

Insurance Europe response to Joint Committee consultation on guidelines for cross-selling practices

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General remarks

Insurance Europe welcomes the recognition by the Joint Committee that the text of the review of the Insurance Mediation Directive (IMD 2) is still being discussed in the legislative process and subject to further changes, as well as the commitment to amend the proposed guidelines to ensure a full alignment with the final provisions of IMD 2.

Insurance Europe is aware of the difficulties of trying to harmonise measures at Level 3 when the relevant rules are not harmonised at Level 1, and as such these guidelines necessarily should be kept high level in nature. It is crucial to ensure a coherent approach and avoid going beyond the scope and requirements of the relevant primary legislation. Moreover, the guidelines should not address issues and requirements that are not specific to cross-selling practices. A number of issues that are addressed in the proposed guidelines are not only relevant in the context of cross-selling, eg advice, disclosures, training and remuneration, but are relevant to the sale of all insurance products. There is no clear consumer benefit, therefore, in issuing specific guidance on how they should be addressed in the case of cross-selling.

Insurance Europe would also like to highlight the fact that tying and bundling practices are captured by both EU and national competition law, while any practices that are perceived to be unfair may be covered under the provisions of the Unfair Commercial Practices Directive (2005/29/EC). This Directive is designed to achieve a high level of consumer protection across EU member states and prohibits any practices that would be harmful to consumers' economic interests.

Question 1: Do you agree with the general description of what constitutes the practice of cross-selling?

Insurance Europe supports the focus of the guidelines on only financial services and products (para 4, page 10), but has concerns over the definitions used in the proposed guidelines and believes that there is a need for further clarity and consistency across EU legislation in this respect. For example, Insurance Europe would welcome the introduction of the term "financial" before any references to product in the text to add greater clarity to the context of the guidelines.

It is important to recognise that insurance products which cover several risks (ie multi-risk products) are not considered as a “package” of combined products, which is a separate product. In Annex 1, para 4 on the scope of the guidelines (page 19), it states that these guidelines are not intended to prevent the offering of products which constitute an inherent or indivisible package, which cannot by its nature be offered or sold separately, because the components are a fully integrated part of the package. However, footnote 7 refers only to “certain” multi-risk insurance policies, which is not fully aligned with the texts of the Council and the European Parliament on IMD 2, which explicitly exempt multi-risk-products (Council Art 21 para 4, recital 41a last sentence; EP Art. 21 para 2 sentence 2, Art. 2 Nr. 20). In addition, there may be situations where a component of a package could in principle be offered separately, but companies make a conscious commercial decision not to offer it separately (eg legal expenses cover that may be included in a standard home insurance package). Insurance Europe would welcome a clearer recognition of this in the guidelines and to have a general reference to multi-risk insurance policies contained within the main text, rather than within a footnote (see also comments under Question 2).

Insurance Europe believes that clarification should also be introduced in the guidelines that the obligation on providers is to inform the customer about whether the different components are offered for sale separately **by that same provider**; ie there is no expectation on providers to have a full knowledge of all the different products that are available on the market in general.

Insurance Europe also supports the acknowledgement in footnote 4 on page 9 that PRIIPs are not *per se* considered as cross-sold products.

Question 2: Do you agree with the identified potential benefits of cross-selling practices?
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Insurance Europe agrees with the potential benefits of cross-selling practices that have been identified in the consultation paper. Cross-selling practices have many positive beneficial effects for both provider and consumer, which include cost savings through economies of scope, better risk management, reduced transaction costs, and a “one-stop-shop” effect.

In the insurance sector, multiple risk coverage allows insurers to diversify and pool together risks which may otherwise prove too expensive for consumers, or too risky for insurers, as stand-alone coverage. For instance, the coverage of natural disasters, where available, is often combined with more standard risks under the one extended policy. Such multi-risk insurance policies enhance the availability of cover for risks which could otherwise be purely uninsurable, and so lead to better overall risk management for the provider and a better/more effective price for the consumer.

The practice of combining products enables providers to offer a range of products that are better suited to their customers’ needs and requirements, while the savings in production, distribution and transaction costs that are generated can be passed on to the consumer in the form of lower prices, with the pure risk premium still reflecting the individual risk posed by the policyholder. Such practices are convenient for consumers, in that they are able to pay a one-off fee for a combination of products or services that would cost more if requested outside the product combination. Such combined product offerings help the consumer to benefit from lower premiums for several products through economies of scale. For example, where a consumer has different insurance policies taken out with separate companies, he may be able to bundle these policies together using only one company, and thereby reduce his total payments by combining them into a lower overall premium. The consumer remains free to purchase the products separately from the same or different providers, but may find that it is not rational for him to do so considering the clear cost savings to be enjoyed from the combination.

In its Guidance on the application of Article 82 (now Article 102 TFEU)¹, the European Commission recognises that there are efficiency justifications associated with these practices that “may lead to savings in production or distribution that would benefit consumers” and states that consideration should be given to “whether such practices reduce transaction costs for consumers, who would otherwise be forced to buy the components separately, and enable substantial savings on packaging and distribution costs for suppliers”². Examination should also be given to “whether combining two independent products into a new, single product might enhance the ability to bring such a product to the market to the benefit of consumers”³. Such a combination has also been recognised as offering providers an innovative way to market the products⁴. Cross-selling therefore allows for an enhancement of innovation for the benefit of consumers.

Question 3: Do you agree with the identified potential detriment associated with cross-selling practices?

While it is noted that the identified practices can cause potential detriment, this is not entirely representative of all cross-selling practices and so Insurance Europe would like to make a few short comments in response.

Where there are some limitations on mobility, they are more linked to the nature of the product involved. For instance, with regard to the limitation of mobility in para 10 on page 13, it is important to point out that there are many insurance products which are long-term in nature that provide benefits to consumers, despite any possible limitations on mobility.

Likewise, there are a number of behavioural drivers of potential detriment identified that are not specific to cross-selling and are covered under general sales rules (eg remuneration; information disclosure; suitability/appropriateness).

It should also be pointed out, in the context of para 2 on page 11, that there is not necessarily a clear correlation between the more complex a product is and consumer detriment following the purchase of a tied or bundled package.

Question 4: Please comment on each of the five examples in paragraph 13, clearly indicating the number of the example to which your comment(s) relate.

Example 1

A distributor usually offers bundled or tied products for a better price (lower than the price of each component offered separately). Insurance Europe fully supports transparency regarding the prices of components available separately from the same provider. Moreover, the unfairness of a practice concerning poor consumer information on the price of the components (making them wrongly believe that they pay less by buying a bundled product) or forcing the sale (not respecting their choice) may already be dealt with under the Unfair Commercial Practices Directive.

Example 2

Likewise, the second example concerns misleading / abusive trade practices as regards advertising or promoting documents, for which primary (European and national) legislation addresses the requirements and sanctions to be applied. Notably, the Unfair Commercial Practices Directive lays down harmonised rules for the

¹ Communication from the Commission “ Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (2009/C 45/02).

² Para 62.

³ Para 62.

⁴ DG Competition Discussion Paper on the application of Article 82 of the Treaty to exclusionary abuses, December 2005, para 205.

fight against unfair commercial practices. It ensures that consumers are not misled or exposed to aggressive marketing. It seeks to enable consumers to make informed and meaningful choices as regards the sale of all products, not just those that are cross-sold.

Example 3

Pricing arrangements remain under national legislation which is consistent with the subsidiarity principle.

Example 4

Directive 2002/65/EC on distance marketing of consumer financial services explicitly prohibits providing for a penalty if the right of withdrawal provided for under Article 6 is exercised. Beyond this, Directive 93/13/EC protects consumers against unfair contract terms.

Question 5: Please comment on the proposed guidelines 1 and 5 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Insurance Europe supports a high level of transparency to allow consumers to effectively compare products. However, the proposed requirement in Guideline 1 (para 13, page 22) goes beyond what is being proposed under any of the Level 1 texts on cross-selling (IMD 2, the revised Markets in Financial Instruments Directive (MiFID 2), the Payment Accounts Directive, etc), as it contains an obligation to provide the consumer with the price for both the overall package of products and for each of the component products, irrespective of whether or not the component products are available for sale separately. It should be made clear in the guidelines that the obligation only applies when the components in the package are also offered or sold by the firm separately. Furthermore, the requirement in para 14 to provide a clear breakdown and aggregation of all relevant costs associated with the purchase of the package and its component products (administration fees, transaction costs, exit/pre-payment penalty charges) is not a current requirement for the sale of non-life insurance products, and relevant work is still currently being done on the breakdown and aggregation of costs in the context of packaged retail and insurance-based investment products (PRIIPs). Insurance Europe feels it is not appropriate for these guidelines to include a detailed breakdown of costs, as this should be determined by the legislator and not simply under cross-selling rules.

Guideline 5 concerns the full disclosure of key information on non-price features and risks. However, some of the illustrative examples used in the consultation paper are clearly focused on banking or investment products. As such, the language used is at times misleading. In para 19 (Guideline 5, page 24), reference is made to the provision of information on the risks of each of the component products and the package, including in particular the information on how the risks are modified as a result of purchasing the bundled package rather than each of the components separately. The reference to "risks" in this particular case is not appropriate in the insurance context, where insurance is taken out to provide cover against risk and therefore has a very different meaning to a banking or investment context. The second illustrative example for Guideline 8 (page 27) also focuses on how the interaction of different components may modify the risks of the package. Insurance Europe believes that such references to risks are not appropriate in the context of insurance products, and may actually end up misleading or confusing the consumer. In the interest of legal certainty, the obligation should be deleted or at least be explicitly restricted to investment/banking products. The reference to the provision of information on "non-price features", on the other hand, could be relevant from an insurance perspective, as this may be a way of highlighting to consumers the benefits of the risk coverage offered by the insurance.

Question 6: Please comment on the proposed guidelines 2, 3, 4 and 6 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

It follows from the consultation paper, and specifically from Guideline 2, that all relevant costs of the package and its components should be made available in good time. It should be made clear, however, that this refers to the price/premium and any additional costs, and does not entail an obligation to provide the consumer with a breakdown of detailed information on all the cost elements contained in the premium. Such detailed information on costs would go further than any proposed provisions on IMD 2 (see response to Question 5). The most relevant information for the consumer is the price they will pay for the package and the price that they would pay for the individual components in the event that they can be bought separately.

Question 7: Please comment on the proposed guideline 7 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 7 seeks to ensure that consumers are properly informed whether it is possible to purchase the component products separately, ie to ensure that the 'optionality of purchase' is communicated to them. While Insurance Europe fully supports the provision of clear information to consumers, it also wishes to point out the potential consumer detriment that may result from setting the default options as "No", requiring consumers to actively select insurance coverage components and to make a conscious decision to buy them. Where insurance products are sold together as a combined offering, consumers can be assured of receiving the optimal level of insurance coverage to meet their needs, without running the risk of double coverage or lack of coverage. Aside from the evident search costs involved, if a consumer has to seek out each individual aspect of insurance coverage from different providers, each offering their own different products, there is a risk that they may be insuring themselves twice for the same element of risk. Conversely, there is also a danger that by effectively attempting to create their own combination of different types of insurance from different providers, or by having to "opt-in" to the various different components, a consumer may unwittingly fail to cover themselves against certain risks, thereby resulting in gaps in coverage and the level of protection.

Insurance Europe believes that clarification should be introduced in the guidelines that the obligation on providers is to inform the consumer about whether the different components are offered for sale separately **by that same provider**, ie there is no expectation on providers to have a full knowledge of, or to communicate to consumers, all the different products that are available on the market in general.

Question 8: Please comment on the proposed guideline 8 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 8 deals with the assessment of demands and needs, and suitability/appropriateness, all of which are dealt with under primary legislation. With regard to insurance, Article 12 para 3 of IMD 1 already requires insurance intermediaries to specify the demands and the needs of the consumer, while IMD 2 requires an assessment of demands and needs by insurance undertakings and intermediaries, as well as suitability/appropriateness in the case of insurance-based investment products. There is no clear consumer benefit in issuing specific guidance on how this should be done in the case of cross-selling.

The distinction between demands and needs for insurance products and suitability/appropriateness for investment products should, therefore, be respected in the proposed guidelines and separate, specific rules in the case of cross-selling are both unnecessary and inappropriate.

Some of the illustrative examples used in the consultation paper are clearly focused on banking or investment products. As such, the language used is at times misleading in an insurance context. For example, in the second illustrative example for Guideline 8 (page 27), in the case of how the interaction of different components may modify the risks of the package, the reference to “risks” is not appropriate in the insurance context, where insurance is taken out to provide cover against risk and therefore has a very different meaning to a banking or investment context. Insurance Europe believes that such a reference is not appropriate for insurance products.

Question 9: Please comment on the proposed guidelines 9 and 10 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 9 proposes to introduce requirements regarding adequate training for relevant staff. The issue of training is already dealt with in IMD 2 for persons involved in insurance distribution.

Guideline 10 proposes to introduce requirements regarding conflicts of interest in the remuneration structures of sales staff distributing tied or bundled packages. However, requirements with regard to remuneration are currently being discussed and decided upon by the co-legislators, and will be included in the Level 1 text of IMD 2 and apply to the sale of all insurance products.

The proposed guidelines should not address issues that are not specific to cross-selling. It is, therefore, not appropriate for the guidelines to introduce provisions concerning training and remuneration structures for the specific case of cross-selling.

Question 10: Please comment on the proposed guideline 11 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 11 refers to post-sale cancellation rights attached to the purchase of one of the products (para 28, p.28), and addresses the subsequent splitting of products that had been purchased as part of a package (para 29). Insurance Europe is unsure what para 29 on page 28 is aiming to achieve, as packaged products often give a better overall rate than individual components purchased separately. If the objective is to ensure that any cancellation rights referred to in para 28 are not subject to disproportionate penalties, then the wording of para 29 should be clarified and shortened. It should be made very clear, particularly in light of the reference to the “optionality of purchase” in guideline 7, that it is not intended to enable consumers to circumvent the fact that they have purchased a package. Otherwise, consumers could, for example, subsequently seek out cheaper products in order to replace one of the items in the package and continue to enjoy the beneficial rate of the remaining item, despite the fact that it is the very nature of the overall package that allows for the beneficial rate to be offered in the first place.

Question 11: Please provide any specific evidence or data that would further inform the analysis of the likely cost and benefit impacts of the guidelines.

It is important to stress the need for these guidelines to be fully aligned and consistent with IMD 2, which is still in the process of being negotiated and so is yet to be finalised, as each and every change to the legal regime causes additional costs to companies, which may ultimately end up being passed on to consumers.



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