

European Supervisory Authorities (EBA, ESMA, EIOPA):
Consultation Paper (JC/CP/2014/05)
on Guidelines for Cross-Selling Practices

BdV-Comments, March 2015

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

BdV-comment on Q1:

Yes, we agree upon the general description of what constitutes the practice of cross-selling. We emphasize that bundled or tied products have to be considered as a particular category of products, because "...it is reasonable to assume that a bundled or tied purchase complicates further what are already complex purchase decisions for customers." (cf. CP, p.10). The effects of the information asymmetry that normally exists between the firm and the customers in the financial sector are even reinforced by these tied or bundled products.

Question 2: Do you agree with the identified potential benefits of cross-selling practices?

BdV-comment on Q2:

We do not agree upon the potential consumer benefits of cross-selling practices, which are identified in the consultation paper. Only by reviewing the terms and conditions of each product in detail it is possible to determine if there are any financial benefits (reduced overall costs or superior financial conditions). We do not foresee any "streamlining of the negotiations" for purchasing the products by the customers, because the reality of the distribution activities is primarily characterized by information asymmetry to the detriment of the customers.

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

BdV-comment on Q3:

We fully agree upon the potential consumer detriment and its behavioural drivers by customers and distributors. Many more examples resulting from relevant distribution experiences can be found in EIOPA's Report on feedback from National Competent Authorities regarding EIOPA's Opinion on Payment Protection Insurance, published at 25th June 2014.

We criticise that - following to this EIOPA Report - the German NCA (BaFin) does not consider any further action in this field as necessary (cf. Report, p. 10). We would like to remember that the German consumer institutions (Verbraucherzentralen) had made an comprehensive research related to PPI in 2007, and its results had been published by BaFin (cf. Bafin-Journal, February 2007). But only several judgements by the Federal High Court of Justice (Bundesgerichtshof-BGH) from 2009 on have given a push to more effective consumer protection (mainly related to cancellation rights). Even BaFin is aware of on-going potential mis-selling risks, which are not only related to PPI, but to other classes of insurances as well (like travel insurances).

Limitation of mobility (cf. CP, p. 13): A severe example are permanent disability insurances ("Berufsunfähigkeitsversicherungen"), which are often sold as additional coverages to life insurance contracts. They are not considered as tied products, nor are they multi-risk policies. Nonetheless the following difficult situation may emerge for the customer: if the customer cancels the life insurance contracts because of increase of premiums or other reasons, the permanent disability insurance cannot be continued solely. For a new disability contract the customer has to pass a new health check, which will often have the consequence of increased premiums for reasons of age and of other health risks.

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.

BdV-comment on Q4:

Example 1: Travel health insurances are often less expensive as a single policy than included in a bundled product (or reduced coverage for the same price).

Example 3: This danger may still occur related to PPI and credit agreements, though several judgements of the Federal High Court of Justice (BGH) prohibit these cases in Germany from 2009 on.

Example 4: This danger may mainly occur related to all contracts, which are tied to a capital or term life insurance policy. In Germany because of the method of zillmerisation, investment operations of life insurances are heavily reduced by acquisition fees during the first years after contract conclusion. The judgements of Federal High Court of Justice the (BGH) do not prohibit this particular charges.

Example 5: Bundled travel insurances often include luggage, accident and third party liability insurances. These risks are covered by home content insurances (partially) or sole accident and third party policies with a contract duration of the whole year (not only for the travel). Only travel cancellation insurances may be useful additional coverages. Same conclusion has to be made related to policies bundled via credit cards.

Another example consist in tying a private pension product to a credit agreement (following to Mortgage Credit Directive 2014/17/EU, article 12 (2b)). We consider this as a wrong advice, because usually a private pension product does not include a death risk

coverage. This risk is only covered by a term life insurance, which additionally is much cheaper than a private pension product, because no investment operation is included.

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.

BdV-comment on Q5:

We strongly agree upon the full disclosure of information on prices/premiums, relevant costs and non-price features and risks included in bundled or tied products (guideline 1, paragraph number 13; guideline 5, paragraph number 19). The full disclosure of hidden costs is particularly important for all products related to life insurances (guideline 1, paragraph number 14). In Germany because of the method of zillmerisation, investment operations of life insurances are heavily reduced by acquisition fees during the first years after contract conclusion.

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.

BdV-comment on Q6:

We fully agree upon the proposal of guideline 2 (communication in good time), of guideline 3 (communication in a prominent, accurate manner and in a simplified or jargon-free language), of guideline 4 (presentation of all costs in a way which is not misleading or distorted or obscured) and of guideline 6 (prominent presentation of all non-price factors and relevant risks). These guidelines must not be softened in order to guarantee the clear distinction between key information on the product (like KIDs for PRIIPs) and any kind of marketing materials.

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.

BdV-comment on Q7:

We fully agree upon the proposal of this guideline, for each of the three outlined aspects is very important for the selling practices. Customers have properly to be informed, whether it is possible to purchase the component products separately (guideline 7, paragraph number 22).

It is absolutely necessary to avoid any false perception that the purchase of the bundled package is compulsory when it is in fact an optional purchase (guideline 7, paragraph number 24).

Last but not least online customers have to be enabled to make a conscious decision, therefore the default purchase option for a bundled package on the company's website have to be set or defaulted at "NO". Only this triggers an active response from the customers to "opt-in" (guideline 7, paragraph number 23).

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.

BdV-comment on Q8:

We fully agree upon the proposal of this guideline. Additionally we refer to EIOPA's proposal for guidelines on product oversight and governance arrangements, in which when introducing new products the identification of target markets and of adequate consumer groups are clearly determined (POG guideline 5). That is the reason why we strongly underlined the importance of this innovative guideline in our comment: the identification of target markets not only for simple marketing reasons, but as an obligation for the distribution channels to comply, constitutes an innovation of immense importance for insurers. The obligatory identification of groups of consumers for which the product is considered not to meet their interests, objectives and characteristics will be a fundamental provision reducing mis-selling practices. This constitutes an essential step to a level playing field between insurers and investment companies offering their products (guideline 8, paragraph number 25).

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.

BdV-comment on Q9:

We fully agree upon the proposal of guideline 9 (paragraph number 26) and of guideline 10 (paragraph number 27). Additionally we underline the importance of EIOPA's proposal for guidelines on product oversight and governance arrangements, in which the full responsibility of the management for the adequate training of distributors is fixed (especially in POG guideline 10).

The prevention and if necessary the management of conflicts of interests of the sales staff emerging from any kind of remuneration and inducement structures were already discussed by EIOPA consultations in July and December 2014. In January 2015 EIOPA published the relevant Technical Advice for the EU-Commission.

We sent comments to both consultations and stated that any kind of inducement which would not be for the benefit of the customer must be forbidden and sanctioned. In its Delegated Regulation Act on Solvency II (10 October 2014) the European Commission developed a System of Governance (Chapter IX, articles 273 and 275), in which Fit and Proper Requirements for the management as well as principles of Remuneration Policy are fixed.

One major problem driver which has to be taken into consideration is the choice of qualified personal. Knowledge and ability requirements have to be standardized on a common mandatory level, a continuous professional development (CPD) has to be implemented by each insurer. When choosing new personal, distributors or insurers have to stress that working for a financial company does not mean “quick sale” and “making a big fortune” only in a short time.

Again, it is the responsibility of the Board to emphasize that trust and confidence by consumers is only gained by doing business in a honest way, having good governance arrangements, and offering transparent products. The objective that consumers are able to understand what they intend to buy can only be reached by the necessary prior step, that intermediaries understand what they sell. The implementation of these differentiated professional trainings fully belongs to the responsibility of the insurers.

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.

BdV-comment on Q10:

We fully agree upon the proposal of this guideline. Disproportionate penalties (cancellation fees) can be observed related to all products which are tied to life insurances. In Germany because of the method of zillmerisation, investment operations of life insurances are heavily reduced by acquisition fees during the first years after contract conclusion (guideline 11, paragraph number 29).

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.

BdV-comment on Q11:

Our association is a NGO, which does not sell any insurance contracts. That is why we are not able to calculate any likely cost and benefit impacts of these guidelines. But we would like to stress again the immense dimension of consumer detriment because of abusive cross-selling practices in the past.

Germany:

The local and federal consumer institutions (Verbraucherzentralen) stated that 41% of the customers who had concluded a PPI contract (related to credit agreements) had already concluded a life insurance contract (cf. Süddeutsche Zeitung, 21 May 2010 and 11 March 2015). This clearly shows that neither the demands and needs of the customers nor the suitability/appropriateness of the proposed products had been properly assessed by the distributors. Overconsumption or unnecessary multiple coverages to the detriment of the customers are evident. In Germany there are more than 80 millions of capital life insurance contracts.

Ireland:

In March 2014, the Central Bank issued a summary report on the review explaining both the scope and results of the review. €67.4 million (including interest of €4.9 million) was calculated for refund to circa 77,000 policyholders who were sold PPI since 1 July 2007. This represents 22% of the PPI sales included in the review (cf. EIOPA Report, June 2014).

Great Britain:

The UK has experienced large scale mis-selling of Payment Protection Insurance products by some of the country's largest banks. Many consumers were often re-quired to pay via a single premium that was added to the loan; faced significant barriers to switching; were not eligible to claim; were captive and unable, or un-willing, to search for alternative products; and/or were pressurised into buying the product. The resultant regulatory action has led to a substantial compensation scheme amounting to £12bn (as of June 2013; cf. Joint Position of the European Supervisory Authorities on Manufacturers' Product Oversight & Governance Processes, Nov. 2013).