



Comments of Dutch Association of Insurers

CESR Consultation Paper (CESR/09-958) Inducements: Good and poor practices

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The Dutch Association of Insurers represents the interests of private insurance companies operating in the Netherlands. The Association's members represent more than 95 percent of the insurance market expressed in terms of gross premium income. The Association is an independent organisation managed and financed by its members.

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VERBOND VAN VERZEKERAARS



Key messages

The Dutch Association of Insurers call on CESR to:

1. put the needs and interests of consumers first.
2. keep regulator based guidance short and clear with a hands-on focus. The guidance itself should not raise questions. Principle based regulation and detailed CESR regulator guidance are contradictory.
3. take into account the European Commission work on Packaged Retail Investment Products (PRIIPs). MiFID provisions on conflict of interest and inducements will be the benchmark for the new horizontal instrument with mandatory disclosure of selling practices. CESR has a sectoral approach, however in practice CESR recommendations are applied to the insurance sector.
4. assess the impact of CESR's work on inducements for the insurance industry. Remuneration bias is removed from the Dutch insurance market. We do not want bias to be reintroduced or conflict of interest to rise through CESR good and poor practices.
5. undertake consumer/(client) testing with respect to the disclosure items related to the Questions XI-XV. Based upon the little (indirect) client feedback CESR received from investment firms it is difficult to draw any conclusions whether or not clients find the information in disclosures to be of use. This is a serious lack this CESR work on inducements. In our view the focus should be on the client and not the views of investment firm or regulators.

General remarks

1. The Dutch Association of Insurers¹ comments are provided due to the impact of CESR's work for the Dutch insurance market. In July 2009 the Dutch regulator and member of CESR published extensive guidance on commissions for insurance product manufacturers and insurance intermediaries². In particular the CESR Recommendation "Inducements under MiFID", May 2007, ref. CESR/07-228b, intended for the securities industry is used as a benchmark for regulator guidance for the insurance industry.
2. CESR mentions in §6 that none of CESR's views, opinions, judgements and statements constitutes European legislation and that CESR does not propose any legislative or regulatory changes. Due to our experience in the Dutch insurance market with the explanation of the CESR Recommendations by the CESR member we can not agree with this. We have an extensive regulator guidance on commissions which in practice work as pseudo legislation. We are concerned for the potential consequences of the CESR "Inducements good and poor practices" for the Dutch insurance market. In particular that:

¹ For more information on the Dutch Association of Insurers please visit our website at <http://www.verzekeraars.nl/english.aspx>.

² Please visit <http://www.afm.nl/marktpartijen/default.ashx?DocumentId=12662> for a copy of the AFM guidance "Leidraad passende provisie financiële dienstverleners, juli 2009" and the "AFM Feedback statement Leidraad passende provisie". Unfortunately in Dutch only, there is no UK version available at this time.

- o it will result in pseudo legislation despite CESR's intentions.
 - o securities industry practices are translated on a one by one basis to the Dutch insurance industry leaving room for bias and conflict of interest. In the Dutch insurance industry all (remuneration) bias (for example bonuses, distribution fees and up-front lump-sum fees) is removed. We do not want the bias to be reintroduced in the Dutch insurance market.
 - o it could excessively be disruptive for the results reached in the Dutch insurance market. Securities industry practices will not be workable in the insurance market and Dutch insurance consumers/clients would not benefit at all.
3. The European Commission's ongoing work on Packaged Retail Investment Products (PRIPs) will take the MiFID provisions (on conflict of interest and inducements) as the benchmark for the new horizontal instrument with mandatory disclosure of selling practices. In §9 CESR notes that the final CESR inducement report will be set out as a collective view from securities regulators on practices related to MiFID inducement rules. The EC work on PRIPs is cross-sectoral while CESR's work on inducement however seems to be sectoral of its nature with the focus on the securities industry. We call on CESR to take into account the EC work on PRIPs. CESR should make clear what the relation is with PRIPs. When CESR and its members are targeting the insurance industry, then a questionnaire should be distributed to insurance manufacturers.
4. The comments of the Dutch Association of Insurers are based on our vision on the distribution of complex products³: Customer Agreed Remuneration (CAR). The CAR vision is based on 10 key elements (such as clarity for the consumer on the role of intermediaries, agreed and mandatory transparency of remuneration, avoiding even the appearance of conflict of interest, different types of remuneration) and implicates that:
- i. All remuneration bias must be removed;
 - ii. Remuneration of an intermediary is agreed between consumer and intermediary without any involvement of a product manufacturer. No distribution fees or lump-sum payments allowed from product manufacturers;
 - iii. Remuneration of the intermediary is attached to specific services provided by the intermediary, agreed by the consumer and laid down in a service agreement;
 - iv. Product manufacturers set the price of a product (factory price) upon which the intermediary can add the agreed remuneration with the client. On request of the consumer a product manufacturer can facilitate remuneration payments in terms as a transparent surcharge on the premium;
 - v. Clarity on the roles and responsibilities of intermediaries and product manufacturers is essential. Intermediaries are responsible for the advice and product manufacturers are responsible for the product.
5. The Dutch Association of Insurers initiated major changes in the Dutch legislation based upon its CAR vision. The new Dutch rules on mandatory transparency of remuneration and costs are laid down in the Dutch Decree on the Supervision of the conduct of Financial Enterprises. Part of the new rules are applicable since 1 January 2009 and some will become in effect on 1 January 2010. Some key features of the new legislation:
- o Only initial and trail commissions are allowed for the insurance industry;
 - o Commission is defined in broad terms. Every monetary and non-monetary payment falls under the definition;
 - o No bonus commissions allowed;

^{3 3} Complex products are defined as a combination of two or more financial products of which the value of at least one of the products is dependent on the developments on the financial markets or other markets. This includes life, mortgages and second and third pillar pensions

- o Mandatory pre-contractual disclosure of remuneration by intermediaries (in Euros and not in percentages);
- o Mandatory services document (on remuneration and services) to be provided to consumers by intermediaries;
- o Mandatory pre-contractual disclosure of costs by product manufacturers (in Euros and not in percentages);
- o Level playing field between distribution channels with respect to selling rules and product disclosures.

On 3 December 2009 the Dutch House of Representatives decided that two exemptions for “soft commissions” (product information training and IT systems) which were still allowed besides the ban on bonuses will also not be allowed.

Answers to the consultation questions I-III: Classifying payments and non-monetary benefits and setting up an organisation to be compliant

6. In general regulated firms have arrangements and procedures in force to comply with regulations and senior management is involved in the compliance process. In our view the key issue is the level of detail required by legislation and the regulator. Principle based regulation and detailed CESR regulator guidance are contradictory. When CESR regulator requirements with respect to arrangements and procedures are detailed and complex, which is the case with inducements, it will be more difficult for regulated firms to comply with the requirements. Regulator based guidance should be clear, practical and straightforward. The guidance itself should not raise questions. Unfortunately we have the experience with CESR Recommendations that regulator guidance is complex, detailed and more academic of its nature. We call on CESR to keep regulator based guidance short and clear with a hands-on focus. Remuneration issues which are obvious not in the interest of consumer/client, such as distribution fees, lump-sum payments, turnover related bonuses and quality bonuses should be prohibited instead of setting up arrangements and procedures to control it.

Answers to the consultation questions IV-VI: Proper fees

7. In the Dutch legislation only legal fees and legal levies are considered to be proper fees for the insurance industry. The list of items that have been reported by some respondent (§43) for the securities industry reveals the tendency of investment firms to consider for example even brokerage fees, compensation of tied agents, portfolio management fees, rebates, introducing broker fees as proper fees. It is clear that some investment firms would like to avoid the application of criteria mentioned in article 26(b) of the Level 2 Directive. This is not the behaviour we would like to see in the Dutch insurance industry. In our view CESR should be aware of avoidance of the application of the relevant rules. As CESR mentioned the category of proper fees is intended to be a narrow category. Regulators should strictly enforce this.

Answers to the consultation questions VII-X: Payments and non-monetary benefits authorised to certain cumulative conditions – acting in the best interest of the client and designed to enhance the quality of the service provided to the client

8. The instances mentioned in §74 indeed give rise to very significant potential conflicts. This is the case for all payments from product manufacturers to intermediaries. In our CAR vision we have stated that consumers should agree remuneration with their intermediary and there is no product manufacturers involvement at all.

The question is whether the two key elements of the test “designed to enhance” and “duty to act in the best interest of the client” (§79 - §84) will address the potential conflicts adequately and taking in to account the regulatory burden on the market. In §79 CESR’s reaction is that the findings of the survey show that the “designed to enhance” wording is causing some degree of

uncertainty amongst investment firms. In §80 CESR acknowledges that the application of the test might not always be straightforward. In the §81, §82 and §83 we see evidence what the results of the test are in practice. It is clear that investment firms have serious difficulties how to apply the test in practice. The test is complex and there is a major negative impact on the market. The compliance costs are too high. Therefore CESR should reconsider this approach.

9. Distribution fees and lump-sum payments from third parties which do not have any relationship with the ongoing efforts of financial intermediaries creates conflict of interest and give rise to bias. These payments are not allowed in the Dutch insurance industry. We are against intermediaries receiving payments from both consumers and distribution fees from product manufacturers. We would not like to introduce the practices of the securities industry into the Dutch insurance industry. When there is no service attached to ongoing payments the payment should not be allowed.

Answers to the consultation questions XI-XV: Payments and non-monetary benefits authorised to certain cumulative conditions-Disclosure

10. We call on CESR to undertake extensive consumer/client testing with respect to the disclosure items related to the Questions XI-XV. Based upon the little (indirect) client feedback CESR received from investment firms it is difficult to draw any conclusions from this whether or not clients find the information in disclosures to be of use. This is a serious lack in CESR's work on inducements. The focus should be on the view consumer/client and not on the views of investment firms or regulators. In the PRIIPs dossier the EC stated that consumer/client testing is important.
11. CESR states that it is legitimate for investment firms to take into account in disclosures the retail or professional nature of their clients. We do not agree that a less stringent disclosure regime for professional investor is a good thing when we are dealing with inducements. Rebuilding investor confidence in financial markets requires the removal of all bias and adequate management of conflict of interest. Unclear or incomplete disclosures are not working for restoring confidence.
12. The use of bands in summary disclosures is permissible according to CESR as long as the information enables an investor to make an informed decision whether to proceed with the service or to ask for more information. In our view summary disclosures using bands must:
 - o contain in advance all the relevant information on the specific nature of the services provided and the amount of payments/commissions received from third parties which are attached to these services. The information provided must be mandatory. Information provided on request of the client does not work in practice.
 - o contain Euros in the bands instead of percentages.
 - o provided in a timely way (direct after the orientation phase) and prior to the provision of the services.

We agree with CESR that in detailed disclosures the exact amount should be provided, however this should always be the case. First a summary disclosure using bands should be provided and then the exact amount.