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EIOPA Final Report

on the

Discussion Paper on Conflicts of Interest in direct and intermediated sales of insurance-based investment products (PRIIPS)

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Executive Summary

On 21 May 2014, EIOPA published a Discussion Paper in view of the Mandate of the European Commission requesting EIOPA to provide technical advice with regard to the amendments related to conflicts of interest made by Article 91 of the revised Markets in Financial Instruments Directive (2014/65/EU) to the Insurance Mediation Directive (2002/92/92).

EIOPA invited comments from interested parties by 22 July 2014 and received more than 30 replies up to that date. This document is a summary of the written contributions and the comments made during the public hearing of EIOPA on 11 July 2014.

EIOPA would like to thank its Insurance and Reinsurance Stakeholder Group (IRSG), all participants of the public hearing and all respondents to the Discussion Paper for their comments.

- Respondents to the Discussion Paper emphasized that the MiFID rules should carefully be adapted to the specificities of the insurance sector.

- Many respondents asked for clarification that the principle of proportionality applies.

- Many respondents expressed concerns that too far-reaching implementing measures on inducements could lead to a de facto ban on commission-based business models.

1. Discussion Paper

The aim of the Discussion Paper was to provide stakeholders with an early orientation on issues that will need to be addressed in the technical advice of EIOPA to the Commission and to invite interested parties to provide comments on these issues. The responses received have been thoroughly analysed and considered when drafting the Consultation Paper for the Public Consultation in the upcoming weeks.

Using a template, respondents were invited to provide comments question-by-question, whereby the Discussion Paper distinguished between questions seeking feedback on the different types of conflict of interest related to insurance distribution activities, questions on steps to identify, prevent, manage and disclose conflicts of interests related to insurance distribution activities and questions on the impact assessment.

2. Responses to the Consultation

2.1. General remarks

Even though respondents referred to the general duty to act in the best interests of customers, most respondents shared the notion that appropriate organisational measures are needed to address and manage conflicts of interests which may occur in the context of the distribution of insurance-based investment products. Respondents were mainly supportive of the general idea to establish Level 2 measures related to conflicts of interest which relate to existing provisions of the MiFID Implementing Directive 2006/73/EC. For the sake of a level playing field and in order to avoid a fragmentation between national regimes, some respondents underlined the importance of having consistent and uniform standards governing the distribution of all kind of investment products across the different financial sectors.

> *EIOPA is aware of the importance of a level playing field applicable to all packaged retail investment and insurance-based investment products, independent from the question whether they take the form of an insurance contract or that of a financial instrument.*

At the same time, some respondents expressed their preference for a principles-based approach which would leave sufficient flexibility for national supervisors and firms to apply the rules, taking into account the specificities of their national markets and structures. In this context, respondents also referred to the diversity of conflict of interests which vary substantially depending on the relationship the intermediary holds with the insurance company. For example, respondents indicated that the conflicts of interests of an independent broker would differ significantly from those of a tied agent who is representative of only one insurance company.

> *EIOPA shares the opinion that the organisational requirements should offer sufficient flexibility and degree of abstraction that the implementing measures can be applied to all different kind of business models and market structures. EIOPA is of the view that the organisational requirements on conflicts of interest in the MiFID Implementing Directive should form the basis for the amended IMD implementing measures as they offer this essential prerequisite.*

Additionally, respondents expressed their concerns that the organisational requirements with regard to conflicts of interest should have to take into account the

specificities of the insurance sector; hence a pure "copy and paste" of the existing MiFID implementing provisions would not be appropriate. Some respondents also pointed out that future implementing measures should be consistent with IMD2 which is still under negotiations in the European legislative procedure. Here, respondents expressed concerns that market participants could be obliged to bear further costs and administrative burden should IMD2 alter L2 provisions again requiring market participants to readapt their systems and organisational measures within a short timeframe.

> *EIOPA agrees that the organisational requirements addressing conflicts of interest which arise in the course of distribution activities of insurance based investment products, should take appropriate account of the insurance specificities.*
>
> *Whether IMD2 will alter the implementing measures for which EIOPA is currently preparing its technical advice is a question to be dealt with in the ongoing revision of the Insurance Mediation Directive. In its request for technical advice, the Commission assumes that the empowerment to adopt implementing measures on conflicts of interests will be upheld during the IMD2 negotiations.*

Finally, respondents expressed strong concerns regarding L2 measures which could lead to a situation where solely commission based business models could *de facto no longer be pursued.* They argued, amongst others, that the general rules on conflicts of interests introduced under the amended IMD would not provide an appropriate legal basis for such a wide-reaching prohibition and that such a ban would dramatically change traditional market structures and would force many (small) intermediaries to give up their business, leading to less competition to the detriment of customers.

Another consequence would be that only high net-worth customers could afford advice on investment products, whereas especially the average customer would need the expertise of an advisor. Instead of a ban on inducements, some respondents stated their preference for enhanced transparency and full disclosure of the costs encountered and remuneration/benefits provided by third parties, including all types of inducements. Other respondents argued strongly in favour of a ban of inducements (especially in the context of advised sales) and referred to the fact that a ban on inducements had already been successfully introduced in some national regimes, such as in the UK, Denmark and Finland.

> *EIOPA has no intention to ban commission-based business models or to introduce requirements that lead to a de facto ban of those models. Notwithstanding this, EIOPA intends to propose in its technical advice to the Commission appropriate steps to be taken in order to address the conflict of interest resulting from the reception of inducements paid by third party, as explicitly requested by the Commission.*

Some respondents argued that the (still to be finalized) implementing measures of MiFID II should be transferred to the insurance sector for the sake of a level playing field. The clear majority was of the opinion that the principle of proportionality should be included in order to allow sole traders and small intermediaries to take into account the size and (potentially less) complexity of their business and investment products offered to their customers when adopting their organisational and administrative measures in response to the new L2 measures.

EIOPA believes that it is neither appropriate nor necessary to include a further specification of the principle of proportionality in the implementing measures for the amended IMD. Firstly, the principle of proportionality is already recognised as one of the general principles of European Union law by the European Court of Justice, namely whether a measure is appropriate and necessary to achieve the objectives legitimately pursued. It is now captured in Article 5(4) of the consolidated version of the Treaty on European Union, which provides: "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties". Secondly, the principle of proportionality has been translated into the wording of the new IMD provisions. Article 13b states that an "insurance intermediary … shall maintain and operate effective organisational and administrative arrangements with a view taking all ***reasonable*** *steps designed to prevent conflicts of interest … from adversely affecting the interests of its customers"; Article 13c states that insurance intermediary shall "take* ***appropriate*** *steps to identify conflicts of interest that arise in the course of carrying out any distribution activities".*

2.2. Specific comments with regard to the questions on types of conflict of interest related to insurance distribution activities

Because of the very different situations in which conflicts of interest may arise and the fact that business practices constantly evolve, some respondents argued that it would not be appropriate to come up with an exhaustive enumeration of all existing or conceivable conflicts of interests, as this would create loopholes and the risk that the rules could easily be circumvented.

EIOPA shares this view. Nevertheless for the purpose of a consistent application and in order to inform the market participants about EIOPA's expectations, further guidance by means of Level 3 measures, such as opinions, should be developed at a later stage.

Most respondents agreed that remuneration provided by a third party would be one of the most relevant situations where conflicts of interests exist. In the context of remuneration, not only the different types of commissions paid by insurers were mentioned, but also retrocessions in the case of unit-linked contracts, profit-sharing agreements, internal remuneration models for employees as well as sales incentives and other (non) monetary benefits.

Besides remuneration and inducements, respondents especially mentioned the following situations and circumstances, which are liable to conflicts of interests (non-exhaustive list of examples provided):

- Personal ties between intermediary and customer;
- Shareholding, ownership or control of intermediaries by insurers and vice versa;
- Business development loans and other contributions or subsidies to the distributor;
- Sales targets, sales pressure, sales contests, performance measurement systems and sales incentives;
- Allocation of return to contracts of different subscriptions;
- Registration of an intermediary as a broker, as well as tied agent;
- Involvement of the intermediary in the development and/or management of products
- After-sale transactions which concern the underlying assets of a contract and are incentivised by commissions paid by the asset manager; and

- "Churning" in order to generate commissions (e.g. excessive switching of funds).

Generally, respondents agreed that the language of Article 21 of the MiFID Implementing Directive would have to be adapted. Views were split whether the circumstances listed should also be amended. Some respondents argued that the provision as it is would be sufficiently broad and abstract to cover all the types of relevant conflicts of interests which may arise in the context of the distribution of insurance-based investment products; whereas other favoured the inclusion of circumstances specific to the insurance sector and referred to former work of EIOPA, such as the advice of CEIOPS in the context of IMD2.

> *EIOPA believes that the wording of Article 21 of the MiFID Implementing Directive is of such an abstract nature to cover examples respondents mentioned in their feedback to the Discussion Paper as well as the instances described in the former work of EIOPA/CEIOPS.*

Some respondents even provided proposals on how to redraft and adjust Article 21 in order to align the provision with the insurance specificities. Respondents spoke against the inclusion of (an exhaustive list of) examples, which would hinder a flexible application required by national authorities and would give room for circumvention.

2.3. Specific comments with regard to the steps to be taken in identifying, preventing, managing and disclosing conflicts of interests

With regard to the organisational measures to be taken in order to identify, prevent, manage and disclose conflicts of interest, the Discussion Paper explicitly addressed two areas of particular importance.

First, with regard to organisational measures to be taken by sole traders and small intermediaries, most respondents did not question the fact that the same principles and provisions should apply, but urged for a clarification that the principle of proportionality should be applicable to all measures in order to avoid excessive administrative burdens and costs.

> *As outlined above, EIOPA believes that it is neither appropriate nor necessary to introduce a further specification of the principle of proportionality in the implementing measures for the amended IMD.*

Second, with regard to the question of how to address conflicts of interests arising out of inducements, the majority of the respondents supported the idea to enhance transparency and to introduce full disclosure of third party payments for the benefit of the customers, whereas some respondent argued that full disclosure would be confusing for the customers and would not offer added value. Some respondents even asked for a full alignment with the future L2 measures for MiFID II or argued in favour of a complete ban on inducements.

Regarding the question how information should be disclosed to the customers, respondents pointed out that the information should be understandable and appropriate to the target group. From a customer's perspective it would be essential that information would be provided about the status of an intermediary (independent or tied) as well as how the costs influence the return of a product. Respondents also warned against an information overload and confusion caused by multiple disclosures.

EIOPA supports the idea that transparency should be appropriately enhanced to allow customer to make an informed investment decision. The implementing measures should ideally be aligned with the corresponding MiFID rules.

Overwhelmingly, respondents did not see the need to introduce provisions equivalent to Articles 24 and 25 of the MiFID Implementing Directive addressing organisational measures to be taken in the context of investment research stating that these kinds of services would not be provided by insurers.

Considering the comments received in response to the Discussion Paper, EIOPA shares the view that insurance undertakings normally do not provide investment research services to their customers.

2.4. Specific comments on the questions on the impact assessment

Respondents pointed out that the implementing measures for the amended IMD should not destroy existing distribution systems. Furthermore, it would be important to have sufficiently long transitional periods, especially for those markets which have not yet introduced MiFID equivalent rules for insurance-based products.

Respondents also expressed their concern about possible discrepancies between the amended IMD and IMD 2 which is still being negotiated at Level 1. Not only insurers and intermediaries would be affected by the new organisational measures, but also third parties ("network hubs") to which intermediaries would outsource specific organisational functions (such as compliance).

The costs for the implementation of new organisational requirements should not be disproportionate to the benefits for the customers. It should also be considered which consequences new rules might have on competition in the market. Too severe rules could force small companies to give up their business, ultimately leading to the detriment of the customers as their choices of service providers and products would be reduced.

Summary of Comments on Discussion Paper Conflicts of Interest in direct and intermediated sales of insurance-based investment products

EIOPA would like to thank ACA, ACTUAM – Actuarial and Risk Services S.à.r.l, Luxe, AILO, Allianz SE, ANACOFI, ANASF, Association des consommateurs Test-Achats / Test-A, Association of British Insurance (ABI), Assuralia, Austrian Insurance Association (VVO), BdV, Better Finance, BIPAR, BVI (the German fund association), DUTCH ASSOCIATION OF INSURERS, Dutch Investors' Association (VEB) , EIOPA Insurance and Reinsurance Stakeholder Group, European Federation of Financial Advisers and Fina, European Financial Planning Association (EFPA), European Fund and Asset Management Association, Fédération Française des Sociétés d'Assurances, Federation of Finnish Financial Services (FFI), GEMA, German Insurance Association, IMA, Insurance Europe, Nordic Financial Unions, Polish Insurance Ombudsman, Professional Association of Insurance Brokers, UNI Europa Finance, and Verbraucherzentrale Bundesverband e.V. (vzbv)

Discussion Paper Questions

General Comment

1. What types of conflicts of interest have you experienced in practice or are aware of? For each type of conflict, please identify in your view the cause of the conflict, who (in general terms) it applied to, and, where possible, provide an assessment of its potential impact for customers.
2. What types of conflicts of interest do you believe are most important and why?
3. Are you aware of potential types of conflicts of interest other than those outlined in the discussion above?
4. More specifically, what conflicts of interest are you aware of that are related to insurance distribution activities undertaken following the conclusion of a contract (that is to say, during the life of the contract or after it ends)? Please identify the type and source of the conflict and include any data available on the incidence and impact of the conflict.
5. Do you agree that specific types of conflicts of interest for insurance distribution should be added to the basic structure contained within Article 21, as outlined in the discussion above? If so, please clarify which types, and how they might be different from the types of conflict already covered by the criteria in Article 21.
6. Are there any other adjustments that might need to be made to the criteria in Article 21 to clarify their application? Where you believe an

adjustment is necessary to clarify the application of the criteria, please explain the adjustment you propose.

7. Do you have any other comments on the assessment of possible criteria for identifying types of conflicts of interest set out above?
8. Do you agree that additional measures might be necessary for clarifying how sole traders and similar entities might manage conflicts of interest, where independence of functions is not feasible? If so, please provide detail on the possible measures, explain why you believe these measures are appropriate, and set out how you believe these measures will effectively manage the conflicts of interest that might arise for sole traders and other similar entities.
9. Do you agree that it is necessary to include a further clarification of how to manage conflicts of interest arising out of third party payments or benefits, commission payments or remuneration? If so, please provide detail on the possible measures and the circumstances in which they might apply, explain why you believe these measures are appropriate, and set out how you believe these measures will effectively manage the conflicts of interest that might arise due to inducements or commission arrangements.
10. Do you have any other comments on the above assessment of the stepsto take in relation to each of the following steps:
    - identifying conflicts of interest;
    - preventing conflicts of interest;
    - managing conflicts of interest; and
    - disclosing conflicts of interest?
11. Thinking specifically about disclosure, what steps do you think could maximise its effectiveness in ensuring customers understand and are able to use the information provided in their decision-making process?
12. Are there any additional adjustments to the existing MiFID measures in Articles 22 and 23 that might be necessary to clarify their application to insurance distribution activities? If so, please clarify which adjustments you believe necessary, set out why you believe this, and provide evidence to support your view.
13. Do you agree that the existing MiFID measures in Articles 24-25 related to investment research should be applied to insurance distribution activities, following a redrafting to take into account the legal framework applying to insurance undertakings and insurance intermediaries? Please provide details of the aspects of insurance distribution activities to which you believe these measures might apply.
14. Are there other problem drivers that you believe should be considered?

15. Are there other entities or stakeholders who have not been identified here who could be impacted by changes? Please identify them and the nature and reasons for the possible impact, including is potential scale for them if possible.
16. Are there other drivers of costs or benefits that have not been identified? Please identify these drivers, and outline how their scale might be estimated, and which stakeholders they might impact.
17. Considering the differential impacts of changes for different stakeholders, are there other determinants for differential impacts that you would like to highlight?
18. How do you think effective estimates of costs and benefits for the different stakeholders impacted might be developed? Please consider in particular the challenges with estimating potential benefits for customers and for the industry on an ex ante basis. Please highlight any data sources you are aware of that might be used for developing such estimates.

The views expressed in these Resolutions are preliminary and do not bind in any way, EIOPA or any other parties in the future development of the Technical Advice. They are aimed at gathering stakeholders' and other relevant parties' opinions to be used as a working document for the consultation process.

No.	Name	Reference	Comment	Resolution
1.	ACA	General Comment	ACA is the professionnal organization of insurance companies operating in Luxembourg. Up to 90% of premiums written are under the freedom of services provisions.	Noted
2.	ACTUAM – Actuarial and Risk Services S.à.r.l, Luxe	General Comment	The more difficult part will not be to manage conflicts of interest but to identify them.	Noted
3.	AILO	General Comment	AILO welcomes the opportunity to respond to EIOPAs discussion paper on conflicts of interest in sales of insurance PRIIPs.	Stakeholders will have the opportunity to

			While the paper is in respect of conflicts faced in distribution, it has to be borne in mind that some potential conflicts are, or have historically been, created by Providers who also need to have regard to the interests of the consumer. AILO is concerned that while alignment with MiFID is the goal, it is critical that legislative copy over to IMD should clearly take account of insurance specificities. We are also concerned that we now have IMD1.5 at level 2 whilst IMD2 remains at the level 1 discussion phase. There is the risk that changes introduced due to IMD1.5 would need further amendment with IMD2 resulting in additional IT, administrative and legal costs unless consistency between the texts is ensured. Distribution channels and their relative market importance vary widely across MS and regulatory approach also differs widely. AILO members only transact business on a cross border basis and distribute products almost exclusively through distributors' independent from insurers (though some do make limited use of tied agents). We believe in the interests of the Single Market that it is essential for conflicts of interest to be dealt with at EU level to avoid further fragmentation, difficulties and costs for cross border intermediaries (and Providers). Both could be disadvantaged if their Home State requirements were higher than those of the Host State local distributors and Providers. The goal should be the recognition of a body of ethical and highly knowledgeable individuals whether distributing products directly as an agent of an insurer or independent of an insurer. In principle we consider that enforcement of higher professional standards at national level for the sale of investment -based PRIIPs, which includes CPD requirements, offer a means to ensure so far as is possible attainment of that goal for the benefit of consumers.	comment on EIOPA's more detailed proposals which will be part of the Consultation Paper to be published soon and to recommend amendments which are necessary from their point of view. EIOPA's goal is to develop cross-sectorial consistent rules adapted to the insurance sector. EIOPA's goal is to establish consistent rules applicable in all member states whereas sufficient flexibility should be given because of differences in national market structures. EIOPA's intention is not to prohibit certain remuneration models but to require specific organisational

			The Report on good supervisory practices on knowledge and ability issued by EIOPA in conjunction with Article 8a of the current IMD2 compromise text and Annex II(b) would result in regulatory convergence not only at national level but across MS for passporting distributors. In addition intermediaries and insurance undertakings would be obliged to confirm continued compliance when requested by Supervisors. Finally, how to deal with possible remuneration conflict provides polar opinions. AILO would caution against further steps to a prohibition on remuneration by commission as it would be likely to result in unforeseen consequences to the detriment of consumers. In that respect we are forwarding by separate cover the report prepared for us by Acuity consultants which included commentary on the effects of a commission prohibition on the distribution market in Finland.	measures to address conflicts of interest which result from third party payments.
4.	Allianz SE	General Comment	Allianz appreciates the opportunity to comment on the EIOPA on Conflicts of Interest in direct and intermediated sales of insurance-based investment products (PRIIPs). Generally, Allianz agrees that conflicts of interest may exist in insurance distribution. They may take many forms and may have adverse effects on customers. Allianz also agrees that they need to be sufficiently mitigated to minimize adverse outcomes for customers. Fortunately, there are many measures to successfully avoid or mitigate such conflicts of interest and effectively ensure a positive outcome for the customer. Allianz also supports an approach in line with recital (87) of MiFID II,	Noted

			which requests that the customer protection requirements should be applied equally to insurance PRIIPs, but to use a revision of IMD (rather than MiFID II) to "adequately reflect different market structures and product characteristics". This asks for a sufficiently differentiated approach in the design of rules, not just an identical adoption of MiFID rules.	Noted
			Typically, the potential for conflicts of interest in the insurance industry is already lower than in other businesses. The long-term character of many distribution relationships supports alignment of interests between customers and distributors via reputation effects and mutual interest in the relationship. Furthermore, in the ordinary course of business there are typically no situations where an intermediary or insurance company has to position itself on the opposing side of a transaction, such as may be the case in M&A situations, proprietary trading or issuance of research. Insurance-based investment products are typically bought by the customer and are designed to be held to maturity. Also, the insurance aspect of the products primarily focuses on coverage of external risks (such as longevity risks), which are outside the influence of all parties (insurer, intermediary and customer), so the core aspect of the transaction cannot be influenced by any conflict of interest.	Noted
			In addition, Allianz already successfully employs many measures to address any remaining conflicts of interest, e.g. via its sales compliance principles, remuneration principles, product design principles and various supporting initiatives.	Noted
			Regarding effective management of conflicts of interest, Allianz supports	

			an outcome-oriented and principles-based approach to effectively addressing conflicts of interest with the customer's interest in mind as priority. Outcome orientiation: While conflicts of interest may pose serious risks, what matters most from the customer's point of view is, that the outcome of the advice or service he or she receives is overall beneficial. This effective result should take into account all positive and negative aspects, i.e. the potential risks for the customer's interest resulting from conflicts of interest as well as the costs and potential losses of any kind, e.g. associated with overly tight, partial or otherwise misguided rules of any kind. In addition, the rules have to follow the principle of proportionality. This outcome-oriented approach is consistent with Art. 13b of IMD1.5 asking for "effective" arrangements and taking "all reasonable steps" to prevent conflicts of interest or otherwise create a sufficient level of transparency to allow the customer to take an informed decision. Principles-based approach: Allianz supports a principles-based approach that leaves sufficient room for a variety in the acceptable measures on Member State and company level to address the potentially adverse results from conflicts of interest. In many cases, many different approaches can successfully avoid or mitigate the adverse potential arising from conflicts of interest. In practice, insurers, intermediaries, supervisors or legislators of Member States have successfully developed many such solutions that ensure a beneficial outcome for the customer. These solutions very often already take into account that the burden or cost of any measure to mitigate conflicts of interest ultimately has to be	Noted It should be noted that Article 13b and Article 13c of the revised IMD require investment firms to take all reasonable steps to prevent conflicts of interest from adversely affecting the interests of the customers. Firms have to take all reasonable steps to identify, prevent and manage conflicts of interest. Disclosure should be a measure of last resort. EIOPA shares the view that the organisational requirements addressing conflicts of

			borne by the customer, either as part of the product price or the loss of access to beneficial offers. This burden can be reduced if different arrangements for mitigation of conflicts of interest remain permissible, i.e. the prescriptions on a European level are not overly detailed. Another advantage of this approach is that it can equally be applied to distributors of all sizes (incl. sole traders, for more detail see Q8 below). The principles-based approach is consistent with the wording of Art. 13a - 13d of IMD1.5 where open wording such as "effective" and "sufficient", "all appropriate steps" or "reasonable expectations" indicate the intent of the legislator to permit a variety of measures and steps as adequate. This may also include disclosure as a measure (for more detail see answer to Q11). By contrast, an extreme position that focuses on avoidance / mitigation of conflicts of interest in isolation and at any cost would be overly restrictive, in effect preventing many beneficial arrangements for customers. In particular, a blanket categorization of certain arrangements (such as certain remuneration structures) as problematic per se does not take a sufficiently holistic, outcome-driven perspective to act in the customer's overall best interest. Allianz also supports the allocation of the primary responsibility for handling conflicts of interest risks to the distributor, which in turn should have enough flexibility to ensure the design of effective arrangements for a solution. This is in line with Art. 13b which allocates ultimate responsibility (and liability) for adequate solutions to the distributor. This is adequate, given that the distributor typically has most knowledge about the immediate customer interaction and access to means to successfully handle any adverse developments. In consequence, the distributor should therefore be entrusted with the responsibility and means to make use of this knowledge and to design and implement an	interests should offer sufficient flexibility. It should be noted that the principle of proportionality applies. Noted.

			effective solution within certain bounds. This can be best achieved with broad prescriptive hard "guardrails", principles-based requirements (supported by guidance) to calibrate conduct within these bounds and procedural safeguards to ensure implementation (e.g. including a conflicts-of-interest policy and organizational safeguards).	
5.	ANACOFI	General Comment	ENG We are the main French association of Financial advisers and we impose to our members a system of resolution of conflicts of interests as per MIF I and because the French regulations requiring more transparency of the remunerations. We are able to identify conflicts of interests on the ground thanks to three levels of information: - Within the framework of the controls of our members, the controllers have access to the handled files(cases) and to those identified necessarily as in conflict of interests. Consequently, we can have an idea of the conflicts of interest met by our members. - The mediation service (department) also allows to make go back up (raise) the information in case a dispute between a professional and a customer appeared. - The mediations and the disputes have necessarily for foundation no conflict of interests. The particular case of the volume of conflicts of interests is handled(treated) below in the question 1 FR Nous sommes la principale association française de conseillers en	Noted

			Investissements financiers et nous imposons à nos membres un système de résolution des conflits d'intérêt au sens de la directive MIF I et de la réglementation française qui exige davantage concernant la transparence des rémunérations. Nous identifions les conflits d'intérêt sur le terrain grâce à trois niveaux d'information : - Dans le cadre des contrôles de nos membres, les controleurs ont accès aux dossiers traités et à ceux identifiés obligatoirement comme en conflit d'intérêt. Par conséquent, nous pouvons avoir une idée des conflits d' intérêt rencontrés par nos membres. - Le service médiation permet également de faire remonter les informations dans le cas où un différend entre un professionnel et un client est apparu. Les médiations concernent au total entre 1% et 2% de nos membres chauqe année. - Les contentieux dont nous avons connaissance via nos juristes ou les assureurs de nos membres . Chaque année, cela concerne 0,01% de nos professionnels. Les médiations et les contentieux n'ont pas obligatoirement pour fondement un conflit d'intérêt. Le cas particulier du volume de conflits d'intérêt est traité ci-après dans la question 1.	
6.	Association of British Insurance (ABI)	General Comment	Introduction The ABI welcomes the opportunity to respond to EIOPA's discussion paper (DP) on conflicts of interest. We strongly support the need for firms to address and manage conflicts of interest. Strong conflicts of	Noted

			interest management is important in fostering high levels of consumer protection. Firms in the UK actively identify and manage potential conflicts of interest which might have a detrimental impact on their customers and take this responsibility seriously. The ABI's two key areas of focus within the discusson paper are the following; ☐ Consistency: We caveat our support for general principles on a pan-european level, on the basis that they must be consistent with the future revised Insurance Medication Directive (IMD 2) and they must have negligible impact in terms of making any minor adjustments for those Member States such as the UK who have already carried across and implemented Markets in Financial Instruments Directive (MiFID) 1 conflicts of interest rules. In order to achieve this consistency, there needs to be sufficient flexibility in the proposed approach. ☐ Flexibility: This is needed to allow national supervisors to tackle specific types of conflicts of interest that arise at a national level. This has worked well in the UK especially on conflicts of interest and inducements where our national authority has used its supervisory powers to meet the needs of the national market on the basis of a common EU framework. Conflicts of interest: The amendments laid down in Article 91 MiFID 2 to IMD are broadly consistent with the current conflict of interest standards being applied in the UK. Insurance based investments are subject to extensive Financial Conduct Authority (FCA) Conduct of Business (COBS) Rules) in conjunction with high level principles that are designed to mitigate the risk of poor consumer outcomes by managing conflicts of interest. Principle 8 of the FCA Principles for Business requires firms to manage conflicts of interest fairly and sets out specific rules regarding their	Noted EIOPA shares the view that the organisational requirements addressing conflicts of interests should offer sufficient flexibility. Noted

			identification and management. Additional rules are also set down in the Systems and Controls (SYSC) framework informing senior management about their responsibilities in this area, including requirements for identifying, controlling and reviewing conflicts of interest. Inducements: Under the Retail Distribution Review (RDR), which came into force in 2012, conflicts of interest relating to advised sales of insurance based investment products are managed by a ban on commission payments.. In addition, there are a number of existing rules around suitability of advice for insurance based investment products, for the delivery of non-advised sales and also guiding high level principles governing the behaviour of senior management as discussed above. The FCA is currently carrying out an on-going review of the RDR, and has produced further and more detailed guidance on inducements. Firms must now be able to demonstrate that a payment that they have either made or received will enhance the quality of the service to the client. If a firm is not able to demonstrate this then the payment cannot be made or received. This guidance is a good example of national supervisors taking action to address specific market developments. Proportionality: We are pleased with the inclusion in Article 22 MiFID regarding the principle of proportionality in regards to organisational structure particularly of sole traders and small intermediaries. These particular firms will not have the organisational structure to be able to manage conflicts of interest through separation of functions or via a remuneration committee. Instead we believe that national regulators are best placed to assess proportionality, since they will already be closely monitoring the risk management approach in the firms they supervise. They will also be	Noted From EIOPA's point of view the principle of proportionality applies whenever regulatory requirements come into play. It is also laid down in the wording of Art. 13b and Art. 13c of IMD

			better placed to take account of the extensive variation in legal forms and incorporation structures and, importantly, in corporate governance regimes and practices. As for transparency, while the ABI agrees that consumers need good disclosure to help them compare between products, we do not believe this measure in itself is enough to manage conflicts of interest. As discussed above, effective management of conflicts of interest is addressed much more effectively through firms' internal systems and controls, and through national supervisory vigilance. Finally, while we understand the need for ESMA and EIOPA to work closely together to ensure consistent protection standards and regulatory approach, this cross-sectoral consistency must not introduce a one size fits all approach. The insurance and asset management sectors are different, having different products and different distribution channels, which in turn will present different conflicts of interest. If EIOPA are wanting to go further than MiFID 1 with more specific recommendations then these sectoral differences must be reflected in the final EIOPA guidelines.	1.5 ("taking all reasonable steps", "take all appropriate steps"). Noted. Pursuant to Art. 13c (2) IMD 1.5 disclosure is measure of last resort. Noted
7.	Assuralia	General Comment	General comments by Assuralia, the association of insurance undertakings in Belgium: The European Commission has asked EIOPA for technical advice in preparation for the delegated acts referred to in article 91 of MiFID2 Directive 2014/65/EU in order to - define the steps that insurance intermediaries or insurance undertakings might reasonably be expected to take to (1) identify, (2)	Noted

			prevent, (3) manage and (4) disclose conflicts of interest in the context of insurance-based investment products; - establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers in the context of insurance-based investment products. EIOPA is invited by the European Commission to base its technical advice primarily on the existing conflicts of interest rules laid down in the MiFID1 Implementing Directive 2006/73/EC , while at the same time closely liaising with ESMA as regards ESMA's technical advice on MiFID2. We would like to give two general comments: A. "Conflict of interest rules in the context of insurance-based investment products" Insurance-based investment products are subject to the MiFID1 conflicts of interest rules in Belgium since 30th April 2014 (Act of 30th July 2013, hereafter 'Twin Peaks 2'). The implementation of these MiFID1 rules has been and still is a burdensome process for insurance undertakings and intermediaries, entailing a review of existing business models, ICT adaptations, training of staff, the development of new information documents...	Noted

			Assuralia calls upon EIOPA to acknowledge the work done by those markets that have already implemented MiFID1 for insurance-based investment products at present. For those markets, the delegated acts based on article 91 MiFID2 should not lead to more complexity caused by new legal concepts and wording, nor should it require insurers and intermediaries to change recently introduced practices based on MiFID1. B. "Closely liaising with ESMA" Our comments hereunder regard the application of the articles on conflicts of interest of the MiFID1 Implementing Directive 2006/73/EC. Our response should by no means be understood as an approval of the MiFID2 level 2 measures on conflicts of interest, inducements and remuneration that ESMA is currently developing for banking products and investment funds. Insurance-based investment products are not taken into account by ESMA when developing the MiFID2 level 2 measures on conflicts of interest (Consultation Paper ESMA/2014/549). We therefore expect EIOPA to consult and involve the insurance sector and its customers if it would consider applying measures to insurance-based investment products that are similar to the upcoming MiFID2 implementing measures for banks and investment funds.	Noted. EIOPA will soon publish a Consultation Paper giving stakeholders another opportunity to comment on EIOPA's considerations regarding its Technical Advice requested by the Commission.
8.	Austrian Insurance Association (VVO)	General Comment	1. Conflicts of interest in the insurance sector are already addressed by the Insurance Mediation Directive 2002/92/EC, in particular Article 12 para 1 lit (c), (d), (ii) and (iii), and the Legal Expenses Insurance Directive 87/344/EEC, in particular Articles 3, 4 and 7.	Noted

			2. Additional rules based upon Articles 21 - 23 of Directive 2006/73/EC can't be applied sic et simpliciter to the insurance sector. As stipulated by the European legislator in Directive 2014/65/EU (recital 87) the market structure and the characteristics of products in the insurance sector differ substantially from those in the securities sector. Replacing any references to 'investment services' with 'insurance distribution' will be largely insufficient. In order to reflect the reality of the sector we propose adjustments in answers to questions 5 and 12. 3. The diversity of insurance distributors (insurance undertaking's employees, agents, brokers) results in different levels of formal (in) dependence from the product manufacturer which entails different potential conflicts of interest. This diversity requires a multi-level approach. 4. Self-employed insurance intermediaries in Austria are predominantly one-man businesses. Therefore organisational measures to manage conflicts of interest should take a proportionate approach.	EIOPA shares the view that the organisational requirements of MiFID have to be aligned with the specificities of the insurance sector. Stakeholders will have the opportunity to comment on EIOPA's recommendations which will be outlined in the Consultation Paper. Noted
9.	BdV	General Comment	As Germany's most important NGO of consumer protection related to private insurances (with more than 50.000 members), we strongly support EIOPA's position that consumer protection "will remain EIOPA's strategic goal number one", as Mr. Bernardino said in his keynote speech at July 11th in Frankfurt/Main.	Noted

			We would like to thank very much for the opportunity to participate at the EIOPA conference that day on "Conflicts of interest related to insurance distribution activities". Additionally the Discussion Paper published by EIOPA at 21 May 2014 related to this consultation was very detailed. Both were heavily inspiring for the written answers being presented here.	
10.	BIPAR	General Comment	BIPAR is the European Federation of Insurance Intermediaries. It groups 52 national associations in 32 countries. Through its national associations, BIPAR represents the interests of insurance intermediaries (agents and brokers) and financial intermediaries in Europe. More information on BIPAR can be found on: www.bipar.eu	Noted
			Most intermediaries are smaller or micro enterprises, established near to the customer. They render personalised services to mostly local private clients and smaller to mid-size businesses. Some intermediaries operate internationally and contribute significantly to the EU net exports. All intermediaries operate their businesses in a highly competitive environment with intense competition from alternative forms of distribution.	Noted
			Hundreds of thousands small and medium sized insurance intermediaries employing over one million people across the Member States and millions of consumers will be directly affected by the IMD I as amended by MIFID and later by the IMD II.	Noted

			Insurance intermediaries play a key role: o They help clients identify the risks they face; o They help clients in understanding and coping with the complexities of the insurance marketplace and reduce the clients' search costs by helping them to find the most appropriate insurance policy; o They may help clients obtain better terms on their policies due to the higher business volume they bring to insurance companies; o They help insurance companies reach potential clients without having to develop fully-fledged distribution networks. o They help insurance companies overcome their imperfect knowledge of the precise risk profile of each potential client.	Noted
			Because reputation is an important business asset of insurance intermediaries, they have every incentive to deliver quality service to the client, while presenting the risk being underwritten in a balanced and professional manner to the insurance companies. Insurance intermediaries help clients overcome potential market failures arising from high search costs and asymmetric information, provide some countervailing power to the large insurance companies and facilitate entry into the market by new insurance companies which do not have to develop fully-fledged distribution networks. Thus, intermediaries contribute to the competitiveness of their clients by ensuring that risk is transferred in the most cost-efficient manner. Intermediaries play also an important role in designing new and innovative solutions to risks to which their clients are exposed.	Noted

			BIPAR welcomes the opportunity provided by EIOPA to comment on its "Discussion paper on Conflicts of interest in direct and intermediated sales of insurance- based investment products (PRIIPS)". BIPAR supports initiatives aimed at reinforcing consumer confidence and protection across the European Union. BIPAR supports initiatives that bring clear and tangible benefit for consumers. BIPAR 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. In this context it should be noted that IMD I already covers the issue of conflict of interests. With its Article 12, the IMD already 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, BIPAR supports transparency. We promote that 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	From EIOPA's perspective the existing rules do not address any conceivable conflict of interest, but are of limited scope. Under the new IMD 1.5 rules firms primarily have to

			of their services. We also promote that 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 I, this would cover most of the situations which are identified as possible sources of conflicts of interests. In this context BIPAR would like to recall the European "Think small first" principal that requires European legislation to take SME's interests in account and the European Commission's Regulatory Fitness and Performance Programme ('REFIT) that aims at making EU law simpler and at reducing regulatory costs. BIPAR hopes that EIOPA technical advice to the European Commission concerning amendments related to conflicts of interest made by Article 91 of the MIFID II to the IMD, will request that implementing measures are "fit for purpose" through the effective use of smart regulation tools. On a different but related issue, BIPAR regrets the cumulative aspect of some requirements in chapter III (A) of the IMD 1.5 with the other chapters of the IMD I (and then of the IMD II). Article 13 a states that "subject to the exception in the second sub paragraph of Article 2 (3), this Chapter applies additional requirements to insurance mediation activities and direct sales carried out by insurance undertakings when they are carried out in relation to the sale of insurance based investment products. These activities shall be referred to as insurance distribution activities.".	identify, prevent and manage conflict of interests which may lead to a harm of the customer's interest. Disclosure is only the last resort. Noted Noted. The alleged incompatibility results from the Level 1 rules.

			In the recital 42 of the IMD II proposal it also stated that "(...) For insurance investment products, the standards of this Directive which are applicable to all insurance contracts and the enhanced standards for insurance investment products are cumulative (...)". We believe that this will lead to incompatible requirements or to an unnecessary duplication of requirements, and thus to administrative burden. We believe that this also leads to an unlevel playing field with firms distributing MIFID products. We therefore propose that article 15 of the IMD II does not apply to persons carrying out insurance mediation in relation to insurance investment products which fall under the chapter VII. The appropriateness and suitability tests are already applicable for these activities under article 25. These rules should not be duplicated with all the requirements applicable to all other insurance products in article 15 of the proposed IMD II. If a suitability test is required for the investment insurance product then there should be no demands and needs test requirement for the same product. Lastly, BIPAR would like to underline that the IMD II proposal is still being discussed by the EU legislators and is expected to be implemented in 2017. It is therefore important that Chapter VII of the IMDII is consistent with the IMD 1.5. Otherwise this would result in firms, and in particular SME intermediaries, having to make significant changes to their systems twice within the space of 12 months, with no real added benefit for the customer.	Noted. IMD II is still negotiated in the L1 legislative procedure. EIOPA does not participate at these negotiations. Se above.

11.	BVI (the German fund association)	General Comment	BVI welcomes the opportunity to contribute its views to the pending discussion on the appropriate treatment of conflicts of interest in the context of insurance distribution. The initiative at hand represents an important opportunity to further align the conduct of business standards applicable at the point of sale in relation to investment products. Given that the amendments to the IMD included in Article 91 of the MiFID II package mirror the MiFID II requirements in terms of identification and management of conflicts of interest, it is appropriate to base the Level 2 implementing measures on the corresponding Level 2 standards under the MiFID regime. This approach will certainly contribute to more effective investor protection in accordance with the broader concept of the PRIIPs initiative and simultaneously enhance the consistency in the distributors' conduct of business. Consistency of standards governing distribution of investment products is crucial in terms of effective protection of the interests of investors given that equivalent investment propositions may be offered in different product wrappers and distributors could be induced to engage in regulatory arbitrage by focusing their services on products with less stringent requirements. Additionally, consistency is of utmost importance in order to ensure fair competition across financial sectors. Therefore, we believe that EIOPA should strive to achieve encompassing consistency with the applicable conflict of interest provisions under MiFID, in particular regarding third party payments. Indeed, proper treatment of	EIOPA shares the view that the implementing measures for the revised IMD should be aligned with the corresponding MiFID requirements. Noted.

			third party payments (inducements) is key to the achievement of regulatory goals mentioned above. Hence, we would like to focus our further comments on Q9 of the Discussion Paper dealing specifically with this aspect of conflicts of interest management. BVI represents the interests of the German investment fund and asset management industry. Its 81 members currently handle assets of EUR 2.1 trillion in both investment funds and mandates. BVI enforces improvements for fund-investors and promotes equal treatment for all investors in the financial markets. BVI`s investor education programmes support students and citizens to improve their financial knowledge. BVI`s members directly and indirectly manage the capital of 50 million private clients in 21 million households. (BVI's ID number in the EU register of interest representatives is 96816064173-47). For more information, please visit www.bvi.de.	Noted.
12.	DUTCH ASSOCIATION OF INSURERS	General Comment	The Dutch Association of Insurers welcomes the EIOPA discussion paper "Conflicts of Interest in direct and intermediated sales of insurance-based investment products" as its provides the European insurance markets with an early orientation given the amendments to the IMD. The Member State option, article 13d, to prohibit the acceptance or receipt of fees, commissions or any monetary benefits paid or provided to insurance intermediaries or insurance undertakings is outside the scope of the discussion paper. We fully support this as it is explicitly left to Member States to prohibit commissions. We would however like to emphasize the fact that in The Netherlands we have adequately dealt with (potential) conflicts of interest for insurance insurance-based investment products (as well as for non-life products), but that additional and detailed European rules, based on MiFID 1, could	Noted. EIOPA has been explicitly asked by the Commission (in the mandate to provide technical advice) to consider the conflicts of interest which results from third party payments.

			still lead to additional regulation and extra costs for the Dutch market. We therefore propose to formulate only high level principles as Member States may already have taken appropriate steps. Such an approach would take into account current legislation at national level, give the insurance undertakings the flexibility to determine the appropriate approach given their size and nature. It would also recognize the fact that distribution structures differ across Europe.	Noted
13.	Dutch Investors' Association (VEB)	General Comment	ID Number in Transparency Register: 92447095540-39	Noted
14.	EIOPA Insurance and Reinsurance Stakeholder Group	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	Noted EIOPA agrees. Noted Noted

			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 asymmetry 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.	Under the new IMD 1.5 rules firms primarily have to identify, prevent and manage conflict of interests which may lead to a harm of the customer's interest. Disclosure is only the last resort.

			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.	Noted. EIOPA supports an approach offering sufficient flexibility to market participants and national authorities. Noted
15.	European Federation of Financial Advisers and Fina	General Comment	In our view a conflict of interest can occur when commission is payable to an adviser for both the sale of the life policy and also the sale of investment funds, plus perhaps portfolio management included with policy. This can only occur when the type of life policy is "open architecture" and free to invest in any investment fund. Moreover, in open architecture you are free and therefore there is less scope for a more insidious conflict of interest. The solution is not further regulation. The solution is guidance for those life assurance companies in how they monitor the assets placed within their policies. The life assurance companies are the legal owners of these	EIOPA does not share the view that conflicts of interest may only occur in an "open architecture".

			assets so it is in their interest to have a greater say and control of what is allowable or not. Many life companies are already setting maximum commission levels payable by a fund. Many active managers waive the initial insurance commissions in favour of commissions on their activity of managing. We should not be limiting their right to choose how they are remunerated.	
16.	European Financial Planning Association (EFPA)	General Comment	The mission of the European Financial Planning Association (EFPA) is to set, promote and implement high quality standards for competence and ethical behaviour for the financial advisory sector throughout Europe, benefiting the profession, financial firms and clients. EFPA offers the EFPA European Financial Advisor™ and EFPA European Financial Planner™ professional certifications as the best recognized, respected and highest quality designations available in Europe: we accredit financial advisory professional education programs, continuous development programmes and other services relevant to the Association's members and the sector's needs, nationally and throughout Europe. Our vision is that each and every client will be able to benefit from competent, reliable and transparent advice from trusted, certified financial advisers and planners in Europe and beyond. The advisers will have the knowledge, skills and ethical attitudes required to serve as financial trustees for the clients' finances. As financial advisers, many EFPA's certificate holders include insurance-based investment products, as part of a diversified portfolio for their clients.	Noted Noted Noted Noted

17.	European Fund and Asset Management Association	General Comment	EFAMA has always fully supported the European Commission's intentions to enhance transparency and disclosure as regards to packaged retail and insurance-based investment products (PRIIPs), with a view to ensuring improved protection for retail investors across the European Union. EFAMA welcomes the decision to amend IMD I through MiFID II. We believe that these amendments may lay the foundation for further alignment of the investor protection standards under both Directives. Thus, while agreeing with EIOPA that the treatment of conflicts of interest requires a deepened discussion of inducements, we think that the respective considerations should not be confined to the MiFID I standards. Article 26 of the MiFID I Implementing Directive which is the reference point of the envisaged implementing measures under IMD I has been meanwhile endorsed by Article 24(9) of MiFID II and is due for more detailed regulation at Level 2. ESMA has already presented its preliminary suggestions for the regulatory approach in this regard. Hence, in line with the Commission's formal request to EIOPA[2], it appears reasonable to discuss whether the MiFID II inducements standards should be applied also to inducement payments under IMD in accordance with the conflicts of interest regime based on both Directives' common principles. In order to provide substance to the key objectives of the overall PRIIPs initiative – namely, bringing about similar rules on selling practices for all PRIIPs – we would encourage EIOPA to open such discussion in the context of the upcoming consultation. In this regard, EIOPA should closely liase with ESMA in order to develop a regulatory approach to inducements that is reasonable and proportionate under both IMD and MiFID.	Noted EIOPA has been explicitly invited by the Commission to consider conflicts of interest resulting from inducements (in its mandate to EIOPA). EIOPA will present its policy considerations in the Consultation Paper to be published soon.

			EIOPA's approach for insurance products distribution should be the right form for all PRIIPs. To ensure such a level playing field, EFAMA suggests EIOPA to encourage ESMA to align its advice on EIOPA consultation for more transparency and a safe management of potential conflict of interests due to inducements (identifying potential conflict, preventing, managing and disclosing such conflict of interest), controlling the impact of inducements rather than banning them. Whilst we accept that a number of insurance intermediaries are small firms or sole traders, this is also the case for many intermediaries distributing MiFID instruments throughout Europe. Indeed, it has to be taken into account that many such intermediaries distribute both types of IMD and MiFID products. As investor protection standards for MiFID products have been raised significantly through MiFID 2, we agree with EIOPA's assessment that "consumer detriment linked to conflicts of interest may be significant at the level of the individual customer, irrespective of the size of the business engaged in the selling. A sole trader may cause harm as readily as a large undertaking, and vice versa." EFAMA trusts that the still on-going revision to IMD at the level of the European co-legislator will address the still outstanding crucial issues of retail investor protection and the lack of level playing field in the distribution of retail financial products through a harmonised and convergent approach in MiFID II and IMD II. We believe it is essential, therefore, to create such a harmonised framework that not only addresses conflicts of interests, but also product disclosures and the distribution of retail financial products (including detailed requirements	Noted EIOPA agrees with this statement. In this context EIOPA would like to refer to the ongoing review of the IMD which will lead to further cross-sectorial harmonisation.

			on the provision of advice and the receipt of inducements) seeking to eliminate regulatory arbitrage in the distribution of financial products to retail investors, ensuring a high level of protection for retail investors via the provision of easily-accessible product information produced to common standards. Cf. ESMA's Consultation Paper on MiFID II/MiFIR dd. 22 May 2014 (ESMA/2014/549), section 2.15. [2] See EIOPA's Discussion Paper second bullet on page 41 and the text in the boxes on page 43-44.	
18.	Fédération Française des Sociétés d'Assurances	General Comment	As a preliminary comment, the FFSA would like to point out that discussions are still ongoing on IMD2, particularly on chapter VII of the draft directive, so that the current discussion paper based on IMD1.5 provisions could be partly out of date in a few months. As a consequence, the FFSA reserves judgment until the final provisions of IMD2 are consolidated. 1) The FFSA believes that any new rules on conflicts of interest should be of clear and demonstrable benefit to consumers. In this respect, national regulation about consumer protection as well as local customs and habits should be taken into account. For example, Mifid regulation makes clear difference between the product and the service. Therefore it allows the client to choose whether or not for the « service » of advice and to pay for it which is quite opposite to the French regulation. In France, advice is not only a legal	Noted In the published Consultation Paper EIOPA explains its understanding of services in the context

			requirement but also a professional duty stated by the case-law since a very long time. That means that in France all life insurance products sales have to be advised irrespective of the distribution chanel and the type of products concerned, eg classical life insurance products or unit linked insurance products. Compulsory advice formalised by written documents which engage the professional liability of the distributor has proved to be an effective way to prevent the risk of conflicts of interest as it aims at looking for the best adequacy between the consumer'needs and the product. In this context, any European regulation on conflicts of interest should be principle based to allow suitable adaptations to Member States' own regulation and avoid a "one size fits all" solution which is very likely to disturb consumers as well as the good functioning of the market at national level. 2) The plurality of distribution channels increases competition to the benefit of consumers. Nevetheless, conflicts of interest do not arise to the same extent between these different distribution channels (e.g the exclusive agent is representative of the insurance company while the broker is of principle, the representative of his client). As the European Commission points out in its call for advice, different products as well as different distribution channels might present different risk of conflicts of interest. Indeed, issues are different according to whether the client addresses an exclusive agent or the company directly or chooses to be in touch with independent broker. The expectations of the client are not the same in either cases, any future provisions should take into account this fact accordingly. Moreover, since IMD1, the client is clearly informed, before subscribing a contract about the ability or unability of the	of the organisational requirements to address conflicts of interest. Noted Noted EIOPA supports an approach which provides sufficient flexibility for market participants national authorities.

			intermediary to provide a fair analysis so that he knows perfectly who he is dealing with. 3)The FFSA believes that any measure dealing with conflict of interest should also be adaptated to insurance sector specificities. It must be kept in mind that the distribution structures of financial instruments market under MIFID are quite different from insurance market under IMD. The former are mostly based on internal distribution (eg. distribution by employees of big entities), while the latter mostly relies on external partners of different sizes. Moreover, client of investment firms may be legal person while life insurance products are sold to natural person. A copy paste of MIFID1 implementing directive provisions would thus do not fit with insurance distribution as these provisions have been created with financial instruments market in mind. For example, we do not see how the crireria reffered to in article 21 (d) of the MIFID 1 implementing directive applies to insurance. 4)The FFSA does not believe that disclosure of remuneration is the most appropriate way to manage conflict of interest. Indeed, disclosure of remuneration would provide the consumer with misleading information as the remuneration nature differs from one distribution network to another. Some distribution channels have to cover costs that others do not have, so remuneration systems are not easily comparable. Such transparency will therefore not be of a greater protection to the consumer. On the contrary , it can be confusing for the consumer and would also endanger the level playing field between distribution channels. Besides, the study carried out for the Commission by PricewaterhouseCooperson on the IMD review stresses several market	EIOPA shares the view that the organisational requirements of MiFID have to be aligned with the specificities of the insurance sector. Stakeholders will have the opportunity to comment on EIOPA's recommendation which will be outlined in the Consultation Paper. EIOPA does not share this opinion. From EIOPA's point of view transparency and disclosure are important preconditions to enable the customer

			studies on the effects of remuneration disclosure which revealed little or no benefit to consumers from being informed of the remuneration earned by the intermediary. Instead of that, we do believe that internal policies aiming at preventing detrimental conflicts of interest linked to remuneration woul be a better solution. Fédération Française des Sociétés d'Assurances (FFSA) 26 boulevard Haussmann 75311 Paris - Cedex 09 FRANCE The French Federation of Insurance Companies (FFSA) has 240 member companies representing together 90% of the French insurance market, and close to 100% of the French insurance market internation business. It brings together French insurance companies, mutual insurance societies and the branch office of foreign insurance and reinsurance companies.	to make an informed investment decision.
19.	Federation of Finnish Financial Services (FFI)	General Comment	As a general comment the Federation of Finnish Financial Services (FFI) states that we would have favored a coherent negotiation process for insurance PRIIPs products in the remit of IMD2 regime, rather than regulating insurance PRIIPs products as part of the MiFID2 negotiations (IMD 1.5). This would have resulted in a coherent regime for insurance-based investment products, which would also take into account relevant articles in the other parts of IMD. As a result of IMD 1.5, there is a risk of two different sets of regimes for insurance-based investment products, entering into force in a differing timetable. Due to this, the regulators should now have the priority aim to avoid disparity and overlaps in the regulation of insurance PRIIPs and in the entry into force of the two	Noted

			regimes. In our view, this could be avoided by a single entry into force of rules contained in IMD 1.5 and IMD 2.	
			The FFI is in favour of increasing the clarity and transparency of insurance sales, as well as making it easier for customers to understand and compare the products. The administrative burden of service providers should not, however, be further increased without sound reasons. Regulation should seek to avoid over-regulation and sufficiently acknowledge the differences between different sales channels and insurance products, their complexity and risks.	Noted
			In terms of the conduct of business rules, we hold it highly important to avoid conflicts of interest and to have transparent practices for remuneration. The regulation of conflicts of interest should be based on the fundamental differences in how conflicts of interest arise due to the nature of different distribution channels. An insurance broker is an independent representative of the customer, and the risk that conflicts of interest may arise is clearly higher than with insurance agents or direct sales. An insurance agent is part of the insurance company's sales network and acts for and at the responsibility of the insurance company. The distribution channel and the insurance company should always dislclose clearly on whose behalf they´re working. This is part of the management of conflicts of interest.	Noted
			The Finnish Insurance Mediation Act stipulates that an insurance broker may only receive remuneration from his/her customer. The objective of the commission ban is to prevent insurance brokers having ties to insurance companies which would threaten their independence and	EIOPA's intention is not to make commission based business models impossible. This would

			impartiality. This ensures that the broker will always act in the best interests of his/her customer, instead of directing the customer's business to the company that pays the highest remuneration. In this regard, we are in favour of the Member states option in MiFID 2 art. 91 to regulate nationally on the prohibition of commissions or other benefits received from third parties, in order to safeguard the impartiality of the broker.	neither be covered by the mandate of the Commission nor by the rules of the revised IMD.
			The FFI supports the uniform conduct of business regulation of similar investment products that is insurance PRIIPs and other investments under the MiFID regime. However, there are certain insurance specificities which need to be taken into account when formulating the rules on insurance PRIIPs. These specificities relate to the specific structure of insurance PRIIPs (a two-level structure with a wrapper and underlying funds). A simple copy pasting of MiFID2 rules into insurance PRIIPs would not be sufficient. In addition, MiFID2 rules have been created with providers of investment services in mind. Rules on conflicts of interest target specifically the provision of advice. FFI would like to point out that investment services is not a comparable definition with the definition of insurance distribution. The notion of advice is missing in the insurance regulation. IMD 1.5 will not introduce the notion of advice either. Thus, it seems that part of the basis for regulating insurance PRIIPs with similar rules than in MiFID1 and 2 are missing in the context of IMD 1.5. As stated earlier, this implies that the right context to regulate insurance PRIIPs would be IMD2, which will provide for a sound and coherent set of rules for the	EIOPA shares the view that the organisational requirements of MiFID have to be aligned with the specificities of the insurance sector. Stakeholders will have the opportunity to comment on EIOPA's recommendations which will be outlined in the Consultation Paper.

			distribution of insurance products. For example, the notion of advice is introduced in IMD2. We also like to point out that level playing field requirement works in both ways. Insurance products should not be regulated more tightly than other PRIIPs products under MiFID regime. This might happen if IMD 1 and 1.5 rules are applied at the same time. We would encourage EIOPA to work closely with ESMA on the rules on insurance PRIIPs, as similar work for other PRIIPs products is under way in MiFID2 level 2 at the same time. We would also prefer EIOPA to concentrate only on insurance specificities, otherwise there´s a risk of differing rules and interpretations under IMD 1.5 and MiFID2. We are also in favour of applying proportionality principle in conduct of business rules for intermediaries. This is particularly important for small tied agents.	Noted EIOPA shares the view that a close liaison with ESMA is crucial for consistency reasons. Noted
20.	GEMA	General Comment	GEMA is an association of mutual insurers. It provides a mutualist vision for economic, legal and social problems of the insurance and reinsurance market. GEMA's mutuals mainly distribute insurance products by mean of direct sales. Among them, a minority uses intermediaries. GEMA's mutuals point out that it is premature to work on possible	Noted Noted

			delegated acts on conflicts of interests in the distribution of insurance-based investment products, as long as an agreement has not been found on IMD 2 between the European Parliament and the Council. Moreover they do not believe that the MIFID Implementing Directive 2006/73/CE could be a relevant starting point for insurance-based investments products. The criteria for identifying conflicts of interests as listed in article 21 of the MIFID Implementing Directive should fully be adapted to the insurance sector. It is not only a matter of replacing terms, for example "insurance distribution activities" instead of "investment services". The MIFID Implementing measures seem too inappropriate to the insurances' special features.	In EIOPA's view the Implementing Directive entails abstract rules which are generally applicable to the insurance sector, too. Insurance specificities should be taken into consideration.
21.	German Insurance Association	General Comment	German Insurance Association, Wilhelmstr. 43G, 10117 Berlin (ID Number 6437280268-55) 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. When developing regulatory Level 2 provisions, EIOPA should fulfil its function as supervisory authority and take account of the following issues: ☐ Article 12 of IMD1 has already provided for concrete and effective	Noted

			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.	Noted
			☐ 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.	Noted. The principle of proportionality will apply.
			☐ 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.	EIOPA shares the view that the organisational requirements of MiFID have to be aligned with the specificities of the insurance sector. Stakeholders will have the opportunity to comment on EIOPA's recommendations which will be outlined in the Consultation Paper.

22.	IMA	General Comment	The IMA is very supportive of the European Commission's overall PRIIPs initiative – harmonised rules on product disclosure and selling. In particular, the IMA is committed to enhanced transparency, disclosure and consistency in approach of different types of PRIIPs to improve protection for retail investors across the European Union. The IMA therefore supports EFAMA's response to this discussion paper. The IMA welcomes the co-legislator's decision to amend IMD I through MiFID II. This was a crucial opportunity to drive the overall PRIIPs initiative to create a level playing field for selling practises of PRIIPs. Regrettably, the amendments to IMD I do not provide the same level of investor protection that MiFID II requires. The Level 2 measures should not further exacerbate this divergence. We therefore agree with the European Commission's position –as set out in the second bullet on page 41 of the Discussion Paper - to achieve as much consistency as possible in the conduct of business standards as between the sectors. Investor protection standards for MiFID products are raised significantly by the MiFID II revision. We acknowledge that a number of insurance intermediaries are small firms or sole traders, but we note that the same is true for many intermediaries distributing MiFID instruments. Indeed, it should be taken into account that many such intermediaries distribute both IMD and MiFID products. Accordingly, we agree with EIOPA's assessment on page 30 that "consumer detriment […] may be significant	Noted Noted Noted

			at the level of the individual customer, irrespective of the size of the business engaged in the selling. A sole trader may cause harm as readily as a large undertaking, and vice versa." The IMA believes it is essential to create a harmonised framework for product disclosure that seeks to eliminate regulatory arbitrage in the distribution of financial products to retail investors and to ensure a high level of protection for retail investors via the provision of easily-accessible product information produced to common standards. Therefore, we trust that the on-going revision to IMD at the level of the European co-legislator will address retail investor protection and the lack of level playing field in the distribution of retail financial products throughout the European Union. The IMA represents the asset management industry operating in the UK. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of over €6 trillion of assets, which are invested globally on behalf of clients. These include UCITS, other authorised retail investment funds and a wide range of institutional investment vehicles.	Noted Noted
23.	Insurance Europe	General Comment	Insurance Europe welcomes the opportunity to comment on EIOPA's discussion paper on conflicts of interest in direct and intermediated sales of insurance-based investment products. We would like to stress, however, that discussions are still ongoing on IMD2, particularly on chapter VII of the draft directive, so the current discussion paper based on IMD1.5 provisions could be partly out of date in a few months. As a consequence, Insurance Europe reserves judgment on certain points	Noted

			until the future orientation of IMD2 becomes clearer.	
24.	Nordic Financial Unions	General Comment	Nordic Financial Unions (NFU) is the voice of the employees in the Nordic financial sectors. We are an organisation for co-operation between trade unions in the banking, finance and insurance sectors of the Nordic countries. Through our eight affiliated unions in Denmark, Sweden, Norway, Finland and Iceland we represent 150 000 members – a vast majority of the employees in the Nordic financial sectors.	Noted
25.	Professional Association of Insurance Brokers	General Comment	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber is part of the Austrian Chamber of Commerce and represents the interests of all Austrian insurance brokers. In Austria most of the around 3.946 insurance brokers are smaller or micro enterprises, established near to the customer. They render personalised services to mostly local private clients and smaller to mid-size businesses. All insurance brokers operate their businesses in a highly competitive environment with intense competition from alternative forms of distribution. Due to the fact that there are four major insurers, insurance brokers – not only not depending on an insurer but legally bound to provide best advice to the client (see below) - play a key role in fostering a competitive environment in Austria. Austrian insurance brokers do not only have an incentive to deliver quality service to the client because reputation is an important business asset of insurance intermediaries, they have a legal obligation to do so. Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber welcomes the opportunity provided by EIOPA to comment on its "Discussion paper on Conflicts of interest in direct and	Noted

			intermediated sales of insurance- based investment products (PRIIPS)".	
			Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber believes that it is essential that insurance brokers, as in every sector of the economy, put in place reasonable and proportional systems to identify, manage and mitigate conflicts of interest. In this context it should be noted that IMD I already covers the issue of conflict of interests. With its Article 12, the IMD already 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.	Noted
			In order to mitigate the potential conflicts of interest, Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber supports transparency. We promote that 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. For insurance brokers this is already a legal obligation under Austrian law (see below).	Noted
			The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber is a member of BIPAR. As Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber is aware of, BIPAR will also respond to the EIOPA consultation paper on Discussion paper – Conflicts of interest in direct and intermediated sales of insurance – based investment products (PRIIPS). Therefore the follow	Noted

			response will only focus on specific issues while on a general level Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refers to and supports BIPARs response.	
26.	ACA	Q1.	In general the remunueration of any party intervening in the sale of a PRIIP can be considered as rising, to different extents, the necessity to treat the question of conflicts of interests.In crossborder business the role of one same intermediary might be in one country a tied agent and in another country an independent broker and in a third one an asset manager. In this perspective a European level playing field would be welcome. Retrocessions by fund managers in unit-linked policies might also rise issues of conflicts of interest.	Noted
27.	ACTUAM – Actuarial and Risk Services S.à.r.l, Luxe	Q1.	Regarding ACTUAM, undertakings have to define cartography of the conflicts and then quantitative ones and qualitative ones, their relation with Solvency II Pillar II and define their implementation. What about the interest conflicts for big bank insurance? Is it possible to separate the physically insurance from banking as the one who is selling the banking products is not insurance professionals and which is the case for the moment.	Noted
28.	AILO	Q1.	AILO Members have experienced or are aware of a number of conflicts: • Non disclosed commission from the manager of a unitised fund leading to influenced linked recommendation/inappropriate linked asset. This can result in higher than normal charges and unexplained early redemption penalties or illiquidity and thus lack of understanding of risks entailed. This can be particularly damaging to elderly customers who may have less financial acumen and may need to ensure funds are easily realised should circumstances change (need for long term care funding). • Personal ties where a family member, say son, recommends a product to his customer, say father, and becomes perhaps the joint	Noted Noted

			owner of the policy and/or sole beneficiary. Of special concern where the customer is elderly. • Gearing – where a Distributor recommends a 'geared arrangement' (i.e. borrowing from a bank to increase premium), to a customer. If the intermediary is an interested party – i.e. is being paid commission by the bank or is the bank itself, then the result can be customer detriment in the form of increased risk in that the gearing is usually secured on the policy, often with a value drop trigger point for redemption. • Similarly if a fund house offers a geared fund (i.e. the bank lending is to the fund itself), and this is promoted by distributors who are being paid increased commissions from the fund house, the customer detriment is again in the form of increased risk such that if the gearing is called in, or not renewed the fund may rapidly lose value and /or become suspended whilst another source of gearing is found, if available. At its worst it can lead to liquidation of the fund at a much reduced value. • Share holdings and membership of Boards of intermediaries/asset managers by direct insurers and vice versa. This can lead to restricted proposition constructs which would not seem to be in the interest of any party. • Ownership of intermediaries/platforms by asset managers so influencing investment advice. • Offering of competitions/conventions by insurers/intermediaries which entail qualifying sales targets and a cut-off date.	Noted Noted Noted Noted Noted
29.	Allianz SE	Q1.	The EIOPA discussion paper already lists a very long list of potential conflicts of interest. Additionally, the general criteria of Art. 21 MiFID	Noted

			Implementing Directive (Directive 2006/73/EC) are sufficently broad to capture all relevant aspects (but see also comment to Q6).	
30.	ANACOFI	Q1.	ENG We will begin to answer about the first case a) expressed in the article 21 of the directive MIF I. The files of mediation reveal more often cases in whom the customers refuse to pay rather than professionals who earned money or who were too much paid. As regards to the second type of conflict of interests mentioned in b) of the article 21, we identify already this case. In France, the majority have the status of financial adviser. Beforehand when they were only sellers, this type of conflicts of interests existed. Since the change of status, the professionals are easily challenged in court by their customers in regard of the nature of a binding contract and of the responsability which ensues from it. It thus raises no more problems on our market. We do not have any knowledge about complaints based on this type of conflict of interests. There are, on the other hand, more disputes in the domain of real estate brokers. In the insurance sector, this type of conflict appears for example with general agent's of insurance (assurance) (tied agents). The case where a company or a person favors the interest of another customer or group of customers: we are not supposed to know him(it), because the broker (at least in French law) acts in the name and for his customer.	Noted

			We are not in situation to know a large number of case where the professional favors a customer to the detriment of an other one: the life insurance is a family investment and the French Law is very protective. These cases are more a matter for the courts. The number of cases is tiny even non-existent. We do not have statistics other than those supplied by the courts on the subject The case where the intermediary acts in the same professional domain as his(her) customer is addressed in France by rules supervising the profession or those dictated by the company. We did not find case of mediation having for foundation this type of conflict of interests. Finally, concerning the last type of conflict of interests of the article 21, with the Law of 2007 and the indirect effects of the Law of financial security of 2010, the professionals have of divide up between two categories: - The commercial - The intermediaries in the service of the end customer In these conditions, the organs of mediation and the justice can always determine the abuses and the responsibilities falling to the professionals. Besides, these last ones have a civil liability professional settling this type of conflict by protecting the customer. FR	Noted

			Notre réponse portera tout d'abord sur le premier cas a) énoncé à l'article 21 de la directive MIF I. Les dossiers de médiation révèlent plus souvent des cas dans lesquels des clients refusent de payer plutôt que des professionnels qui ont gagné de l'argent ou qui ont été trop payés. S'agissant du second type de conflit d'intérêt mentionné au b) de l'article 21, nous avons déjà identifé ce cas. En France, la majorité a le statut de conseiller intermédiaire. Dans les années antèrieures quand ils étaient uniquement vendeurs, ce type de conflits d'intérêts existait. Depuis le changement de statut, les professionnels sont aisément attaquables en justice par les clients du fait de la nature du lien contractuel et de la responsabilité qui en découle. Cela ne pose donc plus de problèmes sur notre marché. Nous n'avons pas connaisance de réclamations fondées sur ce type de conflit d'intérêt ni de contentieux. Il y a, en revanche, plus de contentieux dans ce domaine dans les réseaux d'agents liés vendeurs, dans le secteur de l'immobilier. Dans le secteur de l'assurance, ce type de conflit apparait par exemple chez des agents généraux d'assurance (agents liés). Le cas où une entreprise ou une personne privilégie l'intérêt d'un autre client ou d'un groupe de clients : nous ne sommes pas censés le connaitre, car le courtier (au moins en droit français) agit au nom et pour le compte de son client. Nous ne sommes pas en situation de connaitre un grand nombre de cas où le professionnel favorise un client au détriment d'un autre : l'assurance-vie est un investissement familial et la Loi française est très protectrice. Ces cas relève davantage des tribunaux. Le nombre de cas	

			est infime voire inexistant. Nous ne disposons pas de statistiques autres que celles fournies par les tribunaux en la matière. Le cas où l'intermédiaire agit dans le même domaine professionnel que son client est appréhendé en France par des règles encadrant la profession ou celles dictées par l'entreprise. Nous n'avons pas relevé de cas de médiation ayant pour fondement ce type de conflit d'intérêt. Enfin, concernant le dernier type de conflit d'intérêt de l'article 21, du fait de la Loi de 2007 et des effets indirects de la Loi de sécurité financière de 2010, les professionnels ont du se répartir entre deux catégories : - Les commerciaux - Les intermédiaires au service du client final Dans ces conditions, les organes de médiation et la justice peuvent toujours déterminer les abus et les responsabilités incombant aux professionnels. En outre, ces-derniers disposent d'une responsabilité civile professionnel réglant ce type de conflit en protégeant le client.	
31.	Association des consommateurs Test-Achats / Test-A	Q1.	As a consumer organization, we are aware of the different types of conflict of interest mentioned by EIOPA in its consultation document. Contingent commissions, volume based commissions, high commissions linked to cross-selling practices (additional protections to a main PRIPs contract), remuneration in nature (luxurious objects, restaurants, travels,…), up-front high commissions for long-term contracts, etc. are some of the frequent sources of conflict of interest to be avoided.	Noted

			Seel also our response to Question 3.	
32.	Association of British Insurance (ABI)	Q1.	The UK financial services conduct regulator, the FCA, conducted work with financial services firms in 2011, which does identify some potential conflicts of interest: http://www.fca.org.uk/firms/being-regulated/meeting-your-obligations/firm-guides/systems/risks-to-customers-from-financial-incentives You can also find some information about the impact of incentives on outcomes for consumers when the FCA began to discuss their plans for the Retail Distribution Review.	Noted Noted
33.	Austrian Insurance Association (VVO)	Q1.	What types of conflicts of interest have you experienced in practice or are aware of? Situations that may imply a conflict of interest are outlined in answer to question 5. With reference to the list on page 17 of the Discussion Paper we would like to underline that the following situations should not be considered as a potential source of a conflict of interest: ☐ It is in the best interest of the customer that intermediaries are actively involved in the design of insurance products as they know the market and the demands and needs of customers. ☐ Under the Austrian Trade, Commerce and Industry Regulation Act (§ 137 para 1 Gewerbeordnung) it is explicitly allowed that intermediaries may act as both a broker and agent in different business cases under the condition that this is disclosed to the customer (§ 137f	EIOPA disagrees. Even if the involvement of the intermediary might be beneficial from the customer's perspective, conflicts of interest may arise, nevertheless. Noted

			para 8 Gewerbeordnung). ☐ Any limitation on employments or assignments on the grounds of family links would raise concerns regarding a discrimination by association which is incompatible with EU Law such as the Employment Equality Directive 2000/78/EC.	Noted
34.	BdV	Q1.	Best advice versus quick sale: Consumers need comprehensive risk coverage and therefore independent and impartial, "best" advice (including complete analysis of their personal and professional situation). Intermediaries often offer just suitable, sometimes only poor advice (due to lack of time and desire of "quick sale"). Disclosure of professional status as independent or tied agent and its impact on the offered range of contracts are essential for choice by consumers. Fair premiums versus increase of sales volumes/sales pressure: consumers are ready to pay fair premiums with only reduced capital loss risks. Independent agents are obliged to strive for constant increase of sales volumes, and employees of insurers and banks are often submitted to strong sales pressure. The risk of high capital loss for consumers, if the life insurance contract is cancelled more or less shortly after its conclusion, increases even more under these conditions. Transparency versus information overload: consumers seek to understand what they intend to buy. Therefore they need transparency of contract clauses. But at the point of sale they are confronted with	Noted Noted Noted

			information overload on contract conditions and details, which produces even more confusion (concerning mechanisms of participation of benefits, pre-contractual information duties, obligations of claims settlements etc.). Therefore any jargon and unnecessary technical terms have to be avoided. The information should be reduced to only those facts that are related to the given product and should not include any additional information related to other products. Simple products versus complex products: In order to meet their fundamental needs consumers look for simple products. Insurers develop complex products in order to avoid transparency on scope of cover, on participation of benefits, on capital loss risks, on costs of contract etc. Insurance PRIPs (PRIIPs) are on the top of complex products. Therefore we suggest offering complex products only to those customers who are experienced with complex financial products.	Noted
35.	Better Finance	Q1.	What types of conflicts of interest have you experienced in practice or are aware of? For each type of conflict, please identify in your view the cause of the conflict, who (in general terms) it applied to, and, where possible, provide an assessment of its potential impact for customers. It would be very difficult, and not operative, to make an exhaustive enumeration of all existing conflicts of interest and draw a "black list" of	Noted. EIOPA shares the view that an

			prohibited or non recommendable business practices. Since business practices continuously evolve throughout time and through the various Member States, it is not appropriate to establish a closed list of practices to avoid since these can be circumvented It is much better instead to agree for a list of high level principles that should be the base for the industry's risk assessment for their potential harm to consumers, and most importantly mitigating the risk.	exhaustive list of all existing conflicts of interest would not be appropriate. Nevertheless further guidance for the market could be considered in this regard.
			We do agree with this compilation exercise of conflicts of interest currently happening in insurance distribution if its objective is merely providing examples to illustraste the kind of practices under concern for its potential detriment generated to consumers, As an organization, we are particularly concerned about the existing conflicts of interest arising in the commercialization of life insurance. One of our biggest members is FAIDER, the federation of life insurance beneficiaries associations in France, counts with 2 million beneficiaries of life insurance policies as their members. Nevertheless, we can mention a few widespread cases of conflicts of interest in the distribution of life insurance products: - The lack of segregation of assets which largely enables the	Noted

			insurance providers to allocate return and performance to the contracts they want to actively promote, and, on the other hand allocate lower prefromance and returns to contracts no longer actively promoted or even closed to new subscriptions	Noted
			- The allocation of lower performance and returns to contracts subscribed by "captive" clients. In particular, for example in France, life insurance contracts manufactured and sold by the big retail "bancassurance" groups systematically provide much lower returns than those distributed by capitalistically independent distributors. In 2013, with profit policies ("fonds en euros") sold by French bancassurance retuned on average 2.62 % (nominal net of fees) whereas cotnracts subscribed by independent savers associations returned 3.29 % on average (Source: Better Finance, FAIDER).	Noted
			- With prtofit policies in France tend to invest the equity part in in-house funds and not transferring the "inducements" from those funds to the policy holders.	Noted
			- Unit-linked contracts are the retail investment product with highedt conflicts of interests because there are typically two layers of fees (contrat level and underlying units level) to remunerate distributors. One striking proof of the extent of conflicts of interests in those life insurance contracts - in France at least – is that funds available in unit-linked policies are never low cost funds such as index ETFs as distributors require high inducements, not only on the contract fees themselves but also on the underlying funds fees. In Poland, it is even worse as unit-linked contracts also charge enormous up-front fees and mix life insurance with death insurance features, making even the longer term net returns of the policies very low and negative in real terms.	Noted
			- Distributor advice to invest in equity funds via unit linked c	Noted

			ontracts for tax optimization purposes wherehas it is not the interest of the client as mower fee and better tax optimization tools are available: case of France with "PEAs".	
36.	BIPAR	Q1.	Depending on the size of the intermediary (with many being small and micro enterprises as highlighted in the General Comments) most will NOT have experienced in practice, a number of the conflicts included within the list in the discussion paper. It would therefore be disproportionate to place similar obligations on these SME intermediaries to have systems and processes to manage these conflicts. Broadly speaking we believe that the EIOPA discussion paper captures the broad spectrum of potential conflicts of interest. We also believe that article 21 MIFID I, level 2 reflects a rather exhaustive set of criteria for identifying conflicts which are potentially detrimental to the customer. We attract the attention to the fact that it refers to conflicts which are potentially detrimental to the customer interest in the case of insurance based investment products: • the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client; • the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome; • the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the	EIOPA disagrees. In order to establish a level playing field same obligations should apply to all market participants, independent from their size. In order to avoid disproportionate burden the principle of proportionality applies.

			client; • the firm or that person carries on the same business as the client; • the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service. We understand that in general, conflicts of interest occur when an entity has an interest of its own that conflicts with the interest or interests of other customers or entities for whom the entity is also acting in some capacity. Conflicts of interest can exist without harm for the customer, for instance where a conflict is identified and managed or mitigated by the entity suffering the conflict so as to ensure there is no harm for the customer. We also believe that some situations which at first sight or in theory may be considered as a potential conflict of interest do not harm the interest of the customer because there is an alignment of the interest between the parties.	Noted Noted
37.	DUTCH ASSOCIATION OF INSURERS	Q1.	We have experienced material conflicts of interest with respect to the remuneration/ (commissions)/inducements for (independent) intermedairies. As from 1 January 2013 there is a commission ban applicable in The Netherlands for insurance-based investments products. There is also a total ban on volume driven (contingent) commissions, soft commissions, etc.	Noted

			The key reason for the introduction of these policy measures is mis-selling of insurance-based investments products. Initial and trail commissions for insurance-based investments products have created bias (product bias and/or provider bias) towards the advice and other conflicts of interest in the Dutch market.	
38.	Dutch Investors' Association (VEB)	Q1.	What types of conflicts of interest have you experienced in practice or are aware of? For each type of conflict, please identify in your view the cause of the conflict, who (in general terms) it applied to, and, where possible, provide an assessment of its potential impact for customers. It would be very difficult, and not operative, to make an exhaustive enumeration of all existing conflicts of interest and draw a "black list" of prohibited or non recommendable business practices. Since business practices continuously evolve throughout time and through the various Member Statess, it is not appropriate to establish a closed list of practices to avoid since these can be circumvented It is much better instead to agree for a list of high level principles that should be the base for the industry's risk assessment for their potential harm to consumers, and most importantly mitigating the risk.	Noted. EIOPA shares the view that an exhaustive list of all existing conflicts of interest would not be appropriate. Nevertheless further guidance for the market could be considered in this regard.

			We do agree with this compilation exercise of conflicts of interest currently happening in insurance distribution if its objective is merely providing examples to illustrate the kind of practices under concern for its potential detriment generated to consumers,	Noted
			As an organization, we are particularly concerned about the existing conflicts of interest arising in the commercialization of life insurance. One of our biggest members is FAIDER, the federation of life insurance beneficiaries associations in France, counts with 2 million beneficiaries of life insurance policies as their members.	Noted
			Nevertheless, we can mention a few widespread cases of conflicts of interest in the distribution of life insurance products:	
			- The lack of segregation of assets which largely enables the insurance providers to allocate return and performance to the contracts they want to actively promote, and, on the other hand allocate lower performance and returns to contracts no longer actively promoted or even closed to new subscriptions	Noted
			- The allocation of lower performance and returns to contracts subscribed by "captive" clients. In particular, for example in France, life insurance contracts manufactured and sold by the big retail "bancassurance" groups systematically provide much lower returns than those distributed by capitalistically independent distributors. In 2013, with profit policies ("fonds en euros") sold by French bancassurance retuned on average 2.62 % (nominal net of fees) whereas contracts subscribed by independent savers associations returned 3.29 % on	Noted

			average (Source: Better Finance, FAIDER). - With prtofit policies in France tend to invest the equity part in in-house funds and not transferring the "inducements" from those funds to the policy holders. - Unit-linked contracts are the retail investment product with highedt conflicts of interests because there are typically two layers of fees (in the contract level and underlying units level) to remunerate distributors. One striking proof of the extent of conflicts of interests in those life insurance contracts - in France at least – is that funds available in unit-linked policies are never low cost funds such as index ETFs as distributors require high inducements, not only on the contract fees themselves but also on the underlying funds fees. In Poland, it is even worse as unit-linked contracts also charge enormous up-front fees and mix life insurance with death insurance features, making even the longer term net returns of the policies very low and negative in real terms. - Distributor advice to invest in equity funds via unit linked contracts for tax optimization purposes wherehas it is not the interest of the client as lower fees and better tax optimization tools are available.	Noted Noted Noted
39.	EIOPA Insurance and Reinsurance Stakeholder Group	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	Noted

			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.	
40.	Federation of Finnish Financial Services (FFI)	Q1.	A clear case of conflicts of interest is the conflicts of interest in the remuneration between the broker and the insurance company. As the broker is the independent representative of the customer, it should not have any ties with insurance companies or other product providers. In Finland, we have had practical examples of conflicts of interest cases related to the distribution of life insurance policies. This happened before the commission ban entered into force (2008) in the new Finnish Act on Intermediation. Problems on impartiality related to the brokerage of certain life insurance products.	Noted
41.	GEMA	Q1.	/	
42.	German Insurance Association	Q1.	From the point of view of German insurers, there are basically three events in which conflicts of interest might occur: 1. When it is not clear to the customer on which "side" the intermediary is acting (agent, broker), 2. When the requirements of the customer are not clear, i.e. it is not clear what customers want, 3. When the customer does not know the total costs of the product.	Noted. From EIOPA's point of view the situations described under 1 and 3 rather raise the questions whether the customer is properly informed than the

				question of conflict of interest.
			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.	EIOPA disagrees. The fact that the intermediary is paid a commission generally creates a conflict of interest.
			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.	Noted
			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	EIOPA disagrees. From a general point of view, conflicts of interest may also be caused by soft

			by insurance undertakings without violating their obligations towards their customers. In this case too, training ensures the quality of the advice. 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.	commissions. Noted
43.	Insurance Europe	Q1.	There are a range of different types of potential conflicts of interest and not all of them can be dealt with in the same way. Not all conflicts of interest have the potential of causing detriment directly to consumers, and EIOPA should focus on those that are demonstrated as being detrimental to consumers, while also bearing in mind the extent of potential damage. For example, in some Member States, the case of an intermediary being involved in developing a product together with an insurance undertaking	EIOPA agrees. Nevertheless it should be pointed out that the assessment whether a conflict of interest may lead to harm for customers is part of the obligation

			would often actually create positive outcomes for consumers, as the intermediary knows the market very well and can incorporate knowledge of consumer demands and needs into the design of the product. Cooperation between intermediaries and undertakings in product development is also foreseen under ESMA's current work on MiFID2, which highlights the need for manufacturers and distributors to work together and share information in order to fulfil their respective product governance requirements. Any potential conflict of interest has to be looked at in terms of the detrimental effect on the consumer. It should be stressed that just because there is the potential for a conflict of interest does not always mean that a conflict exists. Another example might be circumstances where there is a potential for conflicts of interest in relation to "minimum levels of sales being required from an intermediary in order to be accepted as an intermediary by the insurer". This is also a measure that helps to improve efficiency and is often linked to both the economic decision-making and the solvency of the insurance undertaking. An example of where national remedies are developed includes the option in some Member States for exclusive agents to propose to their customer a contract issued from a company other than the one they represent, as long as the company they represent is not able to provide such a contract. In this case and for this contract, registration as a broker is required by law, and the intermediary must explain to the customer that he is not acting as an exclusive agent. This is how these Member States have chosen to deal with the potential for this particular conflict of interest, which is relevant for this distribution model and legal corporation structure. It is therefore important to ensure that the rules remain high level enough to offer Member State regulators the flexibility to learn from each other across the EU and be inspired to develop rules	to identify conflicts of interests and therefore an obligation of each undertaking and intermediary. EIOPA believes that the involvement of intermediaries in the product development and the management of those products can result in conflicts of interest, even if this involvement may be beneficial from the perspective of the customers. Noted

			relevant for their market.	
44.	Nordic Financial Unions	Q1.	It is important to look at the causes for conflicts of interest and what drives the occurrence of conflicts. Standards of ethics in the distribution system are particularly important for financial institutions to fulfil their role, be taken seriously and maintain a good reputation. Everyone working in the industry should have a high level of awareness of his or her particular contribution to the industry's credibility. Performance measurement systems/merit rating systems for employees are counterproductive to customer protection and qualified advice, and they must be avoided in the financial sectors. As the employee feels pressured to reach his/her targets it is likely that what is sold to customers may not be based on objective and sound advice from the employee. It is important to acknowledge the different types of systems that create sales pressure on employees. There are both the commissions based incentives or performance measurements systems, as well as non-monetary performance measurement systems that instead affect the salary or position of the employee. Both systems can create equal sales pressure on employees which in turn can have a negative impact on customer protection. See more under Q2-Q5. NFU recognises the obstacles regarding commissions and conflicts of interest but wants to stress that it is up to the social partners to negotiate and regulate all forms of remuneration.	EIOPA believes that ethics standards can help to strengthen the industry's credibility, but cannot replace binding regulatory provisions supervised and enforced by the competent authorities. Noted Noted

45.	Polish Insurance Ombudsman	Q1.	Typical conflict of interest encountered in Poland is in a situation where bank sells insurance – either as a stand-alone product or an added one – for example PPI. The conflict is most common if the insurance is sold as a group insurance. It means that a general agreement between the bank and insurer is concluded and the product itself is distributed to consumers without the need of transponding any provisions on insurance mediation. The cause of the conflict is the indemnification that is received by the bank for "selling' insurance and sometimes also because of the profit sharing clauses that are included in the general contract between bank and insurer but also other reasons – I would say that all the exaples listed in the discussion paper can be addressed to banks selling insurance in Poland. This is a very important problem because of the volume of sales of insurance (also unit-linked) through banks. This conflict of interest is also visible in other non-banking group insurance in Poland. For example in employment group insurance, where the conflict arises between the employer and the employees for whom the insurance is offered. The cause of the conflict is usually also pecuniary as for example for the transfer of insurance contract to another insurer, employer may receive benefits or money. Conflict of interest is rising with the hight of the commission paid.	Noted Noted
46.	Professional Association of Insurance Brokers	Q1.	First of all, as highlighted in the BIPAR answers, the whole topic depends very much on the size of the broker. Since in Austria brokers are small and micro enterprises, they will NOT have experienced in practice, a number of the conflicts included within the list in the discussion paper. It would therefore be disproportionate to place similar obligations on these SME brokers to have systems and processes to manage these conflicts. We agree that proportionality shall be a key element of every discussion regarding possible obligations regarding the managing of conflicts of	Noted. See EIOPA's comment above. Noted

			interests. Further, in order to identify and deal with potential conflicts of interest, the national legal framework has to be taken into consideration in detail. Therefore, we give a brief overview of the Austrian broker regulation: Austrian brokers are regulated by the Gewerbeordnung (trade law) and the Maklergesetz (broker law). Brokering insurance services can only be provided by authorised brokers. Austrian brokers are defined as so called "Bundesgenossen" of the customer. They are obliged to provide "best advice" to the customer, which means that, according to the specific risk situation of the customer, the insurance broker guarantees to provide the customer with the best insurance coverage available on the market. In order to fulfil this obligation, the insurance broker has to analyse the specific risik situation of the customer as well as the insurance market in detail. Further the insurance broker has to provide the customer with a detailed documentation. In case, the insurance broker fails to fulfil these legal obligations, he can be held liable by the customer for damages. This legal framework leads to a situation, in which Austrian brokers do not experience conflicts such as included in the list in the discussion paper. Further, as covered by BIPARs answers in detail, we believe that the EIOPA discussion paper already captures the broad spectrum of potential conflicts of interest. We also believe that article 21 MIFID I, level 2 reflects a rather exhaustive set of criteria for identifying conflicts which are potentially detrimental to the customer. Finally, we also believe that some situations which at first sight or in theory may be considered as a potential conflict of interest do not harm	Noted EIOPA disagrees. Even if the broker is required to provide "best advice" conflicts of interest may arise. Noted Noted

			the interest of the customer because there is an alignment of the interest between the parties.	
47.	UNI Europa Finance	Q1.	It is important to look at the causes for conflicts of interest and what drives the occurrence of conflicts. Standards of ethics in the distribution system are particularly important for financial institutions to fulfil their role, be taken seriously and maintain a good reputation. Everyone working in the industry should have a high level of awareness of her or his particular contribution to the industry's credibility. Performance measurement systems, also known as merit rating systems, solely based on the number of sold products are counterproductive to customer protection and qualified advice, and they must be avoided in the financial sector. As the employee feels pressured to reach her or his targets, many times what is sold to customers is not primarily based on the customer's actual need, following objective and sound advice. It is important to acknowledge the different types of systems that create sales pressure on employees. There are both the commission based incentives, as well as non-monetary performance measurement systems that affect the fixed salary as well as future career opportunities, social status and competence development possibilities of the employee. Both systems can equally lead to sales pressure being put on employees and have negative impacts on customer protection. See more under Q2-Q5. UNI Europa Finance recognises the obstacles regarding commissions and conflicts of interest but wants to stress that it is up to the social partners to negotiate and regulate all forms of remuneration.	EIOPA believes that ethics standards can help to strengthen the industry's credibility, but cannot replace binding regulatory provisions supervised and enforced by the competent authorities for the sake of consumer protection. Noted Noted
48.	ACA	Q2.	Conflicts of interest related to remuneration issues and especially "hidden retrocessions", as well as "soft commissions" are important; such type of remuneration is hidden to the client and therefore not in line with a fair treatment of the client.	Noted

49.	AILO	Q2.	• Those relating to choice of linked assets and possible remuneration from the asset manager that may lead the customer into inappropriate asset exposure that they do not understand. Particularly of concern for elderly customers as indicated in Qu 1 above and where liquidity and diversification are of fundamental importance (of course it has to be borne in mind that a particular product sale might represent a small percentage of overall invested assets and so be suitable in the circumstances). • Commission levels above the "norm" and clearly not to the benefit of the customer. • Conflicts of interest caused by 'gearing' (either through loans to the customer or gearing directly in the fund), whereby the distributor is influenced to promote such arrangements. The increase in risk of loss of value is rarely fully understood by the customer.	Noted Noted. The definition of the threshold "norm" is supposed to be difficult in practice. Noted
50.	Allianz SE	Q2.	The most important conflicts of interests are those where conflicts of interests not only are strong at the outset but cannot be or are not successfully mitigated and therefore in effect harm the interests of the customer. The most harmful cases typically arise out of configurations where the general setup of the distribution relationship is unclear or intentionally misleading and is not mitigated. This could arise out of misrepresentation about the status or affiliations of a distributor, e.g. not disclosing ☐ the general status of an intermediary (e.g. whether it is tied or not), or even ambivalence about the status, because the intermediary represents two different types of intermediary	Noted Noted

			☐ personal ties, relevant capital participations or other meaningful affiliations or control that could adversely influence the service provided. In addition, any confusion that emerges from not disclosing relevant information. Many of these issues are already addressed in IMD1 and other EU and Member State regulation. By contrast, while remuneration structures may carry risks of detrimental impacts, they do not per se create conflicts of interest, which could not be mitigated. As an example, commission-based distribution is sometimes accused per se to carry certain conflict-of-interest risks. On the other hand, it is precisely their pay-per-use characteristic ("no cure-no pay") that makes them both attractive and objectively beneficial for potential customers, e.g. by permitting to shop around for alternatives free of charge. In addition, there are strong filters and corrective incentives in place that support the alignment of customer and intermediary interests. Those include e.g. reputation effects for intermediaries and insurers (whose brand is at risk), recurring commissions (that increase an interest in long-term relationships), cancellation rights, complaint procedures, liability for misconduct, supervision and potential administrative sanctions administered by supervisory authorities etc. Additional measures (such as functional separations) may be adequate in some cases to ensure sufficiently beneficial outcomes.	In EIOPA's view commissions can lead to conflicts of interest, but not all conflicts lead to harm for the customer. As explained by the respondent there are ways how these conflicts might be managed.

			To assess the overall risk or benefit potential, all these aspects should be adequately taken into account.	
51.	ANACOFI	Q2.	ENG On one hand, the problem on the remuneration is mainly known in France. The regulations imposed to the professionals a total transparency on their remunerations towards the customer: reveal the nature of their remuneration from the start of the relationship. Consequently, this type of conflict of interests is not the most insidious. There are fewer legal actions on these subjects than in the other cases of conflicts of interests. Consequently, the most real cases are the most insidious according to our organization of which the first type of conflict of interests expressed in the article 21, which concerns a professional guiding the choices of the customer to gain or not lose any money. The judges, the mediators or the departments of complaints manage this kind of case. Besides, the transparency and the traceability allow to handle these situations. On the other hand, the case where the professional favors another customer or group of customer (article 21 c) is settled by the insurance law of each state. It happens that a professional favors another customer a profitable clause. The life insurance being off succession, the professional can in spite of him favor a person at the request of the customer. The professional will be paid only if he treats the case. Example: the professional is to advise a father and widower. His two sons invest some money in PRIIPS by using the same intermediary as the father. The father makes an investment the beneficiary of which is one of his sons. The professional applies strictly the law nevertheless one of the sons was disadvantaged with the implication of the professional.	Noted

			Remarks: The commercial instigations always existed. They are not shocking if the product is adapted to the customer. The commercial instigation is more a problem of networks than intermediaries. Indeed, the big networks risk a fine of the regulator when the intermediaries risk a fine the amount of which is over their means and\or the prison and the ban to practice during 10 years, what is not the case of a big productive structure. FR D'une part, le problème sur la rémunération est majoritairement connu en France. La réglementation a imposé aux professionnels une transarence totale sur leurs rémunérations vis-à-vis du client : révéler la nature de leur rémunération dès l'entrée en relation. Par conséquent, ce type de conflit d'intérêt n'est pas le plus insidieux. Il y a moins d'actions en justice sur ces sujets que dans les autres cas de conflits d'intérêt. Par conséquent, les cas les plus réels, sont les plus insidieux selon notre organisation dont le premier type de conflit d'intérêt énoncé à l'article 21, qui concerne un professionnel guidant les choix du client pour gagner ou ne pas perdre de l'argent. Les juges, les médiateurs ou les services de réclamations gèrent ce genre de cas. Par ailleurs, la transparence et la traçabilité permettent de traiter ces situations. D'autre part, le cas où le professionnel favorise un autre client ou un groupe de client (article 21 c) est réglé par le droit des assurances de chaque pays. Il peut arriver qu'un professionnel favorise un autre client par le jeu de la clause bénéficiaire. L'assurance-vie étant hors	

			succession, le professionnel peut malgré lui favoriser une personne à la demande du client. Ce-denier ne sera rémunéré que s'il traite le dossier. Exemple : le professionnel est conseiller d'un père veuf. Ses deux fils placent de l'argent dans des PRIIPS en utilisant le même intermédiaire que le père. Le père fait un placement dont le bénéficiaire est l'un de ses fils. Le professionnel applique strictement la loi pourtant l'un des fils a été défavorisé avec l'implication du professionnel. Remarques Les incitations commerciales ont toujours existé. Elles ne sont pas choquantes si le produit est adapté au client. L'incitation commerciale est plus un problème de réseaux que des intermédiaires. En effet, les grands réseaux risquent une amende du régulateur quand les intermédiaires risquent une amende dont le montant est au-dessus de leurs moyens et/ou la prison et l'interdiction d'exercer pendant 10 ans, ce qui n'est pas le cas d'une grande structure fabriquante.	
52.	ANASF	Q2.	In order to ensure a level playing field between insurance and financial activities, we believe that, within the context of system stability, the most important types of conflicts concern remuneration, established by intermediaries and applied to their tied agents, linked to sales-volume and the setting of minimum levels of sales for insurance intermediaries. Indeed, we consider that such a specification is needed to ensure that insurance intermediaries and insurance undertakings comply with the duty to act in the best interests of their customers.	Noted
53.	Association des consommateurs	Q2.	Conflicts of interst linked to remuneration and inducements are particularly important. But, within a firm (insurance undertaking or	

	Test-Achats / Test-A		intermediary) other techniques can put people under pressure and put them in a position that makes them difficult to act in the best interest of the customer. The performance evaluation is a key element in this view. Organising contests between sales people or publishing comparison tables can also have detrimental impact for the quality of the service to the customers.	Noted
54.	Association of British Insurance (ABI)	Q2.	There are a range of different types of conflicts and not all can be dealt with the in the same way. As the discussion paper outlines not all conflicts of interest produce poor outcomes for consumers. EIOPA should focus on those that are demonstrated as being detrimental to consumers. For example, the potential for conflicts of interest related to commission paid to independent advisors may arguably have a greater impact than a potential conflict of interest resulting from two people working in the insurance industry who have a personal connection. The varying levels of impact of these different potential conflicts will be more easily judged at firm level, and supervised via the national regulatory who has an ongoing relationship and oversight of the firm.	Noted
55.	Austrian Insurance Association (VVO)	Q2.	What types of conflicts of interest do you believe are most important and why? Please see answer to question 5.	
56.	BdV	Q2.	The needs of the consumers are evident: they need a comprehensive risk coverage for a fair price. An insurance is not a "normal" consumer good like a TV, a computer or a washing machine, because an insurance contract has to cover fundamental life risks like loss of property (house, content, car etc.), liability (protection against third party claims) or illness, disability or even death. In some very important issues like health insurances, life insurances or pension schemes it is likely that	Noted

			customers never acquire solid experiences, because they buy those products only once or twice in their whole life. These are the reasons why the purely commercial sales interests of the distributors have to be tamed on a legitimate level. The full disclosure of remuneration mechanisms with a priority to the disclosure of commissions ("hard disclosure") should therefore be transferred from the banking sector to the insurance sector, especially when linked to insurance PRIPs. Surveys assess again and again the - more or less - poor financial education and knowledge of the majority of the population in the EU member states. This assessment meets the overwhelming, sometimes exorbitant desire for commercial success. Complex products are one of the major means for the realization of this desire. A decisive measure as a way out of this asymmetry of information is the development of key information documents (KIDs). These KIDs have to be standardized in shape, print and parameters for each product category, which should be one of the main goals of European supervisory activities. Plain language, standardized information on risks and costs should become mandatory.	Noted
57.	Better Finance	Q2.	What types of conflicts of interest do you believe are most important and why? We believe the most important conflicts of interest are all those directly linked to the remuneration of the sales force. They cause the highest potential consumer detriment because inducements are the main driver of sales of financial products to consumers, rather than suitability criteria (according to the 64% of respondents of a survey from CFA Institute	Noted

			(http://www.cfainstitute.org/Survey/retail_investment_products_poll.pdf)). A perfectly designed product will be a main source of consumer detriment when mis-sold, so even when the manufacturer has respected all product design rules and addressed possible conflicts of interest arising during the manufacturing process. Therefore it seems quite reasonable to believe that the source of the most sizeable possible consumer detriment is the commercialization of the product itself. We refer to the cases listed above for Q1.	
58.	BIPAR	Q2.	As a matter of principle, the most important conflicts are the ones that the intermediary or undertaking is unable to manage. In our experience, intermediaries - subject to regulatory regimes in Member States that have given a high profile to managing conflicts of interests as part of their transposition of intermediary-focused directives - are managing conflicts of interest effectively in general. 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. We regret the rather one sided and "silo" approach adopted in the	Noted Noted

			discussion paper. 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 to the detriment of the customer. The conflict situation can, from a conflict of interest perspective, not seem to be beneficial for the client at first glance, but overall it may offer a solution which in competitive terms may be the most suitable, when analysed. For example in the list of examples in the 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" is qualified as being potentially a conflict of interest. The intermediary may however have designed a product- having obtained input/feedback from clients as to what is most suitable for them. It also defies logic in what is a highly competitive sector, for an intermediary to be party to designing a product which would put his clients at a disadvantage and render the intermediary vulnerable to competitors being able to tempt his clients away.	EIOPA believes that the involvement of intermediaries in the product development and the management of those products can result in conflicts of interest, even if this involvement may be beneficial from the perspective of the customers.
59.	DUTCH ASSOCIATION OF INSURERS	Q2.	Remuneration/inducements were the key drivers of material conflicts of interest related to insurance-based investment products in the Dutch market. This type is most important because of detriment for consumers on the short and the long run. This type of conflicts of interest also has a hugh negative impact on the trust and confidence of consumers in the Dutch insurance industry.	Noted
60.	Dutch Investors'	Q2.	What types of conflicts of interest do you believe are most important and	

	Association (VEB)		why? We believe the most important conflicts of interest are all those directly linked to the remuneration of the sales force. They cause the highest potential consumer detriment because inducements are the main driver of sales of financial products to consumers, rather than suitability criteria (according to the 64% of respondents of a survey from CFA Institute). A perfectly designed product will be a main source of consumer detriment when mis-sold, so even when the manufacturer has respected all product design rules and addressed possible conflicts of interest arising during the manufacturing process. Therefore it seems quite reasonable to believe that the source of the most sizeable possible consumer detriment is the commercialization of the product itself. We refer to the cases listed above for Q1.	Noted Noted
61.	EIOPA Insurance and Reinsurance Stakeholder Group	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.	Noted

			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.	
62.	European Federation of Financial Advisers and Fina	Q2.	In order to ensure a level playing field between insurance and financial activities, we believe that, within the context of system stability, the most common form of conflict concerns remuneration established by intermediaries and applied to their tied agents, linked to sales-volume and the setting of minimum levels of sales for insurance intermediaries. Indeed, we consider that such a specification is needed to ensure that insurance intermediaries and insurance undertakings comply with the duty to act in the best interests of their customers.	Noted
63.	Fédération Française des Sociétés d'Assurances	Q2.	There is a range of potential different conflicts of interest but not all conflicts of interest are detrimental to consumers. For example, the case of a broker being involved in developing a product together with an insurer may have positive outcomes for customers when the broker knows a specific market very well and helps designing the product in a way that fits the specific needs and demands of this market. In the same way, an intermediary may be the beneficiary of the insurance contract without leading to a detrimental impact for the	EIOPA believes that the involvement of intermediaries in the product development and the management of those products can result in conflicts of interest, even if this involvement may be

			consumer: in France, a funeral service operator is allowed to mediate life insurance contract for financing in advance the funeral service and to be at the same time the beneficiary of the contract as the person in charge of the performance of the funeral service. This is clearly known and accepted by the subscriber who designs the funeral service operator as the beneficiary of the contract. As a consequence, the FFSA considers it is important to apply a case by case approach for identifying those conflicts of interest which may have a detrimental effect on customers.	beneficial from the perspective of the customers.
64.	Federation of Finnish Financial Services (FFI)	Q2.	The most important case of conflicts interest, and in practice the only one, are the ones mentioned in question 1 – conflicts of interest related to the remuneration between independent broker and the product provider/insurance company. An agent and a sales person of an insurance company should always disclose clearly who he/she is representing. The client should be made aware of that he/she will not receive a service based on impartial advice on full range of products available.	Noted
65.	GEMA	Q2.	As far as GEMA members are concerned, they believe that conflicts of interests are not relevant for direct sales. Indeed when employees distribute insurance policies tailored by their employers, there is no place for conflicts of interests. These employees are paid the same whatever the number and the type of products they sell. Furthermore they usually sell one type of product by risk. These are the reasons why employees will not act in their own interests rather than that of the customer. Most of GEMA's mutuals follows this kind of distribution. This being said, it happens that employees receive variable commissions linked to the successful sales of one line of product in particular.	Noted

			However, there are no conflicts of interests since in France all life insurance products' sales have to be advised. This is true whatever the distribution channel and the type of insurance-based investment products, eg classical life insurance or unit-linked insurance. For GEMA's mutuals, a formalized service of advice (that is to say in a written document) is an effective way of handling conflicts of interests between distributors and customers because both of them keep the evidence of the advised product. For all these reasons, GEMA's mutuals express that any text adopted by EIOPA following this public consultation should be proportionate and appropriate.	
66.	German Insurance Association	Q2.	The answer to Q2 is part of the answer to Q1.	
67.	Nordic Financial Unions	Q2.	NFU considers that the most important types of conflicts of interest are the ones connected to sales pressure of employees, such as for example commissions and performance measurement systems. It is important to acknowledge both monetary and non-monetary performance measurements and/or incentive systems. Different types of measurements of sales can create incentives for employees to sell more and be a positive drive for them. However it can also create a negative spiral for the employees with higher sales pressure, stress and worsened climate at the workplace. This increasing pressure on employees to sell products can in turn harm the customers.	Noted

68.	Polish Insurance Ombudsman	Q2.	Profit-sharing agreements are a big threat to decent sale of insurance. It mey lead to situations in which consumers will not be informed about their rights under insurance agreements and even may be encouraged to not claim any compensation from insurer for example may be informed that they can't claim on the policy even though it is not true.	Noted
69.	Professional Association of Insurance Brokers	Q2.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	Noted
70.	UNI Europa Finance	Q2.	UNI Europa Finance considers that the most important types of conflicts of interest are the ones connected to sales pressure put on employees, such as commissions based on the number of sales. It can create a negative spiral for the employees with stress and worsened climate at the workplace. This increasing pressure on employees to sell products can in turn harm the customers. However, incentive systems can serve as positive encouragement for employees to improve their work. It is important to have in mind that encouragement in different forms is positive as to ensure that not only punishment for wrongdoings remains. Positive feedback should be promoted, it just needs to qualitative instead of quantitative.	Noted
71.	Verbraucherzentrale Bundesverband e.V. (vzbv)	Q2.	The most important type of conflict of interest we experienced in practice are remuneration/inducement-based conflicts as summarized under Art. 21 (e) of the Mifid 1 Implementing Directive. While other types of conflicts of interest certainly play a role in doing harm to customers, remuneration/inducement-based conflicts are most important. To make a more general comment on the applicability of the Mifid 1 Level 2 provisions to insurance-based investment products, it should be	Noted Noted

			taken into account that Mifid investor protection rules are designed to include (semi-) professional and retail investors. However, in contrast to investment products, insurance-based investment products do not address professional or semi-professional investors but are designed to address retail investors only. Accordingly, the provisions on conflicts of interest have to be amended to take into account of the specific problems retail investors face. This said, we suggest to introduce a quality criterion to the types of conflicts of interest listed in Art. 21 that clearly states that conflicts of interest related to remuneration or inducement are the most important with respect to potential harm to retail investors. This quality criterion should be introduced without respect to amendments adding additional categories or types of conflicts of interest to the existing list. We would like to note that our view on the particular importance of remuneration/inducement-based conflicts of interest has been backed up by the EIOPA fact-finding among NCAs as well as by the recent public EIOPA event on the IMD in Frankfurt.	Noted Noted
72.	ACA	Q3.	No	
73.	AILO	Q3.	• Business development loans and other contributions or subsidies to the distributors running costs. • Profit share.	Noted
74.	Allianz SE	Q3.	Generally, the categories in Art. 21 MiFID Implementing Directive (2006/73/EC) are not only very broad, but application to the insurance business is not straightforward: In Member States where these broad	EIOPA shares the view that the organisational requirements of MiFID

			MiFID rules already have to be applied to insurance business (e.g. Belgium), it still remains unclear how they can or should be interpreted in an insurance context and applied in practice. In fact, not all configurations captured under Art. 21 MiFID Implementing Directive represent relevant sources for conflicts of interests for insurance products. This is not surprising, since they have not been designed with insurance distribution in mind. For a more detailed discussion see answer to Q6.	have to be aligned with the specificities of the insurance sector. Stakeholders will have the opportunity to comment on EIOPA's recommendations which will be outlined in the Consultation Paper which will be published soon.
75.	ANACOFI	Q3.	ENG We have identified another type of conflict of interest. In the case of a not bound intermediary who distributes a product of which he is actively involved in the management, to the detriment of the other comparable products: if the product is less efficient (less profitable) either more loaded or than the professional appears as independent. Other raised case: when the professional works in a company as intermediary and also works in an insurance company. Finally, the bound selling is supervised by numerous rules. It is more about a problem of adaptability of the products than about a conflict of interest. Concerning the requirement of minimum level of sale to provide to be intermediate, this practice of the companies should be forbidden or supervised.	EIOPA agrees that the involvement of intermediaries in the management of products may cause conflict of interests.

			FR Nous avons identifié un autre type de conflit d'intérêt. Dans le cas d'un intermédiaire non lié qui distribue un produit dont il est partie prenante de la gestion, au détriment d'autres produits comparables : si le produit est moins efficient (moins rentable) ou plus chargé ou que le professionnel se présente comme indépendant. Autre cas relevé : lorsque le professionnel travaille simultanément dans une société en tant qu'intermédiaire et dans une société qui fabrique des produits d'assurance. Enfin, la vente lié est encadré par de nombreuses règles. Il s'agit plus d'un problème d'adaptabilité des produits que d'un conflit d'intérêt. S'agissant de l'exigence d'un niveau minimum de vente pour pourvoir être intermédiaire, cette pratique des compagnies devraient être interdite ou encadrée.	
76.	Association des consommateurs Test-Achats / Test-A	Q3.	In addition to the type of sources of conflict of interest mentioned by CEIOPS in its advice to the Commission on the IMD (page 17 of the consultation document), we would like to focus also on conflicts of interest due to the remuneration scheme or evaluation criteria of people involved in the sales process within an insurance undertaking (direct sales) or within a intermediary firm . We would like to mention some examples of bad practices generating conflict of interest: regularly organizing contest between salespeople or	Noted

			agents rewarding the highest sales volume, publishing comparison tables of sales people based on the volume of sales, remunerating salespeople or intermediaries in nature like holiday travel, high rated restaurants, luxurious objects (watches, etc).	Noted
77.	Austrian Insurance Association (VVO)	Q3.	Are you aware of potential types of conflicts of interests other than those outlined in the discussion above?	
78.	BdV	Q3.	In the general public debate on fair sales practices, the responsibility not only of the distributors (brokers, agents or any other kind of intermediaries like in Germany the so-called "Strukturvertriebe"- multi level distribution companies), but also the responsibility of the insurers themselves should stressed much more clearly. Sole distributors are often even a victim of remuneration and inducement systems, in which they cannot make anything else but "quick sale". Additionally any kind of soft commissions (like corporate hospitality and gifts, soft loans, training support, administrative support) that intermediaries receive from insurers should be disclosed on their websites and be part of written protocols of the sales process (like in Germany the "Beratungsprotokolle"). The responsibility for these remuneration and inducement systems which focus exclusively on the constant increase of sales volumes lies on the directors of distribution services in insurance companies. Therefore the supervisory authorities should implement strict compliance rules for reformed remuneration and inducement mechanisms which give priority to long-term customers advice and services.	Noted Noted
79.	Better Finance	Q3.	Are you aware of potential types of conflicts of interest other than those	

			outlined in the discussion above? See answer to Q1	
80.	BIPAR	Q3.	We believe that the EIOPA consultation paper focuses very much on the intermediary / client relationship while there should be attention to the level playing field. For example, an insurance intermediary is not exposed to the temptation of manipulating investment returns for existing, long-term clients to attract and reward new clients.	Noted
81.	Dutch Investors' Association (VEB)	Q3.	Are you aware of potential types of conflicts of interest other than those outlined in the discussion above? See answer to Q1	
82.	EIOPA Insurance and Reinsurance Stakeholder Group	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 ?	Noted
83.	Federation of Finnish Financial Services (FFI)	Q3.	No.	Noted
84.	GEMA	Q3.	/	
85.	German Insurance Association	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.	Noted
86.	Insurance Europe	Q3.	The conflicts of interest identified by EIOPA in the discussion paper are already captured by Article 21 of the MiFID1 implementing directive. This article is high-level enough to capture any potential conflicts of interest related to insurance-based investment products.	Noted
87.	Nordic Financial Unions	Q3.	What should be added as a cause for conflicts of interest is the role of performance measurement systems because of its potential impacts on employees and customers. The systems are based on individual sales	Noted

			target for employees and are becoming a widespread phenomenon. The measurement of employees does not have to be directly connected to a financial gain, such as commissions for selling a specific product, but can instead have an impact on future salary negotiations and the employee's position at the company. Personal goals on commissions-based products can create high pressure selling and increase the risk of breaking standards of ethics in the distribution system. The sales pressure at a company can also lead to a bad company climate/culture where the sales results between colleagues are made public and focus is placed solely on reaching sales targets. Extensive monitoring of employees also risks creating distrust between employers and employees. Instead employees should be measured by the quality of their work, overall results and customer relations. The performance measurement systems are effective as a short-term method to increase sales but do not take the customer's interest into consideration. The systems can lead to employees selling products to customers that they don't really need simply so the employee can reach its sale targets.	Noted Noted
88.	Polish Insurance Ombudsman	Q3.	No.	Noted
89.	Professional Association of Insurance Brokers	Q3.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	Noted

90.	UNI Europa Finance	Q3.	What should be added as a cause for conflicts of interest is the role of performance measurement systems because of its potential impacts on employees and customers. The systems are based on individual sales targets for employees and are becoming a widespread phenomenon. The measuring of employees does not have to be directly connected to a financial gain, such as commissions for selling a specific product, but can instead have an impact on future salary negotiations and the employee's career in the company. Commission based targets linked to the number of products sold can create a high level of sales pressure and increase the risk of lowering standards of ethics in the distribution system. The sales pressure can also lead to a bad work climate/culture where the sales results are shared among colleagues and the focus is placed solely on reaching sales targets. Extensive monitoring of employees also risks creating distrust between employer and employee. Instead employees should be measured by the quality of their work, overall results and customer satisfaction. The performance measurement systems are effective as a short-term method to increase sales but do not take the customer's interest into consideration. The systems can lead to employees selling products to consumers that they don't really need, for the sole purpose of the employee being able to reach her/his sale targets. It is therefore important to look at causes of conflicts of interest that are not directly related to financial gain, but instead where employees feel pressured to reach sales targets for other reasons than commissions.	Noted Noted Noted
91.	Verbraucherzentrale Bundesverband e.V. (vzbv)	Q3.	No, in our view, the CEIOPS 3L3 paper on possible amendments is exhaustive with respect to potential categories. It is more important to differentiate existing types of conflicts of with respect to the potential	Noted

			harm they may do to retail clients as implicitly done by Q2.	
92.	ACA	Q4.	Most insurance-based PRIIP products allow different types of transactions after the conclusion of the contract such as top-ups or changes in the list of underlying assets. Similar provisions to those applicable before the subscription should treat these transactions.	Noted
93.	AILO	Q4.	• Switching of external unit linked funds influenced by commission from asset manager. • "Churning" advice to surrender one policy to fund purchase of another (earning new commission) in circumstances which will not be of discernible benefit to customer and may even entail early surrender charges.	Noted Noted
94.	Allianz SE	Q4.	There typically are no conflicts of interests during the contract period of an insurance PRIIP since by design there is only very limited action / interaction necessary. Contrary for example to investment products (such as UCITS funds), insurance PRIIPs are typically designed, understood and bought by customers as long-term contracts to be held to maturity by the customer (e.g. for the purpose of old-age provision) and generally include full delegation of any investment activities to the product provider (i.e. no explicit interim investment decisions taken by customers). Also, there are no liquid secondary markets for insurance PRIIPS (such as for ETFs, for example), which could require additional advice on any interim sale or purchase decision before the end of the contract.	Noted
95.	ANACOFI	Q4.	ENG Two cases can appear: - In time an emotional relation with the customer builds up itself who	Noted

			can falsify the neutrality of the customer. Example: a father and his(her) children, all three customers of the same professional. One of the sons becomes a friend with the intermediary: what happens? - The first type of conflict of interests aimed in a) of the article 21 has a bigger occurance: money problem in the group for instance. But a normal supervision protects from this type of risk. FR Deux cas peuvent se présenter : - Avec le temps se crée une relation affective avec le client qui peut fausser la neutralité du client. Exemple : un père de famille et ses enfants, tous trois clients d'un même professionnel. Un des fils devient ami avec l'intermédiaire : que se passe-t-il ? - Le premier type de conflit d'intérêt visé au a) de l'article 21 a une plus grande chance d'arriver dans le temps : problème d'argent dans le groupe par exemple. Mais une surveillance normale protège de ce type de risque.	
96.	Association des consommateurs Test-Achats / Test-A	Q4.	Conflicts of interest can result from a modification in the remuneration of the intermediary during the product's life if it is linked to a modification of the contract the intermediary is asked to obtain from the customer. It can be e.g. an extension of the covered risks or, int the case of PRIPs, higher capital to be invested. We met an insurance undertaking who reduced or stopped the on-going remuneration of its intermediaries as long as the life insurance contract (type with profit with 4,75% guaranted return) was not changed in a combined contract partly guaranteed (with a quite lower intrest rate) and partly invested in a unit-	Noted

			linked life insurance. Almost all clients have been convinced to accept that change, even if it was not in their own interest.	
97.	Association of British Insurance (ABI)	Q4.	Trail commission was one of the things addressed by the FCA in the wake of the RDR.	Noted
98.	Austrian Insurance Association (VVO)	Q4.	More specifically, what conflicts of interest are you aware of that are related to insurance distribution activities undertaken following the conclusion of a contract (that is to say, during the life of the contract or after it ends)?	Noted
99.	BdV	Q4.	In Germany three strong examples of conflicts of interest can be given which are directly linked to the problem of complex products: life insurance contracts which promise a life annuity are calculated following to mortality tables recommended by the professional association of actuaries. But there is no legal obligation to follow this recommendation, the insurer is free to change the "Rentenfaktor" and fix it only at the very beginning of the annuity payments (in case, the contract has not fixed any mandatory parameters of calculation of annuity payments in relation to premiums paid). The result is that reducing the annuity payments, the customers have to wait at least for 25 years or even for 30 years, until the sum of the pension payments by the insurer is equal to the sum of premiums once paid. This waiting period exceeds largely the average life expectancy for men and women in Germany, and so there is no doubt about who makes the profit… In October 2012 one of the most important German economic newspapers, the Handelsblatt, published a large report on mis-selling practices by the life insurer ERGO. It was reported that there were more than 5000 cases of mis-selling practices in only a few months. Agents of	Noted Noted

			ERGO pushed customers to exchange their life insurance contracts to accident insurance contracts with much lower interest rates ("Umdeckungen"). In the sector of illness insurance for many years there was the problem of low budget tariffs especially for young people. High increases of these premiums after some years were inevitable, and affected costumers tried to change these tariffs. But even if there is the legal obligation to offer a different tariff by the same insurer, there are lots of cases in which insurers tried to prevent any change of tariff.	Noted
100.	Better Finance	Q4.	More specifically, what conflicts of interest are you aware of that are related to insurance distribution activities undertaken following the conclusion of a contract (that is to say, during the life of the contract or after it ends)? Please identify the type and source of the conflict and include any data available on the incidence and impact of the conflict. Typically, a distributor will continue to cash in inducements every year as fees on assets without providing any significant service to the life insured client. In France at least, it is very difficult to switch to another distributor/broker during the course of the contract.	Noted
101.	DUTCH	Q4.	"Lock in" of consumers for the lifetime of contracts that are commission	Noted

	ASSOCIATION OF INSURERS		based while there are better (and fee based) products available on the Dutch market.	
102.	Dutch Investors' Association (VEB)	Q4.	More specifically, what conflicts of interest are you aware of that are related to insurance distribution activities undertaken following the conclusion of a contract (that is to say, during the life of the contract or after it ends)? Please identify the type and source of the conflict and include any data available on the incidence and impact of the conflict. Typically, a distributor will continue to cash in inducements every year as fees on assets without providing any significant service to the life insured client. In France at least, it is very difficult to switch to another distributor/broker during the course of the contract.	Noted
103.	EIOPA Insurance and Reinsurance Stakeholder Group	Q4.	Excessive switching of funds or markets to generate fee/commission income where no underlying justification in customer need is apparent.	Noted
104.	German Insurance Association	Q4.	During the term of a life insurance contract particular conflicts of interest cannot 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.	Noted

105.	Insurance Europe	Q4.	The conflicts of interest identified by EIOPA in the discussion paper are already captured by Article 21 of the MiFID1 implementing directive. This article is high-level enough to capture any potential conflicts of interest related to insurance-based investment products.	Noted
106.	Polish Insurance Ombudsman	Q4.	The following conflict of interest have been identified in Poland: - The distributor's interest in the insurance contract - Intermediaries who fulfil functions for third parties - Selling insurance products in association with the supply of other products - Contingent commissions, profit shares, or volume over-riders - Soft commissions - Remuneration linked to sales-volumes	Noted
107.	AILO	Q5.	No, they are sufficient to cover all the types of conflict situations our members have encountered. We also consider that the wording of Article 21 itself (with any necessary amendment to the wording to make it specific to insurance distribution) is sufficiently clear to not require any form of list of examples within the legislation. However, if a list is deemed appropriate then we would have concern with situations per se where intermediaries are actively involved in the design of an insurance product and are the main distributor. They can add value for the customer through their knowledge and experience and assist the insurer in better identification of a target market.	Noted EIOPA disagrees and believes that the involvement of intermediaries in the management of products may cause conflicts of interests.

108.	Allianz SE	Q5.	If there would be specific types of conflicts of interest for insurance intermediaries, they should be added. We are however not aware of any such types of conflict of interest (see also answers to Q3 and Q6).	Noted
109.	ANACOFI	Q5.	ENG It seems to us that it should be added the case in which the intermediary is a broker and also works within a company which makes products. FR Il nous semble que devrait être ajouté le cas dans lequel l'intermédiaire est courtier et travaille également au sein d'une société qui fabrique les produits.	Noted
110.	ANASF	Q5.	Generally, we agree that specific types of conflicts of interest for insurance distribution should be added to the basic structure of Article 21 of the MiFID Implementing Directive. Accordingly, further instances in the insurance sector may be drawn from the documents mentioned in the Discussion Paper (namely, the 3L3 report and the CEIOPS advice on IMD2). We consider that the most relevant instances to be included should refer to: ☐ personal ties; ☐ tying and bundling practices; ☐ contingent commissions, profit shares and overrides leading intermediaries to act in their own interest rather than that of	Noted. EIOPA thinks that most situations mentioned in the 3L3 report and the CEIOPS advice on IMD2 are already covered under letters (a) – (e) because of their broad wording (e.g. letter (a) covers a. o. commissions, profit shares and other types of financial

			customers; ☐ remuneration linked to sales-volumes leading to sellers acting in their own interest rather than that of customers; ☐ minimum levels of sales being required from an intermediary in order to be accepted as an intermediary by the insurer. Conversely, we believe that the involvement of a distributor in the design of an insurance product is less relevant in terms of conflicts of interest potentially detrimental to customers, if specific requirements and procedures are enforced to protect investors. A mutual involvement of the two actors (insurance firm and intermediary) is in fact useful to better understand the investor's needs.	benefits) EIOPA disagrees and believes that the involvement of intermediaries in the management of products may cause conflict of interests even if it might be beneficial for the customers as the intermediary knows better their needs and investment objectives.
111.	Association of British Insurance (ABI)	Q5.	Article 21 introduces general EU principles on conflicts of interest and in turn captures the wide range of conflicts. However, including a non-exhaustive list could lead to inflexibilty and not sufficiently take into account the different markets and therefore the different conflicts of interest. In our view, national supervisors are the best placed to tackle specific types of conflicts of interest that arise at local level and within the firms that they currently supervise. In our view national supervisors are best placed to tackle national issues because of the very different nature of national markets at their current stage of developments. This	EIOPA support an approach which offers sufficient flexibility for national competent authorities and market participants to take into account of national specificities and different market

			is particularly important when tackling specific types of conflicts of interest that arise at a local level and within the firms that they currently supervise, For example, the UK regulator recently conducted a review of financial incentives within firms, working in direct cooperation and dialogue with firms. They published the conclusions of their review, which included good and poor practice, and as a result, many financial services firms have reviewed their financial incentive structures and in some cases replaced them. Maintaining Article 21 as it currently stands will allow flexibility for such innovative solutions to be tested for effectiveness at national level before being used to inspire EU-level rules. It will also ensure a higher degree of regulatory alignment.	structures.
112.	Assuralia	Q5.	Do you agree that specific types of conflicts of interest for insurance distribution should be added to the basic structure contained within Article 21, as outlined in the discussion above? If so, please clarify which types, and how they might be different from the types of conflict already covered by the criteria in Article 21. Response by Assuralia, the association of insurance undertakings in Belgium: We do not agree. The new article 13c of IMD (as amended by article 91 of MiFID2) requires insurance undertakings and intermediaries to identify all conflicts of interest that are potentially detrimental to a buyer of an insurance-based investment product.	

			In practice, conflicts of interest vary considerably between market participants, depending on many factors such as their size, their activities, whether they are part of a group, the type of insurance-based products, the type of intermediaries involved… The identification of conflicts of interest is therefore first and foremost the responsibility of each individual insurance undertaking and (non-tied) intermediary, requiring a case-by-case assessment by the local supervisory authority. It is therefore appropriate to formulate generic principles on the EU level and to leave the assessment of concrete situations to the local supervisory authorities. Article 21 of the MiFID1 Implementing Directive obliges market participants to give special consideration to at least ('minimum') five generically formulated situations when performing this identification exercise. In our view most of the conflicts of interest listed on the pages 15 to 17 of the Discussion Paper can be categorized under these situations. Any other conflict of interest that may arise is covered by the general obligation of article 13c IMD. There seems to be no compelling need for the Belgian market to adapt the criteria listed in article 21 of the MiFID1 Implementing Directive when drafting the delegated acts on conflicts of interest for insurance-based investment products (article 13c IMD).	EIOPA agrees. Noted. EIOPA shares this view.
113.	Austrian Insurance	Q5.	Do you agree that specific types of conflicts of interest for insurance	EIOPA will take into

	Association (VVO)		distribution should be added to the basic structure contained within Art. 21, as outlined in the discussion above? The text of Article 21 of Directive 2006/73/EC should be adjusted as follows for the purpose of Article 91 of Directive 2014/65/EU: (a) the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client; (a) the insurance intermediary is the irrevocable beneficiary of the insurance contract. Justification: Insurance undertakings and insurance intermediaries do not trade the customer's insurance premium like investment firms do with the client's investment. However, in the context of an insurance contract it is the beneficiary that has a financial gain. (b) the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome; (b) the insurance intermediary is distributing insurance products on an independent basis and does not occur civil liability on the basis of the choice of the best possible insurance cover whereby safeguarding the customer's interest may be restricted for objectively justifiable reasons	consideration the proposed adjustments when drafting its technical advice to the Commission. EIOPA shares the view that the existing rules of the Implementing Directive should be aligned thoroughly to address the specificities of the insurance sector. The redrafted letters (a), (b) and (e) seem too limited in scope. Regarding letter (c), it should also be considered, that insurance undertakings and insurance intermediaries have to act in accordance with the best interests of their customers (Art. 13d (1) IMD).

			to specific local markets or specific insurance products under the condition that this is explicitly disclosed towards the customer. Justification: The representative of the customer may be exposed to a conflict of interest in case he is not liable for choosing the best possible product (see also the Austrian Broker Act, § 28 para 3 Maklergesetz) (c) the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client; Justification: In contrast to the securities sector insurance undertakings have to protect their community of insured, i.e. existing customers, against bad new risks. The supervisory regime Solvency II requires insurers to control their claims ratio. Steering the conclusion of new insurance contracts is an essential instrument in this context. The European Commission clearly addressed this technical requirement in 2011 through its "Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (Test-Achats)" C(2011) 9497. According to the Guidelines it remains explicitly possible for insurance undertakings to influence their portfolio mix. (c) (new) the insurance undertaking or parent undertaking of an insurance undertaking has a controlling interest, direct or indirect, in the insurance intermediary.	

			Justification: Direct or indirect holdings representing more than 10 % of the voting rights or of the capital have to be disclosed under Article 12 of Directive 2002/92/EC (IMD 1). In the interest of a comprehensive approach this situation should be integrated into "IMD 1.5". (d) the firm or that person carries on the same business as the client; Justification: Packaged Retail and Insurance-Based Investment Products (PRIIPs) are sold by definition on a b2c basis and not on a b2b basis. (e) the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service. (e) the insurance intermediary acts for more than one insurance undertaking and receives or will receive from a person other than the customer an inducement in relation to a service provided to the customer, in the form of monies, goods or services, other than the standard commission or fee for that insurance service. Justification: The duty of care of the employer towards his employees and agents entails monies such as salaries and variable remuneration, goods such as office furniture and services such as administrative support and training. This does not represent a potential conflict of	

			interest.	
114.	BdV	Q5.	Life insurance contracts are not only saving contracts but contracts linked to basic risk coverage (mainly disability or death risks). This is true for insurance PRIPs, too. This is the reason why all requirements exposed above on transparency (versus information overload) and on simple products (versus complex products) have to be added here (mainly on participation of benefits and on actuarial parameters).	Noted
115.	Better Finance	Q5.	Do you agree that specific types of conflicts of interest for insurance distribution should be added to the basic structure contained within Article 21, as outlined in the discussion above? If so, please clarify which types, and how they might be different from the types of conflict already covered by the criteria in Article 21. Yes, they shall be added but on a purely informative basis, and by no means as a closed, "black list" categorization of prohibited practices.	Noted. As outlined above it does not seem reasonable from EIOPA's point of view to propose an exhaustive list of examples.
116.	BIPAR	Q5.	The basic structure of article 21 is generic enough to cover almost all conflict situations in the insurance based investment sector, once its terminology is adapted to the insurance sector. A too prescriptive approach would create a significant risk of losing the principle of proportionality (particularly in relation to small and micro enterprise intermediaries) which we are sure is not EIOPA's intent.	Noted

			It is important not to compare insurance intermediaries to other regulated professions such as lawyers or experts and to lead to artificial situations. What does for example 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. Also what is the meaning of "the firm or that person carries on the same business as the client"? (See also answer to question 2)	
117.	DUTCH ASSOCIATION OF INSURERS	Q5.	We think that the legal framework should be based on insurance distribution activities and not on investment and ancillary services. A definition of insurance distribution activities should be included. With respect to identifying types of conflicts of interest: the situations in article 21 are based upon investment and ancillary services such as investment research, proprietary trading, dealing for own account, corporate finance business, underwriting, advising on mergers and acquisitions. For example the production of investment research or proprietary trading are no insurance distribution activities. In our view article 21 needs to be revised as it is not adequate to just adapt certain "investment related terms" of article 21. Article 21(d) "the firm or that person carries on the same business as the client" is in our view not applicable to insurance distribution activities.	Noted. Art. 13a IMD states "These activities shall be referred to as insurance distribution activities". With regard to sentence 1 of Art. 13a IMD "these activities" comprise insurance mediation activities and direct sales. A definition of insurance mediation can be found in Art. 2

				of IMD 2002/92/EC. Noted
118.	Dutch Investors' Association (VEB)	Q5.	Do you agree that specific types of conflicts of interest for insurance distribution should be added to the basic structure contained within Article 21, as outlined in the discussion above? If so, please clarify which types, and how they might be different from the types of conflict already covered by the criteria in Article 21. Yes, they shall be added but on a purely informative basis, and by no means as a closed, "black list" categorization of prohibited practices.	Noted
119.	EIOPA Insurance and Reinsurance Stakeholder Group	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	EIOPA agrees that the wording of Article 21 is of abstract nature. Noted

			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.	EIOPA agrees that the rules should be adapted to insurance specificities. EIOPA agrees.
120.	European Federation of Financial Advisers and Fina	Q5.	Generally, we agree that specific types of conflicts of interest cases for insurance distribution should be added to the basic structure of Article 21 of the MiFID Implementing Directive. Accordingly, further instances in the insurance sector may be drawn from the documents mentioned in the Discussion Paper (namely, the 3L3 report and the CEIOPS advice on IMD2). We consider that the most relevant instances to be included should refer to personal ties and tying and bundling practices. However, abolishing override commission goes against all commercial enterprise principles - a million Euro businesses would expect to negotiate better terms than a ten thousand turnover business. This is not a conflict of interest, it is a supplier paying less and therefore earning	Noted. With regard to cross-selling practices (covering tying and bundling practices) it should be noted that ESMA (in cooperation with EIOPA and EBA) is asked to develop guidelines (pursuant to Art. 25 (11) of 2014/65/EU – MiIFID

			more from small inconsequential costly businesses. It would also lead to ongoing fragmentation in the industry as a break away one man band would earn as much as a large network which offers compliance and oversight out of its larger earnings thus self-regulating and protecting consumers. Moreover, minimum levels of sales being required from an intermediary in order to be accepted as an intermediary by the insurer is a prerequisite for many insurance companies to set up commercially viable business relationships. On the contrary, we believe that the involvement of a distributor in the design of an insurance product is less relevant in terms of conflicts of interest potentially detrimental to customers, if specific requirements and procedures are enforced to protect investors. A mutual involvement of the two actors (insurance firm and intermediary) is actually useful to better understand the investor's needs.	II) See EIOPA's comments on the involvement of the intermediary in the development of products, above.
121.	Fédération Française des Sociétés d'Assurances (	Q5.	The FFSA agrees with the statement that criteria for identifying conflicts of interest as listed in article 21 of the MIFID1 implementing directive should be adapted to insurance sector. it is not only a matter of replacing terms, for example "insurance distribution activities" instead of "investment services". The criteria should also fit the specificities of insurance distribution market. For example the criteria set out in article 21 e) does not take into account the duty of care of the insurance undertaking towards its exclusive agents. In France, insurance undertaking are fully responsible for their exclusive agents activities. In this context, services or goods such as training or computer equipement that help the exclusive agent to provide the client with a suitable advice should not be considered as potential conflicts of interest. However, it is important to stress that the exclusive agent cannot refrain from evading	Noted. From EIOPA's perspective duties under national civil law do not prevent conflicts of interest per se.

			his duty of advice. Nevertheless, the FFSA is concerned by the creation of a list of conflicts of interest as proposed in the present discussion paper. Indeed, a list, by nature, cannot cover the whole scope. The FFSA would strongly encourage EIOPA to elaborate principle-based guidelines in this matter. Moreover, examples of potential conflicts identified in L3L report or in CEIOPS advice should be open to debate and in any case checked from the perspective of the client interest. As for the second case refered to in 3L3 report , we strongly believe that offering a life insurance associated to a mortgage does not per se create a conflict of interests at least if the bank just proposes -and does not impose- the subscription of its own life insurance contract. It is the interest of the borrower and his family to be protected in case of insolvency. Moreover in this case, both the bank and the borrower have an interest in the outcome of the contract. In the same way, minimal level of sales to pursue relationship with an intermediary should not be considered as conflicts of interest per se. Indeed, in a competitive market, there is no interest in maintaining relationship with intermediaries who only sell a few products per year without making any effort to develop the client portfolio. It is natural that insurance undertakings pay close attention to the profitability of intermediaries for the sake of the mutuality of subscribers. It also helps to improve efficiency and quality of service provided to consumers and is often linked to both the economic decision-making and the solvency of the company. On the other hand, insurance undertakings in France are looking for competition and diversity so they have no reason to raise too much objectives if the relationship remains profitable.	EIOPA will publish Consultation Paper with more detailed proposals. EIOPA disagrees. EIOPA disagrees.

122.	German Insurance Association	Q5.	No. Any potential conflicts of interest that might be thought of can be subsumed under the situations set out in Article 21.	Noted
123.	Insurance Europe	Q5.	We are concerned that EIOPA's focus is to not only apply the types of conflicts of interest identified under the MiFID regime to all insurance-based investment products, but to also add further instances from the insurance sector on top of this by having a non-exhaustive list, instead of properly tailoring and adapting the text to insurance. We would seek confirmation from EIOPA that in adapting the MiFID1 conflicts of interest rules to insurance PRIPs, EIOPA will make every effort to remove unnecessary MiFID1 requirements, so that insurance firms in Member States where MiFID1 already applies do not suffer from additional regulation, but rather that the new EIOPA rules will introduce equivalent regulation instead that has negligible impact on firms that have already implemented MiFID1 for insurance-based investment products. It is also essential to bear in mind that IMD2 is still under discussion and may apply from late 2016. Therefore, it is important to ensure that IMD2 is fully aligned with IMD1.5 in relation to conflict of interest rules for insurance-based investment products. 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. There should be full consistency between Chapter IIIA of IMD1.5 and Chapter VII of IMD2 in order to maintain legal certainty and legitimate expectations. The conflicts of interest identified by EIOPA in the discussion paper are already captured by Article 21 of the MiFID1 implementing directive. We	EIOPA's intention is to adapt the current MiFID rules in a thorough manner to take account of the insurance sector specificities. Noted

			therefore do not support the creation of a non-exhaustive list of conflicts of interest, as we believe it is unnecessary.	EIOPA agrees.
124.	Nordic Financial Unions	Q5.	The performance measurements systems described under Q3 should be added to the basic structure within Article 21. What differs from for example Art 21 (a) is that performance measurement systems do not have to be directly linked to a financial gain of the employee in terms of commissions or variable pay. Instead the results of the measurements can have an impact on the employee's position at the company and the future salary negotiations. Performance measurements can increase the sales pressure and the stress levels of the employees. With personal sales goals for the employees they can feel pressured to sell more products that are not in the best interest of the customers.	In EIOPA's view performance measurements are one instance where conflicts of interest may arise. In general, EIOPA does not believe it appropriate to include specific examples in the abstract legal wording.
125.	Polish Insurance Ombudsman	Q5.	No. Basic structure of the Article 21 is clear and sufficient.	Noted
126.	Professional Association of Insurance Brokers	Q5.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	Noted
127.	UNI Europa Finance	Q5.	The performance measurement systems described under Q3 should be added to the basic structure within Article 21. What differs from e.g. Art 21 (a) is that performance measurement systems do not have to be directly linked to a financial gain for the employee in terms of commissions or variable pay. Instead the results of the measurements can have an impact on the employee's position in the company and for future salary negotiations. Performance measurements can increase the sales pressure and the stress levels of the employees. With personal	In EIOPA's view performance measurements are one instance where conflicts of interest may arise. In general, EIOPA does not believe it appropriate

			sales targets for the employees they can feel pressured to sell more products that are not in the best interest of customers.	to include specific examples in the implementing measures.
128.	Verbraucherzentrale Bundesverband e.V. (vzbv)	Q5.	Yes we agree, referring to the CEIOPS 3L3 paper again. However, in our view, it appears even more important to differentiate existing types of conflicts of interest with respect to the potential harm they may do to retail clients. We outlined above that remuneration/inducement-based conflicts of interest should have an outstanding position in any insurance-specific redraft of Art. 21 Mifid 1 Implementing Directive. However, this outstanding position must not be restricted to the IMD Level 2 but should simultaneously be part of the redraft of the Art. 21 Mifid Implementing Directive currently underway. We thus would like to encourage EIOPA to synchronize with ESMA's effort to account for the specific role that remuneration/inducement-based conflicts of interest play for retail investor protection. Beyond the differentiation of types of conflicts of interest with respect to the potential harm they may do to retail clients, we suggest to explicitly amend Art. 21 by the following types of conflicts of interest. - Tying and bundling practices - Sales targets and remuneration linked to sales volumes - Soft commissions - Post-point of sale and contingent commissions	Noted. EIOPA considers to address conflicts of interest which arise from third party payments / inducements, separately from the general rules. Noted
129.	AILO	Q6.	Art 21(a) should include the words "…a financial gain, other than the standard commission or fee for the service…"We do not believe that	EIOPA thinks that the limitation "other than

			Article 21(d) has relevance to insurance distribution.	the standard commission or fee for the service" entails an approach which is difficult to apply in practice as it is unclear which commissions / fees are market standard.
130.	Allianz SE	Q6.	Generally, although worded very broadly the criteria of Art. 21 MiFID Implementing Directive (2006/73/EC) are obviously designed to address issues arising for capital market-related companies and their specific business. Therefore, while using the MiFID wording in many cases would not directly cause much harm, it is sometimes difficult to find relevant practical examples in application for insurance PRIIPs. In addition, there are some instances, where a missing fit with the insurance business may increase ambiguity or even give rise to (unintended) misinterpretation. It therefore seems to be clearly preferable to adapt the wording somewhat for insurance distribution. Specific proposals: Deletion: (a) the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client; Alternative: (a) the distributor (intermediary or insurer) is the beneficiary of the insurance contract.	EIOPA acknowledges that the situation underlying the proposed redrafted letter (a) may create a conflict of interest. Nevertheless, the proposed wording of letter (a) seems too limited, from EIOPA's point of view, as there are other instances where the person aims to make a financial gain. Regarding letter b: statement is noted; the need for further clarification will be assessed.

			Rationale: The original wording primarily seems to target conflict of interests arising from trading activities in brokerage and/or proprietary trading of securities companies. Insurance PRIIP providers do not engage these kind of trading activities. On the other hand, there are potential conflicts of interest which may arise from the distributor (e.g. a distributing bank) being a possible beneficiary of the contract (e.g. in an insurance PRIIPs contract with a PPI component that is used reduce the banks´counterparty risk for a mortgage). (b) the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome; Remark: Wording is very open-ended and unclear: On the one hand, this could cover kick-back payments (which could cause conflicts of interest), on the other hand, it could target conflicts of interest for certain trading activities (e.g. proprietary trading of investment banks / brokerage firms). This latter protection is not needed for insurance PRIIPs due to the different setup of the business and the prudent person principle under Solvency II, which restricts short termism and overactive trading for insurance investements. (also see remarks in General Comment) Deletion: (c) the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client; Rationale: generally, for the provision of insurance PRIIPs the product provider does not match opposing orders and therefore typically does not face any directly opposing interests of its customers (e.g. as in the case of a brokerage firm, potentially matching buy and sell orders of	Regarding letter c and d: Statements are noted. Regarding letter e: EIOPA agrees.

			customers, thus being exposed to certain conflicts of interest). In addition, there are no competing interests of customers in the issuance or allocation of insurance PRIIPs (as may be the case in the allocation of stocks in an initial or secondary public offering). Furthermore, if taken literally, this provision could be construed to constrain the proper underwriting to minimize losses for the overall benefit of the community of the insured by the insurer which is explicitly required by Solvency II and other prudential regulation. Such unintended interpretation obviously needs to be avoided. Deletion: (d) the firm or that person carries on the same business as the client; Rationale: The provision is understandable in the context of competing securities firms, but is not applicable in case of distribution of retail products (such as insurance PRIIPs). (e) the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service. Remark: Generally analogous application, should be adapted to reflect overall wording (e.g. use of "customer" instead of "client")	
131.	ANACOFI	Q6.	ENG We have nothing specific to add. It would be good, however, that the EIOPA supplies a practical guideline.	Noted

			FR Nous n'avons rien de spécifique à ajouter. Il serait bon, cependant, que l'EIOPA fournisse un guideline pratique.	
132.	Association of British Insurance (ABI)	Q6.	As mentioned in Question 5, we feel that Article 21 is broad enough to capture the wide range of conflicts of interest, while at the same time being flexible enough to support the on-going work by national supervisors. Most – if not all – of the potential conflicts of interest identified by CEIOPS would fall under one or more of the categories listed in Article 21.	Noted
133.	Austrian Insurance Association (VVO)	Q6.	Are there any other adjustments that might need to be made to the criteria in Article 21 to clarify there application? Please see answer to question 5.	Noted
134.	BdV	Q6.	As said above PRIIPs are insurance contracts, not just saving contracts. Therefore customers need a comprehensive analysis of their personal and professional risk coverage. Any additional insurance should fill a possible gap in the risk coverage, the premiums of the contract should be appropriate, customers have to get value for money (best advice, not quick sale).	Noted
135.	Better Finance	Q6.	Are there any other adjustments that might need to be made to the criteria in Article 21 to clarify their application? Where you believe an adjustment is necessary to clarify the application of the criteria, please	Noted

			explain the adjustment you propose. N/A	
136.	BIPAR	Q6.	As already mentioned above, we regret the rather one sided and "silo" approach adopted in the discussion paper. 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 to the detriment of the customer. The conflict situation can, from a conflict of interest perspective, not seem to be beneficial for the client at first glance, but overall it may offer a solution which in competitive terms may be the best available, when analysed. For example in the list of examples in the 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" is qualified as being potentially a conflict of interest. The intermediary may however have designed a product that is the most suitable for the client and is likely to have derived their views that led to the creation of the proposition following feedback from customers, as well as from their own observations of gaps in the market.	From EIOPA's perspective, it is most probable that conflicts of interest exist if an intermediary works for both sides. Disclosure may be a way to address this conflict. Noted
137.	DUTCH ASSOCIATION OF INSURERS	Q6.	Please see Q5	Noted
138.	Dutch Investors' Association (VEB)	Q6.	Are there any other adjustments that might need to be made to the criteria in Article 21 to clarify their application? Where you believe an	Noted

			adjustment is necessary to clarify the application of the criteria, please explain the adjustment you propose. N/A	
139.	EIOPA Insurance and Reinsurance Stakeholder Group	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.	See EIOPA's comment in line 145.
140.	European Federation of Financial Advisers and Fina	Q6.	We have nothing specific to add. It would be good, however, that EIOPA supplies a practical guideline.	Noted
141.	Fédération Française des Sociétés d'Assurances	Q6.	Article 21 of the MIFID1 implementing directive should be adapted to insurance sector. it is not only a matter of replacing terms, for example "insurance distribution activities" instead of "investment services". The criteria sould also fit the specificities of insurance distribution market. It must be kept in mind that distribution structures of financial instruments	EIOPA aims at a thorough alignment of Art. 21 with the insurance sector specificities. A more

			market under MIFID are quite different from that of insurance market under IMD. The former are mostly based on internal distribution eg distribution by employees of big entities, while the latter mostly rely on external partners of different sizes. Moreover, client of investment firms may be legal person while life insurance products are sold to natural person. A copy/paste of MIFID1 implementing directive provisions would thus do not fit with insurance distribution as these provisions have been created with financial instruments market in mind.	detailed proposal will be presented in the Consultation Paper (to be published soon).
142.	German Insurance Association	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. 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	It should be considered that the new IMD provisions require insurance undertakings and insurance intermediaries to identify all possible conflicts of interest, not only those which potentially lead to harm to investors (see the broad wording of Art. 13c (1) IMD). EIOPA agrees.

			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.	
143.	Insurance Europe	Q6.	We would support an approach that introduces measures that are as close as possible to the MiFID1 implementing directive for conflicts of interest associated with insurance PRIPs, with an appropriate adaptation for issues specific to insurance. This should not however be understood as support for the application of MiFID2 Level 2 measures, which have yet to be drafted, given the reference in the mandate to ensuring that EIOPA's advice should be in line with such provisions as much as possible. It is not possible at this stage to comment on rules that have still to be developed. EIOPA notes in its discussion paper that certain of the terms in the MiFID implementing directive would need to be adapted to apply to insurance distribution. It is crucial that any measures dealing with conflicts of interest are appropriately adapted to insurance specificities. However, it may not be sufficient to simply replace any references to 'investment services' with 'insurance distribution activities'. The measures introduced in the MiFID implementing directive have been created with investment services in mind. For example, we do not see how the criteria referred to in Article 21(d) of the MIFID1 implementing directive could apply to insurance distribution activity.	Noted
144.	Polish Insurance Ombudsman	Q6.	No. Basic structure of the Article 21 is clear and sufficient.	Noted
145.	Professional Association of Insurance Brokers	Q6.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	Noted

146.	Verbraucherzentrale Bundesverband e.V. (vzbv)	Q6.	Yes. Article 21 (e) should be adjusted to include all forms of commissions and not only those that go beyond standard commissions. A distributional channel based on commissions (monetary or non-monetary) is inherently prone to conflicts of interest. In its current form, Article 21 (e) assumes that conflicts of interest (e.g. to sell unsuitable products for reasons of own monetary interest) arise only when inducements are higher than a product specific base-inducement. This is misleading as it only solves the incentive to sell a particular product. The incentive to sell any product remains. In more general terms, inducements are not compatible with investment advice but are a key characteristic of sales-oriented distributional channels.	Noted
147.	AILO	Q7.	It is essential for judgment of such criteria to be undertaken in a proportionate manner so that avoidance and management of potentials conflict takes account of the likelihood of material detriment to the customer. For example, provision by an insurer of profile modelling tools to a distributor would seem on balance to enable provision of a higher standard of service to the customer. Equally there needs to be so far as practical a level playing field between provision of training and other tools by direct insurers to their agents and tied agents and the ability of insurers to support improvement of knowledge and skills of intermediaries who are independent of insurers.	Noted
148.	Allianz SE	Q7.	No, see General Comment and remarks to Q6.	Noted
149.	ANACOFI	Q7.		

150.	Austrian Insurance Association (VVO)	Q7.	Do you have any comments on the assessment of possible criteria for identifying types of conflicts of interest set out above? Please see answer to question 5.	Noted
151.	BdV	Q7.	The German Federal Court of Justice (Bundesgerichtshof-BGH) published only recently a new judgment on the mandatory disclosure on so-called internal commissions of banks (BGH: XI ZR 147/12). This judgment is a supplement to the already existing jurisdiction on kick-backs. Following the requirement of full disclosure of all costs and payments mechanisms ("flächendeckendes Transparenzgebot" following to the BGH) this jurisdiction should be fully applied to insurance PRIPs.	Noted
152.	Better Finance	Q7.	Do you have any other comments on the assessment of possible criteria for identifying types of conflicts of interest set out above? N/A	
153.	BIPAR	Q7.	It seems the obvious intent in MIFID 1 Article 13(3), for the focus to be on potential conflicts that give rise to a material risk of damage to the interests of clients. It is BIPAR's belief that the EIOPA technical advice to the Commission should encourage the Commission to restrict its focus to this area (leaving the rest to Member States to deal with under the principle of subsidiarity). It is important to note that there exists various channels of distribution of insurance products and conflicts of interest may be different	Noted Noted

			depending on these channels. It should also be noted that because of national specificities, the same types of conflicts of interest do not arise in each national market in the EU. It is therefore not possible to regulate every possible type of conflict of interest at EU level. However we believe that Article 21 of MIFID I level II establishes principles that are general enough to cover almost all conflict situations in the insurance based investment sector, allowing national supervisors to ensure that firms established in their territories are effectively managing conflicts of interest and deal with the specific types of conflicts of interest that arise at local level. Also, in order to avoid too many granular rules at European level and to be able to take into consideration national characteristics or distribution structures, differences between conflicts of interest between the different channels of distribution should be addressed at national and firm level.	Noted
154.	Dutch Investors' Association (VEB)	Q7.	Do you have any other comments on the assessment of possible criteria for identifying types of conflicts of interest set out above? N/A	
155.	EIOPA Insurance and Reinsurance Stakeholder Group	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	Noted

			selling (employees) or exclusive agent channel (tied agents).	
156.	Fédération Française des Sociétés d'Assurances	Q7.	From our point of view, the assessment of possible criteria for identifying conflicts of interest should take into account the information requirements under IMD1 and : - be principle based to allow adaptations to Member states' own regulation and distribution market structures - take into account the differences between distribution channels - be consistent with the insurance activity and distribution models - allow a case by case examination of the potential detrimentral effect on the consumers.	Noted
157.	German Insurance Association	Q7.	No further comments.	
158.	Insurance Europe	Q7.	Insurance Europe believes that firms should be responsible for both actively identifying and managing any potential conflicts of interest which might have a detrimental impact on their customers. However, we believe that any new rules on conflicts of interest should be of clear and demonstrable benefit to consumers. In this respect, national regulation on consumer protection should also 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, who are in regular contact with firms, 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, both current and future.	Noted.

			There are a range of different types of potential conflicts of interest and not all of them can be dealt with in the same way. Not all conflicts of interest have the potential of causing detriment directly to consumers, and EIOPA should focus on those that are demonstrated as being detrimental to consumers, while also bearing in mind the extent of potential damage.	Noted
			As mentioned in the discussion paper, there could be several types of potential conflicts of interest. These conflicts of interest, however, differ between financial services industry sectors and between Member States, given the different distribution structures across Member States – particularly for insurance. In our view therefore, possible solutions for potential conflicts of interest should also be dealt with at the level of the Member States. In addition, it should be borne in mind that in the insurance sector conflicts of interest do not arise to the same extent in 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 are different to the potential conflicts of interest that might arise in the direct selling or exclusive/tied agent channel and any future rules must recognise this fact.	Noted
			It is not possible to specify every conceivable type of conflict of interest at EU level, nor do the same types of conflicts of interest arise in each market. Rather the focus should be more on establishing general principles at EU level and leaving it to national supervisors to tackle the specific types of conflicts of interest that arise at local level. In any case, the conflicts of interest identified by EIOPA in the discussion paper are already captured by Article 21 of the MiFID1 implementing directive. We therefore do not support the creation of a non-exhaustive list of conflicts	Noted

			of interest, as we believe it is unnecessary.	
159.	Polish Insurance Ombudsman	Q7.	None.	Noted
160.	Professional Association of Insurance Brokers	Q7.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	Noted
161.	ACA	Q8.	We do not agree to additional measures for sole traders. Any segregation would be difficult to achieve. The fact that the intermediary is a sole trader should be disclosed to the client and nothing should be added.	Noted
162.	AILO	Q8.	• Irrespective of the size of the intermediary, no one should be excused from having in place a written policy for identification, management and where appropriate disclosure of conflicts of interest. However again proportionality and awareness of monetary and time costs for the distributor are essential. Perhaps an Annual Certification of sales people by their employer, and annual certification of the principal to their Regulator should be a matter of course in relation to Conflicts of Interest? Regulators in turn should be able at inspection to assess – Is a policy in place? Have any conflicts of interest arisen during the year? How have these been handled? Does the Principal or employer believe that all advice given during the year has been given 'in the proper interests' of their customers? Possibly the rationale for a sale by review of a "reasons why" letter would indicate the attention paid to the demands and needs of the customer? • It is important to put a strong 'tool' in place for Sole Traders & Similar to rely on when negotiating with their business partners, as they are generally already in a weaker position due to their size – a proper	EIOPA agrees that small intermediaries should not be exempted from the general obligations and points out that the principle of proportionality applies. Noted

			framework gives them a reference point when handling potential excesses.	
163.	Allianz SE	Q8.	Also for sole traders and similar entities, the best results to address potential conflicts of interest can be expected from an outcome-oriented and principles-driven approach (also see General Comment). Main reason is the high diversity of products and distribution formats (including size of the distributor) compared with other sectors. Many risks for customers arising from conflicts of interest are already effectively avoided or managed through diverse sets of measures (which may differ widely, e.g. by product or customer segment, distributor size, Member State) and the fiduciary obligations owed by the distributor to the customer in the respective Member State's legal environment. While it is correct, that sole distributors may not be able to take certain measures (such as functional separation) it is not clear, whether they would need to do so. Which measures are adequate should depend on the specificities of the situation, including the intensity of the conflicts of interests and the effectiveness of alternative effective measures. The goal always should be the effective protection of the customer's valid interests. From this perspective it would therefore be misguided to (a) issue blanket exemptions for sole traders and similar entities just because they cannot comply with a rule (even if that leaves the customer at risk) or (b) take an overly formalistic position in the development and application of rules to address conflicts of interest that unnecessarily penalize or	Noted. EIOPA agrees. EIOPA agrees.

			even eliminate sole traders. In summary, the same principles should be applied to sole traders and similar entities and they should be judged against the same objectives, but this does not necessarily mean that they need to implement the same measures to achieve effectiveness.	
164.	ANACOFI	Q8.	ENG It is important to maintain the proportionality of the measures. We notice that there are fewer problems with the small intermediaries because they pay more attention to their limited number of customers. The problem met in this case is the continuity of the service. We wish a no ban and to make bear the load of responsibility to the only manager or to one of the managers. There is no independence but the legal liability bears on the manager. As regards the sellers, the management of conflicts of interests will be governed by their internal rules of their group . That is why, a transparency on the legal links is essential. FR Il est important de maintenir la proportionnalité des mesures. Nous constatons qu'il y a moins de problèmes avec les petits intermédiaires car ils font plus attention à avoir un nombre limité de clients. Le problème rencontré dans ce cas est la continuité du service. Nous souhaitons une non interdiction et faire porter la charge sur le seul dirigeant ou l'un des dirigeants. Il n'y a pas d'indépendance mais la responsabilité légale repose sur le dirigeant.	Noted

			S'agissant des vendeurs, la gestion des conflits d'intérêt sera régie par les règles du groupe s'ils sont rattachés. C'est pourquoi, une transparence sur les liens juridiques est primordiale.	
165.	ANASF	Q8.	Actually, we believe that a general clarification is needed, considering that a proportionality principle should apply. Accordingly, rather than providing for an additional and specific regime for sole traders and similar small entities, it would be better to specify the dimensional scope of relevant measures. In other words, a careful consideration is required to avoid excessive administrative and operational burdens and costs to the provision of insurance distribution activities by sole traders and other small intermediaries.	From EIOPA's perspective, it is not appropriate to specify the proportionality principle in the implementing measures. The principle is already laid down in the legal wording of the revised IMD.
166.	Association of British Insurance (ABI)	Q8.	In our view there is no need for specific and additional measures for SMEs and sole traders. We believe that national supervisors are best placed to assess proportionality, since they will already be closely monitoring the risk management approach in the firms they supervise.	Noted
167.	Austrian Insurance Association (VVO)	Q8.	Do you agree that additional measures might be necessary for clarifying how sole traders and similar entities might manage conflicts of interest, where independence of function is not feasible? Proportionality is key for providing a workable solution to one man businesses.	Noted

168.	BdV	Q8.	One result of the debates held at the EIOPA conference on conflicts of interest in Frankfurt at July 11th was that representatives of small or sole insurance intermediaries expressed clearly their fears about this question. They fear that if the measures listed in Article 22 of MIFID will have to be fully implemented, the number of small and sole insurance intermediaries will strongly be reduced. This might even be in the interest of some big insurers which strive to have only a few but powerful distribution channels. Simultaneously the number of medium sized insurers, which use only independent brokers as their distribution channel, will surely be reduced as well. This prognosis may fulfill. But for the purpose of consumer protection the commitment of best advice and of fair price must preserve the unquestionable priority. There is a high risk of harm to the interests of consumers, if the measures of managing conflicts of interest are softened for any kind of intermediaries. Just the question, how to draw the quantitative limit of small intermediaries which will not have to follow these measures, will always be considered as arbitrarly. A solution could emerge, if complex insurance PRIPS are restricted to be sold only to experienced customers. Then even small intermediaries will probably have good business chances as distributors for particular customer groups ("Nischenanbieter") through specialization for those complex products.	EIOPA would like to point out that the principle of proportionality applies with regard to the questions which measures should be taken to identify, manage and solve conflicts of interests. Nevertheless the application of the principle must not lead to a reduced customer protection.
169.	Better Finance	Q8.	Do you agree that additional measures might be necessary for clarifying how sole traders and similar entities might manage conflicts of interest,	-

			where independence of functions is not feasible? If so, please provide detail on the possible measures, explain why you believe these measures are appropriate, and set out how you believe these measures will effectively manage the conflicts of interest that might arise for sole traders and other similar entities. N/A	
170.	BIPAR	Q8.	For insurance based investment products we agree that the approach outlined in the discussion paper is good guidance for all investment related operators in relation to conflicts of interest: • To design a policy in writing, to implement it and maintain it. Policy should identify the types and circumstances of conflicts and the procedures to be followed • Procedures between « relevant persons » in terms of preventing certain information flows, separate supervision etc… • Disclosure of the conflict to the client • (art 23) keeping a record of situations of conflict of interest. • Additional organisational requirements in case of investment research • Inducements rules (if from third party : transparency, enhacing the quality) As a principal sole traders and bigger firms both should be required	Noted EIOPA agrees.

			where practicable to take the same steps. However this is where proportionality will have to be taken into account. For instance both a sole trader and a large intermediary must have conflict of interest policies, they both must manage mitigate and disclose conflicts of interest. The issue is the detail and what one can be reasonably expected of both parties, of what is appropriate in the circumstances. An example might be the ability of an institution to create Chinese walls where it would not be possible for a sole trader to do so.	
			As explained in the general comments, most insurance intermediaries are medium, smaller or micro enterprises. We therefore do believe that it is important that their nature and 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, further to EIOPA advice. BIPAR would therefore welcome EIOPA including specific guidance to the Commission to specifically recognise the concept of proportionality in its drafting of rules.	Noted
			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.	Noted
			Having implemented the IMD I and its article 12 in particular, most Member States today address the management of "Conflict of Interest" by insurance intermediaries. Flexibility should be left to Member States	Noted

			as to how the principle of proportionality is dealt with.	
171.	DUTCH ASSOCIATION OF INSURERS	Q7.	The nature of the distribution channel should be taken into account as conflicts of interest may vary depending on the distribution channel (independent, tied, multi-tied, price comparison website, direct, etc.). If a distribution channel is independent then it can only be remunated by the consumer and not by the product provider. The role of the distribution channel should always be made clear in advance to the consumer.	Noted
172.	Dutch Investors' Association (VEB)	Q8.	Do you agree that additional measures might be necessary for clarifying how sole traders and similar entities might manage conflicts of interest, where independence of functions is not feasible? If so, please provide detail on the possible measures, explain why you believe these measures are appropriate, and set out how you believe these measures will effectively manage the conflicts of interest that might arise for sole traders and other similar entities. N/A	-
173.	EIOPA Insurance and Reinsurance Stakeholder Group	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	Noted

			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.	Noted
			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.	Noted
			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.	Noted
			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.	Noted
			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	Noted

			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.	Noted
174.	European Federation of Financial Advisers and Fina	Q8.	We believe that a general clarification is needed considering that the proportionality principle should apply. Accordingly, rather than providing for an additional and specific regime for sole traders and similar small entities, it would be better to specify the dimensional scope of relevant measures. In other words, a careful consideration is required to avoid excessive administrative and operational burdens and costs to the provision of insurance distribution activities by sole traders and other small intermediaries.	Noted
175.	Fédération Française des Sociétés d'Assurances	Q8.	Concerning procedures to identify, prevent, manage or disclose conflicts of interest, the FFSA considers it is absolutely necessary to apply the principle of proportionality. Proportionality is necessary not only for intermediaries who are natural person but also for small and medium sized intermediaries.	The principle of proportionality is a general principle of administrative law. EIOPA plans to issue further guidance to clarify the practical application of the new rules at a later stage.

176.	German Insurance Association	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 conflicts of interest settled by means of the external complaints-handling procedure through the national ombudsmen within the meaning of Article 13 of IMD1. 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.	Noted From EIOPA's point of view intermediaries have to fulfil the organisational requirements on conflicts of interest. This applies to independent and tied intermediaries.
177.	Insurance Europe	Q8.	We agree with the recognition of the need to take into account the principle of proportionality. Many distributors of insurance products are small and medium sized enterprises and in some cases are run by one self-employed individual, who does not have a separate person available to carry out different activities, so any measures developed should not give rise to an onerous regulatory burden for SMEs. National regulators are best placed to assess proportionality, as they will already be closely monitoring the risk management approach in the firms they supervise. They will also be better placed to take account of the extensive variation in legal forms and in corporate governance regimes and practices. In many Member States, SMEs are involved in the distribution of complex products. A lot of them are managed by one person. So a two person management requirement, as introduced in asset management in order	Noted

			to manage conflicts of interest, would put a heavy burden on the market and force SMEs to cooperate with other SMEs or just stop their business.	
178.	Polish Insurance Ombudsman	Q8.	No. This clarification is not needed as all the professionals and also supervision authorities will be able to access if the company manages conflicts of interests correctly. Also, the conflicts of interest should be avoided in the beginning not managed when they appear.	Noted
179.	Professional Association of Insurance Brokers	Q8.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	Noted
180.	ACA	Q9.	We do not agree and we think that no additional provisions are necessary. The base is an adequate organsation of the insurer. Going beyond in detail is not necessary.	Noted
181.	AILO	Q9.	Yes, disclosure of the normal fee or fact of remuneration by commission (or amount where requested by the customer or regulatory requirement) for the service should be disclosed to the customer including whether it includes an ongoing service and cost. Other payments or benefits should be fully disclosed for example a contingent commission - perhaps this could best be achieved by a common form document "sources of possible conflict of interest" produced pre sale by the distributor and so wider than an inducement for the particular sale but indicating all arrangements in place that could have a bearing on advice given and better enable a customer to make an informed decision. For example disclosure to the customer that by taking out a recommended policy the intermediary will have qualified for a contingent commission payment should be seen as further enabling the customer to make an informed decision taking account of the possible effect of the inducement on the assessment of his demands and needs and advice given. It is also	EIOPA shares the view that a level playing field between the different distribution models is important. The question is in which manner this can/should be achieved.

			essential so far as possible to ensure a level playing field between distribution channels in particular so that it is clear to customers that direct sales persons of an insurer are remunerated for the activity.	
182.	Allianz SE	Q9.	It would be helpful to receive further general guidance how to manage conflicts of interest with respect to third party payments. However, as in the case of sole traders (see answer to Q8) it is important to achieve the objectives of customer protections including all additional or alternative measures. It would therefore be misguided to (a) focus or even reduce conflict-of-interest management to a discussion about third-party payments. All remuneration systems may contain some conflicts of interest, which should be adequately addressed. As an example, fee-based independent advisors may also face certain conflicts of interest, namely to extend duration or frequency of advisory services or advise into complex products (depending on the fee structure). Also, the overall setup, i.e. affiliations among parties involved, may play an important part. OR (b) take an overly narrow view to measures to mitigate potential conflicts of interest by focusing solely on the remuneration part. There are many potential measures to address these issues (as indicated in the General Comment and the answer to Q2). While in a particular situation it is often possible to determine whether certain conflicts of interest are addressed effectively, it is very difficult to	Noted

			come up with a comprehensive formulaic approach or case-by-case enumeration of potential issues and solutions. The responsibility to find effective solutions should follow the general principles of product originator responsibility versus distributor responsibility (see also General Comment).	
183.	ANACOFI	Q9.	ENG By the transparency, we answer the problem connected to the remunerations by disclosing a clear information: perception by the professional of a remuneration paid by a third party or if the professional is legally in the service of the third party or of the customer. The French solution is self sufficient: transparency and information about the remunerations ex ante and ex comment as well as at the time of the conclusion of the contract. FR Par la transparence, on répond au problème liée aux rémunérations en transmettant une information claire : perception par le professionnel d'une rémunération versée par un tiers ou si le professionnel est juridiquement au service du tiers ou du client. La solution française est suffisante : transparence et information sur les rémunérations ex ante et ex post ainsi qu'au moment de la conclusion du contrat.	Noted

184.	ANASF	Q9.	Yes, we do. We consider that such a clarification is needed in order to ensure a level playing field between insurance and financial activities. Particularly, possible measures may be inspired to the rules set by relevant Directives relating to financial activities (i.e. CRD III, CRD IV and MiFID II) concerning disclosure staff remuneration and inducements and conflicts of interests arising out of them.	Noted
185.	Association des consommateurs Test-Achats / Test-A	Q9.	In our view, it is necessary to take other aspects in account before focusing on the management of conflict of interest arising out of third party payments. The most important condition for third party payments to be allowed is that they may not impair the duty to act in the best interests of the customer. They may not induce the intermediary to sell a product or a protection that is not really needed by the customer neither to sell a product that is not suitable to sht situation and the needs of the client. A lot of the commissions or remuneration mentioned on page 17 of the Consultation document do not pass successfully this test and should not be allowed. . The first duty is to avoid, then to reduce conflicts of interest. Managing them and disclosing them are clearly third rank and last resort measures to mitigate the impact of conflict of interest that cannot be avoided. Managing or disclosing third party payments should not allow such payments if they are of nature to impair the duty to act in accordance with the best interests of the customers.	EIOPA shares the view that the disclosure of third party payments does not relieve intermediaries to act in accordance with the best interests of their customers.
186.	Association of British Insurance (ABI)	Q9.	As with conflicts of interests, we believe that further clarification on third party payments should be dealt with at a national supervisor level. In the UK, there is a ban on third party payments for advised sales.	Noted. From EIOPA's view specific minimum requirements with

				regard to the management of conflicts of interest arising from third party payments should be introduced on an European level.
187.	Assuralia	Q9.	Do you agree that it is necessary to include a further clarification of how to manage conflicts of interest arising out of third party payments or benefits, commission payments or remuneration? If so, please provide detail on the possible measures and the circumstances in which they might apply, explain why you believe these measures are appropriate, and set out how you believe these measures will effectively manage the conflicts of interest that might arise due to inducements or commission arrangements. Response by Assuralia, the association of insurance undertakings in Belgium: A. On conflicts of interests Third party benefits and remuneration are an aspect that insurance undertakings and intermediaries need to take into account when complying with their general obligation to identify, manage and disclose conflicts of interest. To what extent a concrete and specific conflict of interest is potentially harmful for customers is an issue to be assessed on a case-by-case basis in the context of the general conflicts of interest policy of and the 'reasonable measures' taken by the insurance	Noted

			undertaking or the intermediary involved. Understanding the potential impact of a specific conflict of interest implies a thorough knowledge of the individual insurance undertakings and intermediaries themselves and the context they operate in. The national supervisory authorities are therefore best placed to supervise insurance undertakings and intermediaries when it comes to the identification, management and disclosure of conflicts of interest. We see no need at present to provide more detail and clarification on the EU level on how to manage conflicts of interest arising out of third party payments or benefits, commission payments or remuneration for insurance-based investment products. B. On inducements The Discussion Paper mentions the specific rules for inducements of article 26 of MiFID2. We see no reason to include specific rules on inducements in the EIOPA technical advice in preparation of delegated acts: - A political decision has been taken in MiFID2 not to copy the rules on inducements of article 24 (9) MiFID2 and article 26 MiFID1 Implementing Directive into IMD for the time being (art. 91 MiFID2). That discussion will take place in the context of IMD2. Introducing the criteria of article 26 indirectly into IMD by means of delegated acts for the general rule with regard to the identification, management and disclosure of conflicts of interest would go beyond the mandate given by the present MiFID2 Directive. - Article 91 of MiFID2 entrusts the European Commission with the task to develop delegated acts o to define the steps that insurance intermediaries or insurance undertakings might reasonably be expected to take to (1) identify, (2)	EIOPA disagrees. Conflicts of interest arising out of third parties are of specific importance and relevance justifying a more detailed and specific regulation. It should be noted that EIOPA has explicitly been invited by the Commission to address conflicts of interest in the context of third party payments.

			prevent, (3) manage and (4) disclose conflicts of interest in the context of insurance-based investment products; o to establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers in the context of insurance-based investment products. There seems to be no legal ground for the European Commission to propose specific delegated acts for rules on inducements for insurance-based investment products similar to article 24(9) MiFID2 or article 26 of the MiFID1 Implementing Directive. We therefore see no role for EIOPA to develop a technical advice for this particular issue.	
188.	Austrian Insurance Association (VVO)	Q9.	Do you agree that it is necessary to include a further clarification of how to manage conflicts of interest arising out of third party payments or benefits, commission payments or remuneration? Remuneration by third parties does not constitute per se a conflict of interest.	EIOPA disagrees.
189.	BdV	Q9.	Third party payments or benefits are one major source for mis-selling cases. Especially in Germany the insurance distribution still depends nearly completely on "hidden" commissions. If commissions are not disclosed, the consumers are taken to believe that the sales activity is for free. Of course this would only be the case, if consumers do not conclude any contract. Under these circumstances it is evident, why distributors always try to sell any kind of contract, even if it is completely non-appropriate for the customers.	Noted

			Besides the disclosure of the benefits for the intermediary at the point of sale, additional benefits for other distributors linked to him on the upper hierarchy (like the director of the distribution company e.g.) should be included, too. Two conclusions should be drawn from the current situation: "hard" disclosure of any kind of third party payments and inducement related to insurance PRIPs has to be mandatory. The disclosure should not only include commissions for the pure sales activities, but for the long-term administrative activities, too. Otherwise there is the real danger that parts of the sales commissions will simply be transferred to administrative commissions by the insurers. This problem has not been solved recently in the German "Lebensversicherungs-Reformgesetz".	Noted EIOPA shares this view
190.	Better Finance	Q9.	Do you agree that it is necessary to include a further clarification of how to manage conflicts of interest arising out of third party payments or benefits, commission payments or remuneration? Conflicts of interests should be managed the same way as other substitutable retail investment products: full and quantified disclosure of inducements prior to the sale or subscription; non impairment of the primary duty of the distributor to serve the interests of the client. If so, please provide detail on the possible measures and the circumstances in which they might apply, explain why you believe these measures are appropriate, and set out how you believe these measures	Noted

			will effectively manage the conflicts of interest that might arise due to inducements or commission arrangements. N/A	
191.	BIPAR	Q9.	Disclosure can play an important role in tackling conflicts from commission payments or third party payments but we believe that it is not a panacea. The context of all sales must be taken into account as well as the context of the totality of the insurance mediation regulatory backdrop. 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. According to Article 13d of the IMD I as amended by Article 91 of MIFID II, insurance intermediaries have a professional and contractual duty to give advice in the best interest of their clients. Always alleging that remuneration issues create a conflict of interest to be dealt with in addition to the fulfillment of that duty, would undermine	Noted Noted Noted. From EIOPA's perspective additional requirements should be introduced, for the sake of consumer protection and for the purpose of a level playing field.

			that duty, create suspicion against the intermediaries and make the clients concentrate on remuneration at the expense of product, coverage and quality issues. We believe that for insurance based investments there is a need for full transparency of all costs including the commissions and remuneration, and this on a level playing field basis. BIPAR is of the opinion that every intermediary has the right to be fairly remunerated for his or her services. A pure fee-based market for example would exclude many people from access to any level of advice or assistance in their search for an appropriate insurance product, as has been the practical experience in Member States that have prohibited commission payment approaches. The prohibition of payment and remuneration by insurers would be an obstacle to free market principles of fair remuneration for services rendered. Indeed, it would become impossible for intermediaries to require insurers to pay intermediaries for the work they do on their behalf (and which is work that is done also in the interest of the client). The remuneration of intermediaries being in principle commission-based with the possibility to agree fees has been and continues to be a major contributing factor in the successful development of insurance markets all over the world. Any other situation would ignore the fact that the insurance intermediary typically renders services to both sides of the contract, the client and the insurance company: as with any commercial relationship both kinds of services have to be remunerated by the beneficiary. It would also deprive consumers from choice between	Noted EIOPA agrees. EIOPA' s intention is not to ban the commission based business model, but to set up specific requirements intermediaries have to fulfil when third party payments are accepted.

			business models.	
192.	BVI (the German fund association)	Q9.	We entirely agree with EIOPA that management of conflicts of interest associated with inducements should be subject to further regulatory clarification. As correctly pointed out in the Discussion Paper, commission payments and other inducements received or paid out by distributors may give rise to a variety of conflicts of interest which in turn may cause individual harm to clients purchasing insurance investment products. We also support the notion to treat the conditions for legitimacy of inducements laid down in Article 26 of the MiFID I Implementing Directive as a starting point for the EIOPA's regulatory work. Concurrently, however, we would like to encourage EIOPA to liaise closely with ESMA as regards the pending efforts on the implementation of the MiFID II requirements. Under MiFID II, the conditions formerly included in Article 26 of the Implementing Directive have been enshrined by the Level 1 text while remaining unchanged in substance (Cf. Article 24(9) of Directive 2014/65/EU (MiFID II)). Further implementing measures are foreseen in order to facilitate more consistent application of the already familiar criteria across the Member States. ESMA is currently consulting on the details of such implementing measures with the view of submitting its final advice to the Commission six months after the entry into force of MiFID II, i.e. before 3 January 2015 (Cf. Section 2.15 on page 118-125 of the ESMA Consultation Paper on MiFID II/MiFIR dd. 22 May 2014 (ESMA/2014/549)). In our view, the fact that EIOPA has been granted one additional month	Noted Noted Noted

			for its preparatory work on Level 2 implies the expectation of the EU legislator that the findings by ESMA on MiFID II will be taken into account in the EIOPA's final advice on possible implementing measures to the IMD. This expectation is backed by the clear request from the EU Commission to ensure regular consultations with ESMA as regards ESMA's work on its technical advice in terms of conflict of interest management. Further, the Commission's mandate specifies that "the EIOPA advice should be in line with the MiFID II Level 2 provisions as much as possible, in so far it is consistent with IMD 1.5" (Cf. Formal Request to EIOPA by the Commission as included in Annex 4 to the Discussion Paper, page 43). Therefore, we request EIOPA not limit its considerations regarding inducements to the MiFID I regime, but to take into regard the results of the discussions on implementation of the MiFID II requirements and to cooperate closely with ESMA in this regard. Such proceeding is necessary in order to fulfill the Commission's mandate and to effectively respond to the concerns associated with inducement payments as identified in the Discussion Paper.	Noted
193.	DUTCH ASSOCIATION OF INSURERS	Q8.	A proportional approach is necessary towards SMEs where it is not possible to implement and maintain a conflicts of interest policy by separation of functions. The MiFID 1 implementation in The Netherlands (in 2007) required SMEs (asset managers) to have a management of at least two (natural) persons. Such a mandatory requirement will not work in insurance distribution. Insurance intermediaries are often one man size companies. It would force these insurance SMEs to merge with another SME or	EIOPA acknowledges that a separation of functions would not always be feasible due to the size of the intermediary.

			simply to stop with the distribution of insurance based investment products. Besides a high level requirement to identify (potential) conflicts of interest, establish, implement and maintain a conflicts of interest policy no additional measures are required.	
194.	Dutch Investors' Association (VEB)	Q9.	Do you agree that it is necessary to include a further clarification of how to manage conflicts of interest arising out of third party payments or benefits, commission payments or remuneration? Conflicts of interests should be managed the same way as other substitutable retail investment products: full and quantified disclosure of inducements prior to the sale or subscription; non impairment of the primary duty of the distributor to serve the interests of the client. If so, please provide detail on the possible measures and the circumstances in which they might apply, explain why you believe these measures are appropriate, and set out how you believe these measures will effectively manage the conflicts of interest that might arise due to inducements or commission arrangements. N/A	-
195.	EIOPA Insurance and Reinsurance Stakeholder Group	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	Noted

			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.	EIOPA has explicitly been invited by the Commission to address conflicts of interest arising out of third party payments.
196.	European Federation of Financial Advisers and Fina	Q9.	Yes, we do. We consider that such a clarification is needed in order to ensure a level playing field between insurance and financial activities. Specifically, possible measures may be inspired to the rules set by relevant Directives relating to financial activities (i.e. CRD III, CRD IV and MiFID II) concerning disclosure of all costs and associated charges which must include the cost of advice and disclosure of conflicts of interests arising out of the remuneration structure.	Noted
197.	Fédération Française des Sociétés d'Assurances	Q9.	As EIOPA points it out, MIFID1 provisions on inducement are not mentioned in article 22 about conflicts of interest. Besides that, there is no equivalent provisions in IMD.5. Rules on remuneration by third party in MIFID2 and in recent ESMA consultation paper could in practice lead to a generalized commission	From a legal point of view EIOPA believes that Art. 13c IMD provides a legal basis for implementing measures addressing

			ban for the service of advice whatever independent or not. The FFSA sees strong concerns with this issue as it would mean in France, consumers will have to pay for advice while advice is a legal professional requirement at national level. Moreover, a recent study from Boston consulting group demontrates that the UK retail distribution review including the ban of commission triggered massive unintended effects. It caused the number of independent advisors to plummet (~25% drop in the number of intermediaries, and 60% of advisers expect greater use of restricted advice) and the cost of advice to rise. This also created an advice gap between well-off investors who know the value of advice and are ready to pay an increased price for it and the majority of others who have given up on advised sales because considered as too expensive. Over a third of advisers are focusing on higher value clients, with many setting a new minimum threshold of £150k investable assets, and non-advised investors in the UK have almost doubled from 2.6 million to 4.8 million. The FFSA is far from being convinced that this result is of clear benefit for consumers and competition. Moreover, we consider that remuneration disclosures will not be of great benefit for consumers who are already provided with disclosure on entry costs, exit costs, ongoing costs and other costs. On the contrary, extremely detailed disclosures will prove confusing for the clients and may prevent them from focusing on key information about the contract. Instead, we do think that the client should be provided with clear information about the status of the distributor, his ability ou unability to provide fair anlysis, shareholder links with an insurance undertaking or intermediary, the number of insurers with which he works and for intermediaries who gives advice on the the basis of a fair analysis, the	conflicts of interest arising out of third party payments. EIOPA does not aim to ban third party payments as such, but to introduce further requirements to address conflicts of interest which arise in this context. EIOPA is aware that implementing measures with regard to third party payments, depending on their design and specifications, may have a significant impact on existing market structures. EIOPA shares the view that the information should be provided in a clear and understandable manner in order to help the client to make an informed

			name of insurance undertaking(s) which represent more than 33 per cent of his activity.	investment decision.
198.	Federation of Finnish Financial Services (FFI)	Q9.	Definitely no. We feel these questions fall under the remit of MiFID2 horizontal rules for all PRIIPs products, and ESMA is currently working on this.	Noted
199.	German Insurance Association	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.	EIOPA disagrees. EIOPA believes that the information on third party payments are important as they reveal the intermediary's own interest in in selling the recommended products to the customer.

			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.	
200.	Insurance Europe	Q9.	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.	Noted
201.	Nordic Financial Unions	Q9.	To begin with, it is essential that worker remuneration should consist primarily of fixed income. This is particularly important at income levels where most of the salary pays for living costs such as rent and everyday expenses. Variable income (such as commissions) can have a positive effect on sales and also motivate employees but it must be recognized that it may also lead to inappropriate incentives, in particular related to assessment of risk involved in transactions. The effects have been widely described and debated. However, in several of the Nordic countries, commissions are negotiated	Noted EIOPA agrees. Noted. In EIOPA's opinion the right of

			in local collective agreements. It is therefore essential that it is left to the social partners to negotiate and regulate all forms of remuneration, including commissions. Free collective bargaining is a cornerstone of the Nordic model. The European Union secures this right as set down in article 153.5 of the Treaty (TFEU). It is also found that companies with collective agreements ensure that employees' salaries are not foremost based on variable pay and also have guarantees for employees against lowered sales.	collective bargaining does not hinder from introducing some sort of implementing measures with regard to the management of conflicts arising out of third party payments for the sake of consumer protection.
202.	Polish Insurance Ombudsman	Q9.	No. This clarification is not needed as all the professionals and also supervision authorities will be able to access if the company manages conflicts of interests correctly. Also, the conflicts of interest should be avoided in the beginning not managed when they appear.	Noted
203.	Professional Association of Insurance Brokers	Q9.	Disclosure can play an important role in tackling conflicts from commission payments or third party payments be tackled but we believe – as BIPAR - that it is not a panacea. The context of all sales must be taken into account as well as the context of the totality of the insurance mediation regulatory backdrop. 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. According to Article 13d of the IMD I as amended by Article 91 of MIFID II, insurance	Noted See comments above – line 204 (BIPAR).

			intermediaries have a professional and contractual duty to give advice in the best interest of their clients. Always alleging that remuneration issues create a conflict of interest to be dealt with in addition to the fulfillment of that duty, would undermine the duty, create suspicion against the intermediaries and make the clients concentrate on remuneration rather than on product, coverage and quality issues. See also the above outlined duties of Austrian insurance brokers according to the Maklergesetz. In accordance with BIPAR, we believe that for insurance based investments there is a need for full transparency of all costs including the commissions and remunerations. And this on a level playing field basis with the right to be fairly remunerated. The prohibition of remuneration by insurers would be an obstacle to free market principles of fair remuneration for services rendered. It would lead to a massive reduction of insurance brokers and a lack of competition in the Austrian market. The remuneration of intermediaries being in principle commission-based with the possibility to agree fees has been and continues to be a major contributing factor in the successful development of insurance markets all over the world. Any other situation would ignore the fact that the insurance intermediary typically renders services to both sides of the contract, the client and the insurance company: as with any commercial relationship both kinds of services have to be remunerated by the beneficiary. It would also deprive consumers from choice between business models.	
204.	UNI Europa Finance	Q9.	To begin with, it is essential that employee remuneration primarily consists of a fixed income. This is particularly important at income levels where most of the salary goes to covering basic living costs such as rent	Noted

			and everyday expenses. Variable income (such as commissions) can have a positive effect on sales but it must be recognized that it may also lead to inappropriate incentives, in particular related to assessment of risk involved in transactions. The effects have been widely described and debated. An important dimension to have in mind is that in several countries, commissions are negotiated in local collective agreements. It is therefore essential that the social partners are given the primary right to negotiate and regulate remuneration, including variable pay. The European Union secures this right as set down in article 153.5 of the Treaty (TFEU). It has also been shown that in companies with collective agreements the employees' salaries are not foremost based on variable pay and in effect include guarantees for employees against lowered sales numbers.	EIOPA agrees. Noted. In EIOPA's opinion the right of collective bargaining does not hinder from introducing some sort of implementing measures with regard to the management of conflicts arising out of third party payments for the sake of consumer protection.
205.	Verbraucherzentrale Bundesverband e.V. (vzbv)	Q9.	Yes we agree. In particular, the role of disclosure of conflicts of interest arising out of third party payments or benefits, commission payments or remuneration should be clarified more carefully than done in the discussion paper. While the Commission mandate states that "disclosure is not a measure in itself to manage conflicts of interest", EIOPA technical advice should make clear that (quantitative) disclosure (of inducements) actually is an effective way to prevent conflicts of interest to materialize. It is a matter of fact that remuneration/inducement-based conflicts of	Noted Noted

			interest can neither be prevented nor managed effectively without questioning the distributional channel itself. Moreover, it should be clear that detailed disclosure of inducements is a necessary (but not sufficient) prerequisite for fair competition between distributional channels prone to conflicts of interest and channels not prone to. With respect to coherence between IMD and Mifid Level2 measures, the ESMA draft technical advice on disclosure of inducement (redraft of Art. 26 Mifid Implementing Directive) must be the starting point of any discussion about disclosure. ESMA Consultation Paper, chapter 2.15 §7-9: 7. In relation to monetary payments and non-monetary benefits received from or paid to third parties, investment firms should disclose to the client the following information: i. prior to the provision of the relevant investment or ancillary service, the investment firm shall disclose to the client in a clear, comprehensive, accurate and understandable manner, the existence, nature and amount of the payment or non-monetary benefit concerned. Where the amount cannot be ascertained, the method of calculating that amount must be clearly disclosed to the client; ii. where an investment firm was unable to ascertain on an ex-ante basis the amount of any payment or benefit it was to receive, and instead disclosed to the client the method of calculating that amount (in accordance with Article 24(9) of MiFID II), it should also provide its clients with information of the exact amount of the inducement received	Noted

			on an ex-post basis; iii. at least once a year, as long as (on-going) inducements are received by the investment firm in relation to the investment services provided to the relevant clients, the investment firm should inform its clients on an individual basis about the actual amount of payments or non-monetary benefits received. 8. In implementing these requirements, the investment firm should take into account the rules with regard to disclosure on costs and charges, as outlined in the 'Information to clients on costs and charges' chapter of this CP. 9. When a number of entities are involved in the distribution channel, each investment firm that is providing an investment or ancillary service must comply with its obligations to make disclosures to its clients. ESMA's draft technical advice clearly requires firms to fully disclosure any monetary or non-monetary third-party payments (or at least the method of calculating). Moreover, it requires firms to fully disclose any form of contingent payment as well on annual basis. Finally, it refers to the rules on costs and disclosure that must consequently as well be applied to insurance-based investment products (ESMA Consultation Paper, chapter 2.14).	
206.	ACA	Q10.	In the assessment work of conflicts of interests it has to be taken into account that all risks are not equivalent i.e a risk grading has also to be done. Positions inside the company and external directorship have to be	EIOPA considers the grading of risks as a part of managing

			taken into account in the assessment work. For intermediaries a proportionality system is necessary depending on the intermediary's size and the complexity of the products he sells.	conflicts of interest.
207.	AILO	Q10.	No further comment	
208.	Allianz SE	Q10.	None in particular.	
209.	ANACOFI	Q10.		
210.	ANASF	Q10.	We believe that rules and guidelines applicable to each of the relevant steps should be in line with provisions pertaining to the financial sector (i.e. CRD III, CRD IV and MiFID II). Particularly, we consider that this solution would ensure a consistent approach across the banking, investment and insurance sectors, enhancing competition to the benefit of the industry, national authorities and consumers.	EIOPA agrees.
211.	Austrian Insurance Association (VVO)	Q10.	Do you have any other comments on the above assessment of the steps to take in relation to each of the following steps: identifying, preventing, managing and disclosing conflicts of interests?	
212.	BdV	Q10.	Insurers very often assert that insurances are products that have to be pro-actively "sold", because they are an "abstract" product, not like a TV, a computer or a car which are obviously "haptic". From the consumers perspective we clearly object this assertation. Consumers know their life risks exactly, but they do not know the appropriate insurance products covering these risks. So, the sales pressure on the one hand and the lack of technical knowledge on the other hand leads to a kind of "vicious circle" between intermediaries and customers. The only way out of this constellation producing all the mis-selling cases	Noted

			we know consist in implementing strict compliance rules for the distribution. Unconditional priority has to be given to best advice as a service in itself (and not just as a supplementary argument of sale) and consequently to the social responsibility of the insurers. As Mr. Bernardino stressed recently: "We expect leadership; a tone from the top. It is the Board responsibility to make sure that adequate product oversight and governance is established within the undertaking" (Speech in Reykjavik, 27 June 2014). We also would like to emphasize that often "new" products are so complex that even the intermediaries have not got any idea about how they function. Allianz introduced last year a new product ("Perspektive") related to which even the spokesman assessed that it would be a product without the classical guaranteed interest rate for the investment component. The intermediaries got that same information, too. But this information was wrong. There is a guaranteed interest rate, but it is strongly reduced for most of the duration of the contract. This example shows that even the normal intermediaries have huge problems with those complex products. Therefore we recommend differentiated measures for complex products.	Noted Noted
213.	Better Finance	Q10.	Do you have any other comments on the above assessment of the steps to take in relation to each of the following steps: • identifying conflicts of interest; • preventing conflicts of interest; • managing conflicts of interest; and	

			• disclosing conflicts of interest? Whenever there has been identified and handled a conflict of interest (CoI) the undertaker or Insurance Company should evaluate the procedure/process regarding CoI, the possible impact on the clients interests (the result) and possible adjustments to improve the CoI procedure.	Noted
214.	BIPAR	Q10.	BIPAR believes that it is essential that insurance intermediaries put in place reasonable and proportional systems to identify, manage and mitigate conflicts of interest. With its Article 12, the IMD already 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, BIPAR supports transparency. We promote that 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.	EIOPA notes that the scope of Article 12 IMD (in its current version) is more limited than the organisational requirements introduced by the revised IMD on the management of conflict of interest. Whereas Art. 12 IMD concerns the information firms have to provide to their customers, the new rules of the revised IMD require firms to take organisational measures to address

			We also promote that 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 I, this would cover most of the situations which are identified as possible sources of conflicts of interests Every proposal should also ensure a level playing field between all participants involved in the selling of insurance based investment products. Any duplication of requirements should be avoided. BIPAR regrets the cumulative aspect of some requirements in chapter III (A) of the IMD 1.5 with the other chapters of the IMD I (and then of the IMD II). We believe that this will lead to incompatible requirements or to an unnecessary duplication of requirements, and thus to administrative burden. We believe that this also leads to an unlevel playing field. We therefore propose that article 15 of the IMD II does not apply to persons carrying out insurance mediation in relation to insurance investment products which fall under the chapter VII. The appropriateness and suitability tests are already applicable for these activities under article 25. These rules should not be duplicated with all the requirements applicable to all other insurance products in article 15 of the proposed IMD II. If a suitability test is required for the investment insurance product then there should be no demands and needs test	all types of conflicts of interest.

			requirement for the same product.	
215.	Dutch Investors' Association (VEB)	Q10.	Do you have any other comments on the above assessment of the steps to take in relation to each of the following steps: • identifying conflicts of interest; • preventing conflicts of interest; • managing conflicts of interest; and • disclosing conflicts of interest? Whenever there has been identified and managed a conflict of interest the undertaker or Insurance Company should evaluate the procedure/process regarding a conflict of interest, the possible impact on the client's interests (the result) and possible adjustments to improve the conflict of interest procedure.	Noted
216.	EIOPA Insurance and Reinsurance Stakeholder Group	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.	Noted
217.	European	Q10.	We believe that rules and guidelines applicable to each of the relevant	Noted

	Federation of Financial Advisers and Fina		steps should be in line with provisions pertaining to the financial sector (i.e. CRD III, CRD IV and MiFID II).We consider that this solution would ensure a consistent approach across the banking, investment and insurance sectors, enhancing competition to the benefit of consumers, the industry and national authorities.	
218.	European Financial Planning Association (EFPA)	Q10.	In addition to all definition and measures addressed to identify, prevent, manage and disclose conflicts of interest that already are included on the Discussion Paper, EFPA raises the attention on the key role that in this area may be played by the adherence to a code of ethics. Ethical codes can be promoted both: inside the investment firm or by national or international organizations of the sector, as a professional standard. But in any case, it helps the advisor to know and understand what is expected form him/her under certain circumstance. As stated in the Discussion Paper, conflicts of interest are no possible to eradicate, but there are many tools and procedures to have in place in order to deal better when arising. In many cases, ethics cover areas where regulation cannot arrive, as even with a very tight regulation, many "grey areas" are still there. It would be great that the supervisors (European and National ones) endorses the existing code of ethics of different organizations, pursuing that investment firms to adhere and disseminate them among their employees.	Noted. In EIOPA's view code of ethics may supplement legal requirements, but cannot replace them in total.

			A similar point of view has been expressed by us to the ESMA Consultation Paper on MiFID II and MiFIR.	
219.	Fédération Française des Sociétés d'Assurances	Q10.	As FFSA already mentioned, conflicts of interest policies and procedures should not result in disproportionate administrative burden for intermediaries as well as for insurance undertakings. French industry is already submitted to high compliance requirements in the field of consumer protection including compulsory advice (for example internal procedures to check that the client answers about his needs and demands are consistent with the very detailed information required about his personal financial and patrimonial situation. If these information are missing, the distributor has to warn the client about these inconsistencies and ask for more explanations). Too heavy administrative procedures added to those required by Solvency 2 may be counter-productive for the whole market.	EIOPA is aware and will take into consideration (when drafting its technical advice to the Commission) that new regulatory requirements may lead to additional administrative burden and costs.
220.	Federation of Finnish Financial Services (FFI)	Q10.	See answer 9.	
221.	GEMA	Q10.	GEMA's mutuals believe that the future texts on conflicts of interests for insurance distributors should not exceed the provisions of article 91 of MIFID 2 directive, which are the same as article 23 of the MIFID 2 directive for investment firms. They emphasise that the most important is to establish procedures beforehand in order to prevent, detect and manage these conflicts. The	Noted

			disclosure of conflicts of interests should be the final solution. From GEMA's mutuals' point of view, the provisions dealing with the prevention, detection and the management of conflicts of interests and the provisions on the service of advice are sufficient to avoid conflicts of interests. Therefore, there would be no added value to disclose distributors' remunerations to the customers. Indeed, what consumers need is to be able to compare the guaranties and premiums of different products distributed through different channels. This is the reason why GEMA's mutuals fully support the disclosure on entry costs, ongoing costs and exit costs as well as information about the status of the distributor (his links with insurance undertakings, his degree of independency etc.). But they believe that providing information on remunerations is useless for these comparisons and could even be confusing for consumers.	EIOPA disagrees. The information on the third party payments enables the customer to assess to which extent the distributor may be influenced in its recommendation and has an own financial interest in the outcome of the sale process.
222.	German Insurance Association	Q10.	No further comments.	
223.	Insurance Europe	Q10.	It is worth pointing out that, in the insurance context, the Directive on Legal Expenses Insurance (87/344/EEC) already contains solutions to prevent conflicts of interest that would also be relevant to the discussion at hand. When it comes to the management of conflicts of interest, the approach followed in Article 3 para 2 of this Directive should be taken into account, as it provides for a separation of functions (task and duties) that has also been identified by EIOPA as one possible approach to dealing with conflicts of interest. This could be relevant, for example, in the case of	Noted. It should be noted that the scope of said Directive is narrow as it addresses specific conflicts of interest that arise in the context of legal expenses insurance, only.

			distribution and claims assessment activities.	EIOPA agrees that the underlying idea of Art. 3 (2) may be relevant with regard to how firms of the insurance sector deal with potential conflicts of interest (e.g. complaints handling)
224.	Nordic Financial Unions	Q10.	If conflicts of interest between sales pressure and sound advice are not avoided, the objectivity of employees stands the risk of being questioned, which will have adverse effects on the reliability and trust of the sectors. NFU strives for financial sectors where employees have enough time to convey proper advice to consumers in their daily work, and where employees continuously receive sufficient and in-depth training on the advantages and disadvantages of products. To continuously educate employees in ethics and possible conflicts of interest may also prevent conflicts of interest to appear. In this regard it is important to take the higher burden of documentation into account. The demands on documentation have increased but employees have in general not been given more time to each customer. There has to be a balance between sales, advice and time needed for documentation. One way to prevent possible conflicts of interest is to introduce authorisation schemes or certifications of financial advisors. Such a	EIOPA shares the notion that the education and training of employees is an important aspect in order to carry out insurance distribution activities in accordance with the best interest of the clients; this includes training on conflicts of interest and how to identify and manage these conflicts. The appropriate education and training of employees fall in the primary responsibility of the

			framework would help to ensure that financial products are only sold by staff that are properly trained and have a thorough understanding of both ethics and the products on offer, including their long-term implications for customers. From the perspective of both finance employees and customers, the rules and conditions surrounding the provision of establishing and maintaining sound sales practices has not received the attention that it deserves. A framework for certification of financial advisors would enhance the working conditions for the employees while at the same time contributing to better sales practices. In the Nordic countries there are already certification procedures for financial advisors in place, albeit somewhat varying in scope, nature and content. The financial crisis has highlighted the key importance of maintaining sound and balanced sales practices in the financial sector. The crisis has had a clear negative impact on consumers' trust in the finance sector. A framework for certification could help to restore consumer confidence in the financial markets and finance employees, as it will prove that the industry is taking consumer concerns seriously. A trusting relationship between consumers and employees in the finance sectors is vital for the well-being of the employees as well as for the European internal market and the Member States' national economies.	insurance undertakings and insurance intermediaries. As the education and training is an ongoing obligation firms have to fulfil it would need further consideration whether an onetime authorisation or certification would be an efficient mean for that purpose.
225.	Polish Insurance Ombudsman	Q10.	In managing conflicts of interest a redress mechanism should be included.	EIOPA notes that a redress mechanism primarily aims to

				compensate losses; but it does not provide an instrument to prevent or manage conflicts of interest.
226.	Professional Association of Insurance Brokers	Q10.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	Noted
227.	UNI Europa Finance	Q10.	If conflicts of interest between sales pressure and sound advice are not avoided, the objectivity and professionalism of employees stands the risk of being questioned, which will have adverse effects on the reliability and trust of the sectors. UNI Europa Finance works for a financial sector where employees have enough time to convey proper advice to consumers, and where employees continuously receive sufficient and in-depth training on the advantages and disadvantages of products for specific clients. To continuously educate employees in ethics may also prevent conflicts of interest to appear. In this regard it is important to take the heightened burden of documentation into account. The demands on documentation have increased but employees have in general not been given more time to dedicate to each customer. There has to be a balance between sales, advice and time needed for documentation. Likewise, the contact between customers and employees during the course of the contracts, including clarifications, arising disputes and conflicts should be taken into consideration when assessing measures on managing conflicts of interest. Thus, it must also be assured that the employees are given sufficient time and resources to fulfil this important aspect, as well.	EIOPA shares the notion that the education and training of employees is an important aspect in order to carry out insurance distribution activities in accordance with the best interest of the clients; this includes training on conflicts of interest and how to identify and manage these conflicts. The appropriate education and training of employees fall in the primary responsibility of the insurance

			One way to prevent possible conflicts of interest is to introduce authorisation schemes or certifications of financial advisors. Such a framework would help to ensure that financial products are only sold by staff that are properly trained and have a thorough understanding of both ethics and the products on offer, including their long-term implications for customers. From the perspective of both finance employees and customers, the rules and conditions surrounding the provision of establishing and maintaining sound sales practices has not received the attention that it deserves. A framework for certification of financial advisors would enhance the working conditions for the employees while at the same time contributing to better sales practices. The financial crisis has highlighted the key importance of maintaining sound and balanced sales practices in the financial sector. The crisis has had a clear negative impact on consumers' trust in the finance sector. A framework for certification could help to restore consumer confidence in the financial markets and finance employees, as it will prove that the industry is taking consumer concerns seriously. A trusting relationship between consumers and employees in the finance sectors is vital for the well-being of the employees as well as for the European internal market and the Member States' national economies.	undertakings and insurance intermediaries. As the education and training is an ongoing obligation firms have to fulfil it would need further consideration whether an onetime authorisation or certification would be an efficient mean for that purpose.
228.	Verbraucherzentrale Bundesverband e.V. (vzbv)	Q10.	Yes. It is of primary importance to clarify that measures for remuneration/inducement-based conflicts of interest are quite different from other measures addressing other types of conflicts of interest (recapture that that remuneration/inducement-based conflicts of interest or the most important type with respect to potential harm for retail clients). While prevention and management via organizational requirements	Noted

			might work for certain types, remuneration/inducement-based conflicts of interest can only be avoided to materialize to the harm of the customer when the distributional channel itself is challenged. Therefore, clients need to be enabled to effectively compare the costs and utility of different distributional channels. Against this background, disclosure is indeed a measure to deal with a particular type of conflicts of interest. To make, again, a more general comment. The commission mandate, when stating that disclosure is not a measure in itself, seems to implicitly assume that change to insurance intermediation should not affect existing distributional channels. In our view, this is misleading. Change to insurance markets, product quality and suitability must start from distributional channels.	EIOPA supports enhanced disclosure requirements.
229.	ACA	Q11.	More information is not better information. The information should be concise and the client should have the possibility to get more details on request. The most important is to treat the client fairly and to tell him what services he can expect from the intermediary and what his role precisely is in the subscription of a PRIIP.	Noted
230.	AILO	Q11.	See response to Qu 9. The key potential impact on the sale is transparency of disclosure to the customer of factors affecting the form of service provided and the associated costs. The requirements of IMD combined with the PRIIPs KID may well provide an adequate disclosure solution.	Noted
231.	Allianz SE	Q11.	Generally, disclosure of relevant aspects is an indispensable foundation of the customer's informed decision making and therefore of insurance distribution. In many cases, disclosure is also the most effective and overall most adequate means to address possible issues. To perform its functions, the disclosure to the customer should be appropriate to the	Noted

			target group's financial literacy, the inherent risk of the product and relevant in its content, length and the process of its delivery. Certain balancing of trade-offs may be necessary to optimize the outcome for the customer: the content needs to be both (legally) precise and comprehensible, the length needs permit completeness and sufficient detail but match the (limited) attention span of the customer, the process must deliver the right information at the right time. In addition, many Member States already have certain (often very adequate) disclosure requirements in place: multiple disclosures could be distracting or even confusing for the customer. Some additional disclosure rules may tilt this balance against the customer's best interest, by requiring inadequate disclosures. In addition, it should be borne in mind that the KID document from the recently adopted PRIIPs Regulation should address most relevant issues for the customer decision making.	
232.	ANACOFI	Q11.	ENG As indicated to the question 9, it is essential to inform for whom the professional works, how he is paid and to respect the logic of transparency. If there is conflict of interests, it is fundamental to disclose its existence. FR Comme indiqué à la question 9, il est primordial d'informer pour qui le professionnel travaille, comment il est rémunéré et de respecter la logique de transparence.	Noted

			S'il y a conflit d'intérêt, il est fondamental de révéler son existence.	
233.	ANASF	Q11.	Information may be considerably enhanced through the application of those standard measures already established by the regulator: this is the case, for example, of the PRIIPs Key Information Document (KID) that provides investors with harmonised, fair, clear and not-misleading information.	Noted
234.	Association des consommateurs Test-Achats / Test-A	Q11.	Disclosure must be given product-specific and timely. Accordingly, contingent costs must be disclosed in the same manner via an annual information, certainly in the case the detailed amounts are not fully known in advance. The impact of costs (entry costs, management fees and retrocessions to distribution channel are key for the return of mid and long term investments. The interested customer must receive those information in due time before making its investment decision. This should occur on a harmonized way for all investments and PRIPS products.	Noted
235.	Association of British Insurance (ABI)	Q11.	Any disclosure to consumers should be considered as a last resort, and should be as simple and understandable as possible. If considered as a regulatory tool, consumer research should be conducted to ensure it will actually havea postivie impact on consumer outcomes.	EIOPA shares the view that the disclosure of conflict of interest should be the measure of last resort.
236.	Assuralia	Q11.	Thinking specifically about disclosure, what steps do you think could maximize its effectiveness in ensuring customers understand and are able to use the information provided in their decision-making process? Response by Assuralia, the association of insurance undertakings in	Noted

			Belgium: We suggest two steps with regard to the disclosure of conflicts of interest: - In order to help customers to understand the information given to them, it is key to avoid 'information overkill' and duplication of disclosure requirements (e.g. national requirements, PRIIPs Regulation…). - It is good for customers to understand the different roles of insurance undertakings and tied intermediaries, on the one hand, and non-tied intermediaries, on the other hand. The MiFID1 framework recognizes this difference: tied agents fall under the conflicts of interest policy of the insurance undertakings they have an agreement with, in contrast with non-tied agents and insurance brokers that must develop their own conflict of interests policy and undertake themselves appropriate action with regard to the identification, management and the way they disclose the remaining conflicts of interest.	
237.	Austrian Insurance Association (VVO)	Q11.	Thinking specifically about disclosure, what steps do you think could maximize its effectiveness in ensuring customers understand and are able to use the information provided in their decision-making process? ☐ All relevant distributor information is addressed by the Insurance Mediation Directive (2002/92/EC), e.g. contractual obligations to conduct insurance mediation business exclusively with one or more insurance undertakings have to be disclosed als well as direct or indirect holdings of intermediaries in an insurance undertaking and vice versa.	Noted

			☐ All relevant precontractual product information for the decision-making process has been most recently defined by the European legislator in the Regulation on Key Information Documents (KID) for Packaged Retail and Insurance Based Investment Products (PRIIPs).	
238.	BdV	Q11.	The British parameter for increase in value of life insurances is "Reduction in Yield". The "RiY" will now be introduced even in Germany as "Effektivkosten". This is not a step maximizing disclosure but confusion. Following to "RiY" the costs of a contract reduce the future gains foreseen by the insurer. But this is a parameter only on the basis of a certain probability. Gains are only probable, at the time premiums and costs are definitively fixed. In order to maximize the understanding of the customers, the costs of a contract, especially linked to PRIIPs as very complex products, should always be calculated in relation to the premiums paid by the customers. Costumers know exactly the amount of premiums they will have to pay regularly. They are able to calculate any possible yield (the sum of payments they will receive) in relation to the premiums they will have or they had had to pay. That is the reason why "RIY" is a mis-leading parameter and should be banned. Additionally RiY is a very volatile key number related to the duration of the contract, to the duration of payment of premiums and to the pre-cost rates ("Zins vor Kosten"). Because of these complex mathematical	Noted

			interdependencies it is possible to pretend having a "cheap" product by altering these parameters, although the product is very expensive.	
239.	Better Finance	Q11.	Thinking specifically about disclosure, what steps do you think could maximise its effectiveness in ensuring customers understand and are able to use the information provided in their decision-making process? Dislosure of the amounts of inducements should be made in Euro (or local currency) amounts and as a percentage. Disclosure must be made ex-ante, and in a way that the consumer can compare between the different products offered by the seller. The amount and percentage disclosed must be the total sum of inducements: in particular for unit linked contracts, it must add the commissions to be received by the distributor on the life insurance contract fees plus on the underlying "units" (fund fees). Same applies to any supplementary or side death benefit attached to the policy.	EIOPA shares the view that the disclosure on inducements should be sufficiently detailed.
240.	BIPAR	Q11.	We note that there is much discussion about the "right" level of transparency. In this discussion it should be considered that intermediaries will have to comply with suitability and /or appropriateness test, with the obligation to work in the best interest of the consumer. It is always in the best interest of consumers to be offered a choice of	Noted

			competing or comparable products and to be provided with adequate information so that they can make an informed decision. This is the raison d'être of insurance intermediaries. This goes to the very heart of the intermediaries' role. BIPAR would also refer EIOPA to studies undertaken by the Commission in the past, as well as more recently in the UK by the conduct regulator there, the FCA, on behavioural economics, where "information overload" has been identified as a real regulatory concern. Forcing too much disclosure on a customer results in the customer retaining and understanding less.	
241.	Dutch Investors' Association (VEB)	Q11.	Thinking specifically about disclosure, what steps do you think could maximise its effectiveness in ensuring customers understand and are able to use the information provided in their decision-making process? Dislosure of the amounts of inducements should be made in Euro (or local currency) amounts and as a percentage. Disclosure must be made ex-ante, and in a way that the consumer can compare between the different products offered by the seller. The amount and percentage disclosed must be the total sum of inducements: in particular for unit linked contracts, it must add the commissions to be received by the distributor on the life insurance contract fees plus on the underlying "units" (fund fees). Same applies to any supplementary or side death benefit attached to the policy.	EIOPA shares the view that the disclosure on inducements should be sufficiently detailed.

242.	EIOPA Insurance and Reinsurance Stakeholder Group	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.	Noted
243.	European Federation of Financial Advisers and Fina	Q11.	Information may be considerably enhanced through the application of those standard measures already established by the regulator: this is the case, for example, of the PRIIPs Key Information Document (KID) that provides investors with harmonised, fair, clear and non-misleading information.	Noted
244.	European Financial Planning Association (EFPA)	Q11.	EFPA thinks that disclosure is useless if is not accompanied with a clear and plain explanation of the content of the key aspects involved in the situation that creates the conflict of interest. That explanation must by en plain words and with examples making easy for the client to understand the whole picture. In this sense, EFPA thinks that professional qualifications (such as the European Financial Planner –EFP- and European Financial Adviser –EFA-) ensures that the professional providing advise has the knowledge and skills required for such kinds of explanations. Also, many clients have not the financial literacy level to be able to understand by themselves the situation which raises a potential conflict of interest. So, the investment firm staff (in this case, the insurance company) must be qualified to provide a detailed explanation of the main	EIOPA shares the view that the information on conflict of interest should be presented in an understandable and not misleading manner.

			characteristics of the product or strategy that is being implemented.	
245.	Fédération Française des Sociétés d'Assurances	Q11.	As The European Commission underlines in its call for advice, disclosure should be the very last step of the process, when conflict cannot be avoided. The FFSA considers that prevention and management of conflicts of interest is preferable to disclosure provided that it does not lead to a commission ban. As for the way to disclose, the FFSA considers it is too early to answer that question a this stage.	EIOPA agrees.
246.	German Insurance Association	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).	Noted
247.	Nordic Financial Unions	Q11.	Transparency for the customers is key. However, the systems for transparency must not breach the protection of employees' identities. The customers should be given information on whether the products are connected to commissions or variable pay for employees, but should not access detailed information on the individual sales person's salary or identity. Providing the customer with the exact amount of the variable remuneration received by the employee does not contribute to consumer	EIOPA believes that a right balance should be found between the interest of the employee with regard to the protection of his personal data and the interest of the customers to be informed about the

			protection, instead it risks having a confusing and obscuring effect and divert the customer's attention away from what should be the real focus in sales situation: the price and content of the product. The employees' privacy must not be violated: how an employee is paid, by fixed or variable pay, is an issue for the employer, the employee and his/her trade union. Also, for countries where pay is regulated through collective agreements, this risks undermining the legitimacy of collective bargaining. Conflicts of interest are best mitigated by addressing the issue of excessive sales targets and sales pressure, not by breaching the personal integrity of individual insurance employees with regard to the pay that they receive.	financial interests a financial advisor has in recommending a specific product.
248.	Polish Insurance Ombudsman	Q11.	A customer is not and will never be a professional with regards to investment products and this needs to be stressed. Giving too much information to the customer usually does not change this situation. Disclosure is usually made by producing additional documentation (at least that's how it is in Poland). The customer usually does not read this documentation and/or does not understand the wording and the effects of such a disclosure.	EIOPA acknowledges the risk that information provided to the customer may not be read or understood. Because of that, EIOPA believes that the information provided to the customer should also drafted in a way taking account the target market to which a product is sold.
249.	Professional Association of	Q11.	We note that there has been and still is much discussion about the "right" level of transparency. In this discussion it is of utmost importance	EIOPA shares the statement that

	Insurance Brokers		to consider the SME-character of broker firms (as in Austria) and to make sure that obligations are appropriate and suitable to deal with them in practice. It is always in the best interest of consumers to be offered a choice of competing or comparable products and to be provided with adequate information so that they can make an informed decision. This is the task of insurance brokers in the Austrian insurance market and depend on whether a level playing field of transparency is set into force for all competitors. It is important to ensure that any future European policy on conflict of interests for brokers does not have any unintended side effects and does not result in less choice for consumers by driving brokers out of business.	customers should be provided adequate information in order to make an informed investment decision.
250.	UNI Europa Finance	Q11.	Transparency for the customers is key. However, the systems for transparency must not breach the protection of employees' identities. The customers should be given information on whether the products are connected to commissions or variable pay for employees, but should not access detailed information on the individual sales person's salary or identity. Providing the customer with the exact amount of the variable remuneration received by the employee does not contribute to consumer protection, instead it risks having a confusing and obscuring effect and divert the customer's attention away from what should be the real focus in sales situation: the price and content of the product. The employees' privacy must not be violated: how an employee is paid, by fixed or variable pay, is an issue for the employer, the employee and his/her trade union. Also, for countries where pay is regulated through collective agreements, this risks undermining the legitimacy of collective bargaining. Conflicts of interest are best mitigated by addressing the issue of excessive sales targets and sales pressure, not by breaching the personal integrity of individual insurance employees with regard to the	EIOPA believes that a right balance should be found between the interest of the employee with regard to the protection of his personal data and the interest of the customers to be informed about the financial interests a financial advisor has in recommending a specific product.

			pay that they receive.	
251.	Verbraucherzentrale Bundesverband e.V. (vzbv)	Q11.	Disclosure must be given product-specific, timely and disaggregated with respect to different firm or group levels. In the end, the client needs an invoice-like statement that contains easy to understand information on the exact amount of the pure service costs (costs of financial advice). Accordingly, contingent costs must be disclosed in the same manner via an annual invoice-like statement. Concerning natural limits to cognition and boundaries to rationality, it is of primary importance that any form of information on costs, charges and inducements is designed in a way that takes the ability of consumers to understand quantitative measures explicitly into account. In the end, this ability can only be assessed in practice and must take consumer behaviour as a given, not as a variable. Financial education (i.e. change in consumer behavior) is, certainly, an important field to improve competition in retail financial markets and overall product suitability. However, considering it a primary vain is, in our view, highly misleading. In light of the above mentioned ESMA Mifid2 draft technical advice and the incorporated provisions on disclosure of inuducements, EIOPA should, in our view, concentrate on the technical specification of disclosure provisions and the development of consumer-oriented informational statements as outlined in the previous paragraph.	Noted Noted
252.	ACA	Q12.	The insurance distribution is not identical to other financial services' distribution entities. Insurance intermediaires are very often very small or even single person structures with no legal personality.	Noted
253.	AILO	Q12.	No	

254.	Allianz SE	Q12.	The general nature of the approaches in Art. 22 and 23 seem generally adequate to address conflicts of interest. However, we would like to reiterate the more important question that an outcome-oriented and principles-based approach supplemented by general guidance rules should be taken (see General Comment). Unnecessarily narrow or inapproapriate case-by-case rules with a higher risk of unintended adverse consequences should be avoided. See also General Comment and answers to Q2, Q8, Q9 and Q11.	In EIOPA's view the organisational measures of the MiFID implementing Directive are of sufficiently broad and abstract nature leaving sufficient room for adaption.
255.	ANACOFI	Q12.	ENG It would be necessary to simplify the interpretation of the article 23 because the text of application can be unreasonable. It would be sensible that the rule is of strict but not excessive application, so that the national legislator has no possibility of developing an excessively heavy doctrine. FR Il faudrait simplifier l'interprétation de l'article 23 car le texte d'application peut être déraisonnable. Il serait judicieux que la règle soit d'application stricte mais non excessive, afin que le législateur national n'ait pas la possibilité de développer une doctrine excessivement lourde.	EIOPA considers further guidance to clarify how the new organisational measures on conflicts of interest should be applied by insurance undertakings and intermediaries.
256.	ANASF	Q12.	We consider that additional adjustments pertaining to conflicts of interest policy and records should specifically apply to remuneration and other incentive structures relating to insurance distribution activities. Indeed, such adjustments would ensure a level playing field across financial and insurance activities.	EIOPA considers specific requirements which address the conflict of interest arising out of inducements.
257.	Assuralia	Q12.	Are there any additional adjustments to the existing MiFID measures in Articles 22 and 23 that might be necessary to clarify their application to	

			insurance distribution activities? If so, please clarify which adjustments you believe necessary, set out why you believe this, and provide evidence to support your view. Response by Assuralia, the association of insurance undertakings in Belgium: The articles 22 and 23 provide general rules with regard to the establishment, implementation and maintenance of the conflicts of interest policy. These general rules also explicitly apply the principle of proportionality (e.g. "appropriate to the size and organization of the firm and the nature, scale and complexity of its business"; "appropriate to the size and activities of the investment firm and of the group to which it belongs, and to the materiality of the risk of damage to the interest of the client"; "as are necessary and appropriate"…). There seems to be no need for additional adjustments to these measures.	Noted
258.	Austrian Insurance Association (VVO)	Q12.	Are there any additional adjustments to the existing MiFID measures in Articles 22 and 23 that might be necessary to clarify their application to insurance distribution activities? Article 22 should be redrafted also against the background of the Legal Expenses Insurance Directive 87/344/EEC, in particular Articles 3 para 2 lit a and c, 4 para 1 lit b and 7. However, any separation of functions should consider proportionality in order to comply with the capabilities of smaller sized businesses. The principle of proportionality is properly	Noted.

			reflected in Article 22 para 1 of Directive 2006/73/EC. Article 23 providing for the record keeping of conflicts of interest should include the precontractual disclosure to the customer of the general nature and/or sources of conflicts of interest where organisational or administrative arrangements made by the insurance intermediary or insurance undertaking to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented. The customer shall give his explicit consent by signature.	Requiring the explicit consent and signature of the client would go beyond the obligation to inform the client about conflicts of interest.
259.	BdV	Q12.	In Germany there exist huge distribution organizations (multi level or subscriber broker structures: "Strukturvertriebe"), in which sole distributors are "independent" on the juridical level, but in reality of course not. They have to sell only product lines chosen by their home organization, and sometimes they even have to pay a rent for their bureaus and for the technical equipments to their "mother company". Following to the German law this situation is called "Schein-Selbständigkeit". In this context nothing but extreme sales pressure and therefore mis-selling are the inevitable consequences. The entire structures of these systems of distribution and remuneration have to change from the ground up (fixed incomes following trade union standards, variable remunerations and inducements only as volunteer "bonus").	Noted

260.	Better Finance	Q12.	Are there any additional adjustments to the existing MiFID measures in Articles 22 and 23 that might be necessary to clarify their application to insurance distribution activities? If so, please clarify which adjustments you believe necessary, set out why you believe this, and provide evidence to support your view. See reply to Q11 above. Also, insurers who invest policy holders money in their own funds (funds managed by their asset management affiliate) must disclose where the full amount of fund fees go (typicall a third party distributor would get about 50 % of those).	Noted
261.	BIPAR	Q12.	Insurance intermediaries are mostly SME style operations, employing many thousands of people locally. 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 choice for consumers and does not jeopardize intermediaries' activities and business models.	Noted
262.	Dutch Investors' Association (VEB)	Q12.	Are there any additional adjustments to the existing MiFID measures in Articles 22 and 23 that might be necessary to clarify their application to insurance distribution activities? If so, please clarify which adjustments you believe necessary, set out why you believe this, and provide evidence to support your view.	Noted

			See reply to Q11 above. Also, insurers who invest policy holders money in their own funds (funds managed by their asset management affiliate) must disclose where the full amount of fund fees go (typicall a third party distributor would get about 50 % of those).	
263.	EIOPA Insurance and Reinsurance Stakeholder Group	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.	Noted EIOPA will publish a Consultation Paper in which questions concerning the possible market impact will be addressed to the stakeholders.
264.	European Federation of Financial Advisers and Fina	Q12.	We consider that additional adjustments pertaining to conflicts of interest policy and records should specifically apply to remuneration and other incentive structures relating to insurance distribution activities. Indeed, such adjustments would ensure a level playing field across financial and insurance activities. However, IMD 1.5 must not be overruled as it is the basis allowing Member States to decide independently pro or contra remuneration restrictions of insurance intermediaries.	EIOPA considers specific requirements which address the conflict of interest arising out of inducements.
265.	Fédération Française des	Q12.	Measures in article 22 and 23 of MIFID1 implementing directive need to be written in a way which takes into account the diversity and size of	Noted

	Sociétés d'Assurances		actors in the field of insurance distribution.	
266.	German Insurance Association	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. 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.	Noted
267.	Polish Insurance Ombudsman	Q12.	None.	
268.	Professional Association of Insurance Brokers	Q12.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	Noted
269.	ACA	Q13.	The research provisions are not applicable to unit-linked products. This information for insurance based PRIIP is generally done by external	EIOPA shares the notion that insurance

			entities such as banks or fund managers. The Unit linked insurance PRIIP relies on information provided by third parties.	undertakings and insurance intermediaries do generally not provide financial research services.
270.	AILO	Q13.	Articles 24 and 25 (investment research) are in our view not relevant to insurance distribution activities and should not be applied.	EIOPA shares the notion that insurance undertakings and insurance intermediaries do generally not provide financial research services.
271.	Allianz SE	Q13.	A separate regulation of research seems not to be necessary for insurers and insurance intermediaries. Insurers and insurance intermediaries generally do not issue investment research, i.e. a general, non-personal assessment or recommendation regarding certain asset classes or securities which are not marketing material. In fact they typcially provide advice (i.e. information, including personal recommendations) to their customers. The recommendations in the sale of an insurance-based investment product are also typically not related to individual capital market instruments. The cross-market comparison of several insurance-based investment products (typically from independent parties, such as comparison	EIOPA shares the notion that insurance undertakings and insurance intermediaries do generally not provide financial research services.

			websites or publicatons from consumer organizations) is probably the closest comparable to general investment research. It is clearly desirable, that such comparisons are not adversely affected by conflicts of interest. However, where (personal) advice is given as part of an intermediation (e.g. in the case of comparison websites), the stricter rules on advice apply. Any research-based recommendation without intermediation / distribution (e.g. by consumer organizations) would be out of scope of this regulation.	
272.	ANACOFI	Q13.	ENG We are against the application of the article 25 c). It is dangerous for the ecosystem and positively ineffective for the customers. FR Nous sommes contre l'application de l'article 25 c). Il est dangereux pour l'écosystème et sans effet positif pour les clients.	
273.	ANASF	Q13.	Yes, we do. We consider that these measures should apply to all the aspects of insurance distribution activities (and, in particular, to all the activities with a financial content). Moreover, we believe that a clarification is needed with regard to the distinction between research activities and the provision of advice to customers in the insurance sector.	Noted
274.	Association of British Insurance (ABI)	Q13.	These provisions already apply to the insurance industry in the UK.	Noted
275.	Assuralia	Q13.	Do you agree that the existing MiFID measures in Articles 24-25 related to investment research should be applied to insurance distribution	

			activities, following a redrafting to take into account the legal framework applying to insurance undertakings and insurance intermediaries? Please provide details of the aspects of insurance distribution activities to which you believe these measures might apply. Response by Assuralia, the association of insurance undertakings in Belgium: We are not aware of any cases on the Belgian insurance market that are similar to the situations related to investment research described in the articles 24-25 of the MiFID1 Implementing Directive. There seems to be no reason to apply these articles to insurance distribution activities.	Noted
276.	Austrian Insurance Association (VVO)	Q13.	Do you agree that the existing MiFID measures in Articles 24 - 25 related to investment research should be applied to insurance distribution activities, following a redrafting to take into account the legal framework applying to insurance undertakings and insurance intermediaries? "Insurance distribution" as defined in Directive 2002/92/EC (Art 2 para 3) does not cover "investment research" as defined in Article 24 para 1 of the Directive 2006/73/EC. Therefore Articles 24 and 25 are not applicable.	Noted
277.	BdV	Q13.	Yes, these already existing measures should fully be applied to insurance distribution activities, because insurance PRIPs consist of insurance and	Noted

			of investment components. This should include the level playing field, too. Following to MIFID article 24 (2) marketing communication has clearly to be identified as such. One of the strongest marketing arguments of life insurances are any kind of promised guarantees. Insurance consumers often prefer guarantees to high yields. That is reason why it is absolutely necessary that, if any kind of guarantee is promised by the insurer, the conditions under which this guarantee are given have to be fully disclosed and explained in detail (as a pre-contractual information duty included in KID).	
278.	Better Finance	Q13.	Do you agree that the existing MiFID measures in Articles 24-25 related to investment research should be applied to insurance distribution activities, following a redrafting to take into account the legal framework applying to insurance undertakings and insurance intermediaries? Please provide details of the aspects of insurance distribution activities to which you believe these measures might apply. N/A	
279.	BIPAR	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 term investment research should be dealt carefully in an insurance context. The investment research in a context of insurance based investments tends to be of a more generic nature (the state of the markets, the economy, prospects for different assets, sectors, growth,	Noted

			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 generic investment information and information promoting a specific investment instrument.	
280.	DUTCH ASSOCIATION OF INSURERS	Q12.	It is not clear what the term "relevant person" in article 22(3) is in IMD perspective.	Noted
281.	Dutch Investors' Association (VEB)	Q13.	Do you agree that the existing MiFID measures in Articles 24-25 related to investment research should be applied to insurance distribution activities, following a redrafting to take into account the legal framework applying to insurance undertakings and insurance intermediaries? Please provide details of the aspects of insurance distribution activities to which you believe these measures might apply. N/A	
282.	EIOPA Insurance and Reinsurance Stakeholder Group	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	Noted

			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.	
283.	European Federation of Financial Advisers and Fina	Q13.	Yes, we do. We consider that these measures should apply to all aspects of PRIIPs distribution activities (and, in particular, to all the activities with a financial content) except for a ban on commission for research. We believe that a clarification is needed with regard to the distinction between research activities and the provision of advice to customers in the insurance sector.	Noted
284.	Fédération Française des Sociétés d'Assurances	Q13.	Concerning FFSA, investment research is not an insurance activity so there is no reason to apply measure in article 24 and 25 of MIFID1 implementing directive to insurance distribution activities.	Noted
285.	German Insurance Association	Q13.	The provisions stipulated in Article 24 and Article 25 of the MiFID Implementing Directive 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	EIOPA shares the notion that insurance undertakings and insurance intermediaries do generally not provide financial research services.

			suitability test, if applicable. In this respect, the articles mentioned above should not be adopted.	
286.	Polish Insurance Ombudsman	Q13.	The MiFID measures described in Art. 24-25 should be applied to selling all insurance investment products. However, we must be aware that in many cases, the investment research is not made by the seller. The seller only prepares documentation for the research that the customer signs. This documentation is actually in favour of the seller as he/she can always proof that the research had been made and blocks all the redress mechanisms for the consumer.	Noted
287.	Professional Association of Insurance Brokers	Q13.	In accordance with BIPAR, in relation to Article 24 & 25 relating to investment research, we do not believe that they should be applied to insurance distribution activities.	EIOPA shares the notion that insurance undertakings and insurance intermediaries do generally not provide financial research services.
288.	ACA	Q14.	Gold plating by member states should be avoided and EIOPA should be empowered to intervene in case of goldplating.	Noted
289.	AILO	Q14.	Sale of any investment product, irrespective of insurance linkage, to elderly customers who may be more vulnerable, requires additional safeguards as liquidity and possible short term accessibility may become critical. For example long term care funding and possible need to sustain long term income provision. Note that insurance is attractive to elderly customers in much of Europe as a tool for inheritance planning so the potential exists for emotive sales entailing undue investment risk and customers finding they are locked into investments either temporarily or	Noted

			permanently which cease to be appropriate to their needs.	
290.	Allianz SE	Q14.	None specific.	
291.	ANACOFI	Q14.	ENG The first impact is the flight of the customers. Certain conflicts of interests are wished by the customers who want that the professionals work in spite of this conflict of interests or because they do not perceive it. FR Le premier impact est la fuite des clients. Certains conflits d'intérêt sont souhaités par les clients qui veulent que les professionnels travaillent malgré ce conflit d'intérêt ou parce qu'ils ne le perçoivent pas du tout.	Noted
292.	ANASF	Q14.	As stated in Q8, the scope of new relevant provisions in terms of firm size and organisation is particularly critical, especially if the case of sole traders and similar small intermediaries is considered. Accordingly, a number of exceptions should be introduced for these entities.	EIOPA believes that exemptions would not be appropriate as they would compromise the rules which aim to foster investor protection.
293.	Assuralia	Q14.	Are there other problem drivers that you believe should be considered? Response by Assuralia, the association of insurance undertakings in Belgium: The experience in Belgium shows that providing sufficiently long transitional periods is essential to avoid and manage problem drivers,	Noted

			especially for those markets that have not introduced MiFID style rules for insurance-based products at present. Although the deadline for implementation was 30.04.2014, the Royal Decrees necessary for practical implementation were only published on 07.03.2014 and the accompanying supervisory guidelines were not official before 17.04.2014. This has brought great discomfort and costs to the Belgian insurance sector, leaving no room for proper planning and efficient implementation. We advise EIOPA and the European Commission to leave sufficiently long transitional periods for the practical implementation of the implementing measures on conflicts of interest.	
294.	Austrian Insurance Association (VVO)	Q14.	Are there other problem drivers that you believe should be considered.	
295.	BdV	Q14.	One major problem driver which has to be taken into consideration is the choice of qualified personal. Knowledge and ability requirements have to be standardized on a common mandatory level, a continuous professional development (CPD) has to be implemented by each insurer. When choosing new personal, distributors or insurers have to stress that working for a financial company does not mean "quick sale" and "making a big fortune" only in a short time. On the contrary, distribution personal has to learn that the interests of the consumer are at the centre of the company's culture and strategies. Again, it is the responsibility of the Board to emphasize that trust and confidence by consumers is gained by doing business in a honest way, having good governance arrangements, and offering transparent	Noted

			products. We totally agree on this point with Mr. Bernardino. Additionally we would like to stress that the more financial products are complex - like insurance PRIPs - the more additional professional trainings are necessary. The objective that consumers are able to understand what they intend to buy can only be reached by the necessary prior step, that intermediaries understand what they sell. The implementation of these differentiated professional trainings belongs fully to the responsibility of the insurers. In 2008 the Florida Office of Financial Regulation obliged insurers to offer additional professional trainings only for selling variable annuities.	
296.	Better Finance	Q14.	Are there other problem drivers that you believe should be considered? N/A	
297.	BIPAR	Q14.	The EU legislators by not merely aligning the legislative measures for PRIIPs and MIFID products have recognised the specificities of the insurance industry. The models of distribution are very varied; they are well established to match the specificities of each market and to the level of development of each market. The legislation seeks to increase consumer protection but not to destroy the existing distribution system. It is important that the same is taken into consideration by EIOPA in its	Noted

			advice to the European Commission.	
298.	DUTCH ASSOCIATION OF INSURERS	Q13.	The articles 24 and 25 are related to investment research and should only apply to insurance distributors involved in providing advice on MiFID 1 financial instruments. The majority of insurance undertakings and intermediaries are not engaged in MiFID 1 financial instruments and therefore articles 24 and 25 should not apply to them. It is important to make a clear distinction regarding the scope of these articles.	Noted
299.	Dutch Investors' Association (VEB)	Q14.	Are there other problem drivers that you believe should be considered? N/A	
300.	EIOPA Insurance and Reinsurance Stakeholder Group	Q14.	None that we are aware of	Noted
301.	European Federation of Financial Advisers and Fina	Q14.	As stated in Q8, the scope of new relevant provisions in terms of firm size and organisation is particularly critical, especially if the case of sole traders and similar small intermediaries is considered. Accordingly, a number of exceptions should be introduced for these entities.	EIOPA believes that exemptions would not be appropriate as they would compromise the rules which aim to foster investor protection.
302.	Fédération Française des	Q14.	The FFSA would like to underline that in France all life insurance products sales have to be advised whatever the distribution channel and the type	Noted. The rules governing conflicts of

	Sociétés d'Assurances		of products eg classical life insurance products or unit linked insurance products. As IMD is a minimum harmonization directive, this specificity of the French regulation is likely to be maintained. In this context, we do not see how a MifiD-like regulation which makes the difference between the distribution of the product on one hand and the provision of investment advice service, could be implemented in France. Should the intention be to manage potential conflits of interest without reducing national consumer protection level, then, it is crucial to establish general principles at European level and allow national adaptations.	interest apply to all insurance undertakings and insurance intermediaries, independent from the service provided to the customers.
303.	Federation of Finnish Financial Services (FFI)	Q14.	The main problem driver has not been sufficiently addressed in the Discussion Paper. This relates to the discrepancy of IMD 1.5 and IMD 2 rules and the risk of differing dates of entry into force of these measures. Only a single set of conduct of business rules for insurance PRIIPs should be introduced. This would be best and most coherently done in IMD2. Otherwise there is a risk of major costs and administrative burden for insurance distributors in applying two different sets of rules one after another. This would not benefit consumers and other clients either, but rather confuse them.	IMD 2 is still being negotiated. It should be noted that MiFID II has introduced changes to IMD1. EIOPA is requested by the Commission to provide Technical Advice with regards to the rules on conflict of interest.
304.	German Insurance Association	Q14.	No.	
305.	Polish Insurance Ombudsman	Q14.	Giving the experience of the Polish Insurance Ombudsman we see that customers in Poland choose an investment product based on the oral information given by the seller. This oral information is not always precise and identical to the information in the documents (terms and conditions of a contract, policy etc.). When it comes to redress there is	EIOPA is invited to provide technical advice with regard to the rules governing conflicts of interest.

			usually no way to prove that the customer was told something different than is stated in the documentation. If the customer signs the papers, he has little rights to claim he was misled by the seller. This oral information in many situations is crucial. Therefore, one of the ideas is to record such conversations at least when it comes to contracts of high premiums. Also, when it comes to the commission paid to sellers, the higher the commission is, the less protection customer gets and less investment research is made. One of the options that could be appreciated is paying the commission in installments (for each year of the investment contract a percentage of a commission is paid). Another option is to pay the commission in relation to the profit gained by the investment product, not only for the sale of such a product.	In its statement the respondent addresses other issues that might arise when distribution services are carried out.
306.	Professional Association of Insurance Brokers	Q14.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	Noted
307.	AILO	Q15.	Intermediary Network "hubs" which are established to provide compliance and other functions for intermediary firms and sole traders so providing expertise in a cost effective manner. Their services are often paid for by overriding commission or a direct share of commission remuneration. Thus while they are not involved directly with sales to customers they could be impacted by default should commission be prohibited. That would result in alternative means to be found to pay for their services which could result in higher costs for the customer. It could also result in some Networks ceasing to exist so further disadvantaging the SME distributor through reduced competition and perhaps increased costs. Platform providers who self-finance from fund house trail commissions –	EIOPA does not intend to introduce a ban on commissions. EIOPA acknowledges that requirements on third party payments may have an indirect impact on third parties providing services for the insurance undertakings or insurance

			providing a service to insurers and intermediaries but who do not sell directly to customers – the impact could be as described for Networks by default, if their role is not considered.	intermediaries.
308.	Allianz SE	Q15.	None specific.	
309.	ANACOFI	Q15.	ENG All the ecosystem is concerned: customer, supplier. The load is going to spread. The compliance cost will rest on the customer. The professional will be sometimes obliged to refuse to work or to handle demands. Consequently, the activity is going to slow down. The effects of these phenomena are not quantifiable. The only quantifiable item in life insurance field is that conflicts of interests concerning approximately 20 % of the contracts which results from the motivation of subscription type to favors a beneficiary rather that an other type. So, there would be consequences on more than a billion premiums. FR Tout l'écosystème est concerné : client, fournisseur….la charge va se diffuser. Le prix de la compliance sera répercuté sur le client. Le professionnel sera parfois obligé de refuser de travailler ou de traiter des demandes. Par conséquent, l'activité va ralentir. Les effets de ces phénomènes ne sont pas quantifiables. La seule chose quantifiable en assurance-vie est liée aux conflits d'intérêts concernant environ 20% des contrats liés à un motif de souscription du type avantage d'un bénéficiaire au détriment d'un autre. Il y aurait donc des conséquences sur plus d'un milliard de prime.	Noted

310.	Austrian Insurance Association (VVO)	Q15.	Are there other entities or stakeholders who have not been identified here who could be impacted by changes?	
311.	BdV	Q15.	In recent years in Germany many efforts have been made - even by the legislator - to strengthen fee-based advice and distribution of financial products ("Honorarberatung"). As a consumer NGO we clearly support these efforts. This represents an important step to a larger consciousness of consumers (and distributors!) that advice is a necessary service and insurance must be the appropriate product. Nevertheless the numbers of fee-based advisors specialized on insurances ("Versicherungsberater") are still too small. Commission-based distribution will persist on a large scale very probably, but there has to be a level playing field between these two kinds of remuneration systems. The argument that "hidden" commissions are cheaper than fees is wrong and has to disappear. The more fee-based distribution is spread, the better is the chance that commission-based remuneration changes (from pure volume-based inducements to long-term services by continuous flow of remuneration).	In promoting transparency on costs EIOPA aims to make the different business models better comparable.
312.	Better Finance	Q15.	Are there other entities or stakeholders who have not been identified here who could be impacted by changes? Please identify them and the nature and reasons for the possible impact, including is potential scale for them if possible. N/A	
313.	DUTCH	Q14.		

	ASSOCIATION OF INSURERS			
314.	Dutch Investors' Association (VEB)	Q15.	Are there other entities or stakeholders who have not been identified here who could be impacted by changes? Please identify them and the nature and reasons for the possible impact, including is potential scale for them if possible. N/A	
315.	EIOPA Insurance and Reinsurance Stakeholder Group	Q15.	None that we are aware of	Noted
316.	German Insurance Association	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.	Noted
317.	Polish Insurance Ombudsman	Q15.	None.	
318.	ACA	Q16.	More obligations also mean more costs for advice. The costs are at the end borne by the costumer.	EIOPA is aware that additional organisational requirements may lead to additional costs which might be transferred to the customers.
319.	AILO	Q16.	The benefit of Networks and Platforms tends to manifest in cost	Noted

			reduction and enhanced service to customers. Scale could be gauged via a local regulatory question to insurers & intermediaries to establish if they have these structures in place or use the services of them. If their traditional source of funding was removed they may cease to exist or directly charge for their services which would be passed over to customers through higher fees/commissions, and also possibly reduce the number of intermediaries in existence (due to increasing costs) thereby reducing customer choice and for the providers scalability.	
320.	Allianz SE	Q16.	The cost/benefit analysis should assess the overall impact of additional costs and benefits of the proposed measures on the welfare of customers. An isolated goal to maximize the reduction of (often only latent) conflicts of interest risks runs the risk of effectively working against the well-understood overall interests of the customer by being overly restrictive and/or costly.	EIOPA acknowledges that the management of conflict of interest is not an end in itself, but shall protect the interests of the customers.
321.	ANACOFI	Q16.	ENG Two problems are going to appear: - A reduction in income on this market - An increase of cost by: - the training - The internal procedure: construction of the management process of conflicts of interests and the daily follow-up. - Loss of gross income It can create a real economic problem. Indeed, the management of	Noted

			conflicts of interests supposes in numerous cases the purchase of an outside advice or a technical solution to companies which are specialists on the subject. Consequently, the price of the service will be expensive and the intermediaries will be obliged to go towards this type of service in order to acquire the skills they are not able to develop themselves. FR Deux problèmes vont apparaitre : - Une baisse des revenus sur ce marché - Une augmentation des coûts du fait de: - la formation - la procédure interne : construction du process de gestion des conflits d'intérêt et le suivi au quotidien - perte de chiffre d'affaire Cela peut créer un réel problème économique. En effet, la gestion des conflits d'intérêt suppose dans de nombreux cas l'achat d'une prestation extérieure ou d'une solution technique à des sociétés qui sont des spécialistes en la matière. Par conséquent, le prix du service sera cher et les intermédiaires seront obligés d'aller vers ce type de prestation pour dévelloper les compétences qu'ils ne pourront pas acquérir ou développer eux-mêmes.	
322.	ANASF	Q16.	We believe that a primary focus should be put on costs and benefits of provisions relating to remuneration policies and practices in the insurance sector. In particular, it is important to assess their impact on customers in order to ensure a level playing field between the financial	Noted

			and insurance sectors.	
323.	Association of British Insurance (ABI)	Q16.	Benefits to distributors can include better internal control and management information.	EIOPA agrees.
324.	Assuralia	Q16.	Are there other drivers of costs or benefits that have not been identified? Please identify these drivers, and outline how their scale might be estimated, and which stakeholders they might impact. Response by Assuralia, the association of insurance undertakings in Belgium: An important driver of costs and consumer confusion is the rapid succession of overlapping legislation, requiring both consumers and business to adapt to regulatory changes that bring no substantial added value: - Similar to other insurance markets, the Belgian insurance market has recently invested a great deal of effort in introducing MiFID1 provisions on investor protection for investment-based insurance products, including the rules on conflicts of interest. Customers are getting familiar with these new rules at present. - We are concerned that the MiFID2 amendments to IMD1 on conflicts of interest will oblige consumers and the insurance sector in Belgium to readapt the recently introduced set of MiFID1 rules and practices already very soon. These amendments serve exactly the same objectives as MiFID1 though and will generate a second wave of substantial costs with limited added value for customers, if any.	EIOPA takes notice of the concerns expressed by the respondent. The respondent gives good reasons for a cross-sectorial consistent approach and a close alignment with the MiFID rules.

			- We expect IMD2 to introduce yet another set of rules for insurance-based investment products in exactly the same field of conflicts of interest not much later. This would generate a third wave of substantial costs and consumer confusion, again with no or limited added value for customers. Assuralia therefore recommends EIOPA and the European Commission to avoid unnecessary costs and to offer customers a consistent and stable framework by - Aligning the delegated acts on conflicts of interest of IMD with the related requirements in the MiFID1 Implementing Directive; - Focusing the delegated acts on general principles for conflicts of interest that can be applied across distribution models and insurance undertakings, leaving the assessment of actual situations of conflicts of interest to the intermediaries, insurers and national supervisors themselves.	
325.	Austrian Insurance Association (VVO)	Q16.	Are there other drivers of costs or benefits that have not been identified? Implementation and compliance costs can be controlled best when building on existing insurance regulation instead of fully replacing it by foreign regulation. Additional rules should be adjusted to insurance as outlined in answers to questions 5, 8, 11, 12 and 13.	Noted
326.	BdV	Q16.	Due to tax privileges, for decades life insurances have reached a clearly dominant position in asset allocation of German retail savers (apart from house ownership). Instead of share holder education ("Aktienkultur") there are more life insurance contracts than inhabitants in Germany	Noted

			(more than 90 millions of contracts). But this does not mean that every German citizen has a life insurance contract. On the contrary, many customers do not have a single one, so others possess even several contracts. This implies very often that many customers have contracts with low premiums in each of them. It is obvious that the sum of premiums the customers have to pay regularly is rather high, but the structure of their contracts represents a tremendous driver of costs. This is nothing but the result of constant poor advice and represents an exorbitant mis-allocation of the savings of consumers. One additional driver for costs lies in the assumptions for the calculation like mortality tables as mentioned above. They reduce the payments owed in a very specific way, although they are not costs. Because of the outrageous lack of transparency (it's normally not possible to know these tables for out-standings persons) they are a huge problem for consumers.	
327.	Better Finance	Q16.	Are there other drivers of costs or benefits that have not been identified? Please identify these drivers, and outline how their scale might be estimated, and which stakeholders they might impact. N/A	
328.	BIPAR	Q16.	As many of the proposed rules (and in particular the combination of the rules) will have a high cost impact on many intermediaries/ advisers and the sector of insurance intermediation in general, we would want to	Noted. EIOPA acknowledges the added value

			remind all those involved in the rule making process some basics in the economic theory related to intermediaries. This illustrates the added value of intermediaries and advisers to the economy and the consumers. Intermediaries operate in many different markets such as leisure and business travel, real estate, credit, pensions, etc. Essentially, intermediaries can be found in many markets in which a customer only occasionally seeks to buy a product or a service. The theoretical and empirical analysis of the role of intermediaries has identified 3 core economic contributions of intermediaries which also apply to the financial intermediaries represented by BIPAR: 1) Through their activities intermediaries decrease search and matching costs. Intermediaries enhance market performance by coordinating market transactions. They act as a matching mechanism: they match consumers with specific needs to suppliers that offer particular products and, by doing so, they increase the overall volumes of trade. In a market characterized by differentiated products and by consumers with various needs and preferences, the activity of searching plays an important role as it allows consumers to gather information about products and price quotations. Consumers can avoid time consuming market search by relying on intermediaries that present them with a range of products or services. Similarly, suppliers seeking to reach consumers can make use of intermediaries, thus avoiding the need to open branches, advertise, and promote their products.	intermediaries and advisors provide.

			The magnitude of this benefit depends on whether the intermediary is tied to a single supplier or a few suppliers, or covers the market at large Typical intermediation activities reduce customers' search costs by: ☐ searching themselves for the appropriate products and services, ☐ providing price information (e.g., price quotes or estimates). Intermediaries also assist suppliers establishing links with potential clients, distributing products and services and promoting and advertising suppliers' products and services. 2) Through their activities intermediaries allow economies of scale to be reaped. In many instances, parties trading directly between themselves engage in a variety of costly and time consuming activities (e.g. bargaining, negotiating, and writing contracts). Where intermediaries handle a high volume of transactions with multiple buyers and sellers, they can potentially achieve significant economies of scale. For instance, clients may have high opportunity costs of undertaking administrative tasks related to the process of obtaining a good or service, and might prefer dealing through an intermediary. Similarly, an intermediary may assist a supplier in the preparation of the sales	

			agreement (e.g. by writing contracts and undertaking associated administrative tasks). 3) Through their activities, intermediaries help reduce adverse selection. In some markets, information asymmetries between the trading parties may be so severe as to cause a form of market failure known as "adverse selection". This is a market process in which consumers select a product of inferior quality (or do not purchase it at all) due to having access to a different information set to the provider of the product. In economic theory it has been argued that adverse selection that arises in a direct exchange market can be alleviated if the two sides of the market deal through an intermediary. In the case of many financial products, asymmetric information works at two levels: on the one hand consumers are not fully aware of the characteristics of a financial product and, on the other hand, financial firms do not know all the characteristics of the buyer. In this context, problems of adverse selection are represented by trading opportunities that would be lost due to consumers' lack of confidence (e.g. a buyer does not purchase a potentially suitable product because he does not fully understand its characteristics), or suppliers reluctance to offer a financial product to a potentially valuable client (e.g. a lender's inability to understand and assess all the characteristics of the purchaser).	

			If they are perceived as experts and succeed in acting as quality guarantors for both sides of the market, intermediaries may alleviate these problems. For instance, intermediaries may assist buyers of financial products and services in the purchase of products or services by: ☐ Suggesting suitable products and services ☐ Warning clients about the risk associated with specific products or services; and ☐ Explaining contract terms. Typically, intermediation activities aimed at alleviating financial consumer's asymmetric information are more significant for relatively complex products or services. In contrast these activities are relatively less important in the case of relatively simple and standardised products or service.	
329.	Dutch Investors' Association (VEB)	Q16.	Are there other drivers of costs or benefits that have not been identified? Please identify these drivers, and outline how their scale might be estimated, and which stakeholders they might impact. N/A	
330.	EIOPA Insurance and Reinsurance	Q16.	No	

	Stakeholder Group			
331.	European Federation of Financial Advisers and Fina	Q16.	We believe that a primary focus should be put on costs and benefits of provisions relating to remuneration policies and practices in the insurance sector. In particular, it is important to assess their impact on customers in order to ensure a level playing field between the financial and insurance sectors.	EIOPA acknowledge the importance of a cost-benefit-analysis.
332.	German Insurance Association	Q16.	No comments.	
333.	Nordic Financial Unions	Q16.	As mentioned under Q10, the burden of documentation should be assessed. Financial regulation must minimize the documentation and administration burden on employees, who must be given time and resources to provide sound financial advice. Rules on selling practices should not increase the administrative burden of individual employees. Further administrative requirements risk decreasing the quality of advice and service given to customers.	Noted
334.	Polish Insurance Ombudsman	Q16.	None.	
335.	Professional Association of Insurance Brokers	Q16.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	Noted
336.	UNI Europa Finance	Q16.	As mentioned under Q10, the burden of documentation should be assessed. Financial regulation must not unreasonably increase the documentation and administration burden on employees, who must be given time and resources to provide sound financial advice. Rules on selling practices should not increase the administrative burden of individual employees. Further administrative requirements risk decreasing the quality of advice and service given to customers.	Noted

337.	Verbraucherzentrale Bundesverband e.V. (vzbv)	Q16.	Yes. Beyond increased product suitability, consumers will profit from reduced costs as long as level 2 measures go for total and detailed disclosure of any distributional costs, including inducements. Economically, these reduced costs result from a reallocation of rents currently earned by insurance undertakings and intermediaries. In other words, total market efficiency is enhanced what indirectly benefits the European economy as a whole.	EIOPA supports enhanced cost transparency.
338.	ACA	Q17.	Insurance PRIIP are for the moment subject to several new regulations coming up. Solvenvcy 2 is an example. Superposition of different regulations have to be considered and overlapping should be avoided. There is a risk that sole traders will more and more dispappear and with them the close proximity to clients.	EIOPA is aware of the importance of consistent regulation.
339.	AILO	Q17.	The most important factor has to be 'disclosure' so that customers can make informed choices and proper training of those persons dealing with the public. Too restrictive a regime or too onerous the resultant compliance costs will reduce the number of intermediaries available to customers thereby reducing customer service and choices. Customers tend to place absolute trust in the adviser in front of them. The quality of that person and the clarity of the advice are paramount, together with adequate research of their customer needs. One of the best metrics for cross-comparison by customers has to be 'reduction in yield' of insurance product costs (contract charges – not fund related charges, which is the ambit of the investment houses)– If some reasonable metrics could be agreed for particular product types – then some flexibility could be possible for companies to design their products & remuneration structures within that- always with the proviso that harmful distortions caused by conflicts should be avoided) – i.e. don't get too hung up on product & remuneration structures – but set the	Noted

			'good taste' boundaries of the overall cost to customer in reduction in yield. There is a good piece of work done by the Dutch Ombudsman in this zone.	
340.	Allianz SE	Q17.	None specific.	Noted
341.	ANACOFI	Q17.	ENG A priori not or not particularly. FR A priori non ou pas particulièrement.	Noted
342.	ANASF	Q17.	We consider that harmonisation efforts should particularly concern the provision of key documents to customers. As for this, possible parallels may be established with reference to PRIIPs KID and UCITS KIID.	Noted
343.	Austrian Insurance Association (VVO)	Q17.	Considering the differential impacts of changes for different stakeholders, are there other determinants for differential impacts that you would like to highlight?	
344.	BdV	Q17.	Hard disclosure of commissions and strict implementation of compliance rules by insurer boards may entail a more or less strong reduction of numbers of distributors. From the point of view of consumer protection such a development may even reinforce fairness in selling practices. Regular appropriate income represents a main objective in order to reduce "push sales" and to strengthen "best advice" by distributors. Mis-selling practices damage consumers with small or medium incomes even more: first they are the consumers group which is most pushed to conclude several life insurance contracts with low premiums in each.	EIOPA agrees that a better disclosure will have positive effects on selling practices.

			Secondly because of unstable professional biographies, these customers cancel their life insurance contracts most before reaching maturity. So, they do not only have the highest "hidden" costs, but they suffer from additional and real capital loss because of low surrender values (especially during the first years after conclusion of contract). In Germany more than two-third of life insurance contracts do not reach maturity.	
345.	Better Finance	Q17.	Considering the differential impacts of changes for different stakeholders, are there other determinants for differential impacts that you would like to highlight? N/A	
346.	BIPAR	Q17.	It should be avoided that a "silo" approach in terms of cost benefit analysis is adopted. What should be considered is the overall, cumulative cost both direct and indirect of the proposed rules. Due to the non-application of MIFID I to insurance based investment products and operations and due to the opt out possibility of the MIFID I it should also be considered that many market parties who were not under MIFiD I (or who were in the opt out of MIFID I) will now have to adapt to MIFID II (level II ?) "harmonised" rules in one step.	Noted
347.	Dutch Investors' Association (VEB)	Q17.	Considering the differential impacts of changes for different stakeholders, are there other determinants for differential impacts that you would like to highlight?	

			N/A	
348.	EIOPA Insurance and Reinsurance Stakeholder Group	Q17.	No	
349.	European Federation of Financial Advisers and Fina	Q17.	We consider that harmonisation efforts should particularly concern the provision of key documents to customers. As for this, possible parallels may established with reference to PRIIPs KID and UCITS KIID.	Noted
350.	German Insurance Association	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 persons 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	EIOPA agrees that the cost impact on the individual firm will be influenced by the question whether the firm has already implemented organisational measures to address conflicts of interest and whether the measures taken are appropriate to meet the new requirements.

			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.	
351.	Insurance Europe	Q17.	According to EIOPA's assessment, in the absence of any change, unmitigated conflicts of interest could lead to harm for individual customers that would otherwise be avoided. It notes that other measures such as increased product oversight, product intervention powers and improved transparency measures might help reduce such harm. However, it concludes that inconsistencies in regulatory approaches between sectors at EU level would continue and expose the insurance sector to stresses as a result of regulatory arbitrage, while evolving national measures will lead to growing fragmentation of applicable standards across the EU due to national specificities. If the intended aim of this exercise is to manage existing conflicts of interest, then it is crucially important to take national specificities into account. Evolving national measures are designed to tackle the various issues that arise locally in that particular market and thus are aimed at effectively dealing with those types of conflicts of interest. The focus should therefore be on establishing general principles at EU level and leaving it to national supervisors to tackle the specific types of conflicts of interest that arise at local level.	Noted

352.	Polish Insurance Ombudsman	Q17.	None.	
353.	Professional Association of Insurance Brokers	Q17.	The Professional Association of Insurance Brokers in the Austrian Federal Economic Chamber refer to the correspondent answer of BIPAR.	Noted
354.	Verbraucherzentrale Bundesverband e.V. (vzbv)	Q17.	Yes. The concentration process that naturally arises from regulation (larger firms profit from economies of scale and generally find it easier to comply with new provisions than smaller firms) may be problematic for consumers as well as for overall market efficiency as it further reduces competition. At the same time, conflict of interest provisions are of such fundamental importance that they must be fulfilled by every supply-chain entity. The first part of the discussion paper identified remuneration/inducement-based conflicts of interest as most important type with respect to potential harm to customers. In the second part, we argued that, in our view, disclosure actually is an effective way of dealing with remuneration/inducement-based conflicts of interest. In light of the proportionality discussion, management-by-disclosure has another dimension as it does, in contrast to more costly organizational measures, not lead to the above-mentioned concentration process. Full and disaggregated disclosure of inducements is as easy to do for a sole trader as for a large company. Moreover, the sole trader should find it much easier to adjust his or her business model when tightening competition requires this.	EIOPA agrees that conflict of interest requirements are of utmost importance and should apply to all entities involved in the distribution chain.
355.	ACA	Q18.	The impact on small structures like sole traders and other small	Noted

			intermediaries should be analysed. Small structures have the most difficulties to absorb supplementary costs caused by more regulation. One should also consider exemption of low value products.	
356.	AILO	Q18.	Costs can only be established by releasing consultations with proposals and requesting feedback. Costs may not only be pecuniary – they can also be a reduction in the availability of services and products to customers. Ex Ante benefits could be gauged by a measure of growth or fall in business in terms of value and number & type of policies in-force. This needs to be measured both before and after the implementation. Similarly the number of authorized distributors before and after should be measured.	Noted
357.	Allianz SE	Q18.	No specific comment.	
358.	ANACOFI	Q18.	ENG Being the sole association, in Europe to have a delegation of control of the financial activities, we have some experience in the field of the "compulsory" support of our members on these subjects. We can thus consider that the price paid for the new compliance envisaged here will represent approximately an increase from 1 to 3 % of the current cost of the compliance without acquisition costs of tools. However, the professionals are going to have to equip themselves (as after MIF1 for other purposes) and the tools of compliance have a cost. 50 % of offices are probably going to equip themselves (as after MIF1) and thus to revise their tools or must be accompanied by an external service.	Noted

			¼ intermediaries are not equipped at all. We can envisage reasonably a doubling of the cost of compliance for those who are not already equipped with specific tools (even if certain features will serve to solve other problems). For those who are already equipped, it would represent probably an increase much more reasonable of 2 to 5 % of the current cost. In summary, the costs of compliance would increase as the case may be between 3 and 103 %. FR En tant qu'association, seule en Europe à disposer d'une délégation de contrôle des activités financières, nous avons de l'expérience dans le domaine de l'accompagnement « obligatoire » de nos membres sur ces sujets. Nous pouvons donc considérer que le prix payé pour la compliance nouvelle envisagée ici représentera environ une augmentation de 1 à 3% du coût actuel de la compliance hors couts d'acquisition d'outils. Cependant, les professionnels seront contraints de s'équiper (comme après MIF1 pour d'autres sujets) et les outils de compliance ont un coût. 50% des cabinets vont probablement s'équiper (comme après MIF1) et donc revoir leurs outils ou vont devoir être accompagnés par un service extérieur. ¼ des intermédiaires ne sont pas équipés du tout. On peut envisager raisonnablement un doublement du coût de compliance pour ceux qui ne sont pas déjà équipés d'outils spécifiques (même si certaines fonctionnalités serviront à résoudre d'autres problématiques).	

			Pour ceux qui sont déjà équipés, cela représenterait probablement une augmentation beaucoup plus raisonnables de l'ordre de 2 à 5% du coût actuel. En résumé, les coûts de compliance augmenteraient selon les cas entre 3 et 103%.	
359.	ANASF	Q18.	We consider that a careful estimation of such an impact, through a comparative study between the different national markets in order to detect possible distortions from the harmonized average, should be developed in order to analyse any possible positive consequence for customers.	Noted
360.	Austrian Insurance Association (VVO)	Q18.	How do you think effective estimates of costs and benefits for the different stakeholders impacted might be developed? Experience shows that regulatory changes tend to come at a higher cost than predicted. Against the background of the diversity of national distribution systems and national economic disparities it is difficult to provide for a serious estimation of costs.	Noted
361.	BdV	Q18.	The current system of "unitary premium" for life insurances is obsolete. In the traditional capital life insurance the asset allocation was made by the insurers themselves. Unpredictable stock markets and the current low interest phase reduced harshly the importance of these traditional life insurances with "guaranteed" interests. Like British and French insurers German life insurers now offer more and more unit-linked products and insurance PRIPs with either reduced or no guaranteed benefits at all. This implies that the risks of capital markets are	Noted

			transferred from the insurers to the customers. In order to be able to follow closely increase (or decrease) of the capital encapsulated in their life insurance contracts, the customers need more transparency. Instead of an "unitary premium" the premium has to be split up into three components: the risk component (part of premium linked to risk coverage mainly death and disability), the administration component (part of premium linked to costs of sale and of long-term administration and service), the capital component (part of premium which is invested as savings of the customers). The full disclosure of the capital component of life insurance contracts is the necessary condition for the assessment of capital value at any time by the customers. The total amount of capital assets of German life insurers (without particular occupational pension schemes like Pensionskassen) reached 793 million Euro in December 2013 (BaFin Annual Report 2013, p. 132, table 20). Again we would like to stress that the more financial products are complex - like insurance PRIPs - the more it is necessary to prevent any harm from the needs of the customers that these consumer protection measures ought to be implemented. Available statistics and reports: Total amount of number of contracts, premium income and payments: ☐ Annual Reports of BaFin (German Financial Supervisory	

			Authority). ☐ Statistical Yearbooks of the Association of German Insurers (GDV). Reports on complaints-handling: ☐ Annual Report of BaFin 2013, part 5.4: Consumer complaints and enquiries. ☐ Annual Reports of Versicherungsombudsmann in Berlin (ombudsman of private insurances except of illness insurances, but inclusion of complaints about intermediaries). Former studies on mis-selling practices and standardized product information sheets in Germany: ☐ Stellungnahme des Bundes der Versicherten e. V. (BdV) für das Bundesministerium für Wirtschaft und Technologie (Berlin) vom 10.9.2012 (Aktenzeichen: IIB3 – 12 03 63) zum Vorschlag der Europäischen Kommission für eine Richtlinie des Europäischen Parlaments und des Rates über Versicherungsvermittlung – Neufassung (IMD 2). ☐ Transparenz von privaten Riester- und Basisrentenprodukten, Auftragnehmer: Zentrum für Europäische Wirtschaftsforschung GmbH, Mannheim Juni 2010 (für das Bundesministerium für Finanzen, Berlin). ☐ Anforderungen an Finanzvermittler. Mehr Qualität, bessere Entscheidungen. Studie im Auftrag des Bundesministeriums für Ernährung, Landwirtschaft und Verbraucherschutz, Berlin Dezember 2008.	

362.	Better Finance	Q18.	How do you think effective estimates of costs and benefits for the different stakeholders impacted might be developed? Please consider in particular the challenges with estimating potential benefits for customers and for the industry on an ex ante basis. Please highlight any data sources you are aware of that might be used for developing such estimates. One quite interesting estimate would be to compute the fee difference between an index fund actually used in unit-linked policies and the comparable (same index) ETF (which are never included in retail unit linked contracts as mentioned above): this, multiplied by the AuM would give a good estimate of the consumer detriment caused by conflicts of interests in unit linked life insurance distribution.	Noted
363.	DUTCH ASSOCIATION OF INSURERS	Q17.	As already mentioned conflicts of interest are already dealt with adequately in The Netherlands. There are also product development and oversight obligations in force. New detailed rules on a European level would create additional costs. This should be avoided by introducing high level standards allowing flexibility for Member States to deal with conflicts of interest.	Noted
364.	Dutch Investors' Association (VEB)	Q18.	How do you think effective estimates of costs and benefits for the different stakeholders impacted might be developed? Please consider in particular the challenges with estimating potential benefits for customers and for the industry on an ex ante basis. Please highlight any data sources you are aware of that might be used for developing such estimates. One quite interesting estimate would be to compute the fee difference	Noted

			between an index fund actually used in unit-linked policies and the comparable (same index) ETF (which are never included in retail unit linked contracts as mentioned above): this, multiplied by the AuM would give a good estimate of the consumer detriment caused by conflicts of interests in unit linked life insurance distribution.	
365.	EIOPA Insurance and Reinsurance Stakeholder Group	Q18.	No comment	
366.	European Federation of Financial Advisers and Fina	Q18.	We consider that a careful estimates of such an impact, through a comparative study between the different national markets in order to detect possible distortions from the harmonized average, should be developed in order to analyse any possible positive consequence for customers.	Noted
367.	German Insurance Association	Q18.	No comments.	
368.	Polish Insurance Ombudsman	Q18.	_____	
369.	Verbraucherzentrale Bundesverband e.V. (vzbv)	Q18.	Market inefficiency is hard to estimate as the equilibrium price is a theoretical abstraction that only facilitates thinking. A rough indicator for misallocated resources are economic rents in the insurance industry (i.e. salaries, dividends etc. exceeding those of more competitive sectors of the economy). Another measure would be the difference between the product-specific distribution costs (inducements) and the costs of product-independent advice. Qualitative evidence on product suitability has been produced by the	Noted

			Federation of German Consumer Organisations (vzbv) together with the Consumer Centres of the German Federal States (Verbraucherzentralen) for other financial market sectors (i.e. retail securities markets). However, comparable methodological approaches might be as well employed to grasp the potential benefits for consumers from reduced conflicts of interest (see http://www.vzbv.de/11326.htm).	