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Report on

Good Practices for Disclosure and Selling of Variable Annuities

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1. EXECUTIVE SUMMARY AND MAIN FINDINGS OF THE REPORT

1. This Report summarises the findings of an Expert Group, set up in May 2011 under the auspices of EIOPA's Committee on Consumer Protection and Financial Innovation (CCPFI) with the aim of establishing good disclosure and selling practices for variable annuities (VA). The Expert Group has been able to draw on the conclusions of a previous Task Force, established by EIOPA's predecessor, the Committee of Insurance and Occupational Pensions Supervisors (CEIOPS), which had assessed variable annuities from a prudential perspective[1]. In addition the Expert Group has been assisted in its work by the analysis on market structure and basic product features, undertaken by EIOPA's Financial Stability Committee. The outcome of this analysis has been published in EIOPA's Financial Stability Report for Spring 2011[2].

2. In response to the losses suffered by some large insurance groups on their VA books during the recent financial crises, product characteristics have changed significantly to allow for better risk management.

   Chapter 2.2. describes basic features of variable annuities and **chapter 2.3.** highlights some current trends in product development, which have emerged since the financial crises. As a consequence of an increased focus on risk management, insurance undertakings have had to reflect the associated costs in the charging structure for variable annuity products, thus reducing the potential benefits to customers compared to pre-crises product offerings.

3. The Expert Group referenced the cross-border business model often encountered in relation to the writing and sale of variable annuities. Many large insurance groups have set up specialised subsidiaries dedicated to this business ("VA product companies"), which underwrite variable annuities in several Member States through freedom of establishment or freedom of services. The Group also considered the objectives of consumers who invest in these policies. Consumers may purchase them as a means of saving for their retirement or for investment purposes more generally as an alternative to traditional life insurance or other savings products. Both the business model and the objectives pursued by customers have a bearing on what constitutes good disclosure and selling practices.

4. Good disclosure practices attempt to ensure that customers can make their choices on an informed basis. **Chapter 3** analyses, specifically for variable annuities, which type of information, both general and product-specific, customers should receive in order to be able to decide in favour or against a product offering. Customers need to be informed how the product works under different market conditions, what they are charged and which options they can exercise during the life of the contract. In addition they need to be provided with some general information on the

[1] EIOPA Report on Variable Annuities
https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/Report-on-Variable-Annuities.pdf
[2] EIOPA Financial Stability Report 2011 First half-year report
https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/Full-Spring-FSR-2011.pdf

product provider, the law governing the contract and details on the relevant supervisory authorities to take account of the common cross-border business model referred to above. The use of “frequently asked questions” is considered to be a transparent way of communicating the relevant information.

5. Good selling practices for variable annuities have to ensure that the demands and needs of a customer are taken into account. As described in **chapter 4.1.**, because of their inherent complexity, variable annuities should always be sold on an advised basis via a salesperson, which may be an insurance intermediary or an agent or employee of the insurance undertaking. To avoid the risk of misselling a number of areas, in particular, should be addressed by the salesperson. The Expert Group has suggested an indicative list of questions that could be used in this context.

6. Finally, **chapter 4.2.** examines good practices by the product provider where it does not control the sales process. Insurance undertakings should still ensure that sales are adequate by, inter alia, carrying out a due diligence on the intermediary firms as well as reviewing the clients they have taken on to ensure that they are as expected regardless of who controls the sales process.

7. The main findings of the Report are that good practices

    - in relation to **disclosures**
        - should provide general information on the insurance undertaking and the legal and supervisory regime it operates under to take account of the cross-border nature of this business
        - should also include product specific information to address product complexity
    - in relation to **selling practices**
        - should ensure that variable annuities are always sold on an advised basis, even when they are sold directly by the company
        - should focus on the customer’s objectives to determine his demands and needs.

2. BACKGROUND TO THE REPORT

2.1. MANDATE AND SCOPE OF WORK

Mandate

8. This report examines, specifically in relation to variable annuities, good practices on product disclosure and selling arrangements. These issues had not been covered by the mandate of the previous CEIOPS Task Force that focused only on prudential matters.

9. Following the adoption of the recommendations put forward by the previous Task Force[3], the Board of Supervisors therefore requested the Committee on Consumer Protection and Financial Innovation (CCPFI) to look into these consumer-related issues. To this end, the CCPFI set up a subgroup (Expert Group) to assist it in its work and to prepare the deliberations at the CCPFI plenary.

Scope

10. Concerning product disclosures, the objective is to identify good practices regarding the product-specific information aimed at providing a proper understanding of the risks assumed by the policyholder in a variable annuity contract. These disclosure requirements apply in addition to the information that needs to be provided on the life insurance undertaking and on the commitments the undertaking assumes vis-à-vis the policyholders.

11. In this context, particular attention should be paid to the multi-layered charging structure often encountered in variable annuities.

12. Concerning selling practices, the aim is to look at good practices regarding advice given to customers, which should be based on their demands and needs. Where the sales process takes place through insurance intermediaries as defined in the IMD[4], it has also been assessed how insurance undertakings should ensure that sales are appropriate.

13. This Report has been prepared in response to EIOPA's monitoring role in relation to new financial activities. Variable annuities fall within the broader category of insurance contracts with an investment element. Bearing in mind that at a European level there are several legislative initiatives under way, which may have an impact on the sales of variable annuities, namely on product disclosure and on selling practices (such as the upcoming legislative proposal on Packaged Retail Investment Products –PRIPS- and the revision of the Insurance Mediation Directive -IMD), the purpose of the Report is limited to analysing good practices, but it **does not set forth any guidelines or recommendations**.

14. The Report has a clear **product-specific focus** in line with its mandate, which has driven the range of topics that have been analysed by the Expert Group. The scope of previous work by EIOPA's predecessor CEIOPS

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[3] EIOPA Report on Variable Annuities
https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/Report-on-Variable-Annuities.pdf

[4] Article 2 (5) Directive 2002/92/EC

in the form of technical advice to the European Commission on PRIPS5 and on IMD[6] had been determined by the respective call for advice and, in relation to selling practices, covered a number of areas (such as transparency of remuneration, conflicts of interests and inducements), which are not dealt with in this Report. These aspects are broader in nature and should be developed further as the wider legal framework evolves.

15. In identifying good practices, the Expert Group has taken existing EU legislation for the insurance sector as a starting point. In the future, legal concepts originally developed for other financial sectors (such as the KIID for pre-contractual disclosures or MiFID for rules on sales) may be increasingly relevant as a benchmark for the insurance sector.[7] As these issues are equally of a wider nature, the Expert Group did not want to anticipate any developments in this respect.

16. The focus of this Report is on good practices at the point of sale. Given the long term nature of many VA contracts with options that can be exercised over the lifetime of the policy, the CCPFI noted the importance for policyholders to receive timely and clear information on the performance of their account value, so that they can exercise their options on an informed basis.

2.2. Basic Product Features

17. Variable annuities (VAs) are unit-linked life insurance contracts with investment guarantees provided by the insurance undertaking which, in exchange for single or regular premiums, allow the policyholder to benefit from the upside of the unit, but be partially or totally protected when the unit loses value.

18. A common business model pursued by many larger insurance groups consists of setting up specific subsidiaries dedicated to variable annuities business, which underwrite in several Member States, through freedom of establishment or freedom of services.

19. In the US (where variable annuities have been sold in a significant way since the 1990s) as well as in some other markets such as Japan these products are very popular. In Europe, VAs have become increasingly widespread too, as the possibility to gain from the exposure to specific underlying assets and being protected against a depreciation of these assets at the same time makes them quite appealing.

20. Recently, in some countries new variants of unit-linked policies have emerged that equally aim to provide some downside protection, but which do not include a guarantee by the insurance company.

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[5] https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/submissionstotheec/20101012-3L3-TF-Report-on-PRIPs.pdf

[6] https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/submissionstotheec/20101111-CEIOPS-Advice-on-IMD-Revision.pdf

[7] See European Commission http://ec.europa.eu/internal_market/consultations/docs/2010/prips/consultation_paper_en.pdf

As per the previous paper, these types of contracts fall outside the scope of this report.

21. In their basic form, the guarantees embedded in variable annuities cover the amount of premiums paid, but quite often they entail additional features, for instance, that the premiums paid yield at least at a pre-defined interest rate (roll-up). Alternatively, the guarantee may be reset to the highest account value throughout the insurance period, evaluated in accordance to a set of pre-defined time frames (ratchet).

22. Policyholders' entitlements are determined on the basis of the guaranteed minimum benefits, if the underlying funds depreciate in value (or gain less than warranted by the roll-up rate). In all other instances, their claims are determined by the performance of the underlying funds.

23. Regarding the size and the characteristics of the VA market EIOPA has published the key findings of a survey concentrating on larger insurance groups in its First Half Year Financial Stability Report 2011[8]. From a consumer perspective it is important to look at the type of minimum benefit being offered.

24. There are several kinds of guarantees or minimum benefits that can be embedded into a VA contract. Examples of common offerings include:

    - **GMDB** (guaranteed minimum death benefit): Minimum benefit in case of death;
    - **GMAB** (guaranteed minimum accumulation benefit): Minimum guaranteed capital after a predefined period;
    - **GMIB** (guaranteed minimum income benefit): Minimum guaranteed lifetime or term annuity starting at a predefined age on a defined benefit base;
    - **GMWB** (guaranteed minimum withdrawal benefits): deferred or immediate, temporary or lifelong income stream.

25. The Financial Stability Report indicates that most contracts (72.2 % of gross written premiums) include a minimum death benefit. Regarding minimum living benefits, GMAB seems the most frequent feature, followed by GMWB and GMIB. Most policies are single premium contracts.

26. There are two major markets for these products. Some variable annuity contracts are intended for specific purposes (such as for private retirement savings) and seek to attract specific customer groups (such as affluent individuals approaching retirement age), often when the products are offered in tax preferred wrappers. In relation to these products, the "insurance element" (i.e. the guaranteed minimum living benefits) typically plays a prominent role in their marketing.

27. Other offerings are less focused in terms of the target clients and their goals. They look to attract a broad range of customers by promoting variable annuities as an investment opportunity with limited downside

[8] EIOPA Financial Stability Report 2011 First half-year report https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/Full-Spring-FSR-2011.pdf

risk. For these offerings, more emphasis is generally placed on the "investment element" (i.e. the underlying funds).

2.3. CURRENT TRENDS IN PRODUCT DEVELOPMENT

28. Current trends in product development can be traced back, to a large extent, to the lessons learned during the recent financial crises, which resulted in severe losses for some important insurance groups. To mitigate the effects of losses, these groups had, for example, to inject significant levels of capital into VA subsidiaries, halt product offerings and/or withdraw from certain markets. The complexity of the products offered, market volatility, inadequate hedging and poor product design were some of the main reasons why these losses occurred.

29. One of the key features of many variable annuity products is the long-term nature of the guarantee in the form of living benefits. In addition, policyholders are usually given a number of choices and options – for instance in relation to fund selection - which they can exercise at inception or during the life of the contract. These two factors combined tend to make variable annuities offerings particularly complex from a risk management perspective. In particular, the implementation of a robust hedging programme, designed to ensure that the movements in the liabilities are offset by the movement in the financial derivative instruments used for hedging, presents a huge challenge for VA product companies. The losses experienced in the course of the financial crises have evidenced that the risks associated with these products are difficult to understand and to risk manage.

30. VA product companies have put in place various initiatives with the aim to reduce the risk embedded in VA contracts. These trends in product development include, among others, the use of volatility limits and the reduction of fund options (for example, through only allocating investments to index based funds). This Report has as its sole objective to evaluate the impact of such initiatives on consumers, but does not assess their effectiveness from a risk management perspective.

31. It should be noted, however, that the cost of hedging and related risk-mitigation must be fully reflected in the charging structure for these products, thus reducing the potential benefits to consumers compared to pre-crises offerings. It is, therefore, important that the product information provided is sufficiently clear to enable consumers to fully understand the VA contract they have been presented with.

3. DISCLOSURES

3.1. GENERAL AND PRODUCT SPECIFIC DISCLOSURES

32. The purpose of this section is to outline a possible approach to good disclosure practices for variable annuities. Under current EU law, insurance companies are obliged to provide a certain set of pre-contractual information on the life insurance policies they offer, but the format, in which it is presented, is up to their discretion. To convey the essential product characteristics in a short document insurers often use a key features document, which is prescribed by national law in some jurisdictions.

33. The key features document and any promotional material that may be used for pre-contractual information must be consistent with the general terms and conditions applicable to a variable annuities offering. It is therefore seen as good practice for the promotional material to refer, where appropriate, to the relevant sections of the general terms and conditions. In doing so, the insurance companies can ensure consistency between their disclosure documents and the actual provisions in the contract, but it also allows customers to see how the pre-contractual information they receive is reflected in the general terms and conditions.

34. It is essential for the product provider to explain a number of areas of relevance to a customer in terms that are easily understandable, clear, fair and not misleading. In relation to variable annuities some of the features, which need to be conveyed, are very product specific such as those that result from the interplay of minimum benefits and the performance of the underlying funds. Others concern general information on the product provider, the law governing the product offering and the supervisory regime. Their relevance is due to the cross-border business model generally found with variable annuities.

35. The questions below, which could be presented to the potential customer both in the promotional material and in the pre-contractual information documents, are aimed at ensuring that any reader will have a good understanding of the product, the charges, terms in relation to redemption/maturity and any specific risks that they should be aware of. These have therefore been grouped under 5 headings, although these are by no means exhaustive. Notwithstanding the questions below, insurance companies must follow all legal and regulatory requirements they are subject to. Finally, the questions as laid out below **are indicative and not exhaustive**, and companies may be flexible in their presentation of these to prospective customers, for example using scenarios, tables, graphics and "frequently asked questions" to ensure that the information is portrayed in a consumer-friendly manner.

3.1.1. THE PRODUCT

- What is the product and how does it work? (This should describe the main features of the product and the type of guarantee(s) offered. It should clearly state at what point any monies are payable and how much these will be.)

- What choice does the policy holder have in where premium(s) are invested and what are those choices? (This should describe the underlying funds in which monies may be invested and the ability of the investor to choose)
- What are the main features of these funds in terms of investment objective and risk profile? (This should describe the investment objective of the underlying funds in a clear manner with an indication of risk which should follow the same approach as that used for UCITS)
- How does the guarantee work? (This should describe how the investment works, how the guarantee works and the interaction between the two)
- Is the insurance undertaking entitled to unilaterally modify the degree of the guarantee? If so, is the minimum degree of the guarantee determined?
- Do the guarantee benefits rise or fall under any circumstances? (If the product is subject to mechanisms such as roll-up or ratchet, this should clearly describe how these mechanisms work)
- Are there any circumstances where the guarantee will not be applicable? (This should clearly state any circumstances where the guarantee will cease to exist or clearly state that the guarantee will apply in all eventualities)
- If the underlying funds lose money, what will be impact on the policy? (This should describe, perhaps by way of a simple table or graph, what happens to the payout to the policy holder in certain situations)
- May the policy-holder change the funds in which money is invested? (This will describe the process whereby a policy-holder may or may not have discretion on allocation, and if there is discretion, how often and to what extent that can be exercised)
- Will changing allocation cost the policy holder anything?

3.1.2. CHARGES

- What charges are applicable to the policy and how much are they in percentage terms?
- How much of the initial premium(s) is/are used to pay the various charges payable under the policy?
- What charges are payable on a regular basis and what is the impact of these? (This will describe the effect the regular charges have on the return on the policy)
- If the policy-holder redeems early, will there be a cost associated with that? Or how long does the policy-holder have to stay in the policy to avoid any such surrender cost?

- In case the charges can be modified unilaterally, is the maximum amount of those charges determined?

3.1.3. SURRENDERS/REDEMPTIONS/MATURITY

- When does the policy mature?
- What does the policy-holder receive on maturity?
- Can the policy be surrendered earlier than maturity?
- What happens if surrendered early and is there a cost associated?
- Does the guarantee lapse if surrendered earlier than maturity?
- Are there any bonus payments payable?
- Can the benefits of the policy be transferred to someone else?
- If so, how will this affect the policy?

3.1.4. RISKS

- Is there any risk that the insurance company will not be able to pay the benefits?
- How exposed is the policy-holder to the riskiness in the underlying funds?
- Are there any circumstances where the policy-holder may not obtain the guarantee?
- Is the policy-holder exposed to the risk that the funds will perform badly?
- How does the policy-holder know that the premiums are being invested as requested?

3.1.5. COMPLAINTS/LEGAL/TAX/REGULATION

- Which company does the policy-holder have a contract with?
- What is the name and address of the regulatory body of the insurance company that the policy-holder has a contract with?
- Which regulatory body does the policy-holder contact in the event of a complaint? Does he have access to an Alternative Dispute Resolution (ADR) system?
- Is that company a member of an Insurance Guarantee Scheme? In what country?
- What are the legal consequences for the policy-holder in the event that the insurance company becomes insolvent or winds up?
- In the event of a legal dispute between the policy-holder and the insurance company, under which jurisdiction will the legal proceedings happen (i.e. the governing law of the contract)?

- Are there any tax or legal issues that the policy-holder should be aware of?

3.2. Illustrations

36. The use of illustrations is governed by EU legislation in a number of aspects. For the insurance sector Directive 2009/138/EC ("Solvency II"), in particular, sets forth certain requirements on insurance undertakings, when they provide figures relating to potential payments above and beyond the contractually agreed payments.[9] These also apply in relation to variable annuity contracts, as the guaranteed benefits constitute minimum promises, which may be increased in the event that the underlying funds appreciate in value. The following examples illustrate, specifically for variable annuities, good practice in implementing these legal requirements.

37. Illustrations should be used to give customers an understanding of what payouts they may receive and what it might cost them in a given set of circumstances. It is usually sensible to show this on a number of different bases derived from the specific details of the case. Other illustrations on top of these could be provided but these should not assume investment growth above the top rate of the core illustration.

38. By contrast, the systematic use of favourable scenarios (when all scenarios presented lead to a positive outcome) would be misleading. Unfavourable scenarios should always also be presented and illustrated; otherwise the customer could wrongly assume that his contract has no downside. The scenarios should also illustrate the maximum risk assumed by the customer.

39. In addition given that many of the charges applied to these products are based on the underlying investment it is also good practice to show the effect of these charges on the growth of the fund. This can be done as an effective reduction on the yield of the investment or as an effect of charges calculation (based on a standard investment growth rate or indeed no growth).

40. Furthermore it is also reasonable to use case studies to show what might happen in certain circumstances but these should not be misleading, should show the negative cases as well as the positive ones and should not take away from the standard illustrations above.

41. All of the above should be caveated with the fact that these are just illustrations and should not be seen to give any promise that this will be what the customer will actually get.

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[9] Article 185 (5) Directive 2009/138/EC provides:
"Where, in connection with an offer for or conclusion of a life insurance contract, the insurer provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the insurer shall provide the policy holder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest. This shall not apply to term insurances and contracts. The insurer shall inform the policy holder in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the policy holder shall not derive any contractual claims from the specimen calculation."

Question for public consultation

1. Are documents that communicate the key features of the product (Key Feature Documents) used for Variable Annuities? What features do they contain?
2. What kinds of benefits may flow from the use of such a key features document by insurance undertakings?
3. Do you consider FAQ as a useful way of presenting pre-contractual information? What other alternatives do you consider appropriate?
4. During the life of the contract how do providers inform customers on the performance of their VA contract?
5. Which scenarios should providers use to illustrate potential payouts to customers?
6. Which unfavourable scenarios should always be presented?
7. How should the maximum risk assumed by the customer be illustrated?
8. What kinds of benefits may flow from the use of illustrations by insurance undertakings?

4. SELLING PRACTICES

4.1. DEMANDS AND NEEDS OF THE CUSTOMER

41. This section identifies good selling practices for variable annuities irrespective of the distribution channel via which they are sold. For the insurance sector, current EU legislation only covers sales by insurance intermediaries, defined as any person who, for remuneration, takes up or pursues insurance mediation. Insurance intermediaries shall specify prior to the conclusion of any specific contract, in particular on the basis of information provided by the customer, the demands and needs of that customer as well as the underlying reasons for any advice given to the customer on a given insurance product.[10]

42. In view of the complexity of many VA offerings, their long-term nature and the importance these products frequently have in the context of private wealth management, it is good practice to apply these principles also to the distribution of variable annuities if they are sold directly by the product provider as, irrespective of the distribution channel, the demands and needs of a customer should always determine the type of contract that is being offered.

43. The objective pursued by a customer, based on the material facts that he has disclosed, should be a key consideration in assessing his demands and needs. Determining whether a certain product offering is suitable will namely depend on whether it is used for private retirement savings or as investment opportunity more generally.

44. The Expert Group identified a number of areas where there is a potential risk of misselling (advice based on personal circumstances, use of clear projections, use of clear language).The questions below are intended to prevent such risk from materialising. It should be noted that this list is indicative.

4.1.1. PERSONAL CIRCUMSTANCES

- Does the sales person ask for customer's age, financial situation, personal demand, knowledge of financial markets and the time horizon for his investment (short, medium or long-term) etc.?
- Based on this demand does the sales person outline alternative products (direct investments, unit-linked contracts etc.) to VA products? Which features should the customer focus on when comparing VA to other products?
- Is the VA product tailored to the customer's demand (private pension plan, investment)?
- Are there any personal circumstances under which the sales person should not advise VA?

[10] Article 12 (3) Directive 2002/92/EC

4.1.2. USE OF CLEAR PRODUCT DESCRIPTIONS INCL. ILLUSTRATIONS

The sales person should inform the customer in a clear and comprehensive way about the relevant aspects of the VA product to ensure the customer understands correctly the product he wants to buy.

- Have potential risks of the VA product been explained in detail?
- Has the fund performance been illustrated by adequate and plausible scenarios? (An adequate depiction includes positive scenarios as well as negative developments. It should also include a worst case scenario.)
- What are the benefits of the contract in case of surrender and death and have these been clearly illustrated?
- Does the insurance undertaking prepare information sheets for the sales person/intermediary that they should use when informing the customer?
- Does the insurance undertaking monitor the intermediary?
- Does the customer have to confirm in writing that he understood the information received?

4.1.3. USE OF CLEAR LANGUAGE

The sales person should be able to illustrate all relevant aspects of the VA product without using too many technical terms to avoid any confusion. If technical terms are used, for instance in written product information (e.g. volatility), the intermediary should be able to explain them in a clear manner. The customer should be able to take purchase decisions and to exercise his options during the contract period on an informed basis.

- Does the sales person use terms which are understandable also for non experts?
- Is the sales person trained to explain the complex basis of the VA products?
- Does the sales person explain the written product information to the customer?

4.1.4. UNDERSTANDING POTENTIAL FUTURE OUTCOMES

The performance of funds underlying VA contracts depends on different economic variables and conditions. Despite a variety of illustrations the customer may not be able to assess, which scenario is more realistic, if he is unaware of these variables and how they may affect the performance of fund investments underlying his policy and ultimately his account value.

Customers should be made aware that the performance of their account value depends on how these economic variables and conditions change over time in a way, which is comprehensible to them. Only then can they decide which illustration they consider more realistic.

- Does the sales person explain how external factors e.g. on capital markets can affect the fund development?
- In order to explain how external factors can affect the fund development, does the sales person refer to fund developments of the past? Does he explain that past performance is not necessarily an indication of future performance?
- How does the sales person measure that the customer has understood the information received?

The mechanics how a VA-product generates profits or losses may be very complex. Even if the customer can assess which scenario is more realistic, he does not know whether he has losses or profits in such a scenario.

- Does the sales person explain the underlying basic mechanics of a VA-product?
- Depending on the type of the VA-product, does the sales person show the difference between a classical unit-linked product and a VA-product (Type of guarantee, contractual claims in case of a positive or negative fund development, structure of charges)?
- Does the sales person explain what kind of different options the customer can exercise during the duration of the contract and how this can affect the fund development?
- Does the sales person explain in which cases the customer gets only the guaranteed benefits at the end of the contract duration (e.g. adverse fund development) or to what extent he benefits from a positive fund performance?

4.2. DUE DILIGENCE

Where the provider does not control the sales process i.e. where they sell through intermediaries such as independent brokers and advisors, they should still ensure that sales are adequate to the best of their abilities. The good practices described below apply to insurance companies notwithstanding any obligations under civil law.

It should be noted that some of these practices such as reviewing product sales should be carried out regardless of whether the provider controls the sales process or not.

Practices here could include

- Due diligence on the intermediary firm
    - o Do the intermediaries understand the risks/features of these products?
    - o Does the provider have appropriate agreements in place with the intermediary firm?

- Does the provider understand the sales process that the intermediary follows and are they comfortable that this is reasonable?
- If there are any regulatory requirements for selling these products do they meet these requirements?
- How well trained are the intermediary on these products? Has the provider provided training to the firm?
- Is it compulsory for the intermediary to take an exam to be able to sell these products?
- How does the insurance undertaking measure that the intermediary understands how VA works?
- What controls do the intermediary have on selling of these products? What is their sales process for these products? Are there any issues with this?
- What is the intermediaries target markets and does this fit with the market for these products?
- Have there been any issues with this firm before in the selling of complex products?
- Is the intermediary entitled to issue an information sheet on VA without the authorisation of the insurance undertaking?
- In case of a new VA product, does the insurance undertaking hold consultations organised for the intermediary?
- Does the insurance undertaking measure how satisfied the customer was with VA?

- Post Sales Disclosure of what the customer has actually bought through post sales documentation so that the customer can understand what they have bought and ensure that they agree that it is what they thought they were buying.
- In conjunction with this Cooling off periods to allow the customer to cancel when they are not happy with what they have been sold
- Regular Overview Review of products
    - Demographics and types of sales largely fits with target market
    - Complaints data on these products – analysing any root causes of complaints
    - Lapse rates for these products – If this is higher than expected in any areas this should be investigated
    - Feedback from intermediaries

Question for public consultation

9. What are the distribution channels used in your market?
10. Are these products also distributed via direct sales in your market?
11. What type of information does the sales person need to have on the customer prior to giving advice / making a recommendation?
12. Does it matter in relation to selling practices for which purpose the product is offered (retirement saving vs. investment solution)?
13. Does it matter which type of guaranteed minimum benefit is offered?
14. In which instances, if any, should an insurance intermediary present variable annuities, if he informs the customer that he gives his advice on the basis of an analysis of a sufficiently large number of insurance contracts (Article 12 (2) IMD)? Should this principle also apply to any other sales person?
15. In relation to the due diligence on insurance intermediaries are there any other good practices that providers should consider?