| Comments Template on<br>DP-14-IMD<br>Discussion Paper on<br>Conflicts of Interest in<br>direct and intermediated sales of<br>insurance-based investment products (PRIIPs) | | Deadline<br>22 July 2014<br>18:00 CET |
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| Name of Company: | **German Insurance Association** | |
| Disclosure of comments: | EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.<br>*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 | **German Insurance Association**, Wilhelmstr. 43G, 10117 Berlin **(ID Number 6437280268-55)**<br><br>From the German insurance industry's point of view of, the prevention and adequate management of conflicts of interest are indispensable elements of effective consumer protection. | |

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| | When developing regulatory Level 2 provisions, EIOPA should fulfil its function as supervisory authority and take account of the following issues:<br><br>• Article 12 of IMD1 has already provided for concrete and effective provisions on the prevention of conflicts of interest. The recast of the Insurance Mediation Directive (IMD2), however, has not yet been completed so that it is currently not apparent which provisions on the management of conflicts of interest will still be adopted at Level 1. EIOPA must take any possible developments into account so that there will be no double burden for the distributors affected as a result of multi-level implementation requirements.<br><br>• Potential conflicts of interest differ significantly depending on the status and size of the intermediary. Insurance brokers and tied intermediaries are usually subject to different conflicts of interest. The conflicts of interest of intermediaries mainly acting as sole traders also differ from those of insurance undertakings and large intermediaries. For the provisions to be feasible in practice, they need to be designed as high level principles at Level 2 and must take account of the principle of proportionality.<br><br>• Level 2 provisions must take account of the special nature of the distribution of insurance products and the characteristics of long-term insurance products. The MiFID1 Implementing Directive can therefore only serve as starting point for IMD Level 2 provisions and must therefore be adapted accordingly. It must not be adopted without any modifications. This also applies to any adjustments which might result from the consultation of ESMA on MiFID2 Level 2, which is running in parallel. An alleged obligation to create a level playing field with respect to IMD2 must not be the focus. Those affected need to be consulted on any adjustments in due time, in particular. | |

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| Q1. | From the point of view of German insurers, there are basically three events in which conflicts of interest might occur:<br><br>1. When it is not clear to the customer on which "side" the intermediary is acting (agent, broker),<br>2. When the requirements of the customer are not clear, i.e. it is not clear what customers want,<br>3. When the customer does not know the total costs of the product.<br><br>Commission-based advice does not per se indicate the occurrence of conflicts of interest. 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 must not be understood as something that is basically 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. Intermediaries can only be successful in the long term if their customers are satisfied.<br><br>Agents as well as brokers have already been obliged by IMD1 to provide adequate advice to customers. Moreover, recommendations by intermediaries that are contrary to the interests of their customers result in the fact that the customers might claim compensation from the intermediaries.<br><br>So-called soft commissions do not per se result in conflicts of interest. 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 | |

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| | insurance undertakings without violating their obligations towards their customers. In this case too, training ensures the quality of the advice.<br><br>Personal ties between intermediaries as well as the involvement of individuals linked by family are likely to trigger conflicts of interest. For instance, the activity of a natural person who has been registered as insurance intermediary several times with different status might enable this person to either act as insurance agent or as insurance broker towards the customer. This might be the case, for instance, when a natural person has been registered as tied intermediary of an insurance undertaking and at the same time acts as the general manager of an undertaking registered as insurance broker. Such ties, however, will usually not cause any harm if they are disclosed to the customer. In the modified example in which the wife of an intermediary who has been registered as tied intermediary is also registered as insurance broker and employs her husband as intermediary, conflicts of interest might also arise. According to national legal systems such ties are not per se forbidden. | |
| Q2. | The answer to Q2 is part of the answer to Q1. | |
| Q3. | Conflicts of interest might arise where legal, tax or economic advisory professionals act at the same time as insurance (sub-)intermediaries or providers of contact information. While this is in part prohibited by respective codes of professional conduct, it is not prohibited by general legal rules. | |
| Q4. | During the term of a life insurance contract particular conflicts of interest can not be seen. It is more important to continuously provide the customer with advice, in case there is a particular occasion. Besondere Interessenkonflikte während der Laufzeit eines Lebensversicherungsvertrages sind nicht erkennbar. Entscheidend ist vielmehr, dass Versicherungsunternehmen und -vermittler verpflichtet sind, den Kunden laufend zu beraten, soweit hiefür ein erkennbarer Anlass besteht. | |

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| Q5. | No. Any potential conflicts of interest that might be thought of can be subsumed under the situations set out in Article 21. | |
| Q6. | It should be clarified with respect to Article 21(e) that not any so-called soft commission results in a potential conflict of interest. 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. Soft commissions are therefore not necessarily detrimental to a client but can also improve the quality of the advisory service.<br><br>Additional comments to clarify the criteria stipulated in Article 21 of the MiFID Implementing Directive do not seem to be necessary. The approach to provide for high level principles which are to be interpreted by the supervisory authorities of the Member States as well as by the undertakings and intermediaries guarantees the necessary level playing field with respect to MiFID2. It allows for for taking account of the characteristics of PRIIPs and insurance mediation-specific conflicts of interest. A non-exclusive list of examples that indicate insurance-specific conflicts of interest shall therefore not be included (at least within the scope of a delegated act). This would also carry the risk that the review of potential conflicts of interest will solely be limited to the listed case groups. | |
| Q7. | No further comments. | |
| Q8. | Article 22(1) provides sufficient scope to adjust the internal measures to the size of the undertaking. Moreover, customers always have the possibility to have possible | |

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| | conflicts of interest settled by means of the external complaints-handling procedure through the national ombudsmen within the meaning of Article 13 of IMD1.<br><br>Tied intermediaries are also able to guarantee the required independence since they are backed by an insurance undertaking. The insurance undertaking makes sure that the necessary measures with respect to 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. | |
| Q9. | Disclosing the amount of commission – even upon request – as provided for in Article 26(b)(i) of the MiFID Implementing Directive 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 the customer. Moreover, the intermediary does usually not know the exact amount of remuneration during the advisory process. It is to be considered in this context that 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 **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 comparing products which are subject to the MiFID across industries. | |

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| | As a rule, insurance brokers who offer products of several insurers can more easily be involved in a conflict of interest than tied intermediaries who only offer the products of **one** insurance undertaking. | |
| Q10. | No further comments. | |
| Q11. | Only information on the basis of a total cost approach is appropriate. Only information about the acquisition and distribution costs included in the calculation of the premium as a cost rate as well as about the resulting reduction in yield is useful for the customer. This information will actually enable the customer to compare several products (see also the answer to Q8 above). | |
| Q12. | An obligation to keep a record of the conflicts of interest that have arisen might help to prevent additional conflicts of the same kind in the future. The lessons learned should also be transferred to the complaints-handling procedures of insurers and intermediaries. The obligation to keep a record, however, can only apply to known events that have occurred in the past. A record of activities that are still going on is not realistic. In this respect, the obligation to keep a record as stipulated in Article 23 of the MiFID Implementing Directive should not be adopted.<br><br>Tied intermediaries should not be obliged to keep a record (see comments on Q8). Conflicts of interest only incur with tied intermediaries if the products provided by an insurance undertaking to an intermediary are capable of covering identical customer needs but a different remuneration is paid for these products. The insurance undertaking providing these products for the purpose of distribution is responsible for monitoring these conflicts of interest and not the individual tied intermediary, which is a reasonable approach. | |
| Q13. | The provisions stipulated in Article 24 and Article 25 of the MiFID Implementing Di- | |

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| | rective are specific to MiFID since financial analyses of the kind described in Article 24(1) are neither offered by insurance undertakings nor by intermediaries. Insurances which fall within the scope of the PRIIP definition are mediated based on the wishes and needs of the customers according to the information requirements pursuant to Article 12 of IMD1. Depending on the outcome of the IMD2 procedure, this information requirement might be further specified by a suitability test, if applicable. In this respect, the articles mentioned above should not be adopted. | |
| Q14. | No. | |
| Q15. | The scope of application of IMD2, in particular, indicates which entities and stakeholders will be affected. These are insurance undertakings and insurance intermediaries based on the final functional definition of insurance mediation. | |
| Q16. | No comments. | |
| Q17. | Determining factors for different impacts particularly result from the degree to which measures on the management of conflicts of interest have already been implemented. Where no measures corresponding to MiFID1 have already been stipulated at national level (for instance in Germany), 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, IMD2 Level 2 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 are numerous sole traders with no or only a small number of employees, who usually have not taken respective measures due to their structure. 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 proposals stipulated in the MiFID Implementing Directive require a certain degree of independence of certain per- | |

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| | sons in charge of particular functions within intermediary companies in order to ensure the effectiveness of the provisions on the management of conflicts of interest. Sole traders will probably only be able to ensure this independence to a very limited extent. Costs involved in the implementation are likely to be absolutely disproportionate to the benefits. This is mainly due to the fact that the MiFID Implementing Directive is based on the traditional distribution channels of MiFID2 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 must therefore be adequately taken into account. See also comments on Q8 in this context. | |
| Q18. | No comments. | |