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22 December 2014

Joint Committee Consultation Paper on guidelines for cross-selling practices

Responding to this consultation paper

The European Securities and Markets Authority (ESMA), the European Banking Authority (EBA), and the European Insurance and Occupational Pensions Authority (EIOPA) – the ‘ESAs’ - invite comments on all matters set out in this consultation paper and, in particular, on the specific questions listed in Annex 1. Comments are most helpful if they:

- indicate the number of the question to which the comment relates;
- respond to the question stated;
- contain a clear rationale, also clearly stating the costs and benefits;
- provide evidence to support the views expressed/rationale proposed; and
- describe any alternatives the ESAs should consider.

Comments can be sent by clicking on the ‘**send your comments**’ button on the consultation page of one of the ESAs’ websites. Please note that the deadline for the submission of comments is 22 March 2015. Comments submitted after this deadline, or submitted via other means, may not be processed.

Publication of responses

All contributions received will be published following the end of the consultation, unless otherwise requested. Please indicate clearly and prominently in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an e-mail message will not be treated as a request for non-disclosure. Note that a confidential response may be requested from us in accordance with the ESA rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s, EBA’s or EIOPA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu, www.eba.europa.eu and www.eiopa.europa.eu under ‘Legal Notice’.

Who should read this paper?

This consultation paper will be of interest to investment firms, UCITS management companies and other investment companies, credit institutions, payment institutions, e-money institutions, creditors, credit intermediaries, insurance undertakings and intermediaries.

We would welcome views from regulators, relevant trade bodies, market participants, customers and other interested parties. The ESAs will also seek the views of their respective stakeholder groups, established in accordance with Article 37 of their respective founding Regulations.

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Acronyms

AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive
EBA	European Banking Authority
EIOPA	European Insurance and Occupational Pensions Authority
EMD	E-Money Directive
ESMA	European Securities and Markets Authority
IMD	Insurance Mediation Directive
MCD	Directive on credit agreements for consumers relating to residential immovable property (Mortgage Credit Directive)
MiFID	Market in Financial Instruments Directive
MiFID II	Markets in Financial Instruments Directive (recast)
PAD	Payment Accounts Directive
UCITS	Undertakings for collective investment in transferable securities

1. Executive summary

Reasons for publication

1. The European Supervisory Authorities (ESAs), through the Joint Committee of the ESAs (JC), have been considering the risks to customers that may arise from joint purchases of different products or services, generally known as cross-selling practices. In particular, the more complex purchase decision resulting from buying two or more products together may place additional burden on customers to assimilate relevant product information and understand potential risks and may distort or limit customer choice and cause potential detriment.
2. With a view to their statutory customer protection objective, the ESAs have developed draft guidelines addressed to competent authorities, based on Article 16 of the ESAs Regulations¹. The guidelines aim at indicating to competent authorities, through high-level principles and practical examples, ways to ensure that firms can comply with the general conduct of business standards toward customers² that are expected of firms in the context of cross-selling practices.
3. The requirements regulating the conduct of firms operating in all sectors within the scope of ESAs aim at the fair treatment of customers by those firms.
4. Recent developments in EU sectoral legislation also include explicit focus on cross-selling practices. This is the case of Directive 2014/65/EU on Markets in Financial Instruments (recast) (MiFID II), Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (so called Mortgage Credit Directive - MCD), Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (so called Payment Accounts Directive - PAD), and the planned revision of Directive 2002/92/EC on Insurance Mediation (IMD II).
5. In addition, third sub-paragraph of Article 24 (11) of MiFID II requires that *“ESMA, in cooperation with EBA and EIOPA, shall develop by 3 January 2016, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations laid down in paragraph 1”*

¹ Regulation (EU) n. 1093/2010 (EBA), Regulation (EU) n. 1094/2010 (EIOPA) and Regulation (EU) n. 1095/2010 (ESMA).

² Reference to “customers” covers the natural or legal persons to whom bundled or tied packages, as defined in the guidelines, are proposed. This includes customers who qualify as consumers in accordance with relevant legislation.

(that is, the general conduct of business obligations established under the Directive).

6. In this context, the guidelines aim, *inter alia*, at improving the content of disclosure on price, costs and other non-price features when different products are cross-sold with one another, requiring that all relevant information is communicated in a timely and prominent manner, improving customer understanding of whether the purchase of the individual products is possible, improving the assessment of the customers' individual demands and needs or suitability/appropriateness of the cross-sold package, addressing training and remuneration aspects and clarifying the application of any post-sale cancellation rights attached to the purchase of one of the products. The guidelines apply irrespective of the sales channel used.

Structure of this CP

7. Section 2 sets out the background for the guidelines in more detail; Section 3 provides a description of what constitutes 'cross-selling'. Section 4 sets out an analysis of the potential benefits and risks associated with the practice of cross-selling and Section 5 provides a summary of the guidelines.
8. Annex 1 contains the guidelines. Annex 2 sets out the cost-benefit analysis for the guidelines and Annex 3 lists the questions set out in the consultation paper.

Next steps

9. The ESAs will consider the responses they receive to this consultation paper and expect to publish a final report, and final guidelines, by Q4 2015.

2. Background

1. Cross-selling occurs where a firm groups together one or more products or services and sells them to customers as a distinct package.
2. Whilst this may confer benefits for customers in the form of (initial) cost savings or reduced search costs, it can also raise a number of problems in terms of consumer welfare. For instance, cross-selling can result in customers purchasing products that they do not necessarily want, which may be unsuitable for their needs, or to which they are locked into for a significant period of time. Additionally, over the life-time of the product or service, a customer can end up paying more for the package than he/she would have done had he/she purchased the products separately.
3. In view of these risks, a joint regulatory response is required in line with the existing legislation which aims at ensuring fair treatment of customers in the different sectors. In particular, firms in all sectors are expected to comply with general principles requiring them to act honestly, fairly and professionally, in accordance with the interests of customers, and with more specific conduct obligations - including in the areas of information to clients and, where relevant, assessment of products and services against a client's profile and needs – as well as with the obligation to have robust governance arrangements
4. Furthermore, sectoral legislation has acknowledged the relevance of cross-selling:
 - MiFID II has provided a specific mandate to ESMA, in cooperation with EBA and EIOPA, to develop guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with the general conduct of business obligations established under the Directive (Article 24(11), third sub-paragraph, of MiFID II); and
 - recent Level 1 requirements across a number of key directives (i.e., MCD and PAD, in addition to MiFID II) have supplemented the general conduct of business requirement with specific provisions on cross-selling. Notable changes in one or more of these directives include: stricter information disclosure requirements and an overview of the risks associated with packaging two or more product/services; suitability or appropriateness tests explicitly applied to test whether the overall package is suitable for that client; information to the client whether it is possible to buy the different components separately (Appendix 1 lists the relevant provisions which specifically deal with cross-selling practices in the context of MiFID II, MCD and PAD).
5. In addition, the review of the IMD (IMD II) may also specifically cover cross-selling. As of the date of publication of these guidelines, the draft text of IMD II is still being discussed in the legislative process, and is therefore subject to changes. The JC acknowledges this situation and will, if and when required,

amend these guidelines to ensure a full alignment with the final provisions of the IMD II.

6. Given that cross-selling frequently involves the promotion of products from across a number of different sectors, for example, the cross-selling of a mortgage with an insurance or hedging product, the ESAs have worked together, through the ESA's Joint Committee (JC), to develop these guidelines.³
7. Therefore, the guidelines are based on the respective general and specific conduct and organisational requirements in the three sectors (banking, insurance and securities) and comply with the third sub-paragraph of Article 24(11) of MIFID II.
8. The purpose of the guidelines is to:
 - a. Clarify for competent authorities the expected standard of conduct and organisational requirements when supervising those firms engaged in cross-selling financial products within and between the respective sectors (to the extent that these activities are allowed by EU and national law); and thereby;
 - b. Establish a coherent and effective approach in the supervision of firms which will contribute to the enhancement of customer protection across Member States as well as across the three sectors;
 - c. Enhance the scope for customers to take more proactive and informed purchase decisions in the cross-selling context; and
 - d. Identify actual practices which are consistent with or contrary to the overarching principles and general rules of conduct for the protection of customers.
9. The JC would like to recall that conduct of business standards (as laid down in applicable sectoral EU legislation) may apply to each of the products or services which are cross-sold by a firm or to the package resulting from cross-selling practices. Nothing in these guidelines affects firms' obligations to comply with such applicable requirements.
10. Firms must also comply with particular additional requirements imposed by relevant sectoral legislation – including, for example, the ban of tying practices established under Article 12(1) of the Mortgage Credit Directive. These guidelines are therefore intended to be consistent with the generally

³ As part of the JC's work programme for 2014, the ESAs have been considering the risks to customers from practices related to cross-selling. The JC remit was to develop guidelines in order to orient firms' behaviours when engaging in cross-selling practices.

applicable standards and requirements, and particular additional requirements imposed by relevant sectorial legislation.

11. The principles developed by the ESAs in setting the ESAs' overall policy position with regard to manufacturers' product oversight and governance arrangements will also be of relevance to firms. These principles cover permitted tied and bundled products, as well as each of the component products manufactured and distributed separately. Depending on the products involved in cross-selling practices, product oversight and governance provisions under MiFID II and/or sectorial guidelines developed by EIOPA and the EBA will also be relevant.
12. In developing these guidelines, some competent authorities have referred to the provisions of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (UCPD) as a legal framework used in their jurisdiction to tackle cross-selling practices – even where those competent authorities are not responsible in their jurisdictions for enforcing such rules. The UCPD does not contain provisions specific to cross-selling. Rather it sets high-level standards of conduct, such as requiring that commercial practices are not unfair to customers. These are very general and not specifically designed for the financial sector. However, relevant principles and some practices have merited consideration in developing this consultation paper.

3. What is 'cross-selling'?

1. Generally, cross-selling is the practice whereby firms group, and sell, two or more separately identifiable products or services in a 'package'.⁴
2. This practice is common within the financial services industry. At the point where a customer purchases, or intends to purchase, a 'core' (or 'primary') product or service, firms frequently cross-sell additional (or 'secondary') products or services.
3. Further, cross-selling two or more products or services can take place as:
 - a. a bundled offering, where each of the products/services offered is available separately and where the client retains the choice to purchase each component of the package separately; or

⁴ For the avoidance of doubt, the reference to 'package' or 'packaged' should not be confused with Packaged Retail Investment and Insurance-based Products (PRIIPs) as defined in the PRIIPs Regulation. Single PRIIPs, which may inherently involve a combination of elements where for instance, a structured bond offers an exposure to underlying assets but the underlying assets are not directly purchased by the client, are not themselves to be regarded as tied or bundled packages. Therefore, the sale of a structured bond is not a cross-selling practice.

- b. a tied or conditional offering, where at least one of the products/services offered in the package is not available separately to the customer from the provider.
4. The focus of the principles set out in these guidelines is on cross-selling practices involving only financial services and products, both from the same sector (e.g. two banking products) and to the combination of products from different sectors (e.g. a banking product and an insurance product)⁵. If competent authorities decide to apply cross-selling standards more widely than cross-selling practices only involving financial services and products, then they should apply these guidelines. The JC would like to mention that firms should not cross-sell packages of products which include non-financial services or products for the purpose of circumventing these guidelines.
 5. However, in either case, the primary product is frequently the product of primary interest to the customer and is the platform from which the secondary product sale takes place. This is significant from a regulatory and firm conduct perspective since it is at this point that a customer is faced with a more complex purchasing decision and must assimilate additional information related to the bundled or tied package.
 6. Whilst it is not the case that purchasing the component products separately (i.e. the products constituting the tied or bundled package) removes completely the information burden placed on the customer, it is reasonable to assume that a bundled or tied purchase complicates further what are already complex purchase decisions for customers.

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

4. Potential benefits and detriment associated with cross-selling practices

Potential consumer benefits

1. The following potential benefits of cross-selling practices have been identified:

- a. Financial benefits:

⁵ Indeed, it is frequently the case that products or services in one sector are used as a 'primary' product for the sale of products or services from another sector; for instance:

- mortgages or other loans could be a primary product to be associated to the sale of insurance policies;
- investment services may act as a primary product for current accounts; or
- current accounts often act as a primary product for insurance policies..

- i. Reduced overall costs since often the package of products can be relatively cheaper for customer than buying the products separately;
- ii. Superior financial conditions compared with buying the products separately: (e.g. reduced interest rate for a loan, increase interest for a deposit).

The source of these financial benefits may come from the efficiencies that providers realise due to cross-selling. By selling multiple products, they might realise economies of scope and most notably cost reduction in the field of advertising, marketing and sales costs.

- b. Convenience benefits: Cross-selling can offer a 'one-stop shop' for customers with several potential benefits: reduced search costs; streamlining of the 'negotiations' for purchasing the products; speeding-up/facilitating of the administrative process (e.g. customers do not need to ensure that products acquired from several providers are compatible); reduced transaction costs (for example the customer incurs only one set of adviser fees as opposed to two or more sets of fees if they purchased the product/service separately); and
- c. Access to a wider range of products: Cross-selling may enable customers to access products that might not otherwise be available to them separately or separately at an affordable price.

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

Behavioural drivers of potential consumer detriment

- 2. On the other hand, a more complex purchasing decision as a result of buying a tied or bundled package places additional burden on customers to assimilate the relevant product information and understand the potential risks. As a result, cross-selling may distort or limit customer choice and cause detriment.
- 3. In particular, customers at point-of-sale are often not able to make the best decisions because:
 - a. their main focus is on a product which represents the primary product for them (for instance a loan) and they may not be paying adequate attention to the impact the purchase of an additional product (e.g. insurance) will have on them; or
 - b. they are unable to effectively process the information given to them by firms; or

- c. they are unable to differentiate or determine from the information given by the firm whether the purchase of an additional product and therefore the bundled package is an 'optional' or 'compulsory' purchase; or
 - d. they are reluctant to spend the necessary time and cost to shop-around for alternative component products or tied/bundled packages which might better suit their needs and their budget.
4. Equally, the action of some firms, particularly those distributing the tied or bundled package to their customers, can be characterised by the following behaviours:
- a. firms may not always provide information in a timely, customer-friendly way/format or in a transparent manner at the point-of-sale. This includes firms making information on the additional products available only once the customer has agreed on the core product or at least quite late in the sale process. This makes the research and comparison of alternative products quite burdensome and in some instances virtually impossible for customers;
 - b. firms may not provide enough relevant cost/price information to the customer about the package or the component products or omit useful information on the non-price features of the component products or bundled/tied package (such as their key benefits, limitations and risks) which prevent the customer from making informed purchase decisions and proper assessments of the usefulness of a product or package;
 - c. firms may sometimes present or 'frame' important information in a way that is confusing for the customer to either compare prices across alternative component products or understand the true absolute cost of the additional product and the bundled package;
 - d. firms may sometimes frame their sales process towards an automatic purchase of the bundled package- for instance by pre-setting default options on their various sales channels and in particular their on-line sale channels to 'YES';
 - e. firms may not adequately consider and explain the suitability or appropriateness of particular packages for particular customers (where firms are subject to particular requirements on advice or non-advised services); and how the risks associated with packages may be impacted by different risk profiles of the components in the package;
 - f. firms may have remuneration structures so that their sales staff is strongly incentivised to promote a bundled product.
5. The consequence of such practices may be that the customer is not proactively involved in their purchase decisions and may not fully understand the costs and, where relevant, the risks attached to being cross-sold an additional product in the context of a package.

6. These behaviours from customers and firms may increase, in the sale of bundled or tied packages, the effects of the information asymmetry that normally exists between the firm and the customers in the financial sector.

Potential consumer detriment

7. As a result of the abovementioned types of behaviours on the part of customers and firms, the following potential sources of customer harm have been identified.

Extra costs for customers

8. Cross-selling may mean that customers pay more than they otherwise would for other competing products. This might be particularly the case for the additional products proposed to them, where the customer's attention is less focused on and where they are particularly ill-informed about price and costs of those products since their search efforts will have been mostly directed at the product in which they are more interested.

Consumption (and overconsumption) of unwanted and unsuitable products

9. Certain cross-selling practices may lead to situations where customers purchase products or services they do not need or cannot benefit from (e.g. subscribing to another product because it is cheap and not paying sufficient attention to decide whether they really need it).

Limitation of mobility

10. Cross-selling practices may result in long-term contractual relationships. Customers may wish to remedy the potentially unfavourable consequences of their decision in a cross-selling situation at a later point in time or seize a market opportunity.
11. However, cross-selling offers may sometimes set out contractual barriers limiting the mobility of customers (e.g. limiting the ability of a customer to terminate the agreement in relation to the additional product to get a more competitive offer from a competitor). Such barriers can be incompatible both with fair competition and with other consumer rights such as rights to switch payment accounts or other products and services.

Withdrawal from the market

12. As a result of the negative experience of being sold an expensive or unsuitable product, a customer may withdraw from the market and become reluctant to re-engage. It is possible under that any future bundled products that could confer genuine benefit for the customer would be viewed with circumspection and dismissed.

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

Examples of detrimental cross-selling practices

13. Based on the potential situations of detriment mentioned above, the JC has identified a non-exhaustive list of examples of cross-selling practices which the JC considers to be inconsistent with the general conduct of business obligations to act honestly, fairly and professionally.

Examples of detrimental cross-selling practices
<p><u>Examples with a monetary detriment</u></p> <p>Example 1</p> <p>Offering two products together in a package where the price of the offer is higher than the price of each component separately offered by the same firm (as long as products have the exact same features in both cases).</p> <p>Example 2</p> <p>Inducing a customer to buy a cross-selling offer by advertising/promoting the fact that, as of the day of sale, the overall amount of costs and charges payable by the customer is below the cumulated price of each component as sold separately, where in reality this amount of costs and charges are already scheduled to be raised to a higher amount overtime due, for instance, to the accumulation of running costs/fees.</p> <p>Example 3</p> <p>Not returning a portion of the proportional part of the pre-paid premium of an insurance component of the package further to the early cancellation of a main product that was sold together with it.</p>
<p><u>Example with reduced mobility detriment</u></p> <p>Example 4</p> <p>Imposing disproportionate early termination charges for an ancillary insurance product if a customer wants to substitute the coverage offered by an alternative provider (or threatening with the termination of the contractual relationship regarding the other product included in the package).</p>
<p><u>Example of purchase of unwanted or unnecessary products</u></p> <p>Example 5</p> <p>Offer products bundled with others products not requested by customers and which unnecessarily duplicate a product that the customer already has and which a customer cannot benefit from (including because they are not eligible).</p>

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

5. Summary of the guidelines

1. This section, which sets out the rationale behind each guideline, should be read carefully and in conjunction with Annex 1 containing proposed high-level guidelines on cross-selling.
2. The guidelines are aimed at improving outcomes for customers when making joint purchases of different products in either a tied or a bundled package. Each guideline is supported by illustrative examples of how it could translate into practice.
3. The guidelines apply irrespective of the sales channel used and so will include face-to-face and telephone sale conversations, on-line sales and any other channel where a sale begins and is concluded.
4. The guidelines address each of the following specific areas: disclosure, transparency, purchase options, suitability/assessment of demands and needs, training, remuneration and post-sale cancellation.

Full disclosure of information (Guidelines 1 and 5)

5. These are guidelines aimed at improving the content of disclosure by firms distributing the tied or bundled packages by seeking full information provision on:
 - a. the price of tied or bundled packages and the price of their component products as well as all other relevant costs related to the purchase of the packages and their component products;
 - b. the non-price features and risks, where applicable, attached to the purchase of the tied or bundled packages and their component products including how the interaction of these modifies the risks.
6. These guidelines seeking full disclosure/provision of price and non-price information are key to ensuring that the customer is provided with all relevant information to make informed purchase decisions.

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.

Prominent and timely display of information (Guidelines 2, 3, 4 and 6)

7. These are guidelines aimed at improving the transparency of the information disclosed by firms distributing a tied or bundled packages under guidelines 1 and 5 above by requiring the timely and prominent display and communication of key information on:
 - a. the cost/prices of the tied or bundled packages and their component products;

- b. the non-price features and risks, where applicable, attached to the purchase of the bundled or tied packages and their component products and in particular how the interaction of these modifies the risks.
8. Key information on price and cost and on the other features of the bundled and tied package and each of the component products should be given equal prominence on firm marketing and sales materials as other information that is designed to encourage a customer to buy a component product or tied/ bundled package from the firm.
9. Ensuring customers receive key and prominent information on the different features of the component products and the tied or bundled package at the right time in the sales process is especially important in the cross-selling context.
10. Indeed there is a greater risk under these circumstances, where a greater information burden is placed on customers and where their primary focus is on purchasing the core product, of an inappropriate purchase being made. It is reasonable to assume that customers in the cross-selling context are less likely therefore to pay adequate attention to the inherent implications of the tied or bundled purchase.

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.

Optionality of purchase (Guideline 7)

11. This guideline aimed at improving customer understanding of whether the component products in a bundled package are available separately and therefore whether the purchase of one of the component products is 'optional' when they purchase the other component product from that particular firm.
12. Prominent display/communication of the terms upon which a customer can purchase one of the component products and therefore the bundled package from a firm will engage customers more actively into their sale/ purchase decisions.
13. Therefore, firms should recognise that prompting a customer to 'opt-in' rather than 'opt-out' of a purchase by, for example, pre-setting internet purchase decisions to 'no' rather than 'yes', would better achieve the outcome of allowing customers to fully participate and understand the terms on which they have purchased any component or bundled package.
14. Such a behavioural aspect is particularly important given the evidence which supports the view that customers are often unwilling to deviate from the

option that is set for them by default by the firm at the point of sale: default inertia'.⁶ Therefore, it is vital that firms recognise this bias, and give the customer every opportunity to engage fully and proactively in the purchase decision – that is, that the decision to purchase anything other than the core product lies with the customer and that decision is taken voluntarily by customer.

15. Equally, a firm distributing a tied package should inform or alert customers to the fact that the product is only available as a tied purchase and the component products cannot be purchased separately from that particular firm.
16. Supervision by competent authorities of this guideline will ensure that customers are very clear on whether the purchase of bundled package and its component products is optional. This is particularly important in the cross-selling context since there is a greater risk that under these circumstances where greater information demands are placed on customers and where their primary focus is on the core product, the customer is less likely to pay adequate attention to whether an additional or bundled purchase is something they must do.

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.

**Assessment of demand and needs or suitability/appropriateness
(Guideline 8)**

17. This guideline requires competent authorities to monitor that, where firms are subject to such requirements through sectoral legislation, the demands and needs of customers or suitability/appropriateness are adequately assessed by firms which distribute tied and bundled packages and that these cross-sold packages of financial products are placed in the interests of customers.
18. Supervision by competent authorities of this guideline will ensure that tied or bundled packages are distributed in accordance with customers' profile. This is clearly important since often these packages bring another level of complexity and risk which customers will likely only have a limited understanding of. It is imperative therefore that the firm advising or selling to the client fully understands the - purpose, composition and risks of the package (and the separate component products) to ensure it makes suitable recommendations and minimises the risks of mis-selling and detriment.

⁶ For example, some consumer behaviour evidence suggests that while some customers do have the confidence to de-select an pre-ticked option, many customers are reluctant to override the perceived 'authority' of a firm.

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.

Training and remuneration (Guidelines 9 and 10)

19. These guidelines require competent authorities to monitor the organisational arrangements within the firms which distribute tied and bundled packages, by ensuring that the firm's internal policies and processes are geared to serving the interests of customers and deliver good customer outcomes.
20. The guidelines addressing the training of staff seek to ensure adequate training of firms' staff involved in distributing each of the products sold in the context of cross-selling practices. This should include cross-sectoral training where relevant for the bundled or tied packages offered by the firm.
21. The guidelines addressing remuneration, seek to ensure remuneration policies and sales incentives at firms do not encourage over-selling or mis-selling of bundled or tied packages or of some of their component products i.e. remuneration policies/sales targets for sales staff of the firms distributing these products should avoid incentivising staff to 'push' the tied or bundled packages since this could potentially risk widespread consumer detriment.

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.

Post-sale cancellation (Guideline 11)

22. This guideline requires competent authorities to monitor the post-sale arrangements for customers of those firms which distribute the tied and bundled packages to ensure that any cancellation right attached to the purchase of a component product continues to apply even if the component product is part of a bundled or tied package.

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.

Annex 1: Guidelines on cross-selling practices

Scope

1. The guidelines apply in relation to cross-selling practices involving selling a package of financial products or services falling with the scope of the directives listed in paragraph 5.
2. The JC would like to recall that conduct of business standards (as laid down in applicable sectoral EU legislation) may apply to each of the products or services which are cross-sold by a firm or to the package resulting from cross-selling practices. Nothing in these guidelines affects firms' obligations to comply with such applicable requirements.
3. The guidelines apply to tying and bundled packages to the extent that they are permitted in the respective sectoral legislation.
4. Nothing in the guidelines is intended to prevent the offering of products which constitute an inherent or indivisible package (sectoral legislation permitting) which cannot by its nature be offered or sold separately because the components are a fully integrated part of the package.⁷
5. The guidelines are addressed to competent authorities with supervisory oversight of firms subject to the following directives:
 - a) Markets in Financial Instruments Directive and its recast (MiFID and MiFID II);
 - b) Insurance Mediation Directive (IMD);
 - c) Directive on credit agreements for consumers relating to residential immovable property (the Mortgage Credit Directive (MCD), if these authorities are competent authorities under point (2) of Article 4 of Regulation (EU) No 1093/2010;
 - d) Undertakings for collective investment in transferable securities (UCITS Directive);
 - e) Capital Requirements Directive (CRD) and Capital Requirements Regulation (CRR);

⁷ For example, certain multi-risk insurance policies or a secured overdraft facility together with a current account.

- f) Payment Accounts Directive (PAD), if these authorities are competent authorities under point (2) of Article 4 of Regulation (EU) No 1093/2010;
- g) Solvency II Directive (Solvency);
- h) Payment Services Directive (PSD);
- i) Electronic Money Directive (EMD); and
- j) Alternative Investment Fund Manager Directive (AIFMD).

Definitions

6. Unless otherwise specified, terms used in the sectoral legislation as referred to in paragraph 5 have the same meaning in these guidelines. For the purpose of these guidelines only, the indicative definitions set out in the table below, which do not over-ride equivalent definitions in EU and national law, have been developed.

<i>Customer</i>	The natural or legal person to whom bundled packages or tied packages are proposed.
<i>Firms</i>	<p>The following financial market participants:</p> <ul style="list-style-type: none"> a) investment firms (as defined in Article 4(1)(1) of Directive 2004/39/EC); b) management companies (as defined in Article 2(1)(b) of Directive 2009/65/EC) and investment companies that have not designated a management company (as referred to in Article 30 of Directive 2009/65/EC); c) credit institutions (as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013); d) payment institutions (as defined in Article 4(4) of Directive 2007/64/EC); e) electronic money institution (as defined in article 2 (1) of Directive 2009/110/EC); f) creditor (as defined in Article 4(2) of Directive 2014/17/EU), credit intermediary (as defined in Article 4(5) of Directive 2014/17/EU) or appointed representative (as defined in Article 4 (8) of Directive 2014/17/EU); g) insurance undertakings (as defined in Article

	<p>13(1) of Directive 2009/138/EC;</p> <p>h) insurance intermediaries (as defined in Article 2(5) of Directive 2002/92/EC); and</p> <p>i) external AIFMs (as defined in Article 5(1)(a) of Directive 2011/61/EU) when providing services pursuant to Article 6(4) of Directive 2011/61/EU.</p>
<i>Bundled package</i>	A package of products and/or services where each of the products offered is available separately and where the client retains the choice to purchase each component of the package separately.
<i>Tied package</i>	A package of products and/or services where at least one of the products offered in the package is not available separately to the customer from the provider.
<i>Component product</i>	The separate product and/or service which constitute part of the bundled or tied package.

Purpose of the guidelines

7. The primary purpose of these guidelines is to establish a coherent and effective approach in the supervision of firms by competent authorities which will contribute to the enhancement of customer protection across Member States, as well as across the three financial sectors. The guidelines will therefore help to clarify the expected standard of conduct and organisational arrangements for those firms engaged in cross-selling practices in order to mitigate any consumer detriment arising from these practices.

Compliance and reporting requirements

Status of the guidelines

8. The consultation paper contains guidelines issued under Article 16 of the Regulations establishing the ESAs (ESAs Regulations⁸). In accordance with Article 16(3) of the ESAs Regulations, competent authorities must make every effort to comply with the (final) guidelines. Competent authorities to whom guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. through an amendment of their regulatory framework or their supervisory processes).

⁸ Regulation (EU) n. 1093/2010 (EBA), Regulation (EU) n. 1094/2010 (EIOPA) and Regulation (EU) n. 1095/2010 (ESMA).

9. By adopting these guidelines, the ESAs are also complying with third subparagraph of Article 24 (11) of MiFID II which requires ESMA, in cooperation with EBA and EIOPA, to develop guidelines for the assessment and the supervision of cross-selling practices.
10. These guidelines apply from [date].

Reporting requirements

11. Competent authorities to whom these guidelines apply must notify [the ESAs] whether they comply or intend to comply with the guidelines, stating their reasons for non-compliance, within two months of the date of publication of the translated versions by EBA, EIOPA and ESMA to [EBA, EIOPA and ESMA email addresses]⁹. In the absence of a response by this deadline, competent authorities will be considered non-compliant. A template for notifications is available on the respective websites of EBA, EIOPA and ESMA.
12. Each guideline in the paragraphs below is followed by one or more illustrative examples. The examples serve as a useful benchmark as to how each guideline (as implemented by competent authorities) might be followed by firms in practice. However, there could be other ways in which a firm could choose to put these guidelines into practice.

Guidelines on cross-selling practices

Full disclosure of key price and cost information

Guideline 1

13. Competent authorities supervising firms which distribute a tied or a bundled package should ensure that customers are provided with the price of both the package and of its components products.
14. Competent authorities supervising firms that distribute a tied or a bundled package should ensure that customers are provided with a clear breakdown and aggregation of all relevant costs associated with the purchase of the package and its component products - such as administration fees, transaction costs, and exit or pre-payment penalty charges.

⁹ It should be recalled that, when more than one authority at national level is responsible for the supervision of financial market participants in accordance with relevant directives, those authorities shall agree on a common representative as a member of the Board of Supervisors. When the national authority competent for a specific topic is not represented in the Board of Supervisors, the representative member shall be responsible for transmitting the compliance notification to the competent authority concerned and for ensuring coordination of submission of confirmations for their jurisdiction.

Illustrative example

- 1) When cross-selling an interest rate swap with a variable rate loan to allow a customer to hedge interest rate risk (i.e. the customer swaps their floating rate payment for a fixed interest rate payment) the firm provides key information to the customer on all aspects of the swap agreement which will materially affect the cost the customer finally incurs such as the customer's potential payment liability when interest rates change and the exit charges from the swap contract.

Prominent display and timely communication of key price and cost information

Guideline 2

15. Competent authorities supervising firms which distribute a tied or bundled package should ensure that information on price and all relevant cost of the package and each of its component products is made available in good time before the customer is bound to the agreement, allowing the customer to make an informed decision.

Guideline 3

16. Competent authorities supervising firms which distribute a tied or bundled package should ensure that price and cost information of the package and its component products is communicated to customers in a prominent, accurate manner and in a simplified or jargon-free language.
17. Competent authorities supervising firms which distribute a tied or bundled package should ensure that when promoting any of the component products that will form a bundled or tied package, firms ensure that equal prominence is assigned to the price and cost information of these component products so that a customer can properly and quickly discern the cost impact upon them as a result of purchasing both as a package.

Illustrative Examples

- 1) In whatever the marketing medium the firm uses, the font used to communicate the relevant price and cost information of each of the component products intended to be sold as a package is the same. Relevant information concerning one of the component products is not given more emphasis with the use of a bigger or bolder font.
- 2) Where the sale takes place on the internet or through another channel without a sales person directly involved, the price and cost information of both products that will form the package appears early-on in the relevant webpages and is easily navigated by customers i.e. the price and cost information of any product which will form part of the bundled package is not placed or 'hidden' further down in the firm's on-line sales form.

Guideline 4

18. Competent authorities supervising firms which distribute the tied or bundled package should ensure that the price and cost information is presented to customers in a way which is not misleading or which distorts or obscures the real cost to the customer or prevents meaningful comparison with alternative products.

Illustrative examples

The firm avoids expressing either in cash or percentage terms the price of one product for instance, payment protection insurance relative to the price of another (for instance, a personal loan) in order to emphasize (in this example) that the payment protection insurance is 'relatively cheaper' than the loan, for the sole purpose of inducing a customer to purchase a bundled package of these products.

Full disclosure of key information on non-price features and risks, where relevant

Guideline 5

19. Competent authorities supervising firms which distribute the tied or bundled package should ensure that customers are provided all relevant information relating to the non-price features and risks - where applicable - 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.

Illustrative Examples

A firm offers a preferential rate savings account only when purchased with a structured investment product. In this case, the level of risk posed by this total package is different from the risks posed by the savings account alone: the initial capital in a savings account is guaranteed, and the only variable is the interest paid. But initial capital invested in a structured investment product may not be guaranteed, and so could be lost in part or altogether. In such an example, the risk profiles of the components are clearly very different and, when combined, the level of risk associated with the structured product component could negate the safety of the savings product component to the extent that the overall risk profile of the package is significantly increased. The firm clearly informs the customer about how the risk is modified as a result of purchasing the bundled package rather than each of the components separately.

Prominent display and timely communication of key information on non-price features and risks, where relevant

Guideline 6

20. Competent authorities supervising firms which distribute the tied or bundled package should ensure that key non-price factors and the relevant risks are promoted to customers with the same prominence and weight as the other key selling features of the component products or bundled/tied package and these should be made clear to customers in a simplified or jargon-free language in good time before the consumer is bound to the agreement
21. Competent authorities supervising firms which distribute the tied or bundled package should also ensure that information on the non-price features and risks of the package is presented to customers in a way which is not misleading or which distorts the impact of these factors for the customer.

Illustrative examples

- 1) The firm draws to the customer's attention the limitations and risks (if relevant) of the tied or bundled package and the component products and guides the customer through the relevant information which sets out the key benefits, limitations and risks (if relevant) of the package and the component products. The sales person explains carefully how these non-price factors materially change according to whether and which component product is purchased and offers this explanation in good time before the customer is bound to the agreement. The firm alerts the customer of the tied package to the overall benefits, limitations and risks (if relevant) of the package.
- 2) The firm refrains from exclusively relying on a general reference to their Terms & Conditions to alert or disclose to key non-price information to customers. Instead, the firm explains the risks (if relevant) and non-price information to the customer in plain language.

Prominent display and communication of 'optionality of purchase'

Guideline 7

22. Competent authorities supervising firms which distribute bundled or tied packages should ensure that customers are properly informed whether it is possible to purchase the component products separately– i.e. whether customers have a choice as to which of the products to buy or, to the extent that this is permitted under sectoral legislation, whether one of the component products has to be purchased in order for the customer to be eligible to buy one of the others.
23. Competent authorities supervising firms which distribute a bundled package should ensure that firms design their internet default options in a way which enables customers to actively select a purchase and therefore to make a conscious decision to buy the component product or the bundled package.
24. Competent authorities supervising firms which distribute a bundled package should ensure that firms present their purchase options in a way which

avoids giving a false perception that purchase of the bundled package is compulsory when it is in fact an optional purchase.

Illustrative examples

- 1) A bank might offer a range of different current accounts which, for different monthly fees, come with different packages of products and benefits (such as mobile phone insurance, travel insurance or access to savings accounts with preferential interest rates). The bank should set out the customer's options clearly. For example, it should be clear if a customer has the option to purchase a current account that comes with no additional products, rather than any of the packaged accounts offered. Similarly, it should be clear whether the customer's choice is restricted to particular bundles of component products, or if he/she has a free choice as to which ones they can combine together.
- 2) The default purchase option for a bundled package on the firm's sales internet pages is set or defaulted at 'No'. This triggers an active response from customers to 'opt-in' or click 'yes' to a simple question about whether the customer wants to buy the add-on product (and therefore bundled package) in addition to the 'core' product.

Assessment of demands and needs or suitability/appropriateness, including eligibility

Guideline 8

25. Competent authorities supervising firms which distribute bundled or tied packages should ensure that the overall package and the component products constituting that package are distributed in accordance with any applicable requirements to meet the demands and needs of the customer or to assess suitability or appropriateness. Such distribution may involve the firm providing advice to a customer or may be done without advice being provided.

Illustrative examples

- 1) Firms who distribute bundled or tied packages should consider whether or not a customer is likely to be able to benefit from the various component products. Where a firm provides a service such as advice, or is otherwise required by sectoral legislation to assess a client's demands and needs, or their knowledge and experience, these duties also extend to consideration of both the package as a whole and its component products. Regardless of the nature of the service offered (i.e. whether or not advice is being provided), firms need to consider the potential for customers to actually benefit from the tied or bundled products that they offer. So, a firm should not cross-sell a product to an individual customer where the firm is (or should be) reasonably aware that the customer is not able to benefit from the additional product (e.g. if a loan is extended to a self-employed

person, he or she should not be sold a payment protection product that does not cover loss of income by someone who is self-employed).

- 2) Where the risks resulting from a permitted tied or bundled package offered to a customer are likely to be different from the risks associated with the components taken separately, a firm should consider the suitability of different components of a bundle and the way in which their interaction may modify the risks faced by the customer.
- 3) Where a product, such as an interest rate swap, is sold in a package with a loan in order to provide hedging, the swap should be a reasonable match for the loan. For example, firms should think carefully before packaging up a loan that has no early exit penalties with an interest rate swap which will be expensive to unwind before maturity; and such a package should certainly not be sold to a customer who is interested in being able to pay off their loan early. Similarly, a product that reduces risk in some circumstances, but could actually magnify it in others, should not be packaged up with a variable-rate loan to be sold generally across the market as though the package amounts to an ordinary fixed-rate loan.
- 4) In the example in Guideline 5, the firm considers the risk of the package when identifying the customers to whom the package is deemed suitable (different to those for whom a savings account alone may be suitable) - and therefore those individuals to whom the package is sold.

Adequate training for relevant staff

Guideline 9

26. Competent authorities supervising firms which distribute tied or bundled packages should ensure that adequate training, including cross-sectoral training when relevant, is provided to staff in charge of distributing each of the products sold as part of a package. Staff training should ensure that staff are familiar with the risks, where relevant, of the component products and the bundled or tied package and be able to communicate these to customers in plain (non-technical) language.

Conflicts of interest in the remuneration structures of sales staff

Guideline 10

27. Competent authorities supervising firms which distribute tied or bundled packages should ensure that suitable remuneration models and sales incentives encouraging responsible business conduct, fair treatment of clients and avoidance of conflicts of interest for staff selling the tied or bundled package are in place and are monitored by senior management.

Illustrative examples

- 1) The firm refrains from operating remuneration policies, practices and performance-based competitions that encourage sales staff who may be remunerated on a commission basis to 'push', the sale of the bundled package and which may therefore encourage the unnecessary/unsuitable sales of either a component of the package or the package itself. For instance if sales staff were incentivised to cross-sell a loan with a form of payment protection insurance but the customer had the need of the loan only, then as a result of this remuneration structure, there would be the risk of incentivising a potential mis-selling of the payment protection product and therefore also of the bundled package.
- 2) The firm avoids remuneration policies and practices which reduce sales' staff basic salary substantially if a specific sales target in relation to the bundled/tied package is not met; thereby reducing the risk that the sales person will make inappropriate sales of the bundled package to avoid this outcome.
- 3) The firm avoids reducing bonus or incentive payments earned by sales staff because a sales target or threshold for the bundled package has not been met.

Post-sale cancellation rights

Guideline 11

28. Competent authorities supervising firms which distribute tied or bundled packages should ensure that where 'cooling-off periods' or post-sale cancellation rights apply to one or more components of a cross-selling package (if the components were sold on a stand-alone basis), these rights should continue to apply to those components within the package.
29. Competent authorities supervising firms which distribute tied or bundled packages should ensure that customers are subsequently allowed to split the products grouped in a cross-selling offer without disproportionate penalties – unless there are good and justified reasons why this possibility is not realistic.

Annex 2: Cost-benefit analysis

30. Article 16(2) of the ESA Regulations require the ESAs, where appropriate, to analyse the potential costs and benefits relating to proposed guidelines. It also states that such analyses must be proportionate in relation to the scope, nature and impact of the proposed guidelines.
31. This cost-benefit analysis (CBA) sets out an assessment of the potential costs and benefits of the proposed guidelines on cross-selling practices.

Objective of the proposed guidelines

32. Underpinning all the guidelines contained in this paper is the overarching principle for firms to ensure fair treatment of their clients. The purpose of the guidelines is to ensure there is an appropriate degree of supervisory convergence amongst National Competent Authorities so that firms' behaviours and arrangements for cross-selling practices are in line with the general conduct principles and respective sectoral legislation.
33. The relevance of these cross-selling guidelines is further reinforced by the inclusion of specific obligations on cross-selling in MiFID II, MCD and PAD such as requirements to provide clients with specific information on the possibility to purchase separately products offered as part of a package and information on costs. The IMD II should also give specific prominence to cross-selling practices.

Impact of the guidelines

34. This section presents a qualitative assessment of the potential costs and benefits of the proposed guidelines

Costs

35. It is anticipated that these guidelines will generate additional compliance costs for those Member States where some of the proposed provisions/principles are not currently applied and therefore supervised/monitored.
36. However, for most competent authorities the incremental costs will be minor because much of what is contained in these guidelines implies no significant change in the procedure, oversight responsibilities or resource for NCA's from what is currently being done to ensure compliance with existing conduct and organisational standards regulating the sale of component products.
37. Since competent authorities must comply or explain with these guidelines the firms which they individually supervise will therefore be impacted. It is the view of the JC that firms will already be doing much of what is being proposed in the guidelines, in order to comply with the obligations aimed at ensuring a fair treatment of customers when providing services to them.

38. However, the guidelines may imply moderate incremental costs as far as firms have to modify their existing practices/systems/training. For example, firms distributing a tied or bundled package will already provide price information to customers, however to comply with the guidelines proposed in this consultation paper they may have to amend their websites and sales processes and re-order the information to make this information clearer and more prominent to customers.
39. Since firms should normally already incur the cost of training new staff and updating the training (and training material) for existing staff, there would again be moderate incremental impact on a firm's budget to design training for staff on new bundled or tied products which better meet the demands and needs of customers.

Benefits

40. The benefits of our proposals arise principally from improving the treatment of customers of financial institutions purchasing products in a package and increasing their protection by contributing to better information, improved training of firms' staff provision of more suitable products. They will also reduce the risk that customers purchase packages of products that they do not need or for which they are ineligible to benefit from.

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.

Annex 3: List of consultation questions

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

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

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

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.

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.

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.

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.

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.

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.

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.

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.

...

APPENDIX 1

Specific provisions on cross-selling under MiFID II, MCD, PAD and draft IMD II

MiFID II	Relevant provisions
Recital 81	<p>Cross-selling practices are a common strategy for retail financial service providers throughout the European Union. They can provide benefits to retail clients but can also represent practices where the interest of the client is not adequately considered. For instance, certain forms of cross-selling practices, namely tying practices where two or more financial services are sold together in a package and at least one of those services is not available separately, can distort competition and negatively affect clients' mobility and their ability to make informed choices. An example of tying practices can be the necessary opening of current accounts when an investment service is provided to a retail client. While practices of bundling, where two or more financial services are sold together in a package, but each of the services can also be purchased separately, may also distort competition and negatively affect customer mobility and clients' ability to make informed choices, they at least leave choice to the client and may therefore pose less risk to the compliance of investment firms with their obligations under this directive. The use of such practices should be carefully assessed in order to promote competition and consumer choice.</p>
Art.4(1)(42)	<p>'cross-selling practice' means the offering of an investment service together with another service or product as part of a package or as a condition for the same agreement or package;</p>
Art. 24(1)	<p>Member States shall require that, when providing investment services or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients and comply, in particular, with the principles set out in this Article and in Article 25.</p>
Art. 24(11)	<p>When an investment service is offered together with another service or product as part of a package or as a condition for the same agreement or package, the investment firm shall inform the client whether it is possible to buy the different components separately and shall provide for a separate evidence of the costs and charges of each component.</p> <p>Where the risks resulting from such an agreement or package offered to a retail client are likely to be different from the risks associated with the components taken separately, the investment firm shall provide an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.</p> <p>ESMA, in cooperation with EBA and EIOPA, shall develop by 3 January 2016, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations laid down in paragraph 1.</p>
Art. 25(2)	<p><i>Sub-paragraph 2:</i> Member States shall ensure that where an investment firm provides investment advice recommending a package of services or products bundled pursuant to Article 24(11), the overall bundled package is suitable.</p>
Article 25(3)	<p>Member States shall ensure that investment firms, when providing investment services other than those referred to in paragraph 2, ask the client or potential client to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the investment firm to assess whether the investment service or product envisaged is appropriate for the client. Where a bundle of services or products is envisaged pursuant to Article 24(11), the assessment shall consider whether the overall bundled package is appropriate.</p>

MCD	Relevant provisions
Recital 24	<p>Given the particular characteristics of credit agreements related to residential immovable property it is common practice for creditors to offer to consumers a set of products or services which can be purchased together with the credit agreement. Therefore, given the significance of such agreements for consumers, it is appropriate to lay down specific rules on tying practices. Combining a credit agreement with one or more other financial services or products in packages is a means for creditors to diversify their offer and to compete against each other, provided that the components of the package can also be bought separately. While a combination of credit agreements with one or more other financial services or products in packages can benefit consumers, it may negatively affect consumers' mobility and their ability to make informed choices, unless the components of the package can be bought separately. It is important to prevent practices such as tying of certain products which may induce consumers to enter into credit agreements which are not in their best interest, without however restricting product bundling which can be beneficial to consumers. Member States should however continue monitoring retail financial services markets closely to ensure that bundling practices do not distort consumer choice and competition in the market.</p>
Recital 25	<p>As a general rule, tying practices should not be allowed unless the financial service or product offered together with the credit agreement could not be offered separately as it is a fully integrated part of the credit, for example in the event of a secured overdraft. In other instances, it may however be justified for creditors to offer or sell a credit agreement in a package with a payment account, savings account, investment product or pension product, for instance where the capital in the account is used to repay the credit or is a prerequisite for pooling resources to obtain the credit, or in situations where, for instance, an investment product or a private pension product serves as an additional security for the credit. While it is justified for creditors to be able to require the consumer to have a relevant insurance policy in order to guarantee repayment of the credit or insure the value of the security, the consumer should have the opportunity to choose his own insurance provider, provided that his insurance policy has an equivalent level of guarantee as the insurance policy proposed or offered by the creditor. Moreover Member States may standardise, wholly or in part, the cover provided by insurance contracts in order to facilitate comparisons between different offers for consumers who wish to make such comparisons.</p>
Art. 4(26)	<p>'Tying practice' means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately.</p>
Art. 4(27)	<p>'Bundling practice' means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services.</p>
Art. 12	<p>Tying and bundling practices</p> <ol style="list-style-type: none"> 1. Member States shall allow bundling practices but shall prohibit tying practices. 2. Notwithstanding paragraph 1, Member States may provide that creditors can request the consumer or a family member or close relation of the consumer to: <ol style="list-style-type: none"> (a) open or maintain a payment or a savings account, where the only purpose of such an account is to accumulate capital to repay the credit, to service the credit, to pool resources to obtain the credit, or to provide additional security for the creditor in the event of default; (b) purchase or keep an investment product or a private pension product, where such product which primarily offers the investor an income in retirement serves also to provide additional security for the creditor in the event of default or to accumulate capital to repay the credit, to service the credit or to pool resources to obtain the credit; (c) conclude a separate credit agreement in conjunction with a shared-equity credit agreement to obtain the credit.

3. Notwithstanding paragraph 1, Member States may allow tying practices when the creditor can demonstrate to its competent authority that the tied products or categories of product offered, on terms and conditions similar to each other, which are not made available separately, result in a clear benefit to the consumers taking due account of the availability and the prices of the relevant products offered on the market. This paragraph shall only apply to products which are marketed after ...
4. Member States may allow creditors to require the consumer to hold a relevant insurance policy related to the credit agreement. In such cases Member States shall ensure that the creditor accepts the insurance policy from a supplier different to his preferred supplier where such policy has a level of guarantee equivalent to the one the creditor has proposed.

PAD	Relevant provisions
Recital 24	<p>It is current practice for payment service providers to offer a payment account in a package with products or services other than services linked to a payment account, such as insurance products or financial advice. This practice can be a means for payment services providers to diversify their offer and to compete against each other, and in the end it can be beneficial for consumers. However the Commission study on tying practices in the financial sector conducted in 2009 as well as relevant consultations and consumer complaints have showed that payment service providers may offer payment accounts packaged with products not requested by consumers and which are not essential for payment accounts, such as household insurance. Moreover, it has been observed that these practices may reduce transparency and comparability of prices, limit purchasing options for consumers and negatively impact upon their mobility. Therefore, Member States should ensure that when payment services provider offer packaged payment accounts consumers are provided with information on whether it is possible to buy the payment account separately and if so, provide separate information regarding the applicable costs and fees associated with each of the other products or services included in the package that can be purchased separately.</p>
Article 4 (1) and (3)	<p>(1) Without prejudice to Article 42(3) of Directive 2007/64/EC and Chapter II of Directive 2008/48/EC Member States shall ensure that in good time before entering into a contract for a payment account with a consumer, payment services providers provide the consumer with a fee information document on paper or other durable medium containing the standardised terms in the final list of the most representative services linked to a payment account referred to in Article 3(5) and, where this service is offered by a payment services provider, the corresponding fees for each service.</p> <p>(3) Where one or more services is offered as part of a package of services linked to a payment account, the fee information document shall disclose the fee for the entire package, the services included in the package and their quantity, and the additional fee for any service that exceeds the quantity covered by the package fee.</p>
Article 8	<p>Member States shall ensure that when a payment account is offered as part of a package together with another service or product other than services linked to a payment account the payment service provider informs the consumer of whether it is possible to buy the payment account separately and, if so, provides separate information regarding the costs and fees associated with each of the other products and services offered in that package that can be purchased separately.</p>

IMD2 (Presidency compromise, 28 October, 2014)	Relevant provisions
Recital 41	<p>Cross-selling practices are a common strategy for retail financial service providers throughout the Union. They can provide benefits to customers but can also represent practices where the interest of customers is not adequately considered. For instance, certain forms of cross-selling practices or products, namely tying practices where two or more financial services are sold together in a package and at least one of those services or products is not available separately, can distort competition and negatively affect customers' mobility and their ability to make informed choices. An example of tying practices can be the necessary opening of current accounts when an insurance service is provided to a customer in order to pay the premiums or the necessary conclusion of a motor insurance contract when a consumer credit is provided to a customer in order to insure the financed car. While practices of bundling, where two or more financial services or products are sold together in a package, but each of the services can also be purchased separately, may also distort competition and negatively affect customer mobility and customers' ability to make informed choices, they at least leave choice to the customer and may therefore present less risk to the compliance of insurance intermediaries with their obligations under this directive. The use of such practices should be carefully assessed in order to promote competition and consumer choice. This Directive should not prevent the distribution of insurance policies which cover various types of risks (multi-risk insurance policies), as they are not considered to be cross-selling practices.</p>
Article 2	<p>1. For the purposes of this Directive: (15) 'cross-selling practice' means the offering of an insurance product together with another service or product as part of a package or as a condition of taking another agreement or package.</p>
Article 21 Cross-selling	<p>2. When an insurance product or is offered together with another service or in a package or as a condition for the same agreement or package, the insurance distributor shall inform the customer whether it is possible to buy the different components separately and, if so, shall provide for an adequate description of the different components of the agreement or package as well as a separate evidence of the costs and charges of each component.</p> <p>2a. Where the risks and the insurance coverage resulting from such an agreement or package offered to a customer are likely to be different from the risks associated with the components taken separately, the insurance distributor shall provide an adequate description of the different components of the agreement or package and the way in which their interaction modifies the risks and the insurance coverage.</p> <p>3. EIOPA may develop guidelines for the assessment and the supervision of cross-selling practices indicating situations in which cross-selling practices are not compliant with the obligations laid down in Article 15 (1).</p> <p>4. This Article shall not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).</p>
Chapter VII Additional customer protection requirements in relation to insurance-based investment products Article 25 Assessment of	<p>1. Without prejudice to paragraphs 4 and 5 of Article 15a and to paragraphs 5 and 6 of Article 15c when providing advice on an insurance-based investment product, the insurance intermediary and the insurance undertaking shall obtain the necessary information regarding the customer's or potential customer's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including his ability to bear losses, and his investment objectives, including his risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer or potential customer the investment-based insurance products that are suitable for him and, in particular, are in accordance with his risk tolerance and ability to bear losses.</p> <p>Member States shall ensure that where an insurance intermediary and the insurance undertaking provide investment advice recommending a package of services or products bundled pursuant to Article 21, the overall bundled package is suitable.</p> <p>2. Without prejudice to Article 15a(4) and to Article 15c(5), Member States shall ensure that insurance intermediary or the insurance undertaking, when carrying on insurance distribution activities other than those referred to in paragraph 1, in relation to sales where no advice is given, ask the customer or potential customer to</p>

**suitability and
appropriateness and
reporting to customers**

provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or the insurance undertaking to assess whether the insurance service or product envisaged is appropriate for the customer. Where a bundle of services or products is envisaged pursuant to Article 21, the assessment shall consider whether the overall bundled package is appropriate. (...)