EIOPA Q&As on IDD application

ARTICLE: 7- Division of competence between home and host member States

Question

"I'm currently registered agent of an insurance company in Luxembourg, under the regulation of CAA.
I want to shift my current agreement, from a company established in Luxembourg, to a company established in Ireland, maintain my residence in Luxembourg, and under the freedom to provide services, act on the Portuguese market.
In theory this should be possible, but the Luxembourg regulator claims that can't register me, as an intermediary of the Irish company, because it is not under their regulation, even if, the Irish company is registered in Luxembourg, under the freedom to provide services.
I would like to know what your view, is the right place to be registered as an agent of the Irish company?"

EIOPA answer

Please be informed that insurance intermediaries shall be registered in their home Member State, Article 3 paragraph 1 sentence 1 of the Insurance Distribution Directive (IDD). According to Article 2 paragraph 10 of the IDD home Member State is where the insurance intermediary has his or her residence (in case of natural persons) or where the insurance intermediary has its registered office or where its head office is situated (in case of legal persons). Hence, applying these rules in your case, the registration should be undertaken in the Member State of your residence.

IDD 20 and DA on IBIPs

Question

What are insurance distributors expected to do if the insurance product is not suitable for the individual customer or the suitability cannot be determined but the customer still wishes to conclude the contract – can the contract still be concluded?

EIOPA answer

It is relevant to mention that this answer is subject to Member State implementation, for example whether advice is mandatory.
Paragraph 5 and 6 of Article 9 of Delegated Regulation 2017/2359 cover the cases where a recommendation cannot be made due to the insurance intermediary or the insurance undertaking not obtaining the necessary information or there being no products that are suitable for the customer or potential customer.
In these circumstances the customer may agree to proceed with concluding the contract as a sale without advice (in conformity with the applicable rules of national law), and subject to an assessment of appropriateness unless it is possible to sell the contract on an execution only basis, (see recital 12 of Delegated Regulation 2017/2359). Where the distributor cannot obtain the necessary information to assess the appropriateness of the contract, the distributor shall warn the customer that the contract might not be appropriate. Only when the customer asked to proceed with concluding the contract despite this warning, the distributor may perform the sale.
In all cases, Article 20(1), IDD provides that any contract proposed must always be consistent with the demands and needs of the customer.

IDD – Complaints handling by intermediaries

Question

In the Insurance Intermediary Directive (IDD), recitals 15, 28, 38, article 1(4) lit. a, Article 14, Article 15(1), Article 18 lit. a and b and Annex I, guidelines on complaints and the EIOPA guidelines on complaint handling by insurance intermediaries (EIOPA-BoS-13/164) iVm the Preparatory Guidelines on supervisory and steering arrangements by insurance undertakings and insurance distributors (EIOPA-BoS-16/071)
Is it mandatory to implement or install internal complaint management in the company due to the REQUIREMENTS of the IDD for insurance intermediaries? Case no, why not, or if so, why?

EIOPA answer

Please be informed that EIOPA can only answer those questions relating to the practical implementation of the Policy and/or its implementation provisions as part of the Q&A process. The process, on the other hand, does not serve to give legal advice or to comment on questions which are already apparent from the reading of the legislative text or other pronouncements of EIOPA. Against this background, I would like to refer you to EIOPA's guidelines for the handling of complaints by insurance intermediaries in order to answer your questions. The guidelines can be found, also in German, at the following link:Guidelines On Complaints Handling by Insurance Intermediaries

SII – Outsourcing

Question

Does EIOPA agree that contract with an insurance intermediary regarding sale of insurances at standard terms and rates should not be considered as outsourcing of a critical or important operational function or activity ?

What if the insurance undertaking's insurances are only sold through insurance intermediaries (i.e. the insurance undertaking does not have its own insurance agents)? Would this entail that all of the insurance undertaking's contracts with insurance intermediaries should be considered as outsourcing of critical or important operational functions or activities, even in the case where the insurance intermediaries are only authorized to sell insurances at standard terms and rates set by the insurance undertaking?

Are there any other circumstances or matters which after the opinion of EIOPA should be taken into consideration, when assessing whether an insurance undertaking's contract with an insurance intermediary concerning sale of insurances should be considered as outsourcing of a critical or important operational function or activity?
Some insurance intermediaries issue insurance policies and collect premiums on behalf of the insurance undertaking.

Does EIOPA consider policy issuance and/or collection of premiums as outsourcing of a critical or important operational function or activity?
EIOPA guideline 61 makes reference to claims settling.

Does EIOPA view all contracts regarding claims handling as outsourcing of a critical or important operational function or activity, or is it a prerequisite that the claims handler is authorized to make claim payments before the contract is considered as outsourcing of a critical or important operational function or activity?

EIOPA answer

According to the definition in Article 13 of the Solvency II Directive, outsourcing' means an arrangement of any form between an insurance or reinsurance undertaking and a service provider, by which that service provider performs a process, a service or an activity, which would

otherwise be performed by the insurance or reinsurance undertaking itself. Article 49 of the Directive and Article 274 of the Delegated Regulation contain provisions applicable to outsourcing, some of them only relevant with respect to the outsourcing of critical or important functions or activities.

According to Guideline 60 of the EIOPA Guidelines on system of governance, the decision whether a function or activity is critical or important should be made on the basis of whether this function or activity is essential to the operation of the undertaking as it would be unable to deliver its services to policyholders without the function or activity. With respect to underwriting, Guideline 61 of EIOPA guidelines on system of governance clarifies that "When an insurance intermediary, who is not an employee of the undertaking, is given authority to underwrite business or settle claims in the name and on account of an undertaking, the undertaking should ensure that the activity of this intermediary is subject to the outsourcing requirements."

Within the "EIOPA Final Report on Public Consultation No. 14/017 on Guidelines on the System of Governance" the explanatory text for Guideline 61 states that: "Underwriting is a main activity of any undertaking. As such, underwriting is a critical or important operational function or activity. It is common in most Member States to have insurance intermediaries involved in the underwriting process. These are subject to the Insurance Distribution Directive (IDD). However, where an insurance intermediary is mandated to write insurance business or to settle claims on behalf of the undertaking, this is an outsourced service and, as such, the arrangement is caught by the Solvency II outsourcing requirements. The typical intermediation activities of an insurance intermediary, i.e. introducing, proposing or carrying out other preparatory work for the conclusion of insurance contracts, or concluding such contracts, or assisting in the administration and performance of such contracts, in particular in the event of a claim, as set out in the IDD, are not subject to the outsourcing requirements. In the case of outsourcing of underwriting activities, the application of the outsourcing requirements needs to be analysed taking into consideration the specific requirements applicable under the IDD." Finally, the explanatory text for Guideline 60 states that: "Where functions or activities are partially outsourced it is relevant whether these outsourced parts are per se critical or important."

In view of the above, EIOPA considers that the assessment of an arrangement between an insurance or reinsurance undertaking and a service provider (including an insurance intermediary) should be done on a case by case basis, taking into account the characteristics of the undertakings involved and the content of the arrangement to decide whether it is "outsourcing" or not and whether it is an outsourcing of "critical or important function or activity". Nevertheless, EIOPA acknowledges that:

1.A contract with an insurance intermediary regarding sale of insurances at standard terms and rates would be considered as outsourcing if the insurance intermediary has been granted authority to accept or reject risks (i.e. underwriting) on behalf of the undertaking; such contract could be considered as outsourcing of a critical or important operational function or activity depending on the specific circumstances, in particular the undertaking's distribution model (e.g. in case most of the undertaking's business is underwritten by one or few insurance intermediaries) and the scope of the empowerment granted (e.g. limits of the underwriting capacity for the insurance intermediary).

2.Policy issuance and/or collection of premiums by insurance intermediaries would normally not be considered as outsourcing of a critical or important operational function or activity but part of the ordinary insurance distribution activities.

3.A contract with an insurance intermediary regarding claims handling would not be considered as outsourcing if the role of the insurance intermediary is limited to assist the

policyholder/beneficiary in processing the claim with the insurance undertaking. A contract where a claims handler is empowered to accept claims and make claim payments on behalf of the insurance undertaking would be considered as outsourcing; such contract could be considered as outsourcing of a critical or important operational function or activity depending on the specific circumstances.

Article 2.2 B- Definitions

Question

Can EIOPA please provide further clarity as to what constitutes the 'expert appraisal of claims' under the IDD?

Recital 14 of the references that the IDD does not apply to, inter alia, the expert appraisal of claims, however it is unclear what is intended to be excluded by expert appraisal of claims under the directive and how this activity falls outside the definition of insurance distribution under the IDD.

Any assistance in this regard would be greatly appreciated.

EIOPA answer

Please find below the answer to your question which you submitted on 14 May 2019 regarding the understanding of "expert appraisal of claims" as laid down in Art. 2 (2) letter b of the Insurance Distribution Directive (IDD).

Art. 2 (2) letter b of the IDD defines activities which shall not be considered to constitute insurance distribution activities, including the management of claims of an insurance undertaking on a professional basis and expert appraisal of claims. Further guidance can be found in Recital 14 of the IDD stating that the Directive should not apply to persons with another professional activity, such as tax experts, accountants and lawyers who provide advice on insurance cover on an incidental basis in the course of that other professional activity … provided that the purpose of this activity is not to help the customer conclude or fulfil an insurance contract.

Against this background it can be concluded that assessment of claims undertaken by a professional expert on behalf of an insurance undertaking falls outside the scope of the IDD. This applies, for example, in instances where an insurance undertaking has outsourced the claim appraisal process to an external entity. The same applies if the appraisal is undertaken by a person acting on behalf of a customer, whereas here the IDD requires that the appraisal occurs in the context of another professional activity, e.g. tax consultant or lawyer. However, if the claim appraisal is part of providing assistance to a customer in the contract performance, the scope of the IDD is given (Art. 2 (2) letter a IDD).

IDD – Article 29 and 30 – DA on IBIPS

Question

In the context of periodic reporting to customers, is the insurance intermediary also expected to develop and provide 'adequate reports on the service provided'? Is the insurance intermediary primarily responsible for reporting to customers on costs & charges and providing periodic reports to customers, with the insurance undertaking always responsible for delivering information on the product, as required under the Solvency II Directive?

EIOPA answer

With regard to the obligations to provide appropriate reporting under Articles 29(1) and 30(5), IDD and Article 18 of Delegated Regulation 2017/2359, it will depend upon who is providing the service. This may generally be expected to be an insurance intermediary, except where the insurance undertaking is providing services when distributing directly. The insurance

undertaking will be responsible for delivering information required by Article 185 of Directive 2009/138/EC (Solvency II).

IDD Article 20 and DA on IBIPS

Could the provisions on switching apply only when providing advice on switching between underlying investment assets within a product? Or are insurance intermediaries and untertakings expected to apply this rule when switching between products? Are insurance undertakings and intermediaries also expected to analyse the costs and benefits of the main product as well as the underlyings

EIOPA answer

Article 9(7) of Delegated Regulation 2017/2359 only applies to switching between underlying investment assets such as funds, not concluding a new contract of insurance. However, when providing advice on switching products, the requirements of Article 30, IDD and Article 9 of Delegated Regulation 2017/2359 more widely, must be met, and this would include a cost-benefit analysis as part of the advice given.

Article 3.6 on registration

Question

In order to be registered as an insurance intermediary, competent authorities have to request certain information from the insurance intermediary on the identities of shareholders, persons with close links etc. Under IDD, the insurance intermediary would also have to provide certain information to the customer on its commercial relationships in the pre-contractual phase or develop certain procedures and measures for managing conflicts of interests relating to the distribution of insurance-based investment products. Is it important that competent authorities would also request the latter information as part of the registration process?

EIOPA answer

Article 3(6), IDD requires that the following information must be requested as a condition of registration for insurance, reinsurance and ancillary intermediaries:

a) the identities of shareholders or members, whether natural or legal persons, that have a holding in the intermediary that exceeds 10%;
b) the identities of persons who have close links with the intermediary;
c) information that those holdings or close links do not prevent the effective exercise of the supervisory functions of the competent authority.

Article 3(6), IDD also requires that intermediaries must inform the competent authorities without undue delay of any change in the above information.

The IDD does not require that competent authorities should request the information set down under Article 19(1)(a) and (b) of IDD and Article 5(1) of Delegated Regulation 2017/2359 as a condition of registration or at any other time where this is not required by Article 3 (6) of IDD. However, IDD is a minimum harmonisation Directive and Member States may impose requirements for competent authorities to request further information, either as part of the registration process or at any other time.

IDD Article 1.3 on ancillary intermediary and CPD requirements

Question

Can a UK Veterinary Practice who have an Agreement with an Insurer:
1) Conclude the sale of insurance and issue cover notes;
2) Help the customer complete cover notes;
3) Forward cover notes and proposal forms to the insurer

without falling within the regulatory remit of IDD?

Can the insurer in this scenario use the RAO Connected Contracts Exemption to 'by-pass' the requirements of IDD in terms of the Vets' obligations - including the 15 hours CPD requirement?

EIOPA answer

EIOPA is not in a position to comment on the scope/legality of the UK legislation implementing the IDD, namely the RAO connected contracts exemption. Any queries regarding the connected contracts exemption should be directed to the UK Financial Conduct Authority.

What the text of the IDD provides (as an equivalent to the connected contracts exemption) is that certain types of "ancillary insurance intermediaries" are exempted from the scope of the IDD on the basis of fulfilling certain conditions, including the insurance being complementary to the good or service and that insurance covers certain types of risks (typically, only car rental breakdown cover and travel insurance) (Article 1(3), IDD). The provision of pet insurance by a veterinary practice as an ancillary professional activity would not normally fall under this exemption, unless the UK has chosen to broaden the scope of the exemption at national level beyond car rental insurance and travel insurance.

Therefore, a veterinary practice providing pet insurance as an ancillary professional activity would be considered a non-exempted "ancillary insurance intermediary" (AII, or "AR" in UK language) under the IDD and the veterinary practice have to be registered by the national authority, unless its ancillary activity is not considered "insurance distribution". This would only be the case if in the context of that ancillary professional activity, the veterinary practice is not taking additional steps to assist the customer to conclude or perform an insurance contract. The examples of 1),2),3) in your query would clearly involve such assistance. N.B. The concept of "introducing" is no longer covered under the IDD (compared to its predecessor, the IMD).

Even if the veterinary practice was considered a non-exempted AII and had to be registered with the UK authority, it is important to note that the 15-hour CPD requirement in Article 10(2)(2), IDD does not per se apply to such non-exempted AIIs. There is only a general requirement under Article 10(1) for AIIs to possess "appropriate knowledge and ability". They would not be required to carry out 15 hours of CPD unless the national authority imposes a stricter regime at national level. What recital 28, IDD says is that AIIs are expected to "know the terms and conditions of the policies they distribute and, where applicable, rules on handling claims and complaints".

In conclusion, we concur with your legal assessment, but it is important to note that, depending on the UK implementation, the full training and competence requirements might not apply to you.

IDD Article 30 on Article 30 Assessment of suitability and appropriateness and reporting to customers- IBIPS

Question

The IDD provides that: "any contract shall be consistent with the customer's demands and needs …". In the case of a personal recommendation for an Insurance-based Investment Product (IBIP), a suitability test as well as a demands and needs test must be performed. In

practical terms, what is the scope of a demands and needs test? Can one assume that, if an IBIP is suitable for a customer, this IBIP is also consistent with the customer's demands and needs?

EIOPA answer

The scope of the demands and needs test is not prescribed in the Directive or the Delegated Regulation and is subject to national implementation. However, some guidance can be given regarding minimum expectations for this test and how it may relate to the assessment of suitability.

Recital 7 of Delegated Regulation 2017/2359 clarifies that the assessments of suitability and appropriateness are without prejudice to the obligation, for insurance intermediaries and insurance undertakings, to consider and specify, prior to the conclusion of any insurance contract, on the basis of information obtained from the customer, the demands and needs of that customer.

The demands and needs test provides a protection for customers to avoid cases of mis-selling (Recital 44, IDD) and it applies to all insurance contracts, not just IBIPs. Article 30, IDD applies "without prejudice" to the demands and needs test as covered by Article 20(1), IDD. The demands and needs test has to be performed in any event prior to the conclusion of the contract and is distinct from the suitability assessment in advised cases, and the suitability assessment can also be provided at any time during the customer relationship. The assessment of demands and needs is required whether or not advice is being provided and the specifying of the demands and needs would not amount to a suitability assessment. Depending on the national implementation, where advice is being provided, the demands and needs test and assessment of suitability could be seen as a continuum, rather than as a break.

The main information concerning the customer's needs, typically includes, for example, personal information (age, profession, place of residence etc.) or the information particularly linked to the type of product requested. This information should enable the insurance intermediary or insurance undertaking to assess whether certain products can be offered or not according to their capacity of meeting the demands and needs of the customer. This could lead to a selection of a range of comparable products for consideration during the suitability assessment where advice is being given or during the appropriateness assessment where no advice is given.

Where the customer is provided with advice the information, which will be obtained by the insurance intermediary or the insurance undertaking, will need to include other more specific and detailed elements, like the customer's financial situation, including their ability to bear losses, their investment objectives, including their risk tolerance, and other correlated information. The final outcome should be a personalised recommendation where it is specifically explained why that particular product best meets the customer demands and needs.

IDD – Article 30 Assessment of suitability and appropriateness and reporting to customers-IBIPS

Question

Will the use of profiling and similar tools by the insurance distributor be considered from a supervisory point of view as reasonable evidence of suitability?

EIOPA answer

Article 30, IDD places a requirement on the insurance intermediary or insurance undertaking, in the context of the suitability assessment to obtain the necessary information regarding the customer's or potential customer's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including that person's ability to bear losses, and that person's investment objectives, including that person's risk tolerance.

In that respect, the use of profiling tools and other similar tools may suggest evidence of suitability, but only to a limited extent. It also depends on the evidence of how the tools are deployed and the results produced to assess the information provided by the customer.
To the extent that such tools would form part of an automated or semi-automated system, Article 12 of Delegated Regulation 2017/2359 on Automated Advice would apply.

IDD - DA on IBIPs

Question

Article 8(2)(d) Delegated Regulation 2017/2359: Can EIOPA provide guidance on how an on-going inducement can be assessed under the criteria if it corresponds to an ongoing benefit for the customer

EIOPA answer

Article 8(2) of Delegated Regulation 2017/2359 requires that insurance intermediaries and insurance undertakings shall perform an overall analysis taking into account all relevant factors that may increase or decrease the risk of detrimental impact on the quality of the relevant services to the customer and any organisational measures taken to prevent the risk of detrimental impact.
One of the criteria that they must consider is Article 8(2)(d) of Delegated Regulation 2017/2359, which is whether the inducement is entirely or mainly paid at the moment of the conclusion of the insurance contract or extends of the whole term of that contract. Article 8 (2) requires an assessment of the risk of detrimental impact only, therefore any ongoing benefit is not relevant to this assessment.
The IDD is neutral on whether up-front or on-going inducements may be detrimental to the quality of the services being provided to the customer. Article 8(2)(d) of Delegated Regulation 2017/2359 requires that the insurance intermediary or insurance undertaking consider the timing of the payment of the inducements and assess as part of a broader assessment whether it gives rise to any detrimental impact.
In order to consider whether an on-going inducement has a detrimental impact on the quality of services to the customer, an insurance intermediary must consider all factors, as well as any organization measures put in place to prevent a detrimental impact.

IDD -Article 29 Information to customers - IBIPs

Question

If an insurance undertaking does not provide a personalised recommendation regarding the unit-linked insurance contract and its underlying assets, to the customer, can EIOPA provide guidance on how the receipt of such rebates by insurance undertakings interacts with the requirements of Article 29(2), IDD and the conflict of interest requirements

EIOPA answer

Regardless of whether a personal recommendation is provided, a rebate should be assessed in accordance with Article 29(2), IDD. The IDD requires that the assessment of inducements against the requirements of Article 29(2) takes into account all relevant factors, which may increase or decrease the risk of a detrimental impact on the quality of services to the customer. It recognises that detrimental impact on the quality of the service to the customer or impairment of the duty of insurance undertakings to act honestly, fairly and professionally and in the best interests of customers can occur even when no personal recommendation is made to the customer.

The assessment must consider all relevant factors that may increase or decrease the risk of detrimental impact on the quality of the relevant service to the customer, and any organisational measures taken by the insurance intermediary or insurance undertaking

carrying out distribution activities to prevent the risk of detrimental impact.

Insurance undertakings are also obliged to assess the receipt of such rebates to ensure that they do not impair compliance with the duty of the insurance undertaking to act honestly, fairly and professionally and in the best interest of the customer.

Insurance undertakings should consider rebate arrangements as part of the product oversight and governance processes as required under Article 25, IDD.

Insurance undertakings should also consider EIOPA's Opinion on monetary incentives and remuneration between providers of asset management services and insurance undertakings in which the risk of customer detriment related to the practice of receiving rebates from asset managers are addressed.

IDD -Article 29 Information to customers – IBIPs

Question

Is the insurance undertaking expected to assess and ensure that the rebate paid by a unit-linked fund manager complies with Article 29(2), IDD?

EIOPA answer

Under Article 2(2) of Delegated Regulation 2017/2359, an inducement is defined as "any fee, commission, or any non-monetary benefit provided by or to such an intermediary or undertaking in connection with the distribution of an insurance-based investment product, to or by any party except customers involved in the transaction in question or a person acting on behalf of that customer".

Therefore, a rebate from a fund manager is considered to be an inducement and the rules governing the payment of such rebates is an inducement scheme. As such, any rebate and terms and conditions governing such rebates must be assessed in accordance with Article 29(2), IDD to ensure that it does not have a detrimental impact on the quality of the relevant service to the customer, and that it 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.

Insurance undertakings should also consider EIOPA's Opinion on monetary incentives and remuneration between providers of asset management services and insurance undertakings in which the risk of customer detriment related to the practice of receiving rebates from asset managers are addressed.

IDD -Article 29 Information to customers - IBIPs

Questions

If the insurance undertaking receives rebates with different rates from fund managers, what are the implications for the assessment under Article 29(2), IDD

EIOPA answer

Rebates and terms and conditions governing such rebates must be assessed in accordance with Article 29 (2), IDD to ensure that it does not have a detrimental impact on the quality of the relevant service to the customer, and that it 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.

The insurance undertaking who receives the rebate, is obliged to consider all relevant factors which may increase or decrease the risk of detrimental impact on the quality of the relevant

service to the customer, and which have potential to impair compliance with the insurance undertakings duty to act honestly, fairly and professionally in accordance with the best interests of its customers, including the fact that different rates are received from fund managers.

Insurance undertakings should also consider EIOPA's Opinion on monetary incentives and remuneration between providers of asset management services and insurance undertakings in which the risk of customer detriment related to the practice of receiving rebates from asset managers are addressing, including the application of the Product Oversight and Governance requirements.

IDD – Article 17 general principle

Question

Would an independent broker who acts on behalf of the customer, be able to contribute to issuing documentation and claims assessment on behalf of the undertaking if it handles any arising conflicts of interest in an appropriate manner

EIOPA answer

There is no legal definition of "independent broker" in the IDD. EIOPA understand that there are various definitions of what it means to be an independent broker in national legislation and there may be specific national requirements for independent brokers.
From an IDD perspective, an intermediary can carry out activities on behalf of both the customer and the insurance undertaking provided that those activities have been assessed for conflicts of interest and appropriate measures are implemented to prevent any conflicts of interest arising from those activities from influencing the outcome in a way that may be detrimental to the interests of the customer.
The principle set out in Article 17(1) of IDD should also apply, in that when carrying out insurance distribution activities, insurance distributors must always act honestly, fairly and professionally in accordance with the best interests of their customers.

IDD - Articles 27 and 28 – DA on IBIPs

Question

Can EIOPA provide practical examples to show how the principle of proportionality can be applied in relation to the measures set out in the IDD for managing conflicts of interest

EIOPA answer

Article 5(1) of Delegated Regulation 2017/2359 is a non-exhaustive list of measures to be included, where appropriate, in procedures designed to manage conflicts of interest and prevent them from damaging the interests of the customer which are required to be put in place in accordance with Article 27, IDD.
Article 5(1) of Delegated Regulation 2017/2359 also states that procedures and measures shall be appropriate to the size of the activities of the insurance intermediary or insurance undertaking and to the risk of damage to the interests of the consumer. This is also reflected in Article 27, IDD, which requires that arrangements shall be proportionate to the activities performed, the insurance products sold and the type of distributor.
It is important that all insurance undertakings and insurance intermediaries would consider the measures listed and assess whether they are appropriate or not taking into account their nature and size in view of the principle of proportionality.
In the case of a small insurance intermediary (i.e. small companies or sole traders, it may not always be possible to have separate individuals carrying out different duties, or separate supervision of persons in order to prevent conflicts of interest. (i.e. small companies or sole traders). However, it is important that a small insurance intermediary would be able to identify where conflicts of interest can arise, and where separation is not possible, reasonable

alternative measures would be implemented to prevent the conflicts of interest. If the conflict of interest cannot be managed, it is important that the small insurance intermediary would disclose the conflict of interest to an affected customer in accordance with Article 28(3) of IDD and Article 6 of Delegated Regulation 2017/2359.

IDD Article 29 Information to customers – DA on IBIPS

Question

How should the assessment of inducements be recorded and retained? How often are insurance undertakings and insurance intermediaries expected to undertake the assessment

EIOPA answer

EIOPA considers it important that insurance intermediaries and insurance undertakings demonstrate compliance with Article 8 of Delegated Regulation 2017/2359, which requires that an overall analysis be performed, taking into account any relevant factors that may increase or decrease the risk of detriment to customers an assessment of relevant inducement schemes. The details of the assessment should be recorded in order to demonstrate and enable competent authorities to monitor that the inducement complies with the criteria set out in Article 29(2), IDD.

Regarding the frequency of such assessments, it is important that insurance intermediaries and insurance undertakings consider all relevant factors which may increase or decrease the risk of detrimental impact on the quality of the relevant service to the customer or risk of impairing compliance with the intermediary's or insurance undertaking's obligation to act fairly, honestly and professionally in accordance with the best interests of the customer, and assess for themselves at what frequency the assessment is required in order to maintain continual compliance with the criteria set out in Article 29(2), IDD. If there are no changes or modifications to the inducement scheme, the frequency can be appropriately extended, where no other indicators (such as customer complaints or others) give reason to do so.

IDD Article 25- POG

Question

In which intervals are manufacturers of insurance products expected to review their products

EIOPA answer

According to Article 7 of Delegated Regulation 2017/2358, manufacturers shall determine the appropriate intervals for the regular review of their insurance products, thereby taking into account the size, scale, contractual duration and complexity of those insurance products, their respective distribution channels and any relevant external factors such as changes to the applicable legal rules, technological developments or changes to the market situation. External events such as changing regulations, changing market conditions and customer complaints can trigger a product review. The appropriate interval of product review depends on the specific products, its distribution and its target market. Whereas the IDD does not impose a specific frequency to review insurance products, based on experience in some Member States, EIOPA can provide the examples below to provide some practical guidance on the appropriate intervals for reviewing insurance products. N.B. These examples are purely illustrative and are not intended as full and exhaustive descriptions of required intervals of product review:

a. Supplementary healthcare insurance product. The basic coverage of the (mandatory) healthcare insurance is determined by the national authority on a yearly basis. A manufacturer offers healthcare insurance coverage supplemental to the basic coverage. A yearly product review interval is appropriate for the supplemental healthcare insurance product.

b. Home building insurance. A manufacturer has several decennia experience with home building insurance. The manufacturer has determined that the external conditions are stable. The customer data indicates that the customer is overall satisfied with the insurance product.

The manufacturer can decide that an appropriate interval for product review every two years is appropriate and therefore wider than the one reported in example “a”.

IDD Article 25 – POG

Question

What action are manufacturers expected to take if products are distributed to customers outside of the target market? Examples of appropriate action

EIOPA answer

According to Recital 9 of Delegated Regulation 2017/2358, manufacturers should select insurance distributors that have the necessary knowledge, expertise and competence to understand the features of an insurance product and the identified target market. They should also monitor their distribution channels on a regular basis to ensure that the insurance product is mainly distributed to the target market in conformity with their product oversight and governance arrangements. If it is identified that products are being distributed outside the target market, manufacturers must take appropriate action.

In cases where there have been instances of the product being distributed outside of the target market, the manufacturer will need to assess whether there are any adverse consequences for customers outside of the target market who were provided with the product. If adverse consequences are identified, manufacturers must, in accordance with Article 7(3) of Delegated Regulation 2017/2358, take appropriate action to mitigate the situation and prevent further occurrences. Whereas Recital 9 of the IDD confirms that the IDD does not prohibit the distribution of insurance products to customer outside of the target market, EIOPA assumes that distributing insurance products to customers outside of the target market is an exceptional event if the product oversight and governance arrangements are appropriately applied by insurance undertakings and intermediaries. (Recital 9 of Delegated Regulation 2017/2358 states with regard to sales outside of the target market: “That should however not prevent insurance distributors from distributing insurance products to customers who do not belong to that target market, provided that the individual assessment at the point of sale justifies the conclusion that thos products correspond to the demands and needs of those customers and, where applicable, that the insurance-based investment products are suitable or appropriate for the customer.”).

IDD article 25 – POG

Question

How would the Product Oversight and Governance requirements apply in the context of group insurance contracts?

EIOPA answer

The Product Oversight and Governance requirements would apply to both compulsory and optional group insurance contracts.

As regards compulsory group insurance contracts, these are referred to in Recital 49 of the IDD where the representative of a group of members concludes an insurance contract on behalf of the members where the individual member cannot take an individual decision to join, such as occupational pension arrangements. However, the application of this provision is specific to conduct of business rules such as information disclosure and suitability requirements for individual requirements at the point of sale. Product Oversight and Governance requirements serve a different regulatory objective, concerning the design of products for a wider group of customers. For this reason, the members should be considered as customers with regard to the application of Product Oversight and Governance requirements.

In practical terms, optional group insurance contracts are where the insurance contract is negotiated and concluded by a single legal person (“master policyholder”) for a group of

potential individual members. In contrast to compulsory group insurance contracts, the members adhere to the group insurance contract on a voluntary basis. This scheme can be found in some Member States, in particular for travel insurance products, mobile phone insurance products, health insurance coverage and even insurance-based investment products. The master policyholder may be, for instance, a credit institution or an association, which may be registered or not as an insurance intermediary or an ancillary insurance intermediary depending on whether insurance distribution activities are carried out. The members are their customers. As for all group insurances, these members pay premiums and benefit from the insurance coverage. Moreover, for optional group insurances, it is in the discretion of the individual member to subscribe the contracts.
Taking into consideration that in both cases (compulsory and optional group insurance contracts), the members are considered as customers with regard to the application of Product Oversight and Governance requirements, consequently, the target market has to be defined, taking into account the features of the insurance product as well as the needs and objectives of the members.

IDD – Article 25 POG

Question

Are manufacturers of insurance products expected to identify the target market where insurance products are targeted to legal persons

EIOPA answer

Any insurance product that is for sale to customers is within scope of the POG requirements, except for insurance products, which insure large risks (Article 25(4), IDD). The product approval process should identify the target market and the group of compatible customers, for each insurance product (Article 5(1), Delegated Regulation 2017/2358). No distinction is made between customers that are legal persons and customers that are not legal persons.

IDD Article 25 – POG

Question

Are manufacturers of insurance products expected to apply the Product Oversight and Governance requirements with regard to insurance products which are distributed by ancillary insurance intermediaries exempted from the scope of the IDD

EIOPA answer

Yes. The Product Oversight and Governance requirements which apply in the context of the manufacturing of insurance products are addressed to insurance undertakings and insurance intermediaries which are considered manufacturers. This approach ensures that any insurance product which is designed and manufactured undergoes the Product Oversight and Governance arrangements which have been established by the insurance manufacturer, independent from the question by which entity the insurance products are ultimately distributed, except for insurance products which insure large risks (Article 25(4), IDD).
Hence, even if insurance products are distributed by ancillary insurance intermediaries exempted from the scope of the IDD, the manufacturers of these products are expected to fulfil their obligations under Article 25, IDD and the corresponding provisions in Delegated Regulation 2017/2358. This also means that manufacturer of insurance products are expected to fulfil the requirements with regard to the distribution channel as laid down in Article 8 of Delegated Regulation 2017/2358, such as providing all appropriate information on the insurance products and the identified target market to the ancillary insurance intermediaries exempted from the scope of the IDD.
Furthermore, manufacturers and distributors selling insurance products through ancillary insurance intermediaries exempted from the IDD are expected to adopt adequate procedures

to obtain all the information as referred to in Article 11 of Delegated Regulation 2017/2358 if the product is not in line with the interests, objectives and characteristics of the identified target market or where other product-related circumstances arise that may adversely affect the customers.

IDD Article 25 – POG

Question

How is the target market identified in practice if the insurance product is required by law?

EIOPA answer

Article 25, IDD does not exempt any category of insurance product, except those covering large risks. For compulsory insurance products, it should be considered that these products can offer not only mandatory guarantees but also customization parameters and other guarantees. For example, in some Member States, motor third party liability insurance offer different driving formulas (e.g. expert/free/exclusive). These parameters can have significant tariff effects, which could be relevant for the identification of the target market.

Given the above, for easiness, EIOPA proposes the following illustrative distinction can be made between: (1) the situation in which the customer is required to have the insurance product and the insurance undertaking is required to accept the customer and (2) the situation in which the customer is required to have the insurance product and the insurance undertaking is not required to accept the customer.

(1) If the insurance undertaking is required by law to accept the customer (also defined by law), target market is in accordance with the information provided by law (i.e. the legal definition);

(2) If the insurance undertaking is not required by law to accept the customer, the information provided by the law is the basis for the identification of the target market.