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:	**EIOPA Insurance and Reinsurance Stakeholder Group (IRSG)**	
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	The Insurance and Reinsurance Stakeholder Group (IRSG) welcomes the opportunity provided by EIOPA to comment on EIOPA discussion paper on conflicts of interest in direct and intermediated sales of insurance-based investment products (PRIIPS). The IRSG believes that it is essential that insurance intermediaries, as in every	

	sector of the economy, put in place reasonable and proportional systems to identify, manage and mitigate conflicts of interest. The IRSG also believes that intermediaries and insurers should always act in the best interests of their clients as stated in Article 13D of the IMD 1.5. Effective competition between well managed, efficient organisations/outfits working in the best interests of their clients is what matters In this context it should be noted that IMD 1 covers the issue of conflict of interests. With its Article 12, the IMD addresses the issue though not using the term "conflict of interest". The IMD requires intermediaries, on a contract-by-contract basis, to tell the customer whether they are giving advice based upon a fair analysis, or whether they have contractual obligations with one or more insurers. As a result, customers know where they stand at the outset of the relationship. In addition, the intermediary has to state in writing the reasons for any advice on a given insurance product and all this is supervised and controlled by the national supervisory authorities. In order to mitigate the potential conflicts of interest, the IRSG supports transparency. Before the conclusion of the contract, insurance intermediaries and direct writers shall provide insurance customers with sufficient and clear information to make informed decisions about the purchase of insurance products and about the nature of their services. Insurance intermediaries should inform the insurance customers about the existence of underwriting powers and delegated authorities in relation to the contract.	

	In combination with the existing required disclosure in Article 12 of the IMD 1, this would cover most of the situations which are identified as possible sources of conflicts of interests. While fair clear and not misleading information is valuable, there will continue to be assymetry of knowledge between intermediary and client in most cases. The need for high professional standards and good redress systems will therefore remain vital components of consumer protection. It should also be noted that it is not possible to regulate every conceivable type of conflict of interest at EU level, nor do the same types of conflicts of interest arise in each market. The focus should therefore be on establishing general principles at EU level, ie Article 21 MiFID 1 Level 2, and allowing national supervisors to ensure that their companies are effectively managing any conflicts of interest and to tackle the specific types of conflicts of interest that arise at local level, as they would be the ones best placed to do so. It is also essential to bear in mind that IMD2 is still under discussion and may apply from late 2016. The IMD2 rules on this issue should be fully consistent with those in the IMD1.5. Otherwise this would result in firms having to make significant changes to their systems twice within the space of a year, with no added benefit for the customer, and additional cost that will be passed on to policyholders.	
Q1.	EIOPA discussion paper lists a long list of potential conflicts of interest. Article 21 MIFID I, level 2 reflects a rather exhaustive set of criteria for identifying conflicts which are potentially detrimental to the customer.	

	For instance, CEIOPS advice to the Commission on the IMD revision included the following example (p. 17 of EIOPA Discussion Paper): "*Intermediaries being actively involved in the design of an insurance product and being at the same time the (main) distributor of that product*". We don't consider this to be a conflict of interest if the insurer is chosen for the underwriting of the product following a market research, based on their expertise, availability for the underwriting and other criteria connected to quality, which don't imply the differentiation made on commission for example.	
Q2.	Every situation should be considered in the context of the market, the specific context of the client, the level of competition, the level of transparency. Having made that point the most important conflicts of interest are those that have the potential to have the greatest impact on clients, especially to the extent they cannot be mitigated. Taking this one step further, it is difficult to imagine any interaction between two parties where no conflict of interest would be even conceivable at all. Furthermore, unnecessarily restrictive rules also carry costs for the customer (who in the end has to bear all costs), either directly by increasing the expenses or by unnecessarily reduced offerings in the marketplace. It is therefore important to clearly define materiality thresholds and to give credit for effective mitigation efforts by insurers and intermediaries to reduce the effective threat from conflicts of interest to the customer.	
Q3.	The potential types of conflict of interest as outlined by CEIOPS in its advice to	

	the Commission on the IMD revision are comprehensive and relevant to the insurance mediation and distribution of insurance- based investment products (PRIIPS). Potential types of conflicts of interest other than those outlined in EIOPA consultation paper: - A bank with 2 subsidiaries: an investment portfolio management company and an insurance company. This bank is selling unit-linked insurance products to its customers. The insurance product is produced by the insurance company and the units are managed by the investment portfolio company. As all commissions and profits will return to the bank as the sole owner of the two subsidiaries, is there not a very important risk of conflict of interest, the bank seller being pushed to sell these products rather than others ?	
Q4.	Excessive switching of funds or markets to generate fee/commission income where no underlying justification in customer need is apparent.	
Q5.	The basic structure of article 21 is generic enough to cover almost all conflict situations in the insurance-based investment sector. Moreover, it is advisable to maintain a somewhat abstract definition of conflict situations and not try to enumerate all conceivable cases. The goal should be to reduce the effective adverse effects to customers after all mitigation efforts. It is important not to assimilate insurance intermediaries to other regulated professions such as lawyers or experts and to lead to artificial situations. What does for example mean a conflict of interest between existing customers and new customers mean for an insurance intermediary? If this may be obvious for	

	a lawyer, this is not the case for an intermediary. EIOPA should ensure not to use elements that are not relevant for the activity of intermediaries and therefore impossible for the latter to address. The primary aim should be achievement of effective customer protection at the necessary intervention level, not maximisation of cases for intervention. The IRSG believes that there is a need for cross-sectoral consistency and close liaison with ESMA on this issue. However it is essential that any measures dealing with conflicts of interest are appropriately adapted to insurance specificities. It is clear that a copy-paste of the MIFID rules just replacing any reference to `investment services´ with insurance distribution activities" is not a valid approach. We are not starting from zero in this issue. IMD I already covers a great part of the conflicts of interest mentioned in Article 21 of MIFID.	
Q6.	An intermediary often works for both parties to facilitate a process. Such a situation should be clear to the parties so that they can take informed decisions. Such a situation is not a-priori a conflict of interest which will work to the detriment of the customer. As stated in the revised Art. 13b of IMD1.5, the targeted principle / goal should be for the intermediary or insurance undertaking to "maintain and operate effective organizational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest ... from adversely affecting the interests of its customers." Art. 21 of the MiFID implementing directive carries a similar principle-based provision.	

Q7.	It should be borne in mind that in the insurance sector conflicts of interest do not arise to the same extent between the different distribution channels. As the European Commission points out in its call for advice, different products as well as different distribution channels might present different conflict of interest risks. Indeed, the risks of conflicts of interest and their impact on consumers in the independent intermediated channel (brokers) are different to those in the direct selling (employees) or exclusive agent channel (tied agents).	
Q8.	For insurance-based investment products the approach outlined in the discussion paper is good guidance for all investment related operators in relation to conflicts of interest. Given that most insurance intermediaries are medium, smaller or micro enterprises, it is important in relation to EIOPA advice, that their nature, size, in light of the principle of proportionality, should be taken into account in the measures that the European Commission will adopt on conflicts of interests. Also, effective mitigation efforts by smaller enterprises sometimes work differently than in larger organisations. In any case the regulation sould explicitly give credit for such efforts. It is very important to keep a very large range of intermediaries, small as well as big. Good advice is not related with size and small boutiques are very often more valuable than big houses which deliver standardized advices and not taylor made.	

	The proportionality principle should be an overall concept applicable to all measures. This is the approach chosen by most of the EU member States in their policy on conflicts of interest for insurance intermediaries. It is simply stated that the policy of conflicts of interest must be proportionate to the size, the structure, the nature, the organisation of the firms and the complexity of its activities. Having implemented the IMD 1 and its article 12 in particular, most Member States today address the management of "Conflict of Interest" by insurance intermediaries. Business models differ at national level due to multiple factors. In some of them independent advisors are the major distribution channel while in others agents, tied agents o direct writers prevail. Therefore, before taking any measure attention should be paid if a national market might be specially affected due to its concrete characteristics or distribution structures. This is a fair application of the proportionality principle as it calls for taking into account not only the size of the intermediaries but their structure, nature, scale, organisation and complexity. National regulation should be taken into account, as it is designed to tackle the various issues that arise locally in that market and is aimed at effectively dealing with those types of conflicts of interest. National supervisors are also best placed to ensure that companies are effectively managing any conflicts of interest. Any European regulation on conflicts of interest should therefore be high level enough to allow suitable adaptations to Member States' own regulation.	

Q9.	Article 13d of the IMD I as amended by Article 91 of MIFID II, stipulates that insurance intermediaries (and insurers) have a professional and contractual duty to give advice in the best interest of their clients. Intermediaries are also required to conduct a suitability test. According to Article 13d 3, member States are also given the possibility to prohibit the acceptance or receipt of fees, commissions or any monetary benefits paid or provided to insurance intermediaries or insurance undertakings, by any third party or person acting on behalf of a third party in relation to the distribution of insurance-based investment products to customers. Because of this there is no further need to include further clarification. Furthermore, EIOPA should avoid addressing issues at this stage that are still the subject of on-going discussions by the co-legislators on IMD2. The rules being developed under IMD2 on conflicts of interest and remuneration will apply to all insurance products, including insurance PRIIPs, so to start developing measures here that tackle remuneration and commissions would be to effectively pre-empt the outcome of those discussions.	
Q10.	The IRSG would like to emphasise the need for national supervisors to monitor and police this effectively and take action where required to ensure the new legislation works in practice. Another prevention method would be to include as mandatory in all the national testing / courses / trainings given by intermediaries, a special	

	segment related to conflict of interest.	
Q11.	None specific. Disclosure rules typically are already very detailed and prescriptive and on a Member State level and additional rules will further add to this (possibly including the PRIIPs-KID requirements). In this context the disclosure addressed in Art. 13c (2) IMD1.5 primarily needs to work effectively. There often may be several ways to achieve this goal, which should be acceptable.	
Q12.	Insurance intermediaries are mostly SME style operations, overall employing many thousands of people locally, who help to identify and advise customers with respect to their often highly individual needs. It is important to ensure that any future European policy on conflict of interests for intermediaries mediating insurance PRIPS does not have any unintended side effects, does not result in less necessary advice and choice for consumers and does not jeopardize intermediaries' activities and business models by unnecessarily strict rules.	
Q13.	In relation to Article 24 & 25 relating to investment research, we do not believe that they should be applied to insurance distribution activities. The terms investment research should be dealt carefully in an insurance context. Generally, insurers and intermediaries typically do not create investment research which is published separately from the advice (i.e. personalized recommendation) they give to their individual customer. Since insurance –based investment products rarely comprise a single instrument (e.g a share), the investment recommendations in a context of insurance-	

	based investments tend to be of a broader, more generic nature (the state of the markets, the economy, prospects for different assets, sectors, growth, etc.) than in a MIFID context. This is for example materially different from a stock broker (MIFID firm) promoting a particular share. This should be taken into account and a distinction or clarification should be made between advice and research as well as generic investment information and information promoting a specific investment instrument.	
Q14.	None that we are aware of	
Q15.	None that we are aware of	
Q16.	No	
Q17.	No	
Q18.	No comment	