German Banking Industry Committee

Die Deutsche Kreditwirtschaft

Comments

on residual credit insurance on the occasion of the EIOPA roundtable "Mortgage life and other credit protection insurance sold through banks" on 5th March 2020

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1. Preliminary remark

Residual loan insurance offers the borrower the opportunity to insure against unexpected problems in the repayment of loans. If general life risks such as unemployment or incapacity to work occur, the insurance covers the remaining loan instalments during this period. In the event of death, the residual loan insurance bears the entire remaining debt and helps to survive this already stressful situation financially unscathed. It thus forms an important protection for the borrower and their family against over-indebtedness.

2. Additional regulations for residual loan insurance as part of the IDD implementation in Germany

As part of the implementation of the EU Insurance Distribution Directive (IDD), supplementary regulations for the distribution of residual loan insurance have already been implemented in Germany (some of these are also referred to in EIOPA's "Consumer Trends Report 2019", p. 18):

- The policyholder (or the "insured person") will receive a renewed instruction about their right of revocation in text form one week after submission of their contract declaration for the insurance product. The product information sheet, which also contains further information on the acquisition and distribution costs, must be made available to the policyholder again with this instruction. The separate revocation period does not begin before receipt of these documents (pursuant to § 7a (5) VVG).

- The policyholder of a group insurance contract for residual loan insurance has the same advisory and information duties of an insurer towards the insured person. The insured person has the rights of a policyholder, especially the right of revocation (pursuant to § 7d VVG).

3. GBIC self-commitment to residual loan insurance

Moreover, in March 2019 the German Banking Industry Committee (GBIC) published a recommendation to its member institutions to implement a "GBIC self-commitment to residual loan insurance". The IT technical support measures for the application of the GBIC self-commitment by the credit institutions were implemented in the course of 2019 (depending on the individual credit institutions/groups of credit institutions). From now on, the individual credit institutions will successively apply the GBIC self-commitment.

The "GBIC self-commitment to residual loan insurance" includes the following provisions:

3.1 Voluntariness

Residual loan insurance is not required to obtain a loan, it is in principle voluntary. The customer is expressly informed of this in the advisory documentation, during the advice and additionally in the so-called "Welcome Letter".

3.2 Needs-based advice

Every borrower is offered needs-based advice on residual loan insurance. The borrower is free to accept or decline the offer of advice. The customer's existing needs (e.g. social security obligations, type of employment relationship) as well as existing insurance coverage are taken into account in the advice. On this basis, the customer is offered insurance cover in line with their needs; there is no default setting to take out insurance. The customer makes their decision voluntarily on the basis of the jointly determined requirements. During the advice, the customer is informed about major exclusions of benefits. The results of the advice are also documented in the advisory protocol.

3.3 Transparency towards customers

It is clear from the contract documents that the loan and insurance contracts are separate, distinct contracts, from which the respective provider of the contract is clearly identifiable. This makes it clear to customers that two independent contracts are being concluded. The contract documents are designed in a customer-friendly manner in order to clearly and transparently present the comprehensibility of the insurance, including exclusions of benefits and restrictions. Care is also taken to ensure that a possible pro rata reimbursement amount (which the customer would receive in the event of early termination of the insurance) is made transparent in the insurance documents.

The customer is clearly informed of the insurance premium when the offer is made. If the premium is also loan-financed, the monthly loan instalments are shown both with and without the costs of voluntary insurance in order to facilitate comparison of the financial obligations. The insurance premium will not exceed an appropriate ratio to the loan applied for, especially taking into account the insured risks.

3.4 Revocation

A revocation does not affect the loan against the will of the customer. Only the loan portion with which the insurance premium was possibly loan-financed is omitted. No prepayment penalties or other fees are charged for either the loan or the insurance. The customer may revoke the insurance within 30 days without giving reasons and, if necessary – and if offered by the institution – take out a new insurance with different/reduced risk cover.

3.5 Full power of disposition

Irrespective of the type of contract – group insurance or individual insurance – the customer is entitled to the rights of a policyholder. This allows them to cancel the insurance contract independently and autonomously – even during its term. The termination rights are presented transparently in the contract documentation. The underwriting costs of the insurance are reimbursed or offset proportionately.

3.6 Benefits

Benefits from the insurance are generally used to repay the customer loan, or excess benefits are credited to the customer for use at their own discretion.

3.7 Quality

The member institutions continuously monitor whether their insurance solutions continue to comply with legal requirements, internal quality standards and the characteristics of the market in order to ensure product design that meets the needs of the market. If this no longer applies, they promptly make corrections to the insurance solutions offered in the future or to the individual risk components.

3.8 Increase

If an old contract is terminated and a new contract is concluded for technical reasons in the event of an increase or debt rescheduling, acquisition and administration costs from the original insurance contract are accounted for transparently and reimbursed pro rata or the existing insurance contracts continue to run without change. Furthermore, there are no renewed waiting periods and no renewed application of any exclusion clauses for the originally agreed insurance cover.

3.9 Product description

The member institutions point out in the contract documents that the insurance is a residual loan insurance. This contributes to the clarity of the product description.

4. Topics related to residual loan insurance on which EIOPA would like more information

4.1 Issues/problems and risks with the insurance products within scope

The inclusion of the "mortgage life policy" product in Chapter 1.1.3 by EIOPA gives the impression that there are problems with residual loan insurance in the context of property financing (see "Consumer Trends Report 2019", pp. 16 - 19), but this is not the case for Germany. The events held by BaFin to date with credit institutions, insurance companies and consumer protection associations on this topic have so far only dealt with residual loan insurance in connection with the granting of consumer loans/instalment loans. During these events, there was agreement that the securing of real estate financing was not the subject of the BaFin investigation.

4.2 Business models used to manufacture and distribute these products and the underlying conduct risks, addressing also the different corporate arrangements arising between insurers and banks

Residual loan insurance is sold in Germany by credit institutions as intermediaries, but also by retail staff – at the point of sale (POS).
In the case of group insurance contracts in which the credit institution acts as the policyholder and the respective borrowers then join the contractual relationship as "insured persons", it has often been criticised that the "insured persons" would not have the same rights as the policyholder in such a contractual constellation. In this connection, EIOPA also criticises "(...) increasing conflicts of interests and limiting consumers' rights and obligations on the distributor" (see "Consumer Trends Report 2019", p. 16). As EIOPA correctly states on page 18, this is not the case at least for Germany. Since February 2018, a statutory regulation in Germany has put group insurance contracts and individual insurance contracts on an equal footing. Thus the "insured person" has the same rights as the policyholder. This concerns the advisory and information rights, as well as in particular the right of revocation (see No. 2 and § 7d VVG).

4.3 Potential benefits for consumers, insurers and banks

Group insurance contracts allow for more favourable conditions on the part of the insurance undertaking for the community of insured persons covered by the group insurance contract. Ultimately, this also benefits the consumers who join this contract constellation as "insured persons".

In the "Consumer Trends Report 2019", EIOPA points out that distribution via the bancassurance model ("one-stop shop") could be advantageous for insurance companies, credit institutions and consumers, as it would reduce costs for all parties involved. In addition, about one third of the national supervisory authorities surveyed by EIOPA did not identify any source of consumer detriment or potential conduct risks related to the bancassurance model (see p. 18). We too are of the opinion that the cost advantage for the customer associated with the bancassurance model must be maintained. Under no circumstances should a "cooling-off" period be introduced between the time the loan contract is concluded and the time the insurance contract is concluded. This would increase the cost factor for the customer due to the two-stage product distribution. Moreover, it must be remembered that such a "cooling-off" period always carries the risk that consumers' lack of awareness of the need to take further action could mean that even consumers for whom it would be very advantageous to take out residual loan insurance would not take it out. The regulations for residual loan insurance in force in Germany since February 2018 always allow the consumer to revoke the residual loan insurance afterwards if they should come to the conclusion that they do not need this product (see No. 2). In addition, the consumer in principle has their own right of termination, so that they can also terminate the contract during the contract period.

4.4 Market practices that could lead to consumer detriment

EIOPA criticises the sale of residual loan insurance policies through credit institutions (so-called bancassurance), as cross-selling and pressure exerted during the sales situation could lead to consumers taking out insurance policies that do not meet their needs and which they therefore do not need at all (see "Consumer Trends Report 2019", p. 16). GBIC contradicts this for the German market. According to the GBIC self-commitment, a needs-based advice takes place, taking into account the customer's existing needs as well as the already existing insurances (see No. 3.2). This is precisely to prevent situations in which the consumer takes out insurance that they do not ultimately need. Furthermore, with the legal regulations described under No. 2, the consumer in Germany always has the possibility to revoke the insurance contract retrospectively. The GBIC self-commitment even provides for a uniform 30-day period for all risks, within which the revocation can be made without giving reasons (see No. 3.4).

EIOPA also states in the "Consumer Trends Report 2019" that a large portion of the consumers interviewed believed that residual loan insurance was a legal requirement (see p. 16). The legal regulations described under No. 2 apply here as well. One week after submission of their contractual declaration for the insurance product, the consumer will again receive instructions about their right of revocation in text form. Only after receipt of these documents does the revocation period begin. In this way they will receive confirmation once again that the residual loan insurance is not a legal requirement, because they can "opt out" of it independently through their revocation. As described above, the GBIC self-commitment moreover provides that the conclusion of residual loan insurance is generally voluntary. The consumer is informed about this several times (see No. 3.1).

4.5 Developments and trends in recent years

The legal regulations introduced by the German legislator in February 2018 have put consumers in a better position.

In particular, the repeated instruction of the consumer about their right of revocation one week after submission of their contractual declaration for the insurance product and the revocation period which only begins thereafter, enables them to cancel the insurance contract retrospectively, irrespective of the sales or distribution practices used (see No. 2 and § 7a (5) VVG). With this regulation the consumer is fully protected against sales or distribution practices that may disadvantage them.

5. Conclusion

The German Banking Industry Committee cannot see any need for further regulation of the residual loan insurance product at the European level, as the product and its distribution – as also noted by EIOPA (see "Consumer Trends Report 2019"; p. 16 f.) – are too differently structured in the individual member states. In the case of residual loan insurances that have the same product features as those sold in Germany, we can at best imagine implementing at European level at least the supplementary legal regulations for residual loan insurances that were introduced as part of the IDD implementation in Germany (see our comments under No. 2). These have led to an improvement in the position of consumers.

Furthermore, from GBIC's point of view, it would be preferable if – instead of further legal regulations for the entire industry – the national supervisory authorities (in Germany the BaFin) were to intervene in individual cases in the event of infringements of the already existing legal regulations for the protection of consumers in connection with the sale of residual loan insurance policies. At least in Germany, BaFin has the corresponding mandate since the statutory anchoring of collective consumer protection as a BaFin supervisory objective through the Retail Investor Protection Act in July 2015. In order to ensure the best possible implementation of its consumer protection mandate, BaFin has also set up a separate department since the beginning of 2016 to deal with consumer protection-related issues in all financial sectors. This is clearly preferable to the introduction of further legal regulations for the entire industry and possibly throughout Europe and would benefit honest product suppliers – as in Germany – who act within the framework of the legal regulations or even commit themselves to very consumer-friendly sales practices and contractual provisions by, for example, making a self-commitment that goes beyond the legal requirements.

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