

## **EIOPA Opinion on sales via the Internet of insurance and pension products**

### **1. Legal basis**

- 1.1. This Opinion is issued under the provisions of Article 29(1)(a) of Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 (hereafter the "Regulation"). As established in Article 29(1)(a) of the Regulation, EIOPA shall play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union.
- 1.2. This Opinion is being issued in fulfilment of EIOPA's responsibilities to "monitor new and existing financial activities" under Article 9(2) of the Regulation. Furthermore, EIOPA takes a "leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market" under Article 9(1) of the Regulation.
- 1.3. To this end, EIOPA has provided this Opinion concerning consumer protection issues related to product sales via the Internet. This Opinion is issued without prejudice to relevant existing and future instruments of EIOPA, which may apply to sales and distribution channels that include sales via the Internet, even where such sales are not explicitly referred to.

### **2. Context and scope**

- 2.1. Within its remit, EIOPA wants to ensure that consumers' interests are adequately protected when purchasing insurance and pension<sup>1</sup> products online. EIOPA has found that a substantial percentage of customers already use digital and remote channels.<sup>2</sup> In addition, more and more customers are willing to use these digital and remote channels where they are available. It is expected that due to market developments, in this area consumer detriment may become an increasing issue for financial supervisory authorities; this Opinion is aimed at preventing potential consumer detriment and enhancing awareness.
- 2.2. As further substantiated below, the digital insurance market of the future may create specific consumer detriment or increase, due to the nature of the Internet, the scale of difficulties that exist already in offline distribution. At the same time, consumers may derive benefits from online distribution. Therefore,

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<sup>1</sup> For the purposes of this Opinion, "pension products" are understood as products used for saving for retirement, arranged by consumers, with the goal to provide income in retirement.

<sup>2</sup> By remote contact methods is meant i.e. telephone sales (voice over Internet Protocol VoIP').

EIOPA acknowledges the growing importance of the Internet for the distribution of insurance and pension products, and calls for increased awareness of its impact.

- 2.3. This Opinion is addressed to the National Competent Authorities (NCAs) represented in EIOPA's Board of Supervisors. NCAs are invited to increase their level of awareness of and monitoring of the market with regard to the use of the Internet as a distribution channel.<sup>3</sup> As such, EIOPA, within its remit, would like to remind NCAs that the fact that distributors carry out online distribution should not affect their ability to comply with existing and future requirements applicable in the European Union as well as national legislation in force in Member States for the provision of services to consumers.

### **3. Types of Consumer Protection issues**

- 3.1. EIOPA has found consumer protection issues in a number of Member States, with regard to online distribution. With reference to its legislative remit, EIOPA has conducted a fact-finding exercise among its Member and Observer authorities. The aim of the fact-finding exercise was to map how insurance and pension products are sold via the Internet.
- 3.2. It is worth noting that consumers can find an abundance of information online. Digital research can help to empower consumers making an informed choice. This may help mitigate general information asymmetries that exist between consumers on the one hand, and insurance distributors and insurance undertakings on the other. The surfeit of information online, and different ways this can be filtered or presented, can also present challenges for consumers. Behavioural economics has found that in general most people do not conduct sufficient searches for information, even in a context of information abundance, and instead rely on rules of thumb that can be subject to biases and distortions. EIOPA fact-finding has indicated that customers might be less inclined to read standard disclosure documents outlining the details of products when buying online, and rather focus only on the price of the product or service (see also 4.5).
- 3.3. Furthermore, EIOPA found issues where advice is required to be provided by national law or when so promoted, and the way insurance intermediaries or undertakings comply with their consequent duties when sales are conducted online. In this respect, distributors sometimes do not provide sufficient advice when distributing their products, or the information displayed is not fair enough. This may lead consumers to buy products that insufficiently meet their needs and requirements.
- 3.4. Consumers wishing to research premiums via the Internet may not be fully aware that they may inadvertently enter into unsolicited contracts. This can be particularly the case given the various options and fields to 'tick-off', also taking into account that sometimes such fields are ticked-off as default options by the distributor. Such inadvertent and unsolicited contracts may be caused by a lack of comprehension of the online purchasing process.
- 3.5. Furthermore, supervisors may face today and, increasingly so in the future, challenges with gathering the necessary information to fulfil their supervisory task at the national level. For customers buying by the Internet it can become

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<sup>3</sup> The Internet is understood in this Opinion as a platform used by a variety of distribution channels. As the revision of Directive 2002/92/EC has not been agreed at this stage, the terms "distribution" and "distributor" are used in this Opinion, bearing in mind the proposed extension of the Directive to direct sales.

less relevant where the distributor is located physically. On the one hand, this helps cross-border trade and thus the integration of the internal market. On the other hand, it increases the challenge of fully capturing the potential for consumer detriment arising from sales via the Internet.

- 3.6. Additionally, the potentially transient nature of online information increases the challenge. Undoubtedly, it is difficult to monitor emerging digital distribution channels or distribution by email. Supervisors may also face challenges due to the existence of different supervisory tools for online sales supervision, like a monitoring tool only for advertising and websites of supervised entities.
- 3.7. If not remedied, these issues could lead to a number of undesirable outcomes. Consumers might buy insurance that is unsuitable, they risk concluding an invalid or unsolicited contract or fail to conclude a contract, i.e. their needs and demands would not be met. Consumers may choose an insurance policy based solely on the price offered, where material differences in quality should also be considered. They may not seek or receive other information important for the decision-making process, such as disclosure documents, information on the distributor's customer services, and the level of any guarantees provided.

#### **4. Existing requirements applicable in the European Union**

- 4.1. Existing EU legislation and transposed national legislation address high-level concerns relating to sales via the Internet of insurance and pension products.
- 4.2. Directive 2002/65/EC concerning the distance marketing of consumer financial services lays down fundamental rights for consumers. For example, the Directive establishes: an obligation to provide consumers with comprehensive information on the provider, the financial service, the distant contract and means of redress, before a contract is concluded; the consumer's right to withdraw from the contract during a cooling-off period; a ban on abusive marketing practices seeking to oblige consumers to buy a service they have not solicited ("inertia selling"); and rules to restrict other practices such as unsolicited phone calls and e-mails ("cold-calling" and "spamming"). Nevertheless, a cooling-off period would not necessarily address all issues with unsolicited contracts identified in this Opinion.
- 4.3. Directive 2002/92/EC on insurance mediation (the IMD) specifies requirements, which are applicable to online and offline distribution. Especially Article 12(3) IMD is relevant, whereas "*prior to the conclusion of any specific contract, the insurance intermediary shall at least specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on a given insurance product*". This information has to be clear and accurate, and comprehensible to the customer.
- 4.4. It should be noted that this Opinion does not take a view on whether advice should be provided or not, but aims to place supervised entities, when they are required to provide advice or when sales are promoted 'with advice', in a position to comply with requirements set out in Article 12 IMD.
- 4.5. EIOPA's Consumer Trends Report in 2013 found several issues with the disclosure of information, new channels for sales and marketing of products and services, especially via the internet, including social networks. In 2014, EIOPA issued a Report on Good Practices on Comparison Websites. The Report found that consumers tend to over-rely on the price of products, rather than the underlying terms and conditions. Misleading information may be provided to consumers due to conflicts of interest stemming from close commercial links

between insurers and commercial comparison websites. Comparison websites may not necessarily be suitable for certain types of insurance products.

- 4.6. Future requirements applicable in the European Union for the provision of services to consumers will include *inter alia* better information to consumers. In this respect, Regulation 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) introduces a common standard for key information documents. It can improve the transparency of PRIIPs offered to retail investors, irrespective of the distribution channel used.
- 4.7. The on-going revision of the IMD might introduce new rules for the distribution of insurance and reinsurance products, to make sure that the same level of protection applies regardless of the sales channel. Finally, EIOPA acknowledges that other EU and national legal requirements address sales in general and may apply to all sales and distribution channels, even if not explicitly referred to.

## **5. Taking the above into consideration, EIOPA recommends the following**

- 5.1. EIOPA reminds NCAs that the fact that distributors carry out online distribution should not affect their ability to comply with existing and future requirements applicable in the European Union for the provision of such services to consumers.
- 5.2. With this in mind, EIOPA recommends that NCAs take the necessary and proportionate supervisory actions to ensure that:
  - 5.2.1. Online distributors comply with a duty of advice, if such a duty exists in national law or when sales are so promoted; and
  - 5.2.2. Customers are provided with appropriate information on the selling process of the online distributor with a view to avoiding unsolicited, or mistakenly concluded, contracts.
- 5.3. EIOPA recommends that NCAs, where relevant, prevent consumer detriment by taking a more proactive approach to how they:
  - 5.3.1. Collect information on online distribution activities used by distributors; and
  - 5.3.2. Identify challenges and address issues with newly established online distribution channels at national level.
6. Within six months of the publication of this Opinion, NCAs are requested to provide feedback and, where investigations or regulatory/supervisory actions are undertaken in view of the recommendations, provide details of those investigations/actions.

Done in Frankfurt am Main, 28 January 2015

[signed]

Gabriel Bernardino

EIOPA Chairperson

For the Board of Supervisors