IDD: EIOPA Technical Advice on possible delegated acts
Inducement

15 March 2017

Highlights

- Specific IBIPs regime.
- Best interests of customers (instead of a benefit concept).
- Inducements scheme.
- Global asssessment methodology.

In detail

Recital 57 IDD:

"in order to ensure that any fee or commission or any non-monetary benefit in connection with the distribution of an insurance-based investment product paid to or paid by any party, except the customer or a person on behalf of the customer, does not have a detrimental impact on the quality of the relevant service to the customer, the insurance distributor should put in place appropriate and proportionate arrangements in order to avoid such detrimental impact. To that end, the insurance distributor should develop, adopt and regularly review policies and procedures relating to conflicts of interest with the aim of avoiding any detrimental impact on the quality of the relevant service to the customer and of ensuring that the customer is adequately informed about fees, commissions or benefits."

Article 29.2 IDD:

"without prejudice to points (d) and (e) of Article 19(1), Article 19(3) and Article 22(3), Member States shall ensure that insurance intermediaries or insurance undertakings are regarded as fulfilling their obligations under Article 17(1), Article 27 or Article 28 where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the customer or a person on behalf of the customer only where the payment or benefit:

- Does not have a detrimental impact on the quality of the relevant service to the customer; and
- Does not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers."

Article 29.4 IDD:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 38 to specify:

- The criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the customer;
- The criteria for assessing compliance of insurance intermediaries and insurance undertakings paying or receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer."

1. *Scope*

Scope	Inducements paid or received by insurance undertakings and insurance intermediaries related to the distribution of an **Insurance-Based Investment Products (IBIPs).**
Inducement/ Inducement scheme	• **Inducement**: any fee, commission, or any other monetary or non-monetary benefit which is paid or provided in connection with the distribution of an IBIP or an ancillary service. • **Inducement scheme**: set of rules that govern the payment of inducements and which generally include the criteria for accrual and payment of such inducements.
Exception	Fees paid by clients and internal payments of insurers and insurance intermediaries to their employees should be excluded from the scope.

2. *Inducements: key issues*

2.1 Objective sought

Insurance undertakings and insurance intermediaries are required to consider whether an inducement or inducement scheme may have a detrimental impact on the quality of the relevant service to clients in the context of the distribution of an IBIP.

In this regard, EIOPA establishes a “high-level principle” by which a ***detrimental impact on the quality of the relevant service to the customer will exist when the inducement is of such a nature and scale that it provides an incentive to carry out insurance distribution activities in a way which is not in accordance with the best interests of the customer.***

To this point, a two-step approach is proposed:

- Identification of all inducements paid to third parties by insurers and insurance intermediaries;

- Establishment of the necessary procedures to assess if the inducements have a detrimental impact and of specific organisational arrangements to address the risks of customer detrimental impact caused by the payment of inducements.

2.2 Methodology and criteria for assessing the detrimental impact

- A ***“global assessment”*** methodology is proposed, based upon an overall analysis that takes into consideration all relevant factors which may increase or decrease the risk of detrimental impact to clients, as well as all organisational measures taken by the insurance undertaking or insurance intermediary to make sure that inducements do not provide any incentive to carry out the insurance distribution activities in a way that is not in line with the customer’s best interests.

- EIOPA proposes in its Technical Advice ***some (non-exhaustive) examples***, as described on the table below, as guidance to market participants in assessing whether an inducement or inducement scheme has a detrimental impact on the quality of the relevant service to the customer. As stated by EIOPA, this list is not supposed to introduce a legal assumption of detrimental impact, and the concurrence of a single accelerating factor will not automatically entail the consideration of a detrimental effect, requiring a case-by-case analysis.

2.3 Organisational requirements

- Insurance undertakings and insurance intermediaries ***shall establish, implement and maintain appropriate organisational arrangements and procedures in order to assess on an ongoing basis and ensure that the generic inducement paid for a particular type of contract and the structure of inducement schemes which they pay to or receive do not lead to a detrimental impact*** on the quality of the service provided to customers nor prevent the insurance intermediary or insurance undertaking from complying with their obligation to act honestly, fairly and professionally and in accordance with the best interests of their customers.

- In addition, it should be ensured that inducement schemes (including a policy of gifts and benefits) ***are approved by the insurance undertaking or insurance intermediary's senior management***.

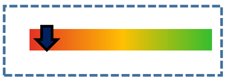
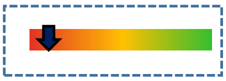
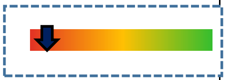
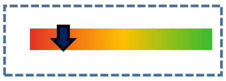
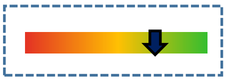
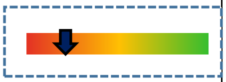
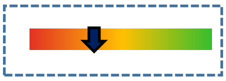
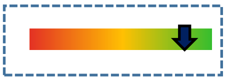
3. Gap Analysis with MiFID II and IMD

	Gap Analysis with MiFID II*	**Gap Analysis with IMD****
Nature of inducements	By express mandate of the Commission, the regulation on inducements foreseen in the IDD is consistent with MiFID II. However there is a relevant difference that should be highlighted: while MiFID II requires that inducements are designed to improve the quality of customer service, IDD only establishes that the inducement shall not have a detrimental impact on the quality of customer service.	IMD, with reference to insurance brokers' remuneration, only states that it is prohibited for these intermediaries to receive any remuneration other than the commission (defined as a percentage over the premium amount accrued at the time of sale of the insurance product).

* Directive 2014/65/EU on markets in financial instruments.

**Directive 2002/92/EC of 9 December on insurance mediation.

4. Main impacts of the requirements included within the Technical Advice on this topic.

Requirement	**Impacts on the organisation** (procedures, policies, contracts)	**Impacts on IT**	**Impacts on business**
Establishment of measures and procedures that assess and ensure the quality of the inducement			
Identification of risk factors (positive and negative)			
Approval of the inducement scheme by the entity's senior management			

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