

ANNEX 1

Unfortunately, due to the limited scope given by the European Commission's mandate, there was no chance for EIOPA to take broader considerations into account to address and achieve the CMU-Action plan goals. E.g., with respect to the objective of enhancing consumers' trust in financial markets, in our view, further restrictions on inducements can only make a very limited contribution and other measures would be more helpful. E.g., considering the intermediaries' professional skills, requirements on further training and development or bolstering consumers' financial literacy would be suitable for this purpose but was not addressed by the European Commission.

Additionally, to the already mentioned points under Nr. 118 we want to list some more benefits of retaining the existing framework. The German Insurers would very much appreciate EIOPA including them in its final advice to the European Commission as given by the European Commission mandate.

Benefits of retaining the existing framework

- One of the strengths of the commission system is that it enables accessible and affordable advice and ongoing support for all kinds of consumers, including less affluent ones. The payment of commission effectively pools the cost of advice, with all consumers who ultimately enter a contract financing advice for all those who receive it. This allows prospective consumers to shop around and receive advice from more than one service provider without being required to repeatedly pay for the service. Abolishing or limiting this proven system could have far-reaching consequences that ultimately harm consumers, intermediaries, and the capital markets.
- In the debate about a ban on commissions, the so-called "advice gap" is usually pointed out very quickly. Consumer protection organizations and some markets such as NL for example stress that there is no advice gap. Industry representatives usually argue oppositely, various studies are taken from both sides to prove the respective opinion. We would like to objectify this discussion a bit:
 - Firstly, there is no common understanding for the term "advice gap". Some stakeholders assume that advice is not available or affordable for all groups of consumers. Others argue that a lot of consumers are not willing to pay for advice and are not using this although it would be accessible and affordable. There are many studies on this topic that are worth reading. We would like to point out two studies that are perhaps less well known: the 2021 edition of [OpenMoney's UK Advice Gap Report](#), which tells that fewer people than ever are taking paid financial advice and an [Oliver Wyman study](#) from 2021. It reflects the advice supply-demand gap that has arisen in Australia after banning commissions and addresses the still existing significant consumer trust deficit.
 - Secondly, national differences in pension systems, tax systems, etc. create a heterogeneous environment for old-age provision, leading to different national requirements for the distribution of insurance and consequently for remuneration schemes in the EU. Hence the impact of any amendment would not be comparable across the EU markets. While a ban on commission can be appropriate for NL with its around 6.600 intermediaries in other markets like Germany with nearly 195.000 intermediaries (46.000 are brokers) this would have a different impact.

- Thirdly, some markets implemented concepts of mandatory advice, while in other markets taking advice is an option and even execution-only sales are common. Mandatory or compulsory advice, as implemented in Germany and France, can hardly be financed with an existing ban on commissions.
- It seems to be a basic hypothesis that fee-based advice comes at lower costs for the consumer. Recent studies, such as the KMPG Study from November 2021, show that this is not necessarily the case. In general, more attention should be paid to the fact that fee-based advice is not comparably regulated. By way of example, the assessment of due costs within the POG-Process under EIOPAs "value for money" concept omit fees. Since they differ from case to case, they must be out of scope naturally. This also applies to any cap on costs, as known for the basis-PEPP. Individual fees paid by consumers for the services of intermediaries remain out of the scope. Moreover, it is important to understand that conflicts of interest can also arise in fee-based models (see the [linked example](#)). In contrast to the commission system, there are usually no claw-back mechanisms in case of early surrender, which is a system that has proven very effective in avoiding potential conflicts of interest. In the case of flat-rate models costs could be charged without taking advice - obviously a poor value for money. The very close monitoring in the area of inducements, especially on commissions and their potential to cause conflicts of interest, ensures that customers are adequately protected from possible detrimental impacts of inducements.
- In contrast to the commission model fee-based models have the disadvantage that each service is charged separately during the term of the contract. Services such as the adjustment of the integrated funds to changed capital market conditions and/or changed circumstances of the client (e.g., change to low-risk funds at a higher age) are charged separately. The overall costs cannot be comparably assessed in advance.
- A commission-based system offers the opportunity to spread the costs of advice amongst all the insured. Consumers can shop around seeking advice multiple, but costs are only charged once when the contract is concluded. Moreover, the commission system spreads costs and therefore makes them easier to bear, especially for the less well-off. At the same time, advice is available to all groups of consumers. Costs only occur when a contract is concluded. Consequently, poor service does not have to be paid for. This stimulates competition and increases the quality of the service by encouraging consumers to compare different providers or get a second opinion from another professional.
- IBIPs are a great vehicle through which many retail investors can access investments in asset classes and areas to which they would otherwise not have access (e.g., infrastructure projects, investments in sustainable energy projects, or water supply). This is worth being preserved. It is to be feared that a ban in commission (e.g., for independent advice) could lead to fees, constituting an obstacle making the access to these asset classes more difficult for retail investors.
- Finally, the legislator and competent authority should not underestimate consumers in general. Within the existing framework, customers have a choice at different stages, they can take or reject advice, they also have the possibility to choose between fee-based advice, commission-based advice, or mixed models. But, in Germany, consumers overwhelmingly take full advice and opt for commission. We are strongly in favour of maintaining the coexistence of forms of remuneration and giving consumers a choice.

The list of cons of any cap or ban on commissions could be further supplemented by potential negative effects on financial literacy: Financial literacy is an important part of the CMU Action plan and helps consumers in making informed decisions. It can be supported through various channels, e.g., at schools, universities, public campaigns, etc. It is especially important when there is a concrete occasion. Therefore, it has a particularly great effect when clients are interested in it, thus at the point of sale. The “army” of 815,219 regulated, registered and supervised insurance intermediaries across Europe makes a great contribution to the financial education of customers. Information deficits, misunderstandings, or objective misconceptions can be recognized and eliminated, but this does not come for free. In return for the occurring costs (to be paid in the form of a commission or fee), the consumer walks away from each advisory process smarter than before. Restricting remunerations by the way of caps or even bans would probably have negative effects on financial literacy because intermediaries will no longer perform this educational mission.

Notes on EIOPAs Statements:

- **Option No. 1 (page 51) Refining existing rules**

Even though we agree with EIOPAs view, that amendments, if seen to be necessary at all, are quicker and easier to implement by refinements on levels 2 and 3 compared to in-depth changes on Level 1, Level 3 should not be used to override the minimum harmonization approach of the level 1 regulation. Furthermore, we are concerned that amendments on Level 1 within a more horizontal Retail Investment Strategy could raise questions on the responsibility and powers of the European supervisory bodies, particularly the question of whether EIOPA, ESMA, or a "Joint Committee" would be responsible for Retail Investment Products including IBIPs.

- **poor fund selection and the proper handling of so-called kickbacks** (e.g., on Page 52 No. 3 and Page 58 No. 135)

The German BaFin already issued interpretative decisions ([link](#)) on the described issue of poor fund selection and the proper handling of so-called kickbacks. This issue could have been already addressed in other European markets as well. We consider the existing supervisory tools to be proper to address any issues in this regard. Markets and products are very different. Therefore, this could rather be an issue to be solved at the national level. By way of example, the German system of surplus participation considerably reduces potential conflicts of interest. However, this system does not exist in all markets.

- **Option No. 6 (page 55) Issue of “volume override arrangements”:** Recital 46 IDD is already very clear in this regard and emphasizes that “Remuneration based on sales targets should not provide an incentive to recommend a particular product to the customer.” This is backed up not only by Art. 17(3) IDD but also within Article 27 ff. and corresponding Delegated Regulation 2017/2359. We would like to reject the inherent assumption that sales targets are conflicts of interest per se. As described under Article 8 DVO 2017/2359 a holistic assessment shall be carried out to cover all factors which might increase or decrease the risk of detrimental impacts for consumers.

- **Option No. 6 (No. 136) Strengthening the rules on record-keeping**

This tool might not prevent conflicts of interest in advance and causes high administrative costs, which additionally increases product costs from the client's perspective. High costs are a hurdle and

discourage retail investors from investing, ultimately it runs counter to the CMU's goals of encouraging more retail investors to invest. Whether this will lead to better consumer protection and more trust is at least questionable.

Comments on EIOPAs public hearing on 18th February 2022

As part of EIOPAs public hearing, the consumer protection organization BEUC referred to their map of miss-selling scandals (<https://www.thepriceofbadadvice.eu>). In this regard we would like to stress that most examples occurred before IDD and MiFID II implementation, hence most of the shown examples need to be seen as outdated. The few latest events, for example, the intervention of the Polish authorities, can be seen as proof that the existing framework works well to identify and prevent maldevelopments.