

# *IDD: EIOPA Technical Advice on possible delegated acts*

## *Conflicts of interest*

20 March 2017

### *Highlights*

- Specific provisions for IBIPs.
- Complementary to Inducements provisions.
- Disclosure as step of last resort.
- Receipt of payment potentially triggers conflicts of interest.

### *In detail*

#### **Recital 39:**

“The expanding range of activities that many insurance intermediaries and undertakings carry on simultaneously has increased potential for conflicts of interest between those different activities and the interests of their customers. It is therefore necessary to provide for rules to ensure that such conflicts of interest do not adversely affect the interests of the customer.”

#### **Recital 57:**

“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 27:**

“Without prejudice to Article 17, an insurance intermediary or an insurance undertaking carrying on the distribution of insurance-based investment products shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as determined under Article 28 from adversely affecting the interests of its customers. Those arrangements shall be proportionate to the activities performed, the insurance products sold and the type of the distributor.”

#### **Article 28:**

“Member States shall ensure that insurance intermediaries and insurance undertakings take all appropriate steps to identify conflicts of interest between themselves, including their managers and employees, or any person directly or indirectly linked to them by control, and their customers or between one customer and another that arise in the course of carrying out any insurance distribution activities.

Where organisational or administrative arrangements made by the insurance intermediary or insurance undertaking in accordance with Article 27 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose to the customer the general nature or sources of the conflicts of interest, in good time before the conclusion of an insurance contract.

By way of derogation from Article 23(1), the disclosure referred to in paragraph 2 of this Article shall: (a) be made on a durable medium; and (b) include sufficient detail, taking into account the nature of the customer, to enable that customer to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.”

### 1. Scope of application

<b>To whom?</b>	<ul style="list-style-type: none"> <li>▪ <b>Insurance intermediaries and insurance undertakings</b>, including their managers, employees or any person directly or indirectly linked to them by control.</li> </ul>
<b>What?</b>	<ul style="list-style-type: none"> <li>▪ Conflicts of interest between the insurance intermediary or insurance undertaking and their clients.</li> </ul>
<b>What?</b>	<ul style="list-style-type: none"> <li>▪ Conflicts of interest between the insurance intermediary or insurance undertaking employees and their clients.</li> </ul>
<b>What?</b>	<ul style="list-style-type: none"> <li>▪ Conflicts of interests between one customer and another.</li> </ul>
<b>When?</b>	<ul style="list-style-type: none"> <li>▪ When distributing IBIPs</li> </ul>

### 2. Conflicts of interest: key aspects

#### 2.1 Identifying conflicts of interest

For the purpose of identifying conflicts of interest, EIOPA provides four minimum criteria that insurance intermediaries and undertakings must take into account. For this purpose, a conflict of interest exists when the insurance intermediary, insurance undertaking or a linked person:

- Is likely to **make a financial gain, or avoid a financial loss**, at the expense of the customer;
- Has a **financial or other incentive** to favour the interest of another customer or group of customers over the interests of the customer;
- Receives or will receive from a person other than the customer **a monetary or non-monetary benefit** in relation to the insurance distribution activities provided to the customer;
- Is involved in the **management or development of the IBIPs**, in particular, if they have an influence on the pricing of those products or its distribution costs.

#### 2.2 Conflicts of interest policy

**General principle:** insurance intermediaries and insurance undertakings shall establish, implement and maintain an effective conflicts of interest policy.



### 2.2.1. Content

The conflict of interest policies must identify, with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more customers.

It also must specify procedures to be followed and measures to be adopted in order to manage and prevent such conflicts from damaging the interests of the customer of the insurance intermediary or insurance undertaking, as follows:

- effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may damage the interests of one or more customers;
- separate supervision of relevant persons whose main functions involve carrying out activities on behalf of, or providing services to, customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;
- the removal of any direct link between payments, including remuneration, to relevant persons mainly engaged in one activity, and payments, including remuneration, to different relevant persons mainly engaged in another activity, where a conflict of interest may arise in relation to those activities;
- measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out insurance distribution activities;
- measures to prevent or control the simultaneous or sequential involvement of a relevant person in insurance distribution activities where such involvement may impair the proper management of conflicts of interest.

### 2.2.2. Alternative measures

If insurance intermediaries and undertakings prove that those measures and procedures are not appropriate to ensure that the distribution activities are carried out in accordance with the best interest of the customers and are not biased by conflicting interests of the insurance undertakings, the insurance intermediaries or another customer, they must adopt adequate alternative measures and procedures for that purpose.

### 2.2.3. Disclosure

Insurance intermediaries and undertakings shall avoid over reliance on disclosure and make that disclosure is a step of last resort that can be used only where the effective organisational and administrative measures established are not sufficient. The disclosure shall:

- include a **specific description of the conflict of interest**, including the general nature and sources of the conflict of interest, as well as the risks to the customer that arise as a result of the conflict of interest and the steps undertaken to mitigate these risks;
- to clearly state that the **organisational and administrative arrangements established are not sufficient to ensure**, with reasonable confidence, that the risks of damage to the interests of the customers will be prevented, to enable the customer to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.




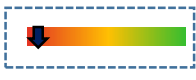





2.2.4. Record

Keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of one or more customers has arisen or, in the case of an ongoing service or activity, may arise.

**3. Gap analysis with MiFID II and IMD**

	Gap analysis with MiFID II*	Gap analysis with IMD**
<b>Conflict of interest policy content</b>	<p>Like the EIOPA Technical Advice, MiFID II includes the obligation to maintain and regularly review a conflicts of interest policy.</p> <p>Article 33 of MiFID II Commission Delegated Regulation establishes a list of five criteria to identify conflicts of interests. Two of them are different from the criteria introduced by the EIOPA Technical Advice: <i>(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 clients' interest in that outcome;</i> <i>(d) the firm or the person carries on the same business as the client.</i></p>	<p>There were already four criteria in the previous EIOPA Technical Advice on conflicts of interest (6 January 2015) but the last one is not exactly the same (the current EIOPA Technical Advice specifies “<i>in particular if they have an influence on the pricing of those products or its distributions costs</i>”).</p>
<b>Alternative measures</b>	<p>Under MiFID II, there is no disposition regarding the adoption of adequate alternative measures and procedures when the established measures are not appropriate (apart from the disclosure, as a measure of last resort).</p>	N/A
<b>Disclosure</b>	<p>Under MiFID II the disclosure to clients shall also be a step of last resort that can be used only where the effective organisational and administrative measures are not sufficient to ensure that the risks of damage will be prevented.</p>	N/A.
<b>Record</b>	<p>Under MiFID II it is also required to keep and regularly update a record of situations in which a conflict of interest may arise.</p>	N/A.

**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
<i>Conflicts of interest policy content</i>			
<i>Alternative measures</i>			
<i>Record</i>			

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

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

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