

**Comments Template on
Consultation Paper on draft Implementing Technical Standards (ITS)
on a standardised presentation format of the Insurance Product
Information Document (IPID)**

**Deadline
24 October 2016
18:00 CET**

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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 CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <u>Do not change the numbering</u> in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-16-007@eiopa.europa.eu.</p> <p>Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the questions refers to the Consultation Paper on draft Implementing Technical Standards (ITS) on a standardised presentation format of the Insurance Product Information Document (IPID)</p>		

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Reference	Comment
General Comment	<p>RIAD, the International Association of Legal Protection Insurance, is the only body worldwide representing the original interests of legal protection insurers and service providers in this field from Europe, Canada, South Africa and Japan. In this capacity RIAD defends the high potential of legal protection insurance as an easy, affordable and high quality solution for access to justice and the law. To preserve and endorse this true value of legal protection insurance for its users it is essential that consumers are informed explicitly and separately about the content of their legal protection policy and, therefore, RIAD urges other stakeholders, policy makers, and legislators to respect and maintain the specific character and value of legal protection insurance by supporting that consumers receive a separate IPID for their legal protection coverage.</p>
Question 1	<p>In section 1.13 to 1.21 of the consultation paper, EIOPA explains its point of view that a single IPID should be presented regarding multi-risk policies. RIAD respectfully disagrees with EIOPA's point of view as far as legal protection insurance coverage is concerned.</p> <p>The current proposal of EIOPA is contrary to the requirements of article 199 "<i>Separate Contracts</i>" of the Directive 2009/138/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2009 stating:</p> <p><i>"Legal expenses cover shall be the subject of a contract separate from that drawn up for the other classes of insurance or shall be dealt with in a separate section of a single policy in which the nature of the legal expenses cover and, should the Member State so request, the amount of the relevant premium are specified."</i></p> <p>Since 1987, European law (first Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance and now Article 199 of Directive 2009/138/EC - which introduces no specific changes to the 1987 directive except through the use of the word "<i>cover</i></p>

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nature" rather than "*content of the coverage.*") requires a separate contract or a separate section attached to a policy to cover legal protection and puts in place the obligation to have a separate management for legal expenses insurance.

Moreover, recital 82 of Directive 2009/138/EC regards legal expenses insurances separately from any other type of insurances which demonstrates the necessity to be considered and treated separately from any other insurance:

(82) "In the interest of the protection of insured persons, national law concerning legal expenses insurance should be harmonized. Any conflicts of interest arising, in particular, from the fact that the insurance undertaking is covering another person or is covering a person in respect of both legal expenses and any other class of insurance should be precluded as far as possible or resolved. To that end, a suitable level of protection of policy holders can be achieved by different means. Whichever solution is adopted, the interest of persons having legal expenses cover should be protected by equivalent safeguards."

I. Arguments against EIOPA's proposal

In the following section, RIAD will provide detailed answers to the arguments from EIOPA. RIAD will then propose a solution compliant with Article 199 of Directive 2009/138/EC.

1. Provision of more than one IPID in these situations would appear to be against the spirit and objectives of the IPID.

According to section 1.1. of the consultation paper, the objective of the IPID is "*to ensure that the customer has the relevant information about a non-life insurance product to allow him to easily compare between different product offers and to make an informed decision about whether or not to purchase the product.*"

RIAD is of the opinion that the objective of the IPID will not be met if it fails to address the requirements of Article 199 of Directive 2009/138/EC which explicitly asks for a separate contract/ section for legal protection insurance.

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The nature of the legal protection coverage is relevant for the customer in order to compare different products (namely between “add-on” LPI, “stand-alone” LPI and whether the legal protection coverage is provided by a separate legal protection insurer or by the same insurer).

The nature of the legal protection coverage is relevant for the customer in order to make an informed decision about whether or not to purchase the product and, in particular, whether or not to purchase the legal protection coverage included within the product or to choose a separate coverage.

Also, it is worth mentioning that the possibility offered by Article 199 to specify separately the amount of the relevant premium has been used by more than 80% of the member states (2003 Survey of CEA (now: Insurance Europe), see “L’assurance Protection Juridique à l’épreuve de Solvabilité 2” RGAR novembre 2015). It demonstrates that member states are aware of to the specificities of the legal protection coverage and the need to provide separate information (nature of coverage, amount of premiums...).

2. In section 1.17, EIOPA expresses its opinion that incorporating all information within one IPID provides “a discipline on providers to only include the main features”.

As demonstrated above, legal protection cover is a separate part of the main coverage and its main features are very distinct by comparison, for instance, to liability insurance:

- The freedom of choice of lawyers (Article 201 of Directive 2009/138/EC) does not apply to liability insurance while it applies to legal protection coverage.
- The arbitration opportunity (Article 203 of Directive 2009/138/EC) does not apply to liability insurance while it applies to legal protection coverage.

Providing only one IPID for products including legal protection coverage would not permit to emphasize the specificities of such coverage and would also endanger the level-playing-field with stand-alone legal protection coverage since the main

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features of the legal protection coverage would not be presented in a similar way.

3. In section 1.18, EIOPA writes that “it could lead to confusion on the part of consumers, e.g. they may believe that it is possible to cancel parts of a policy and it would make it more difficult to compare different product offerings.”

Article 199 of the Directive 2009/138/EC implies that the legal protection coverage can be cancelled separately from the main coverage. The objective of this article is precisely to permit the consumer to take an informed decision regarding its legal protection coverage and to allow him to choose a different insurer than its main insurer.

This aspect is confirmed by the following arguments:

- European law (Directive 2005/29/EC concerning unfair business-to-consumer commercial practices) permits members states to apply additional restrictions on commercial practices regarding financial products, including the principle of “combined offers” (Recital 9 of Directive 2005/29):
‘... Financial services and immovable property, by reason of their complexity and inherent serious risks, necessitate detailed requirements, including positive obligations on traders. For this reason, in the field of financial services and immovable property, this Directive is without prejudice to the right of Member States to go beyond its provisions to protect the economic interests of consumers. ...’

In a judgment of the European Court of Justice of 18 July 2013 (C-265/12), additional restrictions regarding combined offers were considered compliant with the Directive:
‘As regards the appropriateness of Article 72 of the Law of 6 April 2010, it must be stated, first, that financial services are, by nature, complex and entail specific risks with regard to which the consumer is not always sufficiently well informed. Secondly, a combined offer is, in itself, such as to generate on the

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part of the consumer the idea of a price advantage. It follows that a combined offer of which one component is a financial service is more likely to be lacking in transparency as regards the conditions, the price and the exact content of that service. Accordingly, such an offer may well mislead consumers as to the true content and actual characteristics of the combination offered and, at the same time, deprive them of the opportunity of comparing the price and quality of that offer with other corresponding services from other economic operators. In those circumstances, legislation which prohibits combined offers involving at least one financial service is of such a nature as to contribute to consumer protection.'

In Belgium, this restriction has been considered applicable to legal protection insurance in comparison to other insurance products (Court of Appeal of Bruxelles, 27 avril 2009, Annuaire Pratiques du Commerce & Concurrence 2009, 286).

This restriction is also applicable in France: '*Cette disposition relative à la nécessité de lutter contre la vente liée, le consommateur doit toujours avoir le choix de souscrire ou non une garantie facultative, a pour origine une recommandation de la Commission des Clauses abusives relative aux contrats d'assurance des véhicules automobiles de tourisme.*'

(Recomm.comm.cl.abusives n°89-01, I. 15°, 19 mai 1989).

<http://www.conso.net/content/le-contrat-dassurance-protection-juridique>

It is thus forbidden to apply "combined offers" to the legal protection insurance coverage in at least two member states.

Providing only one IPID per product would thus not allow the consumer to be aware of the specificities regarding the legal protection insurance coverage and the possibilities to subscribe it separately. It would in fact be contradictory to the reasoning of the European Court of Justice explicitly referring to the likelihood of combined offers "*lacking transparency*".

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- The Legal Protection coverage cannot be considered as “ancillary” to other lines of businesses or only in limited situations (Article 16 of Directive 2009/138/EC): *'By way of derogation from paragraph 1, the risks included in classes 14, 15 and 17 in Part A of Annex I, shall not be regarded as risks ancillary to other classes.'*
 - General conditions of several insurers in Belgium state the possibility to terminate specific coverage within the contract: *'Lorsque, par la souscription de ce contrat, vous bénéficiez de plusieurs assurances ou de plusieurs garanties dans une assurance, vous pouvez comme nous, à tout moment, résilier une ou plusieurs de ces assurances ou garanties. Toutefois, cette résiliation n'affecte pas ce contrat dans son ensemble, mais porte uniquement sur la garantie ou l'assurance concernée.'*
<https://www.belfius.be/common/FR/multimedia/MMDownloadableFile/GeneralConditions/belfius-home-family.pdf>
- AXA Car Insurance UK [Remark : Section K = Legal cover option] Section General Conditions applying to all sections of your policy Art. 13. Cancelling optional covers (Sections I, J, K or L): *'You have the right to cancel optional Sections I, J, K or L of your policy back to the original start date. If you decide to cancel any optional section of your policy in this way, it must be done within the 14 day cooling off period. The 14 day cooling off period commences when the policy is purchased or received by you. Cancelling your policy in this way will mean that you will not have been covered by us. If your policy is cancelled back to the start date, we will return the premium paid, provided that no claims or accidents have occurred. If you cancel sections I, J, K or L after 14 days of the start date we will not refund the premium for this cover.'*
http://www.axainsurance.com/car/policy-wording/2_1_185_CarPolicyWording.pdf
- Providing separate IPID for legal protection coverage would thus, on the contrary, inform the customer of the possibility to cancel separately its

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coverage and/or subscribe it to another insurance company.

Providing separate IPID for legal protection coverage would also allow the customer to better compare the type of coverage offered as already described above and would permit him to receive answers related to the key features of the legal protection coverage:

- Is it an "add-on" LPI provided by the same insurer as the insurer of the main coverage or a LPI coverage provided by a different insurer?
- How is the claims management handled according to Article 200 of Directive 2009/138/EC?
- What is the freedom of choice of lawyers and when is it applicable?

4. In section 1.19, EIOPA emphasizes that "in any event, if separate IPIDs were provided for these products, several of the categories would contain the same information, e.g. common policy start/end dates, payment and cancellation terms etc."

As already described above, the legal protection coverage contains specific features not applicable to other types of coverage, in particular Articles 199 to 205 of Directive 2009/138/EC.

Moreover, if the legal protection coverage is provided separately by another insurance company within the same product, the start/end dates, the payment feature or the cancellation terms could differ depending on the conditions of the legal protection insurer involved.

The advantages of providing key features of the legal protection coverage, in line with article 199 of Directive 2009/138/EC, outweighs the possible repetition of minor aspects. This could also be solved by dividing/structuring the document in a way that it is obvious which information applies to the whole product, to the main coverage and to the legal protection coverage.

5. In section 1.20, EIOPA expresses its view that "if a product requires several IPIDs, then it is in fact too complex for consumers to readily

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understand, especially when we consider that the breadth and complexity of retail investment products will be presented in one document, the PRIIPs KID.”

RIAD considers it is in fact less complex for the consumer if the legal protection coverage and its key features are provided separately since it is a completely different product than the main coverage and the consumer must understand this insurance might actually protect him against the insurer who provides the other part of the cover.

RIAD considers it proportionate to the IPID objective to ask for a separate document regarding legal protection in line with Article 199 of Directive 2009/138/EC.

II. Alternatives proposed by RIAD

RIAD proposes thus the following alternative.

In case the product contains legal protection coverage, the first document/ IPID related to the main coverage should indicate the company providing legal protection coverage below the main company and refer to the separate document (see below) for further details on the legal protection coverage:

“Company: XYZ Insurance

Company providing Legal Protection Coverage: XYZ Insurance – Please refer to Legal Protection Insurance document for further details.”

In case the product contains legal protection coverage, the first document/ IPID related to the main coverage should indicate in the section “Termination of the contract” that the legal protection coverage can be cancelled/subscribed separately:

“Termination of the contract:

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The legal protection coverage of the contract can be terminated separately. For further information on the termination of the legal protection coverage, please refer to Legal Protection Insurance document.”

A separate document/ IPID should be provided when legal protection coverage is included within the product.

This document/ IPID should be similar to the proposed EIOPA template with the following adaptations in order to inform the customer about the content of Articles 199 to 203 of Directive 2009/138/EC:

- The “Insured Sum” section should be suppressed since it is not applicable to legal protection coverage (i.e. the maximal amount paid are expressed as “ceiling” and should be included in the “main restrictions” section)
- A section related to the specific features of the legal protection coverage should be included and provide the following information:
 - o The choice made by the insurance company in regard of claims management (Article 200 of Directive 2009/138/EC) when the insurance undertaking is covering the insured persons in respect of both legal expenses and any other class of insurance:
 - a) The claims management is performed by a separate department within the insurance undertaking.
 - b) The claims management is performed by a separate undertaking.
 - c) The claims management is performed by a lawyer chosen by the insured persons from the moment the insured person has a claim.
 - d) The insurance undertaking does not cover the insured persons in respect of both legal expenses and any other class of insurance.
 - o The description of the freedom of choice of lawyers according to Article 201 of Directive 2009/138/EC.

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	<ul style="list-style-type: none"> ○ The possibility to use the arbitration clause and how the insurance company handles this clause. (Articles 203 and 204 of Directive 2009/138/EC) 	
Question 2(a)		
Question 2(b)		
Question 3(a)		
Question 3(b)		
Question 4(a)		
Question 4(b)		
Question 5		
Question 6	Yes	