interests are those where conflicts of interests not only are strong at the outset but cannot be or are not successfully mitigated and therefore in effect harm the interests of the customer. The most harmful cases typically arise out of configurations where the general setup of the	

distribution relationship is unclear or intentionally misleading and is not mitigated. This could arise out of misrepresentation about the status or affiliations of a distributor, e.g. not disclosing

- the general status of an intermediary (e.g. whether it is tied or not), or even ambivalence about the status, because the intermediary represents two different types of intermediary
- personal ties, relevant capital participations or other meaningful affiliations or control that could adversely influence the service provided.

In addition, any confusion that emerges from not disclosing relevant information.

Many of these issues are already addressed in IMD1 and other EU and Member State regulation.

By contrast, while remuneration structures may carry risks of detrimental impacts, they do not per se create conflicts of interest, which could not be mitigated. As an example, commission-based distribution is sometimes accused per se to carry certain conflict-of-interest risks. On the other hand, it is precisely their pay-per-use characteristic (“no cure-no pay”) that makes them 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 commissons (that increase an interest in long-term relationships), cancellation rights, complaint procedures, liability for misconduct, supervision and potential adminstrative sanctions administered by supervisory authorities etc. 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.

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Q3.	Generally, the categories in Art. 21 MiFID Implementing Directive (2006/73/EC) are not only very broad, but application to the insurance business is not straightforward: In Member States where these broad MiFID rules already have to be applied to insurance business (e.g. Belgium), it still remains unclear how they can or should be interpreted in an insurance context and applied in practice. In fact, not all configurations captured under Art. 21 MiFID Implementing Directive represent relevant sources for conflicts of interests for insurance products. This is not surprising, since they have not been designed with insurance distribution in mind. For a more detailed discussion see answer to Q6.	
Q4.	There typically are no conflicts of interests during the contract period of an insurance PRIIP since by design there is only very limited action / interaction necessary. Contrary for example to investment products (such as UCITS funds), insurance PRIIPs are typically designed, understood and bought by customers as long-term contracts to be held to maturity by the customer (e.g. for the purpose of old-age provision) and generally include full delegation of any investment activities to the product provider (i.e. no explicit interim investment decisions taken by customers). Also, there are no liquid secondary markets for insurance PRIIPS (such as for ETFs, for example), which could require additional advice on any interim sale or purchase decision before the end of the contract.	
Q5.	If there would be specific types of conflicts of interest for insurance intermediaries, they should be added. We are however not aware of any such types of conflict of interest (see also answers to Q3 and Q6).	
Q6.	Generally, although worded very broadly the criteria of Art. 21 MiFID Implementing Directive (2006/73/EC) are obviously 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 somewhat for insurance distribution.

Specific proposals:
Deletion:
~~(a) the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;~~
Alternative:
(a) the distributor (intermediary or insurer) is the 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).

(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 investements. (also see remarks in General Comment)
Deletion:
~~(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;~~ Rationale: generally, 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, thus being exposed 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). (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. Remark: Generally analogous application, should be adapted to reflect overall wording (e.g. use of “customer” instead of “client”)	
Q7.	No, see General Comment and remarks to Q6.	
Q8.	Also for sole traders and similar entities, the best results to address potential conflicts of interest can be expected from an outcome-oriented and principles-driven approach (also see General Comment).	

	Main reason is the high diversity of products and distribution formats (including size of the distributor) compared with other sectors. Many risks for customers arising from conflicts of interest are already effectively avoided or managed through diverse sets of measures (which may differ widely, e.g. by product or customer segment, distributor size, Member State) and the fiduciary obligations owed by the distributor to the customer in the respective Member State's legal environment. While it is correct, that sole distributors may not be able to take certain measures (such as functional separation) it is not clear, whether they would need to do so. Which measures are adequate should depend on the specificities of the situation, including the intensity of the conflicts of interests and the effectiveness of alternative effective measures. The goal always should be the effective protection of the customer's valid interests. From this perspective it would therefore be misguided to (a) issue blanket exemptions for sole traders and similar entities just because they cannot comply with a rule (even if that leaves the customer at risk) or (b) take an overly formalistic position in the development and application of rules to address conflicts of interest that unnecessarily penalize or even eliminate sole traders. In summary, the same principles should be applied to sole traders and similar entities and they should be judged against the same objectives, but this does not necessarily mean that they need to implement the same measures to achieve effectiveness.	
Q9.	It would be helpful to receive further general guidance how to manage conflicts of interest with respect to third party payments. However, as in the case of sole traders (see answer to Q8) it is important to achieve the objectives of customer protections including all additional or alternative measures.	

	It would therefore be misguided to (a) focus 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). Also, the overall setup, i.e. affiliations among parties involved, may play an important part. OR (b) take an overly narrow view to measures to mitigate potential conflicts of interest by focusing solely on the remuneration part. There are many potential measures to address these issues (as indicated in the General Comment and the answer to Q2). While in a particular situation it is often possible to determine whether certain conflicts of interest are addressed effectively, it is very difficult to come up with a comprehensive formulaic approach or case-by-case enumeration of potential issues and solutions. The responsibility to find effective solutions should follow the general principles of product originator responsibility versus distributor responsibility (see also General Comment).	
Q10.	None in particular.	
Q11.	Generally, disclosure of relevant aspects is an indispensable foundation of the customer's informed decision making and therefore of insurance distribution. In many cases, disclosure is also the most effective and overall most adequate means to address possible issues. To perform its functions, the disclosure to the customer should be appropriate to the target group's financial literacy, the inherent risk of the product and relevant in its content, length and the process of its delivery. Certain balancing of trade-offs may be necessary to optimize the outcome for the customer: the	

	content needs to be both (legally) precise and comprehensible, the length needs permit completeness and sufficient detail but match the (limited) attention span of the customer, the process must deliver the right information at the right time. In addition, many Member States already have certain (often very adequate) disclosure requirements in place: multiple disclosures could be distracting or even confusing for the customer. Some additional disclosure rules may tilt this balance against the customer's best interest, by requiring inadequate disclosures. In addition, it should be borne in mind that the KID document from the recently adopted PRIIPs Regulation should address most relevant issues for the customer decision making.	
Q12.	The general nature of the approaches in Art. 22 and 23 seem generally adequate to address conflicts of interest. However, we would like to reiterate the more important question that an outcome-oriented and principles-based approach supplemented by general guidance rules should be taken (see General Comment). Unnecessarily narrow or inapproapriate case-by-case rules with a higher risk of unintended adverse consequences should be avoided. See also General Comment and answers to Q2, Q8, Q9 and Q11.	
Q13.	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 typcially provide advice (i.e. information, including personal recommendations) to their customers. The recommendations in the sale of an insurance-based investment product are also typically not related to individual capital market instruments. The cross-market comparison of several insurance-based investment products (typically from independent parties, such as comparison websites or publicatons from consumer organizations) is	

	probably the closest comparable to general investment research. It is clearly desirable, that such comparisons are not adversely affected by conflicts of interest. However, where (personal) advice is given as part of an intermediation (e.g. in the case of comparison websites), the stricter rules on advice apply. Any research-based recommendation without intermediation / distribution (e.g. by consumer organizations) would be out of scope of this regulation.	
Q14.	None specific.	
Q15.	None specific.	
Q16.	The cost/benefit analysis should assess the overall impact of additional costs and benefits of the proposed measues on the welfare of customers. An isolated goal to maximize the reduction of (often only latent) conflicts of interest risks runs the risk of effectively working against the well-understood overall interests of the customer by being overly restrictive and/or costly.	
Q17.	None specific.	
Q18.	No specific comment.	