

Insurance Europe comments on the Joint Forum consultation on Point of Sale (POS) disclosure in the insurance, banking and securities sectors

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Contact persons:	Arthur Hilliard, Policy Advisor William Vidonja, Head of Single Market & Social Affairs	E-mail:	hilliard@insurancееurope.eu vidonja@insurancееurope.eu
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Insurance Europe welcomes this opportunity to share its views on the Joint Forum's consultative document on Point of Sale (POS) disclosure in the insurance, banking and securities sectors. Insurance Europe supports a high level of consumer protection and recognises the importance of relevant product disclosures in aiding consumers to make informed financial decisions. In this respect, we believe that the focus should always be on having better information that is relevant to consumers, not simply a case of more information, which ultimately will not benefit consumers.

We would like to share our observations and concerns on the Joint Forum's consultative document, as set out below.

■ Timing and status of the Joint Forum's recommendations

Insurance Europe wishes to caution against the risk of inconsistencies and contradictions between the Joint Forum's recommendations and any existing or proposed legislation, and the impact this would have on industry and consumers.

At EU level, the European Commission put forward proposals on pre-contractual disclosures under its packaged retail investment products (PRIIPs) initiative in July 2012. As described in Annex 3 to the report on '*Selected recent or upcoming international initiatives on consumer protection*' (pp. 27-28), this initiative has a similar objective to the Joint Forum's recommendations. The EU institutions are currently discussing these proposals with a view to adopting the regulation in 2014.

There is therefore a risk that policymakers or supervisors at local level may review their POS disclosure regulations, taking inspiration from the Joint Forum's recommendations, and will subsequently be forced to revise these rules once the PRIIPs regulation becomes applicable. Such regulatory uncertainty would not only impose unnecessary compliance costs and burden on industry, but it would also confuse consumers, thus defeating the very aim of both the recommendations and the future PRIIPs regulation. Against this background, we urge the Joint Forum to await the finalisation of the EU legislative process on the PRIIPs regulation before continuing with its POS disclosure initiative. Where pre-contractual disclosure legislation at EU level will be

finalised and adopted, any pre-contractual information standard developed at international level should at least comply with the features set out below.

In any case, it is important that the report and the recommendations remain an inspiration tool at the disposal of policymakers and supervisors, which they may wish to consider when developing or modifying POS disclosure regulations, and that they are not interpreted as binding or imposing requirements. In order to avoid such misinterpretation, we would propose that the recommendations include terms such as "may" instead of prescriptive terms such as "should".

■ The sample of products

Products are not interchangeable and while some of their features may be similar, they serve different purposes taking a consumer perspective, which in turn means that the disclosures applying to them may have to be different to enable consumers to take a well-informed decision.

Furthermore, we believe that the sample of products should not include any individual/third pillar pension products and life insurance contracts where the insurer fully bears the investment risk:

- Differentiation should be made between individual/third pillar pension products and other retail investment products, as the former have a different purpose and different characteristics (long term duration, limited or no access to the savings before retirement age, protection against income loss in retirement) which give rise to specific information and protection needs. In any case, a split should be made between the accumulation and decumulation phase of pension products. Annuities are strictly relating to the decumulation phase and are therefore not related to investment but are rather a form of protection against longevity risk.
- A split should be made between life insurance contracts where the policyholder (partially) bears the investment risk and life insurance contracts where the insurer fully bears the investment risk. These latter are not real investment products and should therefore be explicitly excluded from the sample of products.
- It should be pointed out in any case that Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) includes provisions on pre-contractual information for policyholders for all insurance products.

■ Insurance specific features

Should the POS disclosure initiative be pushed forward further at Joint Forum level, it is important that any proposal to have a summary disclosure document aimed at facilitating comparison of competing products does not come at the expense of the level of understanding of the product for the consumer. In this respect, we would be concerned about any risk of standardising rules and disclosures, without taking into account insurance specificities and the possible consumer detriment that may result from such an approach.

In contrast, we believe that any attempt to standardise information needs to take into account insurance specificities to reflect the particular characteristics of insurance products that distinguish them from other products, such as biometric risk coverage and the insurance benefits, the duration of the contract and the consequences of early termination of the contract, as well the existence of a cancellation right and its duration.

Consumers should always be well-informed about such insurance product features, including whether or not a product also offers insurance coverage, at the pre-contractual stage. These features distinguish insurance products from other products in the sample and are thus an essential product evaluation and comparison factor for consumers. For this reason, we consider it necessary that any summary disclosure format always

discloses at product level whether a product offers insurance benefits or not, irrespective of the financial sector from which the products are derived.

Therefore, we strongly support the reference in the draft report to the importance of *"keeping in mind that product specificities must be taken into account"* when working on harmonising, as appropriate, POS disclosure across sample products (p.16).

In addition, we suggest introducing:

- a reference to the importance of keeping in mind that product specificities must be taken into account in recommendation 5.
- an explicit reference to insurance benefits among the key characteristics to consider to disclose in a POS disclosure document, in addition to costs, risks and financial benefits.

■ **Format and content flexibility**

In addition, any disclosure format and content should provide for sufficient flexibility to enable innovation and adaptation of information to local consumer needs, expectations and level of financial understanding, as well as to local law. We therefore support the Joint Forum's recognition that the jurisdiction's regulatory regime needs to be taken into account (recommendations 1 and 8).

We also support and suggest emphasising further in recommendation 5 the Joint Forum's recognition *"that flexibility in format and framework can be important to permit disclosure customised to a product"* (p. 14).

We believe that Recommendation 2 should be clarified as follows: "The POS should be provided free of charge and ***in general*** before the time of purchase". There are scenarios in which it can be reasonable to allow for the provision of the POS immediately after the contract is concluded. In such cases, eg where the means of communication do not permit POS disclosure prior to the conclusion of the contract, it should be possible to provide that information without undue delay after the contract is concluded.

■ **Sales without advice**

We are concerned that footnote 14 implies that advice should be compulsory (*"Effective POS disclosure requirements should be supplemented by adequate disclosure obligations at the other relevant stages of the product life cycle and strong requirements on advice..."*).

Consumers should be able to purchase any insurance product, including those in the product sample, without advice. In many cases, consumers do not need or want advice and any restrictions could interfere with consumer choice, and hamper their ability to access products if they were not in a position to afford such advice.

In any case, even where sales are carried out without advice, all relevant information requirements will still be followed. We suggest therefore deleting footnote 14.

■ **Recommendations going beyond product disclosures**

The JFRAC mandate is to identify whether regulatory approaches to POS disclosure need to be further aligned across sectors. The report however contains recommendations and references going beyond this mandate (sales rules, pre-approval process and implementation measures on sanctions).

We suggest removing from the final report any other references going beyond the mandate.

■ Insurance mediation directive

We agree with the Joint Forum's statement that differences in regulatory approaches can arise from differences in sectoral regulatory objectives and differences in product features and terminology (p. 6).

In this context, footnote 13 refers to the Insurance Mediation Directive (IMD) as currently undergoing a review, *intended to "enlarge its scope to include sales of insurance products"*. This is not correct as the existing IMD already addresses the sale of insurance products. We suggest therefore that the footnote reads as follows: "*... a directive on insurance mediation (the Insurance Mediation Directive)(Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation; OJ L 009: 3. The Insurance Mediation Directive (IMD) is currently undergoing a review, ~~intended to enlarge its scope to include sales of insurance products.~~; and ..."*

Moreover footnote 13 should also refer to Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), which includes provisions on information for policyholders.

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