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Chairman

Mr Michael Chapman
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2 rue André-Pascal
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EIOPA/13/272

Subject: Draft OECD Effective Approaches to support the implementation of the G20 High-Level Principles of Financial Consumer Protection

Dear Mr Chapman,

The European Insurance and Occupational Pensions Authority (EIOPA), in its capacity as observer to the OECD's Task Force on Financial Consumer Protection, welcomes the opportunity to provide input into the "Draft Effective Approaches to support the implementation of the G20 High-Level Principles of Financial Consumer Protection".

EIOPA is part of the European System of Financial Supervision (ESFS) consisting of three European Supervisory Authorities (ESAs), the National Supervisory Authorities and the European Systemic Risk Board. It is an independent advisory body to the European Commission, the European Parliament and the Council of the European Union.

One of EIOPA's key objectives is to enhance customer protection by, in particular, fostering the protection of policyholders, pension scheme members and beneficiaries. We, therefore, have a vested interest in Effective Approaches being developed in the area of financial consumer protection by the OECD and believe that we can offer useful input from our own experience as a European Supervisory Authority.

We would like to begin by making some general comments regarding the draft Effective Approaches, followed by some more specific comments on the priority principles.

General comments

- We support the general objective of the Effective Approaches cited in the introduction to the draft Report, namely a "*holistic but proportionate approach to financial consumer protection*". We would like to see a regulatory regime in the retail insurance market, which works well for consumers and is capable of being

effectively supervised. Proportionality is indeed key as regards the objectives to be achieved and taking into account existing market specificities such as a diverse range of distribution channels at national level in the insurance sector.

- We support the general content of the draft Report as it reflects, to a large extent, what is in:
 - Existing or planned EU legislation such as the Insurance Mediation Directive (“IMD1”), the proposal for a recast IMD (“IMD2), the draft Regulation on Key Information Documents for Investment Products (“the PRIIPs Regulation”), the Directive on Alternative Dispute Resolution for consumer disputes (“Directive on consumer ADR”) etc.; or
 - Issues EIOPA and its predecessor body, CEIOPS, have addressed either at the request of the European Commission or on an own-initiative basis for example, advice to the European Commission on the revision of the Insurance Mediation Directive (IMD)¹, Good Practices on disclosure and selling of variable annuities², Guidelines and Best Practices on complaints-handling by insurance undertakings³, advice to the Commission on information to members/beneficiaries of occupational pension schemes⁴.
- One particular aspect of the Effective Approaches we noted that, with some exceptions such as specific disclosure measures for more complex products (section 1.1.15), there seems to be limited differentiation as regards specific types of products. We presume this is due to the challenges of defining or drawing a borderline between different categories of products but it, therefore, means, in theory, the approaches could apply to all products (unless otherwise stated). This is of particular interest to EIOPA on issues such as disclosure and responsible business conduct in the insurance markets as (as outlined below), in some cases, we would see the benefits of differing requirements depending on the complexity of the product involved.
- Another aspect we noted is that there do not seem to be any definitions for terms such as “*financial services provider*” and “*authorised agent*”. We appreciate that it may be challenging to agree definitions of such terms amongst such a broad

¹ CEIOPS Advice to the European Commission on the revision of the Insurance Mediation Directive (2002/92/EC), CEIOPS CCP-59/10, 10 November 2010:
https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/submissionstotheec/20101111-CEIOPS-Advice-on-IMD-Revision.pdf

² Report on Good Practices for Disclosure and Selling of Variable Annuities, EIOPA-CP-11/007, 4 April 2012:
https://eiopa.europa.eu/fileadmin/tx_dam/files/consultations/consultationpapers/CP07-11/EIOPA-CP-11-007_Good_Practices_Report_for_publication.pdf

³ Guidelines on Complaints-Handling by Insurance Undertakings, EIOPA-BoS-12/069, 14 June 2012:
https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/guidelines/complaints_handling/EIOPA_Complaints_Handling_GL_EN.pdf

⁴ EIOPA’s Advice to the European Commission on the review of the IORP Directive 2003/41/EC, EIOPA-BOS-12/015, 15 February 2012:
https://eiopa.europa.eu/fileadmin/tx_dam/files/consultations/consultationpapers/CP06-11/EIOPA-BOS-12-015_EIOPA_s_Advice_to_the_European_Commission_on_the_review_of_the_IORP_Directive.pdf

membership as the OECD and the fact that you are also approaching the issue from a cross-sectoral perspective. One comment we had about the term “authorised agents” was that this is referred to in the introduction in the context of “financial services providers and their authorised agents”. If our understanding is correct, this implies that this would only cover agents which have authority to act on behalf of a financial services provider e.g. tied agents, but would not cover other forms of independent intermediaries such as brokers in the Effective Approaches? From EIOPA’s perspective, we see consumer protection as particularly important in the context of the activities of brokers given that their primary duty is towards the customer. For example, we are currently consulting on draft Guidelines regarding complaints-handling by insurance intermediaries, which are, in particular, targeted at brokers.

Specific comments

Here are some more specific comments on the areas for the Priority Principles:

Principle 4: Disclosure and Transparency

- *Key Information about the Product or Service (1.1.1)* – we support the effective approaches in this area in terms of seeking a consistent approach as regards key information disclosed to consumers, namely “*provision of information on the key features of a financial product or service, highlighting the fees, charges, penalties and risks*”. Consistency of disclosure is something EIOPA is seeking to encourage both at a sectoral level (with regards to insurance and pensions), but also in a cross-sectoral context with regard to the draft EU Regulation on a Key Information Document (KID) for investment products (“PRIPs”).

We also support the reference in the “innovative/emerging” section to the use of “*standardised forms with essential information to reflect the nature of the products and services offered, how such products and services may be paid for and the key features of the financial services provider, so that the consumer can easily compare between similar products and between different providers*”. This very much underpins the objective of the KID for investment products and is also something we have advocated for occupational pensions. We are also considering exploring the possible merits of such a document for certain standardised types of non-life insurance (for example, motor insurance and home contents insurance).

We also support the recommendation regarding the use of professional document designers to ensure documents work as intended. Moreover, we also see particular benefits from consumer testing (something which is currently being envisaged for the Joint Committee of the ESAs’ work on PRIPs).

- *Conflicts of Interest (1.1.2)* – we generally agree with the effective approach in paragraph 15 of the draft Report, namely that if a particular conflict of interest is not prohibited and cannot be avoided, financial services providers should ensure that “*consumers are adequately informed about any conflicts of interest that may*

affect the services provided to the consumer and their possible consequences". However, we would also argue, as stated in our advice to the Commission on the revision of the IMD⁵, that where a conflict of interest is not manageable or avoidable, an intermediary should "consider, according to set of pre-defined principles, whether or not he is able to act in the customer's best interests and whether to refuse the business"⁶.

Principle 6: Responsible Business Conduct

- As regards the key themes, reference is made in paragraph 16 on page 12 to *"regulators/supervisors having the power to draw up legislations and intervene (prohibit or set limits) regarding the product design or the marketing of certain risk or complex financial products addressed to retail consumers"*. We fully support this statement as it is important that regulators/supervisors in all financial sectors are endowed with powers to (temporarily) ban or restrict certain financial activities and not just where they pose a threat to financial stability, but also where they present a threat to the efficiency of the markets and thereby to consumer protection generally. EIOPA is currently arguing for concrete enabling powers to temporarily ban or restrict financial activities in the insurance and pensions sectors, where appropriate.
- *Staff Training (2.1.3)* – we support, as stated in the Report, *"proper training and qualifications for staff who interact directly with customers"*, although the Report limits the scope to employees of financial services providers and their authorised agents. We would expect similar standards to be adhered to by independent intermediaries, such as insurance brokers.

The effective approaches in this section are generally in line with provision on professional requirements in IMD1 and the IMD2 proposal and also a Report on Good Supervisory Practices regarding knowledge and ability of distributors of insurance products, which we will be publishing later this year, which will include a minimum amount of continuous professional development (CPD) to be carried out by distributors of insurance products. We note that the draft Report suggests this CPD as an option (*"may be required to keep to update professional knowledge through CPD"* (paragraph 25)). From our perspective, we would see CPD as essential (rather than just as an option) for staff of financial institutions given the ever increasing level of product innovation. In addition, we think it is equally important that staff training should also cover issues relating to ethical and professional conduct.

- *Remuneration structure (2.1.4)* – As regards the issue of disclosure of the level of remuneration, we would support a differentiation of disclosure according to the type of product involved i.e. a higher standard of disclosure for complex products such as an insurance product with an investment element (as opposed to a non-life

⁵ See footnote 1 for full reference.

⁶ See Recommendation 30 on page 71 of the aforementioned advice to the Commission.

policy where we would advocate an “on request” disclosure only⁷). We also believe that it is important for a financial services provider to have adequate internal systems and controls in addition to disclosure requirements.

Principle 9: Complaints-Handling and Redress

- We support the statements made regarding complaints-handling by regulators, ADR schemes and internal complaints-handling. In the case of internal complaints-handling (section 3.1.2), the effective approaches cover, to a large extent, what is in our Guidelines and Best Practices Report on complaints-handling by insurance undertakings⁸. One interesting point from our perspective is that the effective approaches on internal complaints-handling cover both financial services providers and authorised agents, whereas we have chosen to adopt a differentiated approach between insurers and insurance intermediaries due to specific concerns raised about ensuring a proportionate approach is applied to insurance intermediaries, a large number of which are natural persons in Europe.

We reiterate our appreciation of the opportunity to input to these draft Effective Approaches and, if requested, stand ready to contribute further to the formulation of them. In that regard, if you have any queries or require any further information, please do not hesitate to contact my colleague, David Cowan, Principal Expert on Consumer Protection (David.Cowan@eiopa.europa.eu).

Yours sincerely,



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⁷ See Recommendation 27 (page 61) of CEIOPS Advice to the Commission on the revision of the Insurance Mediation Directive (see footnote 1 for full reference).

⁸ <https://eiopa.europa.eu/publications/eiopa-guidelines/index.html>