

Stockholm, 12 June 2018

PUBLIC CONSULTATION RESPONSE – IMPLEMENTATION OF IDD

1 INTRODUCTION

American Express welcomes the opportunity to respond to the consultation papers issued by the Ministry of Justice and Public Security on 6 March 2018 and the Ministry of Finance on 6 March 2018, both regarding the implementation of the Insurance Distribution Directive (IDD) into Norwegian law. This consultation response is submitted in two identical copies to both the Ministry of Finance and the Ministry of Justice.

Our views may be summarized as follows:

- We agree with the spirit of IDD and the importance of ensuring minimum harmonisation of insurance distribution regulation, creating a level playing field for insurance intermediaries and insurance distribution, regardless of the channel customers use to purchase their products, and to promote transparency and consumer fairness.
- It is necessary to make certain clarifications with regards to scope of what qualifies as 'insurance distribution', specifically with regards to group insurance products. It should be clarified that being a policyholder of a group policy does not constitute a regulated insurance distribution activity in relation to the members of the group. It is not considered regulated insurance distribution when companies such as American Express, as a policyholder of a group insurance contract, provides American Express-cards to customers, and those customers automatically receive the benefit of being a beneficiary under the group policy. American Express' customers take no individual decision on whether to join the group policy, does not have an insurance contract with an insurance company, does not pay any specific premium to American Express for being a beneficiary under the group policy, but enjoys the benefit of being a beneficiary under the group policy automatically. Consequently, we are of the view

that American Express does not engage in insurance distribution when being a group policyholder.

- It is necessary to make certain adjustments to the provisions regarding cross-selling in order to ensure (i) that the Norwegian implementing legislation is in accordance with IDD, and (ii) a good result for consumers when receiving a free of charge insurance under a group policy.

2 AMERICAN EXPRESS NAC INSURANCE

American Express provides its customers ("cardmembers") with payment cards. Some American Express payment cards are offered with NAC insurance (*No Additional Cost insurance*).

By way of example, NAC insurance provides insurance cover such as the following:

- cancelling, postponing or abandoning a trip;
- cutting short a trip;
- travel inconvenience and/or travel accident;
- loss of personal belongings, money and travel documents;
- purchase protection;
- refund protection;
- medical assistance and expenses; and
- car rental benefits, such as theft, damage and liability.

The NAC insurance is a group policy. The group policy is entered into between an American Express entity (as the policyholder) and the insurer (as the insurance provider). Cardmembers are the beneficiaries under the group policy. There is no direct contract between the cardmember and the insurer, and there is consequently no separate contract of insurance with each individual cardmember.

As a policyholder, American Express is liable to the insurance provider for the insurance premium. There is no remuneration payable from the insurer to American Express. American Express receives no commission, fee or other benefit from the insurer for providing the NAC insurance to cardmembers.

Cardmembers who suffer an eligible loss can claim directly against the insurer as an authorised agent of American Express, the group policyholder. There is no exchange of personal data between American Express and the insurer as cardmembers submit claims directly to the insurer. There is no claims management by American Express.

3 GROUP POLICYHOLDER – NOT INSURANCE DISTRIBUTION

Being a group policyholder, such as American Express, and allowing customers to be beneficiaries of that group policy, does not constitute a regulated insurance distribution activity in the relationship between American Express and individual cardmembers. The activity of being a group policyholder therefore falls outside scope of section 1 in *forslag til lov om forsikringsformidling* and *forslag til lov om forsikringsavtaler kapittel 1*.

This fact should be clarified in an unambiguous manner in the Norwegian implementing legislation.

The relevant definition of insurance distribution is provided in section 3 letter a in *forslag til lov om forsikringsformidling*:

å legge fram, rådgje om, foreslå eller utføre annet forberedende arbeid i forbindelse med inngåelse av forsikringsavtaler, eller å inngå slike avtaler, eller å bistå ved forvaltningen eller gjennomføringen av slike avtaler, særlig i forbindelse med et skadetilfelle[...]

There are a number of reasons why the activity of being a group policyholder does not constitute a regulated insurance distribution activity:

A. End customers (cardmembers) do not enter into any direct insurance contract with the insurer. American Express does not act as an intermediary.

A key criteria in the definition of insurance distribution, is that it relates to the distribution of insurance contracts. An insurance distributor acts as an intermediary between an insurer and the customer entering into the insurance contract, and assists in some manner in relation to the entering into of such an insurance contract. American Express does not act as such an intermediary, and the end customers (members of the group) do not enter into any insurance contract.

The insured beneficiaries (the cardmembers) do not enter into any direct insurance contract with the insurer or American Express. The cardmembers are simply beneficiaries under the group policy, and benefit from the group policy (which is already in place) automatically without taking any action on their part. The insurance automatically covers all cardmembers as members of the group policy.

Further, cardmembers are not subject to any obligations under the group policy. For example, there is no obligation for the cardmember to pay any insurance premium under the policy as American Express is liable for such payments to the insurer.

Consequently, given that American Express does not distribute any insurance contracts, the activity of being the group policyholder is not considered regulated insurance distribution.

B. The IDD assumes that a group policyholder is not considered an insurance distributor

The IDD preamble (49) clearly assumes that being a group policyholder is not considered insurance distribution:

In the case of group insurance, 'customer' should mean the representative of a group of members who concludes an insurance contract on behalf of the group of members where the individual member cannot take an individual decision to join, such as a mandatory occupational pension arrangement. The representative of the group should, promptly after enrolment of the member in the group insurance, provide, where relevant, the insurance product information document and the distributor's conduct of business information.

The first sentence of the quoted preamble presumes that the group policyholder (e.g. American Express) is considered the "customer", ie. the person to whom an insurance contract is distributed and the person which is protected under IDD.

The last sentence in the quoted preamble demonstrates that IDD differentiates between the representative of the group (e.g. American Express as policyholder) and the distributor (e.g. the insurer which is providing the group policy or any insurance intermediary relied upon by the insurer). The representative of the group (e.g. American Express) is, where relevant, required to provide the members of the group with the insurance product information document and distributor's conduct of business information. This demonstrates that IDD clearly differentiates between the group policyholder and the insurance distributor.

Consequently, American Express role as a group policyholder should not be considered regulated insurance distribution activities.

C. The principles of IDD – customer transparency, fairness and protection – are delivered as customers are given clear pre-sale information about the American Express card

The key principles of IDD - customer transparency, fairness and protection – are delivered as customers/cardmembers are given clear pre-sale information about the American Express card and the benefits package, including the NAC insurance, before they choose the card. There is no insurance premium paid or payable by the cardmember. There is no remuneration paid by the insurer to American Express in relation to the NAC insurance.

D. Other European countries have explicitly clarified that group policies are outside scope of the IDD

A common theme across many European countries in which American Express operates is that a group policy is **not** seen to be insurance distribution or intermediary activity because American Express is the policyholder of the NAC group policy and does not intermediate the sale of the insurance cover between the insurer and the insured.

In Germany, The German Trade Act has interpreted an insurance intermediary as a person between the insurer and the policyholder and can therefore neither be part of the insurer nor a policyholder. As a result, in relation to group insurance contracts, the policyholder would not be considered an insurance intermediary by definition, even if that policyholder actively seeks to enlarge the group of co-insureds by promoting coverage under the group insurance to its customers (as American Express provides the NAC benefits to Cardmembers). We view this as best practice considering that the customer does not negotiate the terms of the cover or pay a premium to the insurer under these group policy arrangements and is opted in by American Express as the group policyholder by default when they purchase an American Express card.

Further, we expect that American Express NAC activity will be outside scope of IDD legislation in the following countries because of the group policy structure (although final legislation is pending): France, Netherlands, Spain, Sweden, Poland, Czech Republic, Austria and Italy.

E. American Express receives no remuneration and does not engage in insurance activities "for remuneration"

American Express does not receive any remuneration, fee, commission or other benefit from the insurance company for taking out the group policy. This supports our view that there is no insurance distribution activity given that American Express does not engage in the NAC activity "for remuneration" (*No. ervervsmessig mellommannsvirksomhet*), cfr. the IDD art. 2 nr. 1 (3) and *forslag til lov om forsikringsformidling* section 3 first sentence.

Given the above, we deem it appropriate to clarify in an unambiguous manner that the activity of being a policyholder of a group policy does not constitute a regulated insurance distribution activity.

4 CROSS-SELLING PROVISIONS

American Express is of the view that the IDD as well as other EU legislative acts should be implemented in a manner which is closely aligned and loyal to the text of the relevant EU legislation. In this respect, we have noted certain deficiencies in the proposed implementing legislation. We would like to highlight section 1-6 in the *forslag til forsikringsavtalelov*, which implements IDD art. 24 on cross-selling.

As stated above, American Express' position is that the NAC insurance enjoyed by our cardmembers are not affected by the cross-selling provisions in IDD given that American Express does not engage in insurance distribution activities. However, if American Express decided to offer additional insurance products as an ancillary service to our cardmembers, the cross-selling provisions may become relevant.

IDD art 24. nr. 3 includes a prohibition on providing an insurance product as an ancillary product to a good or service which is not insurance, and requires that customers shall be able to buy the good or service separately from the insurance. However, it is explicitly stated that art 24 nr. 3 does not apply to insurance products that are ancillary to an investment service, credit agreement or payment account as defined in the relevant EU-directives. As far as we can tell, this carve-out has not been included in the Norwegian implementing legislation. It is necessary to include this carve-out in order to ensure a level playing field for payment accounts, credit cards, investment services, etc. We assume that this is an inadvertent oversight, and that the carve-out will be included in the final Norwegian implementing legislation.

5 CONCLUDING REMARKS

We are grateful for the opportunity to express our views on the consultation papers and welcome the opportunity to explain our business model and discuss these issues.

Yours faithfully,

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