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**Final Report on Consultation Paper no.
16/006 on Technical Advice on possible
delegated acts concerning the Insurance
Distribution Directive**

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1. Underlying Strategic Objectives of EIOPA's policy proposals in this Final Report

1. On 24 February 2016, EIOPA was asked with a formal "Request for Advice" by the European Commission to provide technical advice on possible delegated acts to further specify the following provisions of the Insurance Distribution Directive (IDD):
 - Product Oversight and Governance, Article 25, IDD;
 - Conflicts of Interest, Articles 27 and 28, IDD;
 - Inducements, Article 29(2), IDD; and
 - Assessment of suitability and appropriateness and reporting, Article 30, IDD.
2. EIOPA places consumer protection, both through prudential and conduct of business regulation, at the centre of its strategy. Misconduct by firms may not only harm individual consumers, but may also have a wider prudential impact, posing a threat to the stability of the financial sector. Notwithstanding the fact that the Commission requests advice of a technical nature from EIOPA, EIOPA sees this advice as also actively contributing to the completion of a single rulebook on consumer protection, namely through the implementation of the IDD.
3. EIOPA has developed its policy proposals in view of EIOPA's strategic objectives and priorities as outlined in EIOPA's annual work programme for 2016¹, in particular the objective *"to ensure transparency, simplicity, accessibility and fairness across the internal market for consumers"*.
4. In this respect, the focus is on the objectives, firstly, to *"provide a framework for better governance, suitability and accessibility of insurance products for consumers"* and, secondly to *"develop a framework for proper selling practices for direct sellers and intermediaries ensuring that advice to consumers is based on what best suits their needs and profiles"*.
5. The detailed policy proposals on product oversight and governance arrangements pursue the first objective to provide a framework for better governance of insurance products. They aim to ensure that the interests of customers are taken into consideration throughout the life cycle of a product, namely the process of designing and manufacturing the product, bringing it to the market and monitoring the product once it has been distributed. The inclusion of the provisions of EIOPA's Product Oversight & Governance (POG) Preparatory Guidelines in the technical advice, is in line with EIOPA's objective of the Guidelines providing early guidance and supporting national authorities and market participants with the implementation of POG requirements in preparation for the formal requirements provided for in the IDD.
6. The policy proposals on conflicts of interest, inducements as well as suitability/appropriateness assessment pursue the second objective. They aim to ensure that distribution activities are carried out in accordance with the best interests of customers and that customers buy insurance products which are suitable and appropriate for the individual customer.

7. Taking into consideration that inducements have the potential to cause a conflict of interest between the interests of distributors and their customers, the policy proposals aim to ensure that any detrimental impact, stemming from the payment of inducements, on the quality of the service provided to the customer is mitigated from the outset.
8. The policy proposals further specifying the suitability/appropriateness assessment, ensure that the insurance intermediary or insurance undertaking obtains all relevant information necessary to assess whether a specific insurance-based investment product is suitable or appropriate for a specific customer. This approach helps, for example, to ensure that insurance intermediaries or insurance undertakings do not request more information from the customer than needed to provide good quality advice to the customer or information requests are not duplicated. This will further enhance the quality of service provided to the customer, thereby strengthening the framework for proper selling practices.

2. Background

1. On 30 June 2015, the European Parliament and the Council Presidency reached an agreement on a draft Directive establishing new improved rules on insurance distribution (the "Insurance Distribution Directive" – hereafter "IDD")². Subsequent to this trilogue agreement being reached, the final legislative proposals of the IDD were approved by the European Parliament on 24 November 2015 and by the Council of the EU on 14 December 2015. The IDD was published on 2 February 2016 in the Official Journal of the European Union and entered into force on 23 February 2016.
2. The deadline for Member States transposing IDD is 23 February 2018. IDD effectively replaces the Insurance Mediation Directive (IMD)³ as the IMD is repealed from the date of transposition. In addition, the amendments made to the Insurance Mediation Directive (IMD) via Article 91 of Directive 2014/65/EC ("MiFID II") were also deleted from the IMD with effect from 23 February 2016.
3. The IDD establishes new rules on insurance distribution and seeks to:
 - Improve regulation in the retail insurance market and create more opportunities for cross-border business;
 - Establish the conditions necessary for fair competition between distributors of insurance products, for example, through an extension of the Directive to direct sales; and
 - Strengthen consumer protection, in particular with regard to the distribution of insurance-based investment products (IBIPs).
4. Certain elements of the IDD need to be further specified in delegated acts to be adopted by the Commission. These include:
 - Product Oversight and Governance (Article 25(2));
 - Conflicts of Interest (Article 27 and 28(4));
 - Inducements (Article 29(4)); and
 - Assessment of suitability and appropriateness and reporting to customers (Article 30(6)).
5. EIOPA received a formal request ("Mandate")⁴ from the European Commission on 24 February 2016 to provide technical advice to the Commission by 1 February 2017 on the possible content of the delegated acts.
6. The Commission invited EIOPA to build on the results of previous work that has already been carried out by EIOPA (e.g. EIOPA's previous technical advice on

² Directive 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast): <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0097&from=EN>

³ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation

⁴ Request for EIOPA Technical Advice on possible delegated acts concerning the Insurance Distribution Directive: <https://eiopa.europa.eu/Publications/Requests%20for%20advice/I-EIOPA-2016-073%20COM%20Letter%20IDD%20%28GBE%29.pdf>

conflict of interests in direct and intermediated sales of insurance-based investment products ("IMD 1.5")⁵ and EIOPA's Preparatory Guidelines on Product Oversight & Governance arrangements by insurance undertakings and insurance distributors⁶).

7. In addition, EIOPA was invited under the Commission's mandate to achieve as much consistency as possible in the conduct of business standards for insurance-based investment products under IDD on the one hand and financial instruments under MiFID II on the other, where there is no fundamental difference in the wording of the provisions in the IDD and corresponding provisions in MiFID II.
8. As regards MiFID II, the following draft delegated acts are of relevance to the technical advice on the delegated acts on IDD and have been adopted by the Commission:
 - Draft Commission Delegated Directive supplementing Directive 2014/65/EU with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits⁷;
 - Draft Commission Delegated Regulation supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms as defined terms of the purposes of that Directive⁸.
9. In order to provide stakeholders with an early orientation on issues that will need to be addressed in the technical advice to the Commission and to gather feedback from the market, EIOPA published an online survey in January 2016 (the results of which have also been published online)⁹.

Cost-benefit analysis

10. EIOPA was requested by the Commission to support its Technical Advice to the Commission with data and evidence on the potential impacts of proposals identified, including an assessment of the relative impacts of different options where this is appropriate. Where impacts might be substantial, the Commission requested, where feasible, that EIOPA provide quantitative data. The provision of such data and evidence will aid the Commission in preparing an Impact Assessment on the measures it shall adopt.

⁵ [https://eiopa.europa.eu/Publications/Opinions/EIOPA-15-135_Technical%20Advice%20%20Impact%20Assessment_conflicts_of_interest_version%20for%20COM%20\(2\).pdf](https://eiopa.europa.eu/Publications/Opinions/EIOPA-15-135_Technical%20Advice%20%20Impact%20Assessment_conflicts_of_interest_version%20for%20COM%20(2).pdf)

⁶ Final Report on the Public Consultation on Preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and distributors:

<https://eiopa.europa.eu/Publications/Reports/Final%20report%20on%20POG%20Guidelines.pdf>

⁷ COMMISSION DELEGATED DIRECTIVE (EU) .../... of 7.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits

⁸ COMMISSION DELEGATED REGULATION (EU) .../... of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

⁹ <https://eiopa.europa.eu/Pages/Consumer-Protection/Online-survey-Call-for-Advice-from-EC-IDD.aspx>

11. EIOPA has included a high-level assessment of possible impacts in Annex I. In developing this submission, EIOPA has also built upon the responses/data received to the public consultation on the costs and benefits of its proposals, the impact assessment work undertaken by the Commission for the revisions of the IMD and MiFID.

Next Steps

12. EIOPA will submit the Technical Advice and Impact Assessment to the European Commission by 1 February 2017 in accordance with the Commission's Request for Advice.

13. EIOPA will monitor the issues raised in this technical advice and assess, on the basis of sound evidence following the implementation of the Level 1 and Level 2 provisions in IDD in February 2018, the need for issuing guidance to further specify particular issues raised in this technical advice.

3. Feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under the IDD

The public consultation on the draft technical advice to the Commission on possible delegated acts, ended on 3 October 2016. EIOPA received 59 responses to the consultation (including a formal Opinion from its Insurance and Reinsurance Stakeholder Group (IRSG), resulting in over 800 pages of comments. A large number of responses focused on the technical advice on Product Oversight and Governance requirements, Conflicts of Interest and Inducements. The IRSG's Opinion and the individual non-confidential consultation responses can be viewed in Annex II of this Final Report and on this link: <https://eiopa.europa.eu/Pages/Consultations/EIOPA-CP-16-006-Consultation-Paper-on-Technical-Advice-on-possible-delegated-acts-concerning-the-Insurance-Distribution-Dir.aspx>

EIOPA also organised a Public Hearing on its Consultation Paper on draft technical advice on possible delegated acts on 23 September 2016 in Frankfurt. More than 160 representatives of the financial services industry, consumers, academia, EU and national institutions as well as supervisory authorities, attended. More details on the outcome of this hearing can be found here: <https://eiopa.europa.eu/Pages/Events/Public-Hearing-on-the-Insurance-Distribution-Directive.aspx>

The following Feedback Statement sets out the main issues raised by external stakeholders during the public consultation, both in writing and orally at the Public Hearing, and how EIOPA has sought to address these issues in its Final Technical Advice.

Product Oversight & Governance

1. Retro-active application

Some respondents asked EIOPA to specify that the product oversight and governance requirements introduced by IDD only apply to insurance products which are new and those which are still being distributed. The scope of the provisions should explicitly be limited, excluding insurance products which are no longer distributed, but still held by customers. The respondents referred to EIOPA's Preparatory Guidelines including a similar provision, which should be transferred to the Technical Advice.

EIOPA would like to point out that this issue is governed by the application and interpretation of the Level 1 provisions of IDD, mainly Article 25 of the IDD and Article 42 of the IDD. The wording of Article 25 (1) of the IDD can be understood to assume that the product oversight and governance arrangements only apply to new products which are sold after the transposition date of the IDD or those products which are significantly adapted or changed.

However, it is not in EIOPA's remit to address this question as this is a legal question which falls in the competence of the European Commission and ultimately in the competence of the European Court of Justice. Therefore, EIOPA has decided to be silent on this issue.

2. POG requirements for distributors go beyond Level 1 of IDD

Some respondents expressed strong concerns about the legal basis to introduce detailed product oversight and governance requirements for insurance intermediaries, in particular with regard to the requirement to inform the product manufacturer under specific circumstances, to regularly review the insurance products and to document the product oversight and governance arrangements.

EIOPA does not share these concerns in view of the language of Article 25(2) of the IDD which is sufficiently broad and abstract, empowering the Commission to further specify the principles set out in Article 25 of the IDD.

3. Reference to the “fair value”

Some respondents criticised the explicit reference to the “fair value”, expressing their concerns that EIOPA would aim to introduce a price control by competent authorities.

EIOPA would like to emphasise that it does not intend to introduce a price control via the policy proposals on product oversight and governance. In view of the concerns of some market participants, EIOPA has amended the final Report with a clear statement for the sake of clarification. However, EIOPA is of the view that the product oversight and governance arrangements aim to ensure that the interests of customers are taken into consideration throughout the life cycle of a product, including the point of time when the insurance product is conceptually designed and manufactured. This also means that insurance products are designed in a way to meet specific demands and needs of customers and insurance products are, as a result, of benefit for customers.

4. Principle of proportionality

A large number of respondents emphasised the importance of the principle of proportionality, in particular when it comes to product oversight and governance arrangements for insurance distributors. In this context, some respondents were concerned about the level of detail, as well as differences between distribution models, in particular with regard to tied insurance intermediaries, which should be better reflected in the policy proposals.

Some respondents also expressed their preference to introduce a different set of product oversight and governance arrangements for insurance-based investment products and non-life insurance products, or to take into consideration whether insurance products are compulsory under national law such as motor insurance or professional indemnity insurance.

EIOPA shares the view that the principle of proportionality plays an important role when it comes to product oversight and governance arrangements. For that reason, the policy proposals generally contain high-level and abstract principles (as opposed to prescriptive rules) and make continuous reference to this principle, e.g. see paragraph 2 of section “Establishment of product distribution arrangements” where it is stated that the *“arrangements need to be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the insurance distributor”*.

Generally, EIOPA does not consider it appropriate to differentiate between or to exempt specific products (such as non-life insurance products), specific services (such as non-advised sales) or services to specific customers (such as professional customers), taking into consideration the relevance of product oversight and governance arrangements from a customer protection point of view. This even applies for compulsory insurance products as they typically offer not only compulsory, but also optional insurance elements.

5. Distribution to customers outside the target market

Many respondents questioned whether distribution to customers outside the target market identified by the manufacturer, would be possible and asked EIOPA to provide more clarity on this issue.

Taking into consideration one of the legal objectives of the target market, namely ensuring that insurance products are only distributed to customers, for whom such insurance products are compatible, it seems, from EIOPA's perspective, appropriate that distribution outside the target market occurs only exceptionally. Therefore, the analysis now specifies that the insurance distributor may distribute, on an exceptional basis, insurance products to a customer, who does not belong to the identified target market, provided that the insurance distributor can prove that the respective insurance product meets the demands and needs of the individual customer, and, in the case of insurance-based investment products, is appropriate or suitable for the customer.

6. Monitoring the distribution channel

Referring to the obligation of manufacturers to monitor distributors, some respondents emphasised that monitoring would be too burdensome and impossible for insurance undertakings, in particular with regard to independent insurance intermediaries such as brokers.

EIOPA has clarified, in the analysis, that the monitoring obligation is limited to the assessment whether the distribution channels carry out their distribution activities in accordance with the product oversight and governance arrangements established by the manufacturer, in particular whether insurance products are distributed to the identified target market. The monitoring obligation does not extend to the general requirements which distributors have to fulfil when carrying out the distribution activities, in particular the conduct of business rules as laid down in IDD.

7. Obtaining information about the product approval process from the manufacturer

Some respondents argued that the obligation of the distributor to obtain information on the product approval process would be disproportionate and could require manufacturers to share information on internal procedures for which the manufacturer might have an interest in keeping this information confidential. Furthermore, there was no need for distributors to have detailed knowledge about the manufacturer's internal procedures. The information obligation should be limited to the target market identified by the manufacturer.

EIOPA has slightly revised the policy proposal to take account of these comments in limiting the obligation to obtain all “relevant” information. EIOPA considers that there is more information than only the target market which is important and necessary for the distributor to know e.g. information on product testing and the distribution strategy chosen by the manufacturer.

8. Documentation requirements

Some respondents argued that the proposed documentation requirements would be disproportionate and questioned how the documentation requirements would support the purpose of customer protection.

EIOPA does not share these concerns. From EIOPA’s perspective, it is important that insurance undertakings and insurance intermediaries document the procedural arrangements and measures taken to fulfil the requirements on product oversight and governance. This will enable competent authorities to supervise and assess whether the regulated entities comply with the regulatory requirements on product oversight and governance which promote customer protection in the end.

9. Acting as manufacturer

A large number of respondents shared EIOPA’s view that not all kinds of involvement or influence on an insurance intermediary in the design and manufacturing of insurance products, should be considered as manufacturing, but emphasised that insurance intermediaries should be treated as manufacturers under exceptional circumstances only.

They emphasised that the assessment should be based upon an overall analysis of the specific activity of the insurance intermediary on a case-by-case basis for each product designed. Furthermore, they argued that the chosen policy proposal based upon a “key role” could lead to unintended consequences and classify insurance intermediaries as manufacturers even in cases where they unintentionally have a key role in designing the product.

Other respondents asked for further clarification, in particular with regard to bespoke or tailor-made insurance products, the allocation of responsibilities between manufacturers and insurance undertakings involved in the manufacturing process and the impact on civil law responsibilities.

In order to address these concerns, EIOPA has revised its policy proposals and amended where necessary. In order to avoid insurance intermediaries being captured by too broad an understanding of manufacturing, EIOPA has replaced “key role” with “decision-making role” to emphasise that an insurance intermediary acts as manufacturer, only, if he takes the decision on key elements of an insurance product.

A typical example can be assumed in cases where the insurance intermediary designs a sophisticated insurance product due to his experience and expertise in a specific area or market. Here, the insurance undertaking relies on the expertise and know-how of the insurance intermediary to design and manufacture an insurance product. Furthermore, it has been clarified that activities in the context of tailor-made contracts and the pure exchange of information or providing feedback should not be understood

as manufacturing.

Assuming an insurance intermediary is acting as a manufacturer, EIOPA would like to point out that the insurance undertaking and insurance intermediary are responsible to fulfil the product oversight and governance requirements for manufacturers. However, this does not influence their respective responsibilities under civil law, in particular with regard to the contractual obligations stemming from the contract between the insurance undertaking and the insurance intermediary.

10. Defining the Target Market

A large number of respondents emphasised the importance of applying the principle of proportionality when it comes to the identification of the target market and the level of granularity of the target market, taking into consideration the nature and characteristics of the respective insurance product. However, some respondents also stressed that the primary responsibility for meeting the individual customer needs should remain with the distributor advising the customer at the point of sale.

Some respondents questioned the understanding of “interests” and “objectives” and asked for further clarification. Further concerns were expressed about the policy proposal to require the identification of a negative target market, in particular with regard to non-life insurance products, arguing that this obligation would go beyond Article 25 of the IDD and would be extremely difficult to apply in practice.

EIOPA agrees that the principle of proportionality plays an important role in the context of the identification of the target market in view of the variety of insurance products. Therefore, the Technical Advice explicitly refers to characteristics which influence and determine the level of granularity such as the risk profile and complexity and nature of the insurance product.

The Technical Advice further stresses that the identification of the target market has to be distinguished from the individual assessment whether an insurance product is consistent with the demands and needs, and where applicable, whether the insurance product is suitable and appropriate for the individual customer at the point of sale. Therefore, the responsibility for these assessments remains with the insurance distributor.

The identification of the target market is undertaken on an abstract level, but not individual level as at the point of sale. The language of the policy proposals has been revised to address concerns and questions about undefined terminology such as “interests” and “objectives”.

Where relevant from a customer protection point of view and for the sake of a level playing field with the product oversight and governance arrangements which apply for the investment sector, EIOPA considers it important that manufacturers identify the negative target market as well. This should apply for insurance-based investment products (which can serve similar investment objectives as other investment products and are often made available to customers as potential alternatives or substitutes to MiFID financial instruments¹⁰), but may also apply for non-life insurance products, as the supervisory experience has proven (e.g. mis-selling of payment protection insurance (PPI)).

¹⁰ See Recital 56, IDD.

11. Product testing

Some respondents noted that product testing should be proportionate to the complexity of the product and its risks. They also argued that manufacturers of insurance products should be allowed to re-use relevant testing of existing products and scenario analysis as a basis when they test similar insurance products. If insurance products are modified or changed, it should be possible to limit the testing to the modifications and changes. In the case of changes or modifications to insurance products, a testing should furthermore be required, only if the changes and modifications are of importance. Some market respondents expressed concerns about applying the claims ratio as an appropriate criterion for testing or monitoring as the claims ratio would need to be evaluated over time.

EIOPA would like to point out that the policy proposals oblige manufacturers to conduct "appropriate" testing. The policy proposals do not prescribe specific testing methods to be applied, but give a broad discretion to market participants to choose the appropriate form and method of product testing. If appropriate, the testing may even be limited to relevant changes and modifications of an existing insurance product in specific circumstances. Furthermore, it is important to note that the Technical Advice does not require the use of a prescribed list of criteria. The criteria which have been introduced in the analysis are of an explanatory and exemplary nature only.

12. Product monitoring, product review and remedial action

Some respondents stated that the different policy proposals on "product monitoring", "remedial action" and "product review" should be combined as they would cover the same issues in order to avoid unnecessary duplication and inconsistencies. Furthermore, they argued that remedial action should be limited to insurance contracts which are sold in the future, but should not lead to the need to amend existing insurance contracts, as this would conflict with national law.

Some respondents stated that manufacturers should not be required to inform their customers about any remedial action as this could encourage herd behaviour of customers. Some respondents were concerned that the proposed obligation of insurance distributors to inform manufacturers about problems with insurance products could breach the distributor's duties towards their customer, in particular in the case of independent insurance brokers.

Furthermore, they criticised the fact that the requested written agreement between insurance manufacturers and insurance distributors would be too burdensome and not practical. Whereas representatives of consumer protection associations argued in favour of a predefined minimum frequency for the periodic review, many industry representatives considered it appropriate to have discretion to define the frequency of the product review depending on the specific characteristics of the respective insurance product.

EIOPA would like to point out that the activities of "product monitoring", "product review" and "remedial action" pursue different objectives. This, therefore, justifies keeping them separate.

Whereas “product monitoring” is of a permanent nature and requires manufacturers to remain alert to crucial events that would substantially affect the insurance product and would require immediate remedial action, the “product review” takes place periodically and the assessment may be carried out on a predefined set of criteria. When reviewing insurance products, manufacturers should assess whether the insurance product remains aligned with the demands and needs of the target market and, where relevant, depending on the complexity of the product, the knowledge and experience in the investment field, as well as the financial situation and investment objectives, of the target market.

In the course of the “product review”, the manufacturer should also assess whether the insurance products are distributed to the target market, or is reaching customers outside of the target market, and if so, the reasons behind this deviation.

Depending on the findings of the product monitoring and product review, the manufacturer may be obliged to take “remedial action” to mitigate the situation and to prevent the re-occurrence of customer detriment. The policy proposals do not specify the remedial action the manufacturers are supposed to take. This very much depends on the specificities of the individual case and should not be limited to a predefined catalogue of possible actions.

Accordingly, EIOPA does generally not expect insurance undertakings to change existing contracts, in particular, in cases where this would contradict rules of national law. Depending on market developments, EIOPA may issue further guidance on this issue to explain best practices which have been developed by market participants.

After a thorough assessment, EIOPA came to the conclusion that it would be disproportionate to introduce a minimum frequency of periodic review in view of the variety of insurance products and different product characteristics. Therefore, EIOPA is of the view that the manufacturer should determine the frequency of the regular reviews whereas criteria such as the contractual duration and the complexity of the respective insurance product are relevant factors which should be taken into consideration to determine the appropriate frequency of review.

Conflicts of Interest

13. Principle of proportionality

Referring to the principle of proportionality, some respondents argued that the policy proposals on conflict of interest would be disproportionate, too detailed and too burdensome, in particular, for small and medium-sized enterprises (SMEs). Respondents also asked to better address differences in insurance distribution channels.

EIOPA acknowledges the importance of the principle of proportionality, especially with regard to the possible impact for small and medium-sized insurance intermediaries. Because of the risk of creating loopholes and the potential for regulatory circumvention, EIOPA, however, rejects the idea of establishing exemptions for predefined market participants. EIOPA is of the view that the proposed rules offer sufficient discretion and leeway for all market participants to set up adequate organisational measures and procedures for the management of conflict of interests which are appropriate with regard to the respective business model of the insurance

undertaking and insurance intermediary.

14. Identification of conflicts of interest

Some respondents expressed concerns about introducing a legal assumption under which circumstances a conflict of interest should be assumed and argued in favour of a pure principle-based approach. Some respondents further urged EIOPA to limit the scope of the policy proposal and to focus on conflicts of interest that are detrimental for the customer.

Some respondents assumed that the list of circumstances entailed situations which should be avoided *per se*, concluding that this would lead to a *de facto* ban on commission-based distribution models, as inducements were explicitly referred to in the list. They also argued that EIOPA had not considered potential conflicts of interest caused by other forms of remuneration (such as fee-based remuneration models).

Furthermore, some respondents expressed concerns about assuming a conflict of interest in a situation where the insurance undertaking or insurance intermediary is likely to make a financial gain to the detriment of the customer. This would imply that every financial profit could create a conflict of interest.

EIOPA would like to emphasise that the policy proposals on the identification of conflicts of interest are simply intended to make insurance undertakings and insurance intermediaries aware of situations where conflicts of interest would arise. The policy proposals do not require insurance undertakings and insurance intermediaries to avoid those situations, but to take appropriate measures to manage and mitigate the identified conflicts of interest in a second step (as laid down in the proposal on a "conflicts of interest policy").

Furthermore, EIOPA would like to emphasise that EIOPA has an impartial view on the business models of insurance distributors and does not favour the establishment of fee-based distribution models over commission-based distribution models. At the same time, EIOPA acknowledges that similar conflicts of interest may arise in both instances which oblige the entities concerned to take appropriate measures to manage these conflicts of interest in order to avoid any damage to customers.

In order to establish a level playing field with the investment sector (namely, the MiFID II legislation¹¹), the language of the policy proposal has been partly revised. The legal assumption has been removed and replaced with the obligation requiring insurance intermediaries and insurance undertakings to take into account, by way of minimum criteria, a further specified list of situations where conflicts of interest typically arise.

15. Horizontal conflicts of interest

Some respondents questioned under which circumstances horizontal conflicts between customers could arise as the situation in the insurance sector would be different from the investment sector where customers could compete for a limited number of financial instruments issued by the manufacturer of an investment product.

EIOPA would like to point out that the European legislators have already introduced

¹¹ See Article 33, draft MiFID II Delegated Regulation.

the concept of horizontal conflicts between different customers. Article 28(1), IDD provides that "*insurance intermediaries and insurance undertakings [should] take all appropriate steps to identify conflicts of interest between themselves, including their managers and employees, ... and their customers **or between one customer and another...***".

16. Involvement on the product development

Some respondents argued that EIOPA's policy proposal, which assumes that conflicts of interest arise whenever the insurance intermediary is somehow involved in the management or development of an insurance product, would be too broad, as not every kind of involvement in product management or development would cause a conflict of interest. According to EIOPA's policy proposal, the legal assumption of a conflict of interest would already be provided for if an insurance intermediary provides feedback to the manufacturer which is taken on board for the development of an insurance product in the future. This assumption would not be appropriate. Therefore, the respondents urged EIOPA to sufficiently narrow down the policy proposal.

In order to address the concerns of stakeholders, EIOPA has amended the policy proposal, now requiring the insurance intermediary to be substantially involved in the management or development of an insurance-based investment product. A substantial involvement should further be assumed in cases where the insurance intermediary has an influence on the pricing or the distribution costs of the insurance product.

17. Relationship between the rules on conflict of interest and the specific requirements for inducements

Some respondents questioned how the general rule on conflicts of interest would interplay with the specific requirements for inducements.

EIOPA has clarified the relationship between the general rules on conflict of interest and the specific requirements for inducements in the analysis section (on inducements) as follows: From EIOPA's perspective, the payment of inducements cause a situation where a conflict of interest is likely to arise which can lead to a detrimental impact if it is not managed in accordance with a stringent conflicts of interest policy.

Insurance intermediaries and insurance undertakings are expected to apply the general rules laid down in Article 27 and 28, IDD for the identification and the appropriate management of conflicts of interest, and additionally the specific requirements on inducements, as laid down in Article 29(2) IDD (a two-step approach):

This requires insurance undertakings and insurance intermediaries, in a first step, to identify all inducements which are paid in connection with the distribution of insurance products and to establish adequate procedures and arrangements to manage those conflicts in an appropriate way.

This includes, in a second step, the establishment of adequate procedures to assess whether the inducements have a detrimental impact and of specific organisational measures as outlined below, aiming to address the risks of customer detriment caused by the payment or receipt of inducements.

Furthermore, EIOPA would like to emphasise that the disclosure of inducements is specifically addressed by Article 29(1)(c), IDD and the second subparagraph of Article 29(1), IDD, as well as Article 19, IDD which entails a simple pre-contractual status disclosure which precedes the general rules on the disclosure of conflicts of interest (see the policy proposals above), including disclosure as a step of last resort.

Furthermore, EIOPA would like to stress that the rules on conflict of interest apply without prejudice to the specific requirements on inducements arising from Article 29, IDD. This means, in particular, that the conclusion that a specific inducement or inducement scheme has a detrimental impact on the quality of the relevant service cannot be overcome by organisational measures to manage conflicts of interest or by the disclosure of the inducements concerned.

18. Conflicts of interest “in the course of carrying out any distribution activities”

A few respondents emphasised that the requirements in Article 27 and Article 28 of IDD state that conflicts of interest arise “in the course of carrying out distribution activities”. Therefore, they argued these provisions would not address possible conflicts of interest which are not closely linked with distribution activities and were sceptical about including the involvement of insurance intermediaries in the management or development of insurance-based investment products in the list of situations where conflicts of interest typically arise.

EIOPA does not share this view. From a consumer protection point of view, it is important to apply a broad understanding of “carrying out distribution activities” which consequently also comprises all activities which are linked and aiming at distributing insurance products. This is supported by the fact that the general definition of “insurance distribution” in Article 2(1)(1), IDD goes much broader than purely point of sale activities.

Therefore, EIOPA is of the view that the rules of conflict of interest should also apply to activities in the context of the management and development of insurance products. The latter includes, for examples, activities such as the definition of the target market or the setting of distribution costs which are closely linked to distribution activities and important issues to carry out the distribution activities in accordance with the best interests of the customer.

Inducements

19. Definition of inducement

Some respondents questioned EIOPA’s definition of “inducement” and whether internal payments to employees of insurance undertakings or insurance intermediaries who are involved in the distribution of insurance products would be covered under this definition, as similar conflicts of interest would arise. Other respondents stressed that tied agents should not be considered as third parties and should be explicitly exempted from the scope.

EIOPA would like to emphasise that the empowerment of Article 29(4), IDD only refers to inducements. In EIOPA’s view, inducements are limited to the reception and payment of monetary and non-monetary benefits by a third party, whereas internal

payments to employees of an insurance undertaking or insurance intermediary are exempted. In EIOPA's view the term "inducement" includes payments to insurance intermediaries, which are contractually obliged to conduct distribution activities exclusively with one or more insurance undertakings (such as tied agents).

The proposed definition is supported by the language of Article 29(2), IDD. Even though internal payment structures may give rise to similar concerns under specific circumstances, the technical advice of EIOPA is limited to inducements against this background. However, EIOPA would to emphasise that payments to tied insurance intermediaries are considered as inducements taking into consideration that the insurance intermediaries are legally independent persons and there are no separate rules for tied insurance intermediaries under the IDD.

20. Introduction of a *de facto* ban

Some respondents argued that EIOPA's approach of introducing a high-level principle to define detrimental impact combined with a non-exhaustive list of instances where a high risk of detrimental impact is assumed, would lead to a *de facto* ban on the payment/receipt of inducements. In particular, the respondents argued that the proposed high-risk practices would expose market participants to legal risks which would discourage them from accepting or paying these inducements. The ultimate consequence would be that the list introduces a ban.

EIOPA is aware that a formal ban on the receipt/payment of commissions was not included in the Level 1 text of IDD and would like to reiterate and stress that the intention of proposing a list of criteria for assessing whether an inducement increases the risk of detrimental impact, is not to introduce a ban on commission through the backdoor. The aim of the list is to make market participants aware that the interests of their customers are put at risk and the likelihood of customer detriment exists, if these types of inducements are paid or received. The Technical Advice rather outlines the possibility to take appropriate organisational measures which aim to address these risks and ensure that customer detriment is avoided.

21. Holistic approach to assess detrimental impact

A large number of respondents argued in favour of assessing the detrimental impact on the quality of the relevant service based upon a "holistic approach". This approach would make it possible to take into account a broad range of factors and variety of circumstances, including the overall service quality provided to the customer during the lifetime of a product. Furthermore, they argued that the assessment should only be made on the inducement scheme, rather than the individual inducements paid for a specific product.

Whereas many respondents supported the idea of certain market practices which could help to reduce the risk the risk of detrimental impact ("risk-reducing practices"), they expressed their preference to be more explicit and to move the respective paragraphs into the core elements of the Technical Advice. Some respondents criticised the fact that the analysis would be misleading in stating that risk-reducing practices "*cannot be used to legitimate practices which are detrimental from the outset*", as this gave the impression that EIOPA still aimed to introduce a *de facto* ban on commissions.

Again, EIOPA would like to emphasise that its intention is not to introduce a *de facto* ban of inducements. EIOPA agrees that the wording of the analysis on inducements, quoted above, gives room for interpretation and may lead to a misunderstanding of EIOPA's policy proposals. For that purpose, EIOPA has revised the respective language, now emphasising that insurance undertakings and insurance intermediaries always have to consider thoroughly whether the measures taken are appropriate and sufficient to mitigate the risk of detrimental impact.

Furthermore, EIOPA has amended the respective policy proposals of the Technical Advice, clarifying that the assessment should be based upon an overall analysis which takes into consideration all relevant factors which may increase or decrease the risk of detrimental impact, and appropriate organisational measures taken by the insurance undertaking or insurance intermediary to decrease the risk of detrimental impact which aim to ensure that the inducements do not provide any incentive to carry out the insurance distribution activities in a way which is not in accordance with the best interests of the customer.

However, EIOPA is of the view that limiting the assessment to the inducement scheme is not sufficient as consumer detriment may also be caused by inducements which are paid with regard to a specific inducement which is part of an inducement scheme.

EIOPA has not included in the core elements of its Technical Advice, an exemplary enumeration of circumstances that could be considered as decreasing the risk of detrimental impact, as this would entail the high risk of creating loopholes for regulatory arbitrage and might restrict the ability of national competent authorities to take prohibitive action in relation to inducements both *ex ante* and *ex post*.

22. Non-exhaustive list of criteria for the assessment of detrimental impact

EIOPA received a large number of comments on the proposed list of types of inducements considered to have a high risk of leading to a detrimental impact on the quality of the relevant service to the customer practices. The comments were supportive (in particular, from consumer associations), but also critical in view of existing market practices. In particular, consumer associations agreed with the proposed list of high-risk practices referring to individual cases of mis-selling and market failure in recent years.

EIOPA is aware that a delicate balance between the customer's interests and the interests of insurance undertakings and insurance intermediaries, has to be found. After a thorough assessment of the responses of stakeholders, EIOPA has revised its policy proposals based upon the following considerations:

In order to be more closely aligned with the Commission's empowerment for delegated acts under Article 29(4), the Technical Advice now refers instead to insurance undertakings and insurance intermediaries "*take into consideration the following **criteria** in order to **assess** whether inducements or inducement schemes increase the risk of detrimental impact*".

With regard to **letter (a)**, some respondent questions how this policy proposal applies in the context of tied insurance intermediaries, taking into consideration that these intermediaries have a limited range of available insurance product of (one) insurance undertaking, whereas the policy proposal would imply that the insurance

intermediaries would have to extend their distribution activities to insurance products of competing insurance undertakings. Furthermore, some respondents asked EIOPA to clarify that the policy proposal refers to the assessment at the time when the product was sold and argued against an assessment *a posteriori*.

EIOPA agrees that the assessment should comprise insurance products which are at the disposal of the insurance intermediary, only. For the sake of clarification, EIOPA has replaced the term "exist" with "available". EIOPA also agrees that no assessment *a posteriori* is required, but that the assessment whether another available insurance product or service would better meet the customer's needs should be undertaken when distribution activities are carried out.

Arguing that only quantitative criteria could be measured objectively, some respondents opposed the notion in **letter (b)** that the predominant use of such criteria should be considered as high risk. The use of quantitative criteria would be common practice in the market, in particular for the reimbursement of independent insurance intermediaries. In view of the status of independent insurance intermediaries, the remuneration paid would necessarily be linked to the sales they generate and, therefore, to quantitative criteria.

EIOPA is aware that quantitative criteria play an important role in remuneration models, in particular for independent insurance intermediaries. However, EIOPA is of the view that remuneration models should also be appropriately based upon qualitative criteria, encouraging insurance distributors to act in the best interests of their customers. EIOPA would like to point out that quantitative criteria are not considered as detrimental *per se*. The more quantitative criteria a remuneration scheme is based upon, the more organisational measures the insurance undertaking is required to take to ensure that the interests of customers are not adversely affected.

Respondents also questioned the understanding of "excessive" and "disproportionate" in **letter (c)**, arguing that the use of abstract terminology would create legal uncertainty. Furthermore, they pointed out that it would be unclear how the value of a product or service, as a relevant benchmark should be determined.

EIOPA's policy proposal is based upon the experience of national supervisors which have encountered such market failures in their respective national markets. The language of the criterion has deliberately been written in abstract terminology which makes it possible to take into consideration specificities of national markets, standards and all relevant jurisprudence of national courts.

Strong concerns were raised about the criterion in **letter (d)** on upfront commissions. Here again, respondents argued that upfront commissions are a common type of remuneration model. Therefore, the wording should, at least, be limited to cases where inducements are entirely paid upfront and where there is no possibility for refunding the commission to the customer at a later date.

EIOPA is aware that upfront commissions play an important role in current payment models. However, EIOPA is of the view that upfront commissions can entail the risk of consumer detriment as they can incite distributors to "hit and run" or churn the choice of underlying investments, instead of looking after their customer's interest over the long term. However, in order to address the concerns of market participants, EIOPA has clarified that an appropriate refunding mechanism can mitigate the risk of consumer detriment.

23. Disclosure of inducements

Some respondents argued that the Technical Advice should entail policy proposals on the disclosure of inducements in order to avoid regulatory arbitrage.

EIOPA would like to emphasise that the disclosure of inducements is specifically addressed by Article 29(1)(c), IDD and the second subparagraph of Article 29(1), IDD, as well as Article 19, IDD which precede the general rules on the disclosure of conflicts of interest, including disclosure as a step of last resort. As the IDD already entails specific disclosure rules and the COM has not explicitly mandated EIOPA in its formal request to further elaborate on this topic, EIOPA has decided not to provide further guidance on this issue in the Technical Advice.

Suitability, Appropriateness and Reporting to customers

24. Information to obtain for Suitability & Appropriateness Assessments

Respondents generally welcomed the list of information to be obtained from customers. In their view, the information to obtain when assessing suitability or appropriateness leaves sufficient flexibility and does not create additional burdens without tangible benefits for consumers. A few respondents raised the question, how and if, elements, that are, in their view, insurance-specific (e.g. age, gender, family status, professional status, health status, income), should be added. Respondents recognised that a number of these criteria are generally covered when a distributor has to assess the **insurance demands and needs** of their customers.

When asked about the need to **reflect insurance specificities**, whilst at the same time ensuring alignment with MiFID II, the demands and needs test was perceived by respondents to create uncertainty. Respondents argued for legislators or competent authorities to introduce an assumption that the demands and needs test is absorbed to a certain extent or completely by the assessment of suitability. Other respondents proposed for EIOPA to focus solely on the assessment of suitability and appropriateness and not propose specifications of the demands and needs test, which should be left solely to Member State discretion.

EIOPA is of the view that the criteria introduced by its technical advice achieve the objectives pursued with the introduction of the assessment of suitability and appropriateness under Article 30, IDD. EIOPA does not deem it appropriate to introduce in its technical advice, criteria which is more closely related to the principle of "know your customer" than the objectives of Article 30, IDD. Similarly, the information to understand the customer's insurance demands and needs is not part of Article 30, IDD, but regulated in Article 20, IDD. EIOPA's technical advice does not wish to introduce obstacles to building a consistent national regulatory framework, but rather leave Member States discretion to find bespoke solutions on this issue.

25. Advice during the customer relationship

Respondents generally agreed that the suitability assessment has to be provided following advice at the point of sale and where advice is provided on an on-going or periodic basis, where such on-going provision of advice was agreed by the parties. Where EIOPA argued that the **suitability assessment has to be undertaken for every personal recommendation** in respect of an IBIP during the customer relationship, a few respondents did not share this opinion. In their view, the assessment of suitability was not needed where a personal recommendation was given sporadically during the customer relationship, i.e. neither at the point of sale nor periodically.

EIOPA considers the definition of advice in Article 2(1)(15), IDD, to be decisive. Any activity that consists of the provision of a personal recommendation to a retail customer, either upon their request or at the initiative of the insurance distributor, in respect of one or more insurance contracts, is, therefore, "advice" and triggers, as a consequence, the assessment of suitability pursuant to Article 30(1), IDD. Whenever the criteria are fulfilled, advice is provided in EIOPA's view. In such cases, it does not matter, whether a periodic assessment of suitability was agreed between the parties.

Respondents questioned whether any switch of **underlying investment options** within an existing contract, triggers the need to assess the suitability of the product. In their view, EIOPA's draft technical advice could be understood in this regard.

EIOPA is of the view that every activity that falls within the definition of advice requires the assessment of suitability of an IBIP for a retail customer under Article 30(1), IDD. However, advice does not occur when customers switch, on their own, certain investments by exercising contractual options. Unless stricter rules are introduced by Member States, the switch of underlying investment options within an existing contract, does not trigger the need to assess suitability.

26. Consequences of failing to obtain all information

Respondents suggested that EIOPA's policy proposal should **clearly state the further consequences of not being able to provide a recommendation** (p. 65, paragraph 10 of the CP). In their view, the question whether sales are still possible, should be answered positively, under the caveat of providing a risk warning under Article 30(2), IDD. Respondents asked for a clarification that EIOPA is not banning such sales, even in jurisdictions with a duty to provide advice at the point of sale.

EIOPA is of the view that, where necessary information is missing, consumers should not falsely obtain the impression of receiving a personal recommendation. EIOPA has made some amendments to the text of paragraph 10 of its technical advice accordingly to provide more clarity on this issue.

Furthermore, respondents argued that **an exception should be made, when the customer does not wish to disclose all relevant information**. In these cases, the customer remains responsible for the fact that a personal recommendation cannot be based on the relevant information and, therefore, bears the consequences.

EIOPA has not introduced an exception for situations, where a customer does not wish to disclose relevant personal information. In EIOPA's view, distributors should only be able to provide a personal recommendation, if the necessary information has been obtained. As EIOPA has not introduced a minimum threshold for what is necessary for

certain types of products, EIOPA believes that pragmatic solutions can be found, especially when advising customers on a range of different insurance-based investment products.

27. Switching underlying / embedded investments

When switching underlying assets, EIOPA proposed that the insurance undertaking or insurance intermediary should undertake a **cost benefit analysis**. Respondents asked for clarification with regard to “embedded investment elements”. EU legislation refers to this concept in different ways. For example, recital 56, IDD refers to “*standards aimed at addressing the investment element embedded in those products*”. Furthermore, the PRIIPs Regulation refers to this concept as: “*multiple underlying investments, such as internal funds held by insurance undertakings*” (Recital 17), “*where a PRIIP offers the retail investor a range of options for investments, such that all information required in Article 8(3) with regard to each underlying investment option cannot be provided*” (Article 6), or “*direct or indirect exposure to the underlying investment assets*” (Article 8). Finally, Solvency II describes the concept as “*the underlying assets for unit-linked policies*” (Article 185).

Respondents highlighted that distributors might find it difficult to quantify the cost-benefit analysis, arguing that the cost-benefit analysis should not be purely about monetary benefits. In their view, the administration of contracts can have a number of reasons that cannot be easily quantified.

EIOPA has taken into account the relevant EU legislation and has aligned the terminology accordingly. Furthermore, EIOPA agrees that the cost benefit analysis can go beyond purely quantifiable elements. EIOPA’s technical advice does not limit the analysis to only monetary benefits. EIOPA acknowledges that customers should not be prevented from, for example, investing in social and environmental assets, even where those assets might provide less return on the investment.

28. Group insurance contracts

Respondents asked for further clarification from EIOPA regarding to the reference in the draft technical advice to “collective contracts”. It seemed to be unclear whether contracts within an occupational environment were intended or another concept. Respondents recalled that recital 49 of the IDD, makes a reference to **group insurance**, as a group of members where the individual member cannot take an individual decision to join, such as a mandatory occupational pension arrangement.

EIOPA has revised the paragraph in its technical advice. The intention was to have a consistent understanding of group insurance, as already introduced by recital 49, IDD. The revised advice also confirms that group insurance contracts do not cover situations where, for example, spouses buy, together with their spouse, an IBIP, even though, in this example, more than one person would be insured.

A number of respondents argued for the introduction of an assumption that the **assessment of suitability should always be done for the “collective”** and not for any individual. Other respondents argued that the necessary assessments should always be done on an individual basis to strengthen the consumer protection objective pursued by Article 30, IDD.

EIOPA recognises that group contracts will vary in practice. The assessment of suitability or appropriateness will equally depend on the practical circumstances. Because of these practical differences, EIOPA is therefore not introducing an assumption in its Technical Advice. EIOPA expects national competent authorities to bear the objectives of Article 30, IDD in mind, when supervising policies implemented for group contracts.

29. Record-keeping

Respondents questioned whether the high level principle for **record-keeping** introduced by EIOPA, went beyond Article 30(4), IDD. Furthermore, respondents viewed the “detection of failures”¹², as too general. In addition, in the view of respondents, the recording obligations of certain aspects of the suitability assessment¹³, should only be applicable where a “periodic assessment of suitability” is agreed (excluding any other situations where advice is provided during the lifetime of the contract).

Finally, only those IBIPs that were concretely recommended should be made part of the record-keeping obligations. Respondents understood the draft technical advice in paragraph 17(b) as including any suggestions by the distributor, to the customer which were ultimately discarded by the customer. This would not mirror the suitability assessment, but go beyond it.

EIOPA has clarified the rules on the record-keeping, where deemed necessary. The Technical Advice with regard to record-keeping is not considered to go beyond Article 30(4), IDD. The suggested rules are drafted with a view to insurance-based investment products. Furthermore, the record-keeping obligations do not intend to extend the assessment of suitability to irrelevant IBIPs when providing advice.

30. Reporting to customers: Suitability statement

Respondents criticised EIOPA for **prescribing a fixed reporting interval** where the periodic assessment of suitability is being performed. Respondents argued that certain insurance-based investment products are long-term investments that do not require a yearly review of the suitability assessment. Furthermore, respondents were of the opinion that the “periodic assessment of suitability” should be based on an agreement between the parties and EIOPA should not use the language that is used by the Level 1 text (“where an insurance intermediary or insurance undertaking has informed the customer.....”).

EIOPA acknowledges that insurance-based investment products can also have very long recommended holding periods. However, the IDD has introduced a periodic assessment. For such an assessment to be performed in a way that reaches the objectives, EIOPA believes it important to prescribe a minimum frequency. EIOPA shares the assessment of respondents that the periodic assessment of suitability is for the parties to agree upon. Nevertheless, in its technical advice, EIOPA follows the terminology of the IDD.

¹² p. 77, paragraph 16(b) in the draft advice

¹³ p. 77, in paragraph 17(a) of the draft advice

31. Reporting to customers: Periodic communications

Respondents questioned why periodic reporting to customers should have a prescribed reporting interval. Where contracts run over decades, a yearly interval might mislead customers to take investment decisions concerning the IBIP because of short-term considerations.

Furthermore, respondents criticised the **list of criteria to be reported on**. Respondents viewed the elements of the list as too focussed on fund-based IBIPs and either going beyond or duplicating the requirements in Article 185, Solvency II which would therefore be misleading for consumers. The requirements were also considered less relevant for insurance intermediaries. Respondents argued in favour of deleting a number of the criteria proposed to ensure that periodic reporting to customers was in line with the principle of proportionality.

EIOPA recognises concerns raised over a possible duplication of reporting obligations under Article 185, Solvency II and has, therefore, reconsidered its approach. Ultimately, periodic reporting to customers should enhance consumers' understanding of their products. EIOPA acknowledges that periodic reporting under IDD should not be seen as a revision of the approach taken by Article 185, Solvency II. Therefore, the technical advice complements the existing reporting obligations and sets up minimum criteria for meaningful periodic communication to customers.

While respondents welcomed EIOPA's initiative to recognise online platforms as a means to fulfil the periodic reporting obligation, respondents viewed it as an unfair **obligation to check if a customer has accessed an online platform**. In their view, adding the relevant information to an online platform should be sufficient to fulfil the same level of consumer protection as any other way of proving the document.

EIOPA acknowledges the concerns voiced with regard to proof of access to online platforms. EIOPA anticipates increasing digitalisation in the distribution of insurance and welcomes solutions where both consumers and distributors benefit from this. Proving access to the online system was seen as an obstacle compared to other more traditional means of providing periodic reporting. Taking into account these concerns, EIOPA has revised its technical advice. It is ultimately for market participants to find the best solutions for the provision of regular reporting by digital means within the regulatory framework of the IDD.

Execution-only sales - other non-complex insurance-based investment products

32. Role of execution-only sales

On the one hand, a number of stakeholders responded that execution-only sales should not be possible for insurance-based investment products. It was argued that due to the variability of *inter alia* the investment returns and costs, the distributor should, at least, provide the customer with an assessment of appropriateness in relation to the customer's knowledge and experience in the investment field. On the other hand, various respondents considered that the proposed criteria to identify other non-complex insurance-based investment products, would result in a *de facto* ban of execution-only sales.

The IDD provides Member States with the option to allow for the sale of certain non-complex insurance-based investment products without the need for the distributor to assess the appropriateness or suitability of the product in relation to the customer. Consequently, it is not considered consistent with that aim to prevent all sales of insurance-based investment products via execution-only, and thus EIOPA does not intend to create a *de facto* ban of such sales.

In relation to the criteria for “other non-complex insurance-based investment products”, it is first important to note that where a product does not satisfy these criteria, it is still possible for it to be sold via execution-only, if it satisfies the conditions in Article 30(3)(a)(i) of IDD.

In addition, since the investment exposure of other non-complex insurance-based investment products is not necessarily limited to financial instruments deemed non-complex under MiFID II, it is essential that the scope of products that can be sold via execution-only, is carefully circumscribed.

EIOPA’s approach is consistent with that taken in MiFID II in this regard and the vast majority of the criteria in the technical advice are drawn from those in the draft MiFID II Delegated Regulation. Nevertheless, EIOPA has reviewed each of the criteria in view of the comments received and would acknowledge that some of these were not appropriately adapted to the insurance sector, and thus could have inadvertently excluded certain non-complex products. EIOPA has therefore made a number of changes to the criteria; the main changes are described below as part of this section, as well as in more detail in the Resolution of comments in Annex II.

33. Investment exposure and reference to Directive 2014/65/EU

Various respondents stated that the reference to Directive 2014/65/EU in Article 30(3)(a)(i) of IDD not only includes financial instruments which are explicitly classified as non-complex in Article 25(4)(a) of Directive 2014/65/EU, but also instruments which pass the non-complexity test provided for in Article 57 of the draft MiFID II Delegated Regulation. This point was not considered to be reflected in EIOPA’s draft advice.

EIOPA agrees with this point and that the draft advice was not completely clear in this respect. EIOPA has therefore amended the technical advice to refer simply to Article 30(3) of IDD. EIOPA has also deleted point (a) from the draft advice since this point concerns the complexity of the underlying financial instruments to which the insurance-based investment product provides investment exposure. The rules regarding the complexity of financial instruments are governed by MiFID II and, therefore, this is considered to be captured by the reference to MiFID II in Article 30(3)(a)(i) of IDD.

34. Clauses that could alter the nature or risk of a product

Numerous stakeholders commented that the text of point (e) in the draft advice regarding clauses, conditions or triggers within a product, could result in the exclusion of products with features, which are beneficial to customers and which are not complex to understand. This was also a point made by a number of associations representing consumers.

Some of the examples provided by respondents were the ability to switch between different non-complex investment options or funds, to decide to increase or reduce the amount of the premiums paid, and to decide whether to take a lump sum or annuity at the maturity of the contract. In particular, several stakeholders argued that the text of EIOPA's draft advice broadened the scope of the comparable provision in the draft MiFID II Delegated Regulation, which addresses the right to convert a financial instrument into a different financial instrument.

EIOPA does not intend to prevent customers that have bought an insurance-based investment product via an execution-only sale, from having any flexibility to select investment options or to exercise other non-complex product features. EIOPA considers that there is a greater risk of customer misunderstanding in relation to changes that the insurance undertaking can make. This might include, for example, the ability for the insurance undertaking to change the frequency or other terms, under which the customer can access some of their investment or surrender the product. Consequently, EIOPA has revised this criterion in the final advice, to address specifically the issue that it is the insurance undertaking which is able to make changes to the nature, risk or pay-out profile of the product.

35. "Beneficiary clause"

Most respondents to the public consultation, including a number of consumer organisations, criticised the provision in point (h) of the draft advice concerning the ability of the customer to modify or personalise the contractual provisions with regard to the person receiving benefits at the end of the contractual relationship. It was contended that the option for the customer to change the beneficiary is a common and well understood contractual option.

Products where it is not possible to change the beneficiary were, in fact, considered to be more complex by various respondents, since it was considered to be in the interests of the customer to be able to change the beneficiary when their circumstances changed, for example, upon divorce.

EIOPA is aware of cases where the customer has not understood the implications of modifying the beneficiary clause, with the result that the benefits under the contract have accrued to a beneficiary other than the one intended by the customer. Nevertheless, EIOPA recognises the arguments that the general requirement that had been included in the draft advice risked excluding contractual options which customers might expect to have.

EIOPA has, therefore, decided to remove the provision from its final advice. However, given the supervisory concerns in this area, EIOPA is still considering whether it is appropriate to develop guidance on this issue, in particular in view of the empowerment for EIOPA to develop Guidelines in Article 30(7) and (8) of IDD.

36. Insurance-based investment products with guarantees

Various representatives of the insurance industry maintained that the draft advice did not reflect the specificities of insurance products, in particular guaranteed products which are considered to be well understood by customers and offer a high level of protection.

EIOPA has considered this point and decided to introduce a criterion in its final advice

that the contractually agreed maturity and surrender value should be, at least, the amount of premiums paid by the customer, minus legitimate costs levied.

It is important to highlight that, in EIOPA's view, the existence of such a guarantee does not mean that a product is necessarily non-complex. It will still be necessary for the product to satisfy the other criteria in the technical advice, including that the product does not incorporate a structure which makes it difficult for the customer to understand the risks involved. This is critical given that, in spite of the guarantee, there is still an investment element to the product and, therefore, it is still paramount that the customer is able to understand the risks involved.

4. Product Oversight & Governance

Background/Mandate

Extract from the European Commission's request for advice

"EIOPA is invited to provide technical advice on detailed product oversight and governance arrangements for insurance undertakings and insurance intermediaries manufacturing and distributing insurance products in order to avoid and reduce, from an early stage, potential risk of detriment to customers' interest. The technical advice should identify when insurance undertakings and insurance intermediaries are acting as manufacturers, distributors, or both, and establish the level of responsibility of those actors. In addition, the technical advice should take into account the different types of distribution channels and differences in the size of the insurance undertaking or insurance intermediary concerned. EIOPA should also address the question of how the nature of the insurance product could be taken into consideration in terms of the practical application of the product oversight and governance arrangements.

With regard to product manufacturers, the technical advice should in particular deal with the arrangements of designing, approving and marketing insurance products, including the manufacturers' ongoing obligations as regards the life cycle of insurance products. In identifying the target market of customers, the technical advice should detail the level of granularity expected from manufacturers as regards the complexity of the insurance product and whether it is intended for mass market distribution. The technical advice should provide examples for activities that can be considered "manufacturing an insurance product for sale to customers".

With regard to insurance distributors, the technical advice should in particular deal with the arrangements for selecting insurance products for distribution to customers as well as for obtaining all the relevant information on the insurance product from the manufacturer in order to provide the distribution activities in accordance with the obligation to act in the best interest of the customer. EIOPA should assess whether distributors should be required to periodically inform the manufacturer about their experience with the product, or whether information on an incidental basis reflecting specific changes in the market would ensure sufficient protection of the customer's interest.

The technical advice should also specify the obligation for manufacturers and distributors of insurance products to regularly review their product governance policies as well as the products they manufacture, offer or recommend. The technical advice should refer to any appropriate actions to be taken by manufacturers and, where appropriate, distributors, to prevent and mitigate detriment to the interests of customers. Strengthening the role of management bodies and, where applicable, the compliance function, to ensure compliance with the arrangements should be duly considered."

1. The relevant provisions in the Insurance Distribution Directive are:

Recital 55:

"In order to ensure that insurance products meet the needs of the target market, insurance undertakings and, in the Member States where insurance intermediaries manufacture insurance products for sale to customers, insurance intermediaries should maintain, operate and review a process for the approval of each insurance product. Where an insurance distributor advises on, or proposes, insurance products which it does not manufacture, it should in any case be able to understand the characteristics and identified target market of those products. This Directive should not limit the variety and flexibility of the approaches which undertakings use to develop new products".

Article 25:

"1. Insurance undertakings, as well as intermediaries which manufacture any insurance product for sale to customers, shall maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers.

The product approval process shall be proportionate and appropriate to the nature of the insurance product.

The product approval process shall specify an identified target market for each product, ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market, and take reasonable steps to ensure that the insurance product is distributed to the identified target market.

The insurance undertaking shall understand and regularly review the insurance products it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

Insurance undertakings, as well as intermediaries which manufacture insurance products, shall make available to distributors all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product.

Where an insurance distributor advises on, or proposes, insurance products which it does not manufacture, it shall have in place adequate arrangements to obtain the information referred to in the fifth subparagraph and to understand the characteristics and identified target market of each insurance product.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 38 to further specify the principles set out in this Article, taking into account in a proportionate way the activities performed, the nature of the insurance products sold and the nature of the distributor.

3. The policies, processes and arrangements referred to in this Article should be without prejudice to all other requirements under this Directive including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest, and inducements.

4. This Article does not apply to insurance products which consist of the insurance of large risks."

Policy work of ESMA and EBA

2. For the purpose of cross-sectoral consistency, EIOPA has taken into account the initial policy work carried out in the Joint Committee of the ESAs on manufacturers' product oversight & governance processes¹⁴ and policy work which ESMA and EBA developed with regard to product and oversight arrangements for credit institutions and investment firms, in particular ESMA's opinion on Structured Retail Products – Good Practices for product governance arrangements¹⁵ and its technical advice to the Commission on MiFID II¹⁶ and EBA's Guidelines on product oversight and governance arrangements for retail banking products¹⁷.
3. Furthermore, it should be noted that the Commission recently published its proposal for a Delegated Directive specifying the product oversight and governance requirements which investment firms have to fulfil under MiFID II which was taken into consideration when drafting this Consultation Paper.¹⁸

Introduction

4. EIOPA has been invited by the Commission to provide technical advice on detailed product oversight and governance arrangements for insurance undertakings and insurance intermediaries manufacturing and distributing insurance products.
5. **EIOPA considers that product oversight and governance arrangements play a key role in customer protection by ensuring that insurance products meet the needs of the target market and thereby mitigate the potential for mis-selling.**
6. Product oversight and governance arrangements aim to ensure that the consumers interests are taken into consideration throughout the life cycle of a product, namely the process of designing and manufacturing the product, bringing it to the market and monitoring the product once it has been distributed. They are an essential element of the new regulatory requirements under IDD. Because of their relevance in terms of customer protection, it is of utmost importance that the new requirements are further detailed and specified.
7. Product oversight and governance arrangements are complementary to the information requirements and conducts of business rules applicable at the point of sale when carrying out distribution activities towards the individual customers.
8. It should be noted that EIOPA has already thoroughly elaborated policy proposals in the context of drafting Preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors¹⁹.

¹⁴ https://eiopa.europa.eu/Publications/Administrative/JC-2013-77_POG - Joint Position .pdf

¹⁵ https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-332_esma_opinion_u_structured_retail_products_-_good_practices_for_product_governance_arrangements.pdf

¹⁶ https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-549_-_consultation_paper_mifid_ii_-_mifir.pdf

¹⁷ <https://www.eba.europa.eu/documents/10180/1141044/EBA-GL-2015-18+Guidelines+on+product+oversight+and+governance.pdf>

¹⁸ COMMISSION DELEGATED DIRECTIVE (EU) .../...of 7.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits: <https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2031-EN-F1-1.PDF>

¹⁹ Final Report on Public Consultation on Preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors: <https://eiopa.europa.eu/Pages/Guidelines/Preparatory-Guidelines-on-product-oversight-and-governance-arrangements-by-insurance-undertakings-and-insurance-distributor.aspx>

In the course of this process, EIOPA conducted two public consultations in order to appropriately involve market participants and stakeholders in the development of policy proposals.²⁰ This work has originally been initiated following the Joint Position of the European Supervisory Authorities on Manufacturers' Product Oversight and Governance Processes²¹. In its Request for Advice, the Commission has explicitly asked to "build on the results of previous work such as the Preparatory Guidelines".

9. After a thorough analysis of the legal requirements in Article 25, IDD and the request of the Commission for technical advice, EIOPA has come to the conclusion that the Preparatory Guidelines entail general principles which are consistent with the IDD and therefore can be used to further specify the product oversight and governance requirements in Article 25, IDD. However, following the analysis of the Commission request, EIOPA has identified several issues which have not yet been addressed by the Preparatory Guidelines so far. For that reason, EIOPA has developed additional policy proposals which amend and have been consolidated with the existing policy proposals based upon the Preparatory Guidelines.

²⁰ First public consultation:
<https://eiopa.europa.eu/Pages/Consultations/CP-14150-Guidelines-on-product-oversight-amp;-governance-arrangements.aspx>

Second public consultation:
<https://eiopa.europa.eu/Pages/Consultations/EIOPA-CP-15-008-Consultation-Paper-on-POG-Guidelines-for-insurance-undertakings-and-insurance-distributors-.aspx>

²¹ [https://www.eba.europa.eu/documents/10180/15736/JC-2013-77+\(POG+--+Joint+Position\).pdf](https://www.eba.europa.eu/documents/10180/15736/JC-2013-77+(POG+--+Joint+Position).pdf)

Analysis

10. The policy proposals distinguish between:
 - (i) Policy proposals for insurance undertakings and insurance intermediaries which manufacture insurance products for sale to customers (also referred to as “product oversight and governance arrangements”), and
 - (ii) Policy proposals for insurance distributors which distribute insurance products which they do not manufacture (also referred to as “product distribution arrangements”).
11. This is in line with the approach proposed by the Commission with regard to the draft Delegated Directive specifying the product oversight and governance requirements which investment firms have to fulfil under MiFID II.²² For the purpose of developing a consistent set of rules for the insurance sector, it is worth noting that the Commission proposes implementing measures with a high level of detail for both manufacturers, as well as distributors which are based upon high-level principles or specific obligations in MiFID, similar to those required under IDD.
12. Article 25 of the IDD introduces general principles regarding the product oversight and governance requirements, for insurance undertakings and insurance intermediaries which manufacturer insurance products for sale to customers, and for insurance distributors which distribute insurance products which they do not manufacture.
13. EIOPA would like to point out that the product oversight and governance arrangements applicable to insurance undertakings that manufacture insurance products are closely linked to the requirements regarding the system of governance as laid down in Articles 40 and 41(1) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (hereinafter “Solvency II”). These Articles require insurance undertakings to have a sound and prudent management of the business under a risk-based approach including an appropriate risk management system.
14. In order to further specify the general principles on product oversight and governance requirements which underlie Article 25, IDD, EIOPA considers it important to define in more detail, the arrangements regarding internal processes, functions and strategies for designing and bringing products to the market, monitoring and reviewing them over their life cycle. The arrangements differ depending on the question whether the regulated entities are acting as a manufacturer and/or distributor of insurance products. In the case of manufacturers, these steps include:
 - (i) identifying a target market for which the product is considered appropriate;
 - (ii) identifying market segments for which the product is not considered appropriate;
 - (iii) carrying out product analysis to assess the expected product performance in different stressed scenarios;
 - (iv) carrying out product reviews to check if the product performance may lead to customer detriment and, in case this occurs, take actions to change its characteristics and minimise the detriment;

²² <https://ec.europa.eu/transparency/reqdoc/rep/3/2016/EN/3-2016-2031-EN-F1-1.PDF>

- (v) identifying the relevant distribution channels taking into account the characteristics of the target market and of the product;
 - (vi) verifying that distribution channels act in compliance with the manufacturer's product oversight and governance arrangements; and
 - (vii) the provision of appropriate information on the product and the product approval process to insurance distributors.
15. The product oversight and governance arrangements should be generally applied to all insurance undertakings and all insurance intermediaries manufacturing insurance products, including any natural or legal person pursuing the activity of insurance distribution, independent from the question whether these activities are pursued by an independent broker or by a tied agent, provided that they fall into the scope of the IDD. However, product oversight and governance arrangements need to be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity.
16. Product oversight and governance arrangements are without prejudice to basic principles in insurance, in particular the principles of solidarity, mathematical methods and risk pooling. The interests of customers that need to be taken into account when designing products following the product oversight and governance arrangements, comprise individual and collective policyholder interests which need to be duly balanced.

a. Analysis for arrangements applicable to manufacturers

17. The arrangements apply to all insurance undertakings and insurance intermediaries which manufacture any insurance product for the sale to customers.

Establishment and objectives of product oversight and governance arrangements

18. The manufacturer should establish, implement and review product oversight and governance arrangements that set out appropriate measures and procedures aimed at designing, monitoring, reviewing and distributing products for customers. The product oversight and governance arrangements should aim to prevent or mitigate customer detriment, support proper management of conflicts of interest and should ensure that the customer's demands and needs, and if relevant their knowledge and experience in the investment field, their financial situation and investment objectives and other relevant characteristics are duly taken into account already at the stage when the insurance products are designed and manufactured.
19. Good implementation of product oversight and governance arrangements should result in products that:
- Meet the needs of one or more identified target markets;
 - Deliver fair outcomes for customers; and
 - Are sold to customers in the target markets by appropriate distribution channels.
20. An application of product oversight and governance arrangements should also ensure that all relevant staff members have knowledge of these arrangements and

monitor them for their respective area of activities. It also ensures that any changes to the arrangements are promptly communicated to them.

Role of Management

21. The administrative, management or supervisory body of the manufacturer or equivalent structure (in the case of two tier systems) is ultimately responsible for the establishment, subsequent reviews and continued compliance of the product oversight and governance arrangements. The manufacturer's administrative, management or supervisory body also ensures that the product oversight and governance arrangements are appropriately designed and implemented into the governing structures of the manufacturer.
22. The product oversight and governance arrangements, as well as any material changes to those arrangements, are subject to prior approval by the manufacturer's administrative, management or supervisory body or equivalent structure.

Acting as Manufacturer

23. Article 25(1), IDD acknowledges that, in certain circumstances, insurance intermediaries can be involved in the manufacturing of insurance products. As a consequence and in order to guarantee a level playing field, the IDD extends the product oversight and governance arrangements which apply for insurance undertakings manufacturing insurance products to insurance intermediaries which pursue such activities as well. Likewise, insurance undertakings do not have to meet the obligations applicable for manufacturers laid down in Article 25 (1) (1) – (5) of the IDD for insurance products which the insurance undertakings do not manufacture, but distribute, only. In this case, the insurance undertakings are only subject to Article 25(1)(6) of the IDD introducing specific product distribution arrangements for distributors of insurance products.
24. EIOPA considers it important to provide further guidance under which circumstances the activities of an insurance distributor should be considered as manufacturing and further specifies what "manufacturing" means. Therefore, EIOPA considers it important to outline and specify under which conditions and based upon which criteria, an insurance intermediary can be considered as acting as a manufacturer. The following explanatory notes on the characteristics of acting as manufacturer refer to insurance intermediaries, only. They apply, accordingly, in the case that insurance undertakings manufacture an insurance product without being the sole insurance undertaking – the insurance product might be a 'combined product' that includes coverage of certain risks by different insurance undertakings.
25. Taking into account the principle of proportionality, it is clear that not all kinds of involvement or influence of an insurance intermediary in the design and manufacturing of an insurance product should be considered as manufacturing.
26. Generally speaking, it can be expected that large brokers, such as managing general agents, could more easily fall under the definition of "manufacturer" in comparison with tied agents – especially those who distribute products on behalf of a sole company. However, it is important to note that the IDD makes no distinction between brokers and tied agents, adopting purely an activity-based definition of an "insurance intermediary".
27. Taking into account the characteristics of the insurance distribution and the specific role of insurance undertakings, it should be assumed that an intermediary can be

considered a manufacturer only when it has a decision-making role in the design and development of insurance products.

28. This depends on the specific circumstances of the individual case and an overall analysis of the respective activities that the insurance intermediary performs with regard to a specific product.

29. In particular, EIOPA considers that the following activities, taken on their own, cannot be considered adequate in order to qualify an intermediary as a manufacturer:

- The mere call for tender for insurance undertakings to cover specific risks required by the insurance intermediary is not relevant when the insurance intermediary does not play any further role in the design of the product;
- The mere possibility to discount the commission or fee paid to the insurance intermediary;
- The activity of handling customer claims;
- The personalisation and adaptation of existing insurance products in the course of insurance distribution activities to the individual customer, in particular cases such as the mere opportunity to choose between different lines of products, contractual clauses and options, recommendation of asset, with regard to a product already designed by the insurance undertaking;
- Tailor-made contracts which are designed at the request of a customer to meet the individual demands and needs of that customer;
- Providing feedback and exchanging information on the distribution of insurance products between manufacturer and distributor.

30. On the other hand, EIOPA is of the view that a decision-making role of the insurance intermediary can be exercised through one of the following practices:

- (i) Design of a new product: the following situations can be included in the notion of "design" if the insurance intermediary has a decision-making role:
 - a) The insurance intermediary takes the initiative to design and define the main elements of a specific insurance product;
 - b) The insurance intermediary defines a certain kind of coverage not already existing in the market for a particular type of customer and asks the undertaking to provide it; or
 - c) The undertaking provides the coverage and establishes the premium under the mandate of the insurance intermediary.
- (ii) A change of significant elements of an existing product: this condition occurs when the coverage, premium, costs, risks, target market or benefits of a type of contract are modified by the insurance intermediary. In all these cases, as the undertaking still provides the coverage, any change should be made under the mandate/authorization of the undertaking and subject to its approval.

31. A decision-making role shall be assumed, in particular, where the insurance intermediary autonomously determines the essential features and main elements of an insurance product, including the coverage, costs, risks, target market or compensation and guarantee rights of the insurance product, which are not substantially modified by the insurance undertaking assuming the underwriting risks. A typical example where a decision-making role by the insurance

intermediary can be assumed are cases where an insurance broker with a high specialisation in a segment of the insurance market, designs a sophisticated insurance product for a market niche based upon his experience and expertise in the specific market (white labelling).

32. It should be highlighted that the presence of one of these activities may not be sufficient to qualify the insurance intermediary as a manufacturer, but this conclusion should be based upon an overall analysis of the specific activity of the intermediary which should be carried out by the intermediary on a case-by-case basis for each product designed.

33. A relevant criterion which should be taken into consideration is further the question whether the product is sold under the brand name of the insurance intermediary and whether the insurance intermediary owns the intellectual property rights in the brand name of the product, and whether the intermediary's remuneration depends on the overall performance of the product, profit sharing arrangements, for example.

34. However, it should be noted that, even in cases where an insurance intermediary is considered as acting as a manufacturer, the insurance undertaking providing the coverage (i.e. insurance provider), remains fully responsible to the customer for the contractual obligations resulting from the insurance product, while each co-manufacturer independently remains responsible to comply with the product oversight and governance arrangements of a manufacturer as laid down in Article 25, IDD.

35. Therefore, the insurance undertaking providing the coverage should always be considered a co-manufacturer for the purposes of the application of POG requirements, its role and contractual responsibilities with regard to the customer and its role in the approval process of the insurance product.

36. Co-manufacturing partnerships should necessarily be established in a written agreement, so that competent authorities are in a position to supervise collaboration arrangements.

37. In this case, through a necessary and proportionate collaboration between the two manufacturers (the insurance undertaking and the insurance intermediary/*de facto* manufacturer), all the arrangements and forms of collaboration necessary should be put in practice in order to comply with the product governance requirements for each product co-designed.

38. Whereas the collaboration agreement sets out how the co-manufacturer have bilaterally agreed upon their respective tasks, it cannot limit the respective civil law responsibilities towards the customer or the respective regulatory responsibilities of the parties towards the competent authorities.

39. As far as insurance undertakings are manufacturers and at the same time distributors of their own insurance products, they have to fulfil with the product oversight and governance arrangements for manufacturers of insurance products, only. Insurance undertakings only have to fulfil the product distribution arrangements where they distribute insurance products they do not manufacture.

Target Market

40. The manufacturer shall identify the group of customers for whom the insurance product is compatible (target market) and only design and bring to the market products with features which are aligned with the demands and needs of the target market the manufacturer has identified.

41. When assessing whether a product is compatible for a group of customers the manufacturer should take into account criteria such as the demands and needs, and, where relevant with regard to the complexity and nature of the product, the knowledge and experience in the investment field, financial situation, the investment objectives and the financial literacy of the typical customer of the target market.
42. EIOPA considers it important to take account of the principle of proportionality when considering the granularity of the target market. Insurance products are quite heterogeneous and their complexity varies. Some insurance products are obligatory for consumers and product choice would be limited. This is, for example, the case with motor insurance products. Some insurance products are complex such as many insurance-based investment products (IBIPs). All products differ and, therefore, the granularity of the target markets can differ depending on the complexity and nature of the product and the risk of consumer detriment. There may be product limitations which are simple to understand, but would mean that the target market assessment would need to be more granular in detail.
43. Even with compulsory motor insurance products, for example, not all customers would need 'fully comprehensive' coverage meaning that a 'fully comprehensive' product may not be compatible for all customers. Therefore, specification of the target market should be more meaningful than simply describing it as 'mass market' suitable for any type of insurance product.
44. This approach is in line with the principles underlying the individual customer assessments in IDD, such as the "demands and needs" test and the suitability and appropriateness tests. The criteria used in these tests are generally relevant to define the target market since the target market is an abstract description of the characteristics of a group of consumers, whereas the individual assessments as laid down in the IDD, verify whether the insurance product fits with the specificities of the individual customer.
45. Examples of criteria which could be considered to determine the target market are detailed below. It should be noted that the examples are not exhaustive and non-binding. If necessary, manufacturers should add additional categories based on the specific product and risk profile.
46. The criteria differ depending on the type of insurance product and the insurance coverage provided. Not all criteria which are relevant for one type of insurance product might be relevant for another type of insurance product as well. The level of detail will depend on the complexity of the product and some criteria may not be appropriate for less complex products.
47. Examples for all insurance products:
 - the level of the target market's knowledge and understanding of the complexity of the product,
 - the objectives, demands and needs of the customers belonging to the target market.
48. Examples, in particular, for IBIPs:
 - the age of the customers belonging to target market;
 - the occupational situation of the customers belonging the target market;
 - the level of risk tolerance of the customers belonging the target market;
 - the financial situation of the customers belonging the target market;

- the financial and non-financial objectives and investment horizon of the customers belonging the target market.

49.Examples, in particular, for health insurance:

- The occupational situation of the customers belonging the target market;
- The social security coverage of the customers belonging the target market;

50.Examples for other insurance products:

- Risks, coverage, needs etc.

51.The level of knowledge and understanding of the product could also include experience of targeted consumers with similar products. The customer's financial situation could, for example, be relevant for the sale of Payment Protection Insurance (PPI). Here, it could be considered whether the product is suitable for consumers with a temporary employment contract or if it is only suitable for consumers with a fixed contract.

52.The policy proposal makes clear that identifying for whom the product may be suitable, is helpful in order to obtain a clear picture of cases where it may be rather questionable for whom the product would not be suitable (e.g. a life insurance policy running for 30 years for a 97-year-old person).

53.If an insurance product is not compatible with the demands and needs, characteristics as well as investment objectives of a specific group of customers, the manufacturer shall also identify the target market to which the insurance product should not be distributed, if relevant from a consumer protection perspective and, in particular, for insurance-based investment products.

54.The level of granularity cannot uniformly be defined for all products as in the insurance market there is a wide range of products which differ in characteristics and complexity. The features listed above may not be appropriate for all insurance products and should be applied using a risk-based approach.

Skills, knowledge and expertise involved in designing products

55.According to the general principle of good governance stated in Article 258(1)(e) of Commission Delegated Regulation (EU) No 2015/35 under Solvency II, insurance undertakings are required to "*employ personnel with the skills, knowledge and expertise necessary to carry out the responsibilities allocated to them properly*". In that respect, the manufacturer should ensure that relevant personnel involved in designing products should possess the necessary skills, knowledge and expertise in order to properly understand the product's main features and characteristics as well as the interests, objectives and characteristics of the target market.

56.As necessary, the staff involved in designing products should receive, for instance, appropriate professional training to understand the characteristics and risks of the relevant products and the interests, objectives and characteristics of the target market.

Product Testing

57.Before a product is brought to the market, or if the target market is changed or changes to an existing product are introduced, the manufacturer should conduct appropriate testing of the product including, if relevant and, in particular, for insurance-based investment products, scenario analyses in order to align the product with the interests of the target market. The range of scenario analysis

needs to be proportionate to the complexity of the product, its risks and the relevance of external factors with respect to the product performance.

58. Keeping in mind the objectives of the defined target market, the assessment could imply considering the following questions:

- What if assumptions change, for instance if market conditions deteriorate?
- Is the price of the policy in balance with the worth of the underlying? For instance, is it possible to conclude an all-risk policy for an old car?
- What if certain circumstances during the lifetime of the product change? For instance, what happens with the premium of a Payment Protection Insurance (PPI) policy if a person becomes unemployed, disabled or experiences other life events? What are the consequences for the coverage of a PPI product when a married couple divorces?
- What happens to the (guaranteed) coverage (insured amounts) of a fire and theft insurance when the income changes?

59. In addition to the question above, more specifically for insurance-based investment products, the assessment could imply considering also the following questions:

- What would happen to the risk and reward profile of the product following changes to the value and liquidity of underlying assets?
- How is the risk/reward profile of the product balanced, taking into account the cost structure of the product?
- When a product benefits from a certain tax environment or other condition; what happens if these conditions change?
- What are the terms and conditions, and how do they affect the outcome of the product?
- What will happen when the manufacturer faces financial difficulties?
- What will happen if the customer terminates the contract early?

60. In addition to the questions above, more specifically for pure protection life insurance products, the assessment could imply considering also the following questions:

- What if the premises change, for instance, the mortality rate or the technical interest rate increases?
- Does the benefit cover sufficiently future needs of beneficiary?

61. In the case of non-life insurance, the assessment could imply considering the following questions:

- What is the expected claims ratio and the claims payment policy? What if it is higher or lower than expected? Do the expected claims ratio and claims payment policy suggest that the product is of benefit to customers?
- Does the coverage of one product potentially overlap with the coverage of another product?
- Does the coverage meets sufficiently future needs of target market? How is the coverage updated in terms of reflecting future needs of target market?
- Do customers understand the terms and limitations of the contract?

- Would the manufacturer be able to cope with a large amount of customers? Is the amount of staff sufficient enough to deal with a large amount of requests from customers?

62. EIOPA believes that especially the claim ratio is an important criterion to assess whether an insurance product is of added value for consumers, but agrees that other indicators may be considered for the sake of a comprehensive assessment. EIOPA does not pursue the intention to introduce a general price control.

63. On the basis of the PRIIPs Regulation²³, EIOPA considers that the manufacturer of an insurance-based investment product will be required to produce a Key Information Document (KID) containing information on the risk and reward profile of the product. Performance scenarios expected to be presented in the KID and the range of scenarios used for testing the product may present similarities; however, may not necessarily be identical. Performance scenarios are disclosed to customers whereas scenarios for testing the products cover a large range of factors that determine the performance of the product.

Product monitoring and review

64. The manufacturer should continuously monitor and regularly review the product to identify crucial events that could materially affect the main features, the risk coverage and the guarantees of the products, e.g. the potential risk or return expectations. When reviewing existing products, the manufacturer should further consider if the product remains aligned with the demands and needs, and where relevant, with regard to the complexity of the product, the knowledge and experience in the investment field as well as the financial situation and investment objectives of the typical customer of the target market.

65. The IDD requires insurance undertakings to regularly review the insurance products they offer or market. The issue of the frequency of the review was discussed in the impact assessment of the EIOPA Preparatory Guidelines and more specifically, whether the frequency of the review should be determined. The pros and cons of both options were discussed and EIOPA concluded that, given the wide range of products offered as well as the differences between the firms selling the products, that the frequency of the reviews should not be uniformly determined.

66. Instead, the decision with regards to the frequency of the review, should be left to the manufacturer (and the distributor, where appropriate). In doing so, the manufacturer should take into consideration the product specificities. This option allows each manufacturer to adapt the correct frequency of the review process in line with the timing of the internal design product, also taking into account the size, scale and complexity of the insurance undertaking and of the different products it manufactures.

67. It is important that the manufacturer and the distributor coordinate their reviews and should aim to have similar frequencies of reviews. Manufacturers should consider: i) what information they need to review a product and ii) what information they already hold. If they need additional information from distributors, they can choose how to gather that information and from which distributors.

²³ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)

68. However, EIOPA considers that the delegated acts should specify that the manufacturer should decide how regularly their products should be reviewed: This should be based on relevant factors such as the nature of the product and the target market or if they become aware of any event that could materially affect the potential risk to investors.

Remedial action

69. EIOPA considers manufacturers and distributors should take appropriate action when they become aware of an event that could materially affect the potential guarantees to the identified target market. However, given the wide range of products offered as well as the differences between the undertakings selling the products, EIOPA considers that there should be no specific action to be taken in all cases and that flexibility should be given to manufacturers and distributors to decide what steps they need to take, based on the circumstances of the case.

70. Nevertheless, manufacturers and distributors should make their best effort to identify events that would materially affect the potential expectations regarding product guarantees and, when such an event occurs, they should take appropriate action on a case-by-case basis. These actions could be the following (the list is not exhaustive):

- the provision of any relevant information on the event and its consequences on the product to the customer, or the distributors of the product if the firm does not offer directly the product to the customer;
- changing the product approval process;
- changing the product;
- proposing a new product to the customer;
- changing the target market;
- stopping further issuance of the product;
- contacting the distributor to discuss a modification of the distribution process;
- terminating the relationship with the distributor;
- informing the relevant competent authority; or
- informing the customer.

71. Furthermore, the manufacturer needs to take appropriate action whenever he becomes aware that the product might cause detriment to customers. This might be the case during the regular product monitoring exercise or the product review, but also when he is, for instance, informed by the insurance distributor or through a complaint.

72. The product lifetime is understood as capturing the entire life cycle of a product which begins at the moment when the product is being designed and only finishes once there is no product left on the market. It covers situations when the product is no longer being sold, but there are still customers who own the product. The end of the life cycle of the product is reached only when the last product has been withdrawn from the market.

73. For example, remedial action needs to be taken when the product no longer meets the general needs of the target market or when the product performance is significantly different from what the manufacturer originally expected.

74. As a general principle, and, in accordance with national legal framework, the manufacturer can only make changes to the product that are consistent with the interests, objectives and characteristics of the already existing target market and these changes do not have an adverse impact on the customer to which the product has been sold already.
75. In order to prevent customer detriment efficiently, it might also be necessary that the manufacturer notifies the remedial action taken to the insurance intermediary involved and to the customer in case of direct sales. This might be the case where the risk profile of a product has changed due to market developments and the product is no longer in line with the interests, objectives and characteristics of the target market.

Distribution channels

76. The manufacturer needs to select insurance distributors that have the necessary knowledge, expertise and competence to understand the product features and the characteristics of the identified target market, correctly place the product in the market and give the appropriate information to customers.
77. If the manufacturer identifies problems with the selected distribution channels (i.e. when the insurance distributor is offering the product to customers for whom it is not compatible) they need to take appropriate action. In the case of independent insurance intermediaries, manufacturers might, for instance, need to consider ceasing making available the relevant products to the insurance intermediary not meeting the product oversight and governance objectives of the manufacturer.
78. Article 25(1)(3) IDD requires manufacturers to take reasonable steps to ensure that the insurance product is distributed to the identified target market. In order to achieve this goal, it is important that the manufacturer monitors and examines on a regular basis whether the product is distributed to customers belonging to the relevant target market in order to assess whether the steps taken are appropriate and efficient.
79. However, it should be emphasised that the monitoring obligation is limited to the assessment whether the distribution channels carry out their distribution activities in accordance with the product oversight and governance arrangements established by the manufacturer, in particular whether insurance products are distributed to the target market identified by the manufacturer. The monitoring obligation does not extend to the general regulatory requirements which distributors have to fulfil when carrying out insurance distribution activities for the individual customers (in particular, the conduct of business rules as laid down in IDD). The monitoring activities should be reasonable taking into consideration the specificities and nature of the respective distribution channels.

Information to be provided to the distributors

80. The IDD rules on POG arrangements aim to strengthen the exchange of product-related information between the manufacturer and distributor.
81. According to Article 25(1)(5), IDD, insurance undertakings, as well as insurance intermediaries which manufacture insurance products, shall make available to distributors all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product.
82. Vice-versa, according to Article 25(1)(6), IDD, where the insurance distributor advises on or proposes insurance products which it does not manufacture, it shall

have in place adequate arrangements to obtain the information (referred to above) and to understand the characteristics and identified target market of each insurance product.

83. The purpose of these requirements is to ensure that the distributor receives all necessary information on the product and the product approval process from the manufacturer which is considered as an important prerequisite in order to carry out the insurance distribution activities in accordance with the best interests of their customers.
84. The purpose of the requested exchange of information between manufacturers and distributors is laid down in Recital 55, IDD, stating that the distributor should *"in any case be able to understand the characteristics and identified target market of each insurance product"*.
85. The importance of having appropriate knowledge and competence is furthermore emphasised in the general rule of Article 10, IDD requiring insurance distributors and their employees carrying out insurance distribution activities, to possess appropriate knowledge and ability in order to complete their tasks and perform their duties adequately.
86. However, the obligation of the manufacturer to make available "all appropriate information" and the obligation of the distributor to obtain that information as laid down in Article 25 of IDD is generally abstract and high-level.
87. Besides the identified target market, the IDD neither specifies the information which the manufacturer is required to make available to the distributor nor specifies the consequences if the distributor does not receive all necessary information. In view of the importance of this matter, EIOPA considers it important to further specify the information, which the distributor should obtain in order to be in a position to distribute the insurance products to its customers further.
88. In view of the variety of insurance products and product features, EIOPA does not consider it appropriate to propose an exhaustive list of information which the distributor should obtain. Instead, EIOPA proposes to introduce a high-level principle combined with specific information details, which should be understood as the bare minimum (see policy proposal below).
89. Taking into consideration the principle of proportionality, the level of information details should take into account the complexity and comprehensibility of the products, the risks of the product and the services provided with regard to the respective products (advice, non-advised sale, execution-only).
90. With regard to the consequences in cases where the distributor fails to obtain all relevant information on the product from the manufacturer or from public sources, EIOPA notes that the legal text of the IDD does not specify what the consequence should be. From a customer protection point of view, however, EIOPA would consider it important that the distributor is pre-emptively prevented from recommending insurance products in order to avoid any detriment to customers' interests from the outset. This would be complementary to the empowerment of competent authorities to impose (ex post) sanctions for infringing the conduct of business requirements set out in Chapter VII of IDD.

Documentation of product oversight and governance arrangements

91. EIOPA considers it important that insurance intermediaries and insurance undertakings keep appropriate records about all relevant action taken in relation to the product oversight and governance arrangements and make available those

records to the competent authorities upon request if needed for supervisory purposes.

b. Analysis for arrangements applicable to insurance distributors

92. The arrangements apply to all insurance undertakings, insurance intermediaries and ancillary insurance intermediaries advising or proposing insurance products, which they do not manufacture.

Establishment and objectives of distribution arrangements

93. EIOPA considers that insurance distributors need to establish appropriate measures and procedures with regard to the insurance products they intend to distribute. Contrary to manufacturer's arrangements, insurance distributors are not required to design and subsequently to review the products, but to take the necessary steps in preparation of the distribution of insurance products to the customer (such as obtaining all relevant information from the manufacturer and defining a distribution strategy).

94. The distribution arrangements should aim to prevent, or, if not, mitigate, customer detriment, support a proper management of conflicts of interests and should ensure that the customer's demands and needs, and, if relevant, their knowledge and experience in the investment field, their financial situation and investment objectives are duly taken into account.

95. According to this approach, insurance distributors need to consider to which extent the product choice gives rise to the risk of conflicts of interest and if so, which measures should be taken in order to ensure that the distribution activities are carried out in accordance with the best interests of the customer. This might also imply that distributors abstain from distributing specific insurance products, for example, in cases where products do not offer any value to the customer, but only a high commission to the distributor.

Role of Management

96. EIOPA emphasises that the ultimate responsibility with regard to the product distribution arrangements lies with the insurance distributor's administrative, management or supervisory body or equivalent structure even though it is possible that the tasks are delegated either internally or even externally (e.g. in cases of outsourcing). In particular, the ultimate responsibility for the organisational measures and procedures lies with the management of the distributor which is registered and responsible for the distribution activities. For sole traders, it is evident that they bear the responsibility for their entire business.

Obtaining all relevant information on the insurance product from the manufacturer

97. An important prerequisite to setting up a distribution strategy is that the insurance distributor has appropriate knowledge about the approval process of the manufacturer, in particular the target market of the individual insurance product, as well as about all other necessary information on the product from the manufacturer in order to fulfil its regulatory obligations towards the customer. This information helps the insurance distributor to select the insurance products the

insurance distributor intends to distribute and to assess to which customers the insurance distributor may advertise and promote the individual insurance products.

98. According to this approach, the insurance distributor should establish appropriate arrangements to obtain from the manufacturer all relevant information on the product which is necessary to carry out its distribution activities.

Distribution strategy

99. Where the insurance distributor sets up or follows its own distribution strategy, this strategy needs to be consistent with the target market identified by the manufacturer of the respective insurance product. In particular, this means that the distribution strategy should not foresee insurance products being distributed to customers which are not part of the target market identified by the manufacturer. The distribution strategy may also outline circumstances under which the distribution of insurance products to customers outside of the target market is permitted exceptionally.

100. The target market identified by the manufacturer specifies the group of customers to whom the insurance products should generally be distributed. On an exceptional basis, the insurance distributor may distribute insurance products to a customer, who does not belong to the identified target market, provided that the insurance distributor can prove that the respective insurance product meets the demands and needs of the individual customer, and, in the case of insurance-based investment products, is appropriate or suitable for the customer.

Informing the manufacturer

101. For the sake of customer protection, EIOPA considers it crucial to enhance the exchange of information between manufacturer and insurance distributor to facilitate market monitoring by the manufacturer. This does not mean that the insurance distributor needs to report every sale to the manufacturer or that the manufacturer needs to confirm that every transaction was made with respect to the correct target market, but the insurance distributor should communicate the relevant information such as the amount of sales made outside the target market, summary information on the customer or a summary of the complaints received with regard to a specific product.

Documentation of distribution arrangements

102. EIOPA considers it important that insurance distributors keep appropriate records about all relevant action taken in relation to the product oversight and governance arrangements and make available those records to the competent authorities upon request, if needed for supervisory purposes.

1. Policy proposals for insurance undertakings and insurance intermediaries which manufacture insurance products for sale to customers

Establishment of product oversight and governance arrangements

1. Insurance undertakings and insurance intermediaries which manufacture any insurance product for sale to customers (the "manufacturer") shall maintain, operate and review product oversight and governance arrangements that set out appropriate measures and procedures aimed at designing, monitoring, reviewing and distributing products for customers, as well as taking action in respect of products that may lead to detriment to customers (product oversight and governance arrangements).
2. The product oversight and governance arrangements need to be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the manufacturer.
3. The manufacturer shall set out the product oversight and governance arrangements in a written document ("product oversight and governance policy") and make it available to its relevant staff.

Objectives of the product oversight and governance arrangements

4. The product oversight and governance arrangements shall aim to prevent or mitigate customer detriment, support a proper management of conflicts of interests and shall ensure that the customer's demands and needs, and, if relevant, their knowledge and experience in the investment field, their financial situation and investment objectives are duly taken into account.

Role of management

5. The manufacturer's administrative, management or supervisory body or equivalent structure responsible for the manufacturing of insurance products shall endorse, and be ultimately responsible for, the establishment, implementation, subsequent reviews and continued internal compliance with the product oversight and governance arrangements.

Acting as manufacturer

6. Based upon an overall analysis of the specific activity of the insurance intermediary, an insurance intermediary shall be considered as a manufacturer if the insurance intermediary has a decision-making role in designing and developing an insurance product for the market. This shall accordingly apply for insurance undertakings which do not provide coverage for an insurance product, but have a decision-making role in designing and developing this insurance product.
7. A decision-making role shall be assumed, in particular, where the insurance distributor autonomously determines the essential features and main elements of an insurance product, including the coverage, costs, risks, target market,

compensation and guarantee rights of the insurance product, which are not substantially modified by the insurance undertaking assuming the underwriting risks. A decision-making role shall be assumed, for example, in instances where an insurance distributor designs a sophisticated insurance product for a market niche based upon his experience and expertise of the specific market.

8. Activities which relate to the personalisation and adaptation of existing insurance products in the course of insurance distribution activities to the individual customer, as well as the design of tailor-made contracts at the request of one customer shall not be considered as activities of manufacturing, in particular cases such as the mere opportunity to choose between different lines of products, contractual clauses and options, individual premium discounts, recommendation of asset, with regard to a product already designed by the insurance undertaking, or the exchange of information between manufacturer and distributor related to these products.
9. Where an insurance intermediary or insurance undertaking is considered as a manufacturer according to paragraph 6, it shall define in a written agreement with the insurance undertaking issuing the insurance product, their collaboration and their respective roles, in particular, clarifying the procedures through which the two parties agree on the identification of the target market. The insurance undertaking issuing the insurance product remains fully responsible to the customer for the coverage provided, while both independently remain responsible for complying with the product oversight and governance arrangements of a manufacturer, as laid down in Article 25, IDD.

Review of product oversight and governance arrangements

10. The manufacturer shall regularly review the product oversight and governance arrangements to ensure that they are still valid and up to date and the manufacturer shall amend them, where appropriate.

Target market

11. The manufacturer shall identify the target market for each insurance product and specify the group of customers for whom the insurance product is compatible. As the identification of the target market describes a group of customers sharing common characteristics at an abstract and generalised level, it has to be distinguished from the individual assessment whether an insurance product is consistent with the demands and needs, and where applicable whether the insurance product is suitable and appropriate for the individual customer at the point of sale.
12. For the assessment whether an insurance product is compatible for a group of customers, the manufacturer shall only design and bring to the market products with features which are aligned with the demands and needs of the target market, and, where relevant with regard to the complexity and nature of the product, the knowledge and experience in the investment field as well as financial situation, including the ability to bear losses, and investment objectives of a typical customer of the target market.

13. When deciding whether a product is compatible with a target market, the manufacturer shall consider the level of information available to the target market and the financial literacy of the target market.
14. The target market shall be identified at a sufficiently granular level, depending on the characteristics, risk profile, complexity and nature of the product, avoiding groups of customers for whose demands and needs, and, where relevant, knowledge and experience in the investment field as well as financial situation and investment objectives, the product is generally not compatible.
15. Where relevant from a consumer protection perspective, the manufacturer shall also identify groups of customers for whom the product is generally not compatible.

Skills, knowledge and expertise of personnel involved in designing products

16. The manufacturer shall ensure that relevant personnel involved in designing products possess the necessary skills, knowledge and expertise in order to properly understand the product's main features and characteristics as well as the interests, objectives and characteristics of the target market.

Product testing

17. Before a product is brought to the market, or if the target market is changed, or changes to an existing product are introduced, the manufacturer shall conduct appropriate testing of the product including, if relevant, scenario analyses. The product testing shall assess if the product is in line with the objectives for the target market over the lifetime of the product.
18. The manufacturer shall not bring a product to the market if the results of the product testing show that the product is not aligned with the interests, objectives and characteristics of the target market.
19. The manufacturer shall carry out product testing in a qualitative and, where appropriate, in a quantifiable manner depending on the type and nature of the product and the related risk of detriment to customer.

Product monitoring and review

20. Once the product is distributed, the manufacturer shall continuously monitor and regularly review the product to identify crucial events that could materially affect the main features, the risk coverage and the guarantees of the products, e.g. the potential risk or return expectations.
21. When reviewing existing products, the manufacturer shall further consider if the product remains aligned with the demands and needs, and where relevant, with regard to the complexity of the product, the knowledge and experience in the investment field as well as the financial situation and investment objectives of the typical customer of the target market. The manufacturer shall also consider if the product is being distributed to the target market, or is reaching customers outside of the target market.

22. The manufacturer should determine the frequency for the regular review, taking into account the size, scale, contractual duration and complexity of the respective insurance product.

Remedial action

23. Should the manufacturer identify, during the lifetime of a product, circumstances which are related to the product and give rise to the risk of customer detriment, the manufacturer shall take appropriate action to mitigate the situation and prevent the re-occurrence of detriment.
24. If relevant, the manufacturer shall notify any relevant remedial action promptly to the distributors involved and to customers.

Distribution channels

25. The manufacturer shall select distribution channels that are appropriate for the target market considering the particular characteristics of the product.
26. The manufacturer shall select distributors with appropriate care.
27. The manufacturer shall provide to the insurance distributors all relevant information on the insurance product, the product approval process, the target market and distribution strategy.

This includes information on the main characteristics of the insurance product, its risks and costs (including implicit costs), as well as circumstances which may cause a conflict of interest to the detriment of the customer. The information shall be of an adequate standard, which is clear, precise and up-to-date.

28. The information given to distributors shall be sufficient to enable them to:
 - understand and place the product properly on the target market;
 - identify the target market for which the product is designed and also to identify the group of customers for whom the product is considered likely not to meet their interests, objectives and characteristics; and
 - to carry out insurance distribution activities in accordance with the best interests of its customers in accordance with Article 17(1) of Directive (EU) 2016/97.
29. The manufacturer shall take all reasonable steps to monitor that distribution channels act in compliance with the objectives of the manufacturer's product oversight and governance arrangements.
30. The manufacturer shall examine, on a regular basis, whether the product is distributed to customers belonging to the relevant target market.
31. When the manufacturer considers that the distribution channel does not meet the objectives of the manufacturer's product oversight and governance arrangements, the manufacturer shall take appropriate remedial action towards the distribution channel.

Outsourcing of the product design

32. The manufacturer shall retain full responsibility for compliance with product oversight and governance arrangements as described in this Technical Advice when it designates a third party to design products on their behalf.

Documentation of product oversight and governance arrangements

33. Relevant actions taken by the manufacturer in relation to the product oversight and governance arrangements shall be duly documented, kept for audit purposes and made available to the competent authorities upon request.

2. Policy proposals for insurance distributors which advise on or propose insurance products which they do not manufacture

Establishment of product distribution arrangements

34. The insurance distributor shall establish and implement product distribution arrangements that set out appropriate measures and procedures for considering the range of products and services the insurance distributor intends to offer to its customers, for reviewing the product distribution arrangements and for obtaining all necessary information on the product(s) from the manufacturer(s).
35. The product distribution arrangements need to be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the insurance distributor.
36. The insurance distributor shall set out the product distribution arrangements in a written document and make it available to its relevant staff.

Objectives of the product distribution arrangements

37. The product distribution arrangements shall aim to prevent or mitigate customer detriment, support a proper management of conflicts of interests and shall ensure that the customer's demands and needs, and, if relevant, their knowledge and experience in the investment field, their financial situation and investment objectives are duly taken into account.

Role of management

38. The insurance distributor's administrative, management or supervisory body or equivalent structure responsible for the insurance distribution, shall endorse and be ultimately responsible for the establishment, implementation, subsequent reviews and continued internal compliance with the product distribution arrangements.

Obtaining all relevant information on the insurance product from the manufacturer

39. The product distribution arrangements shall aim to ensure that the insurance distributor obtains all relevant information which have to be provided, as referred to in paragraph 27, from the manufacturer on the insurance product, the product approval process, the target market and the distribution strategy. This includes information on the main characteristics of the insurance product, its risks and costs (including implicit costs), as well as circumstances which may cause a conflict of interest to the detriment of the customer.
40. The information shall enable the distributors to:
 - understand and place the product properly on the target market;
 - identify the target market for which the product is designed and also to identify the group of customers for whom the product is considered likely not to meet their interests, objectives and characteristics; and

- to carry out insurance distribution activities in accordance with the best interests of the customer in accordance with Article 17(1) of Directive (EU) 2016/97.

Distribution strategy

41. Where the insurance distributor sets up or follows a distribution strategy, it shall not contradict the distribution strategy and the target market identified by the manufacturer of the insurance product.

Regular review of product distribution arrangements

42. The insurance distributor shall regularly review the product distribution arrangements to ensure that they are still valid and up to date and shall amend them where appropriate, in particular the distribution strategy, if any.
43. If the distributor has independently set up a distribution strategy, he shall amend the distribution strategy in view of the outcome of the review, where appropriate.
44. When reviewing distribution arrangements, the distributor shall consider if the product is being distributed to the identified target market, or is reaching customers outside the target market.
45. The distributor shall determine how regularly to review the product distribution arrangements based on relevant factors and taking into account the size, scale and complexity of the different products involved.
46. Upon request, distributors shall provide the manufacturer with relevant sales information and, if necessary, information on the above reviews to support product reviews carried out by manufacturers.

Informing the manufacturer

47. If the insurance distributor becomes aware of any problems causing the risk of customer detriment regarding the target market for a specific product or service, or that a given product or service no longer meets the criteria of the identified target market, he shall promptly inform the manufacturer and, as appropriate, update the distribution strategy already put in place.

Documentation

48. Relevant actions taken by the insurance distributor in relation to the product distribution arrangements shall be duly documented, kept for audit purposes and made available to the competent authorities on request.

5. Conflicts of Interest

Background/mandate

Extract from the Commission's request for advice (mandate)

"EIOPA is invited to provide technical advice on:

- the different steps that insurance intermediaries and insurance undertakings distributing insurance-based investment products might reasonably be expected to take within an effective organisational and administrative arrangement designed to identify, prevent, manage and disclose conflicts of interest;*
- the circumstances and situations to take into account when determining which types of conflict of interest may damage the interests of the customers or potential customers of an insurance intermediary or insurance undertaking.*

The technical advice should specify the different steps to be taken within an effective organisational and administrative arrangement designed to identify, prevent, manage and disclose conflicts of interest. This should include, in particular, the requirements for periodical review of conflicts of interest policies and clarifications with respect to the last resort nature of disclosure which should not be over-relied on by insurance intermediaries and insurance undertakings nor used as a measure to manage conflicts of interest. Particular attention should be given to the practical implementation of the proportionality requirement.

In order to ensure regulatory consistency, the technical advice should build on existing conflict of interest rules, as laid down in Commission Directive 2006/73/EC, particularly with regard to establishing appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of customers or potential customers. It should also be consistent with the line taken in the delegated acts expected to be adopted under Article 23(4) of MiFID II."

1. The relevant provisions in the Insurance Distribution Directive are:

Recital 39:

"The expanding range of activities that many insurance intermediaries and undertakings carry on simultaneously has increased potential for conflicts of interest between those different activities and the interests of their customers. It is therefore necessary to provide for rules to ensure that such conflicts of interest do not adversely affect the interests of the customer".

Recital 57:

"In order to ensure that any fee or commission or any non-monetary benefit in connection with the distribution of an insurance-based investment product paid to or paid by any party, except the customer or a person on behalf of the customer, does not have a detrimental impact on the quality of the relevant service to the customer, the insurance distributor should put in place appropriate and proportionate arrangements in order to avoid such detrimental impact. To that end, the insurance

distributor should develop, adopt and regularly review policies and procedures relating to conflicts of interest with the aim of avoiding any detrimental impact on the quality of the relevant service to the customer and of ensuring that the customer is adequately informed about fees, commissions or benefits”.

Article 27:

“Without prejudice to Article 17, an insurance intermediary or an insurance undertaking carrying on the distribution of insurance-based investment products shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as determined under Article 28 from adversely affecting the interests of its customers. Those arrangements shall be proportionate to the activities performed, the insurance products sold and the type of the distributor.”

Article 28:

1. *“Member States shall ensure that insurance intermediaries and insurance undertakings take all appropriate steps to identify conflicts of interest between themselves, including their managers and employees, or any person directly or indirectly linked to them by control, and their customers or between one customer and another, that arise in the course of carrying out any insurance distribution activities.*
2. *Where organisational or administrative arrangements made by the insurance intermediary or insurance undertaking in accordance with Article 27 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose to the customer the general nature or sources of the conflicts of interest, in good time before the conclusion of an insurance contract.*
3. *By way of derogation from Article 23(1), the disclosure referred to in paragraph 2 of this Article shall:*
 - (a) *be made on a durable medium; and*
 - (b) *include sufficient detail, taking into account the nature of the customer, to enable that customer to take an informed decision with respect to the insurance distribution activities in the context of which the conflict arises.*
4. *The Commission shall be empowered to adopt delegated acts in accordance with Article 38 in order to:*
 - (a) *define the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when carrying out insurance distribution activities;*
 - (b) *establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking.”*

Analysis

2. EIOPA has been invited by the Commission to provide technical advice on organisational and administrative arrangements designed to identify, prevent, manage and disclose conflicts of interest that arise in the course of carrying out any insurance distribution activities.
3. In its mandate, the Commission explicitly invites EIOPA to build on the results of previous work that has already been carried out by EIOPA, such as EIOPA's previous technical advice on conflicts of interests in direct and intermediated sales of insurance-based investment products.²⁴ The latter was submitted to the Commission on 6 January 2015 and referred to the rules on conflicts of interest which were introduced under Article 91, MiFID II²⁵ and were supposed to amend the Insurance Mediation Directive (IMD)²⁶.
4. Taking into consideration that the new requirements on conflicts of interest as outlined in Articles 27 and 28, IDD, are almost identical with the requirements which have been originally introduced under MiFID II, EIOPA considers it appropriate to base its current technical advice on the previous policy recommendations. Some changes, in particular with regard to the disclosure of conflicts of interest, have been introduced for the sake of consistency with the wording of the IDD and for the purpose of alignment with the draft Commission Delegated Regulation under MiFID II regarding organisational requirements and operating conditions for investment firms²⁷.
5. For this purpose, it has been clarified that **the disclosure of conflict of interest should be understood as step of last resort to be used only in cases where the organisational and administrative measures are not sufficient to effectively prevent and manage conflicts of interest. Any overreliance on disclosure should be considered a deficiency in the conflicts of interest policy.**
6. Instances where conflicts of interest typically arise and which need to be appropriately managed by the insurance undertakings or insurance intermediary include the following:
 - The insurance undertaking/insurance intermediary has an own interest in selling products of its own group (e.g. funds contained in a unit linked product);
 - The insurance undertaking/insurance intermediary is receiving sales commissions and/or follow-up commissions;
 - There is a horizontal conflict of interest between different customers, because there is higher demand for a specific life product than occasion for concluding of contracts/supply;
 - The insurance undertaking/insurance intermediary is earning money in case of a change of funds during the lifetime of a unit-linked life insurance contract; or
 - The insurance undertaking/insurance intermediary can have an interest to recommend or not to recommend a certain insurance-based investment product due to his own portfolio (own-account trading).

²⁴ [https://eiopa.europa.eu/Publications/Opinions/EIOPA-15-135_Technical%20Advice%20%20Impact%20Assessment_conflicts_of_interest_version%20for%20COM%20\(2\).pdf](https://eiopa.europa.eu/Publications/Opinions/EIOPA-15-135_Technical%20Advice%20%20Impact%20Assessment_conflicts_of_interest_version%20for%20COM%20(2).pdf)

²⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0065>

²⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32002L0092>

²⁷ <http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2398-EN-F1-1.PDF>

7. EIOPA acknowledges that the management of conflicts of interest, in particular those that arise between customers, should be undertaken in a way which takes into account the basic principles in insurance, in particular the principles of solidarity, risk pooling and mathematical methods.
8. EIOPA also notes that the European legislator has put emphasis on the application of the principle of proportionality in stating in Article 27, IDD, that the *"arrangements shall be proportionate to the activities performed, the insurance products sold and the type of distributor"*. EIOPA would like to point out that the policy proposals which were developed for the IMD explicitly refer to the principle of proportionality in stating that the procedures and measures should be *"appropriate to the size and activities of the insurance intermediaries or insurance undertaking ... and to the materiality of the risk of damage to the interests of the customer"*.
9. The measures and procedures taken by the insurance intermediary or insurance undertaking to identify, prevent and manage conflicts of interest under this section are without prejudice to the specific rules on inducements, in particular the obligation to assess the detrimental impact of inducements on the relevant service to the customer. EIOPA would like to emphasise that the assessment that a specific inducement or inducement scheme has a detrimental impact on the quality of the relevant service cannot be counterbalanced by any kind of organisational measure or procedure taken in accordance with the policy proposals outlined below.

Identification of conflicts of interests

1. For the purpose of identifying the types of conflict of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail the risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, including their managers, employees or any person directly or indirectly linked to them by control, have an interest related to the insurance distribution activities which is distinct from the customer's interest and which has the potential to influence the outcome of the services to the detriment of the customer. Insurance intermediaries and insurance undertakings shall also identify conflicts of interest between one customer and another.
2. For the purpose of identifying conflicts of interest as outlined in paragraph 1, insurance intermediaries and insurance undertakings shall take into account, by way of minimum criteria, any of the following situations:
 - a. the insurance intermediary, insurance undertaking, including their managers, employees, or any person directly or indirectly linked to them by control, is likely to make a financial gain, or avoid a financial loss, to the detriment of the customer;
 - b. the insurance intermediary, insurance undertaking, including their managers, employees, or any person directly or indirectly linked to them by control, has a financial or other incentive to favour the interest of another customer or group of customers over the interests of the customer;
 - c. the insurance intermediary, insurance undertaking, including their managers, employees, or any person directly or indirectly linked to them by control, receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer;
 - d. the insurance intermediary, persons working in an insurance undertaking responsible for the distribution of insurance-based investment products or linked person, are substantially involved in the management or development of insurance based-investment products, in particular if they have an influence on the pricing of those products or its distribution costs.

Conflicts of interest policy

3. Insurance intermediaries and insurance undertakings shall establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business. Where the insurance intermediary or insurance undertaking is a member of a group, the policy must also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

4. The conflicts of interest policy established in accordance with paragraph 3 shall include the following content:
 - (a) it must identify, with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more customers;
 - (b) it must specify procedures to be followed and measures to be adopted in order to manage and prevent such conflicts from damaging the interests of the customer of the insurance intermediary or insurance undertaking, appropriate to the size and activities of the insurance intermediaries or insurance undertaking and of the group to which they belong, and to the risk of damage to the interests of the customer.
5. For the purpose of paragraph 4(b), the procedures to be followed and measures to be adopted shall include, where appropriate, in order to ensure that the distribution activities are carried out in accordance with the best interest of the customer and are not biased by conflicting interests of the insurance undertaking, the insurance intermediary or another customer, the following:
 - (a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may damage the interests of one or more customers;
 - (b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;
 - (c) the removal of any direct link between payments, including remuneration, to relevant persons principally engaged in one activity and payments, including remuneration to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
 - (d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out insurance distribution activities;
 - (e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in insurance distribution activities where such involvement may impair the proper management of conflicts of interest.
6. If insurance intermediaries and insurance undertakings demonstrate that those measures and procedures are not appropriate to ensure that the distribution activities are carried out in accordance with the best interest of the customer and are not biased by conflicting interests of the insurance undertakings, the insurance intermediaries or another customer, insurance intermediaries and insurance undertakings shall adopt adequate alternative measures and procedures for that purpose.
7. The measures and procedures taken by insurance intermediaries or insurance undertakings according to paragraph 4(b), shall be without prejudice to the specific rules on inducements, in particular the obligation to assess the detrimental impact of inducements on the relevant service to the customer.
8. Insurance intermediaries and insurance undertakings shall avoid over reliance on disclosure and shall ensure that disclosure, pursuant to Article 28(2) of

Directive (EU) 2016/97, is a step of last resort that can be used only where the effective organisational and administrative measures established by insurance intermediaries and insurance undertakings to prevent or manage conflicts of interests in accordance with Article 27 thereof are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the customer will be prevented.

9. Insurance intermediaries and insurance undertakings shall make that disclosure to customers, pursuant to Article 28(3) of Directive (EU) 2016/97/EC, in a durable medium. The disclosure shall:

- (a) include a specific description of the conflict of interest, including the general nature and sources of the conflict of interest, as well as the risks to the customer that arise as a result of the conflict of interest and the steps undertaken to mitigate these risks,
- (b) clearly state that the organisational and administrative arrangements established by the insurance intermediary or insurance undertaking are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the customer will be prevented, in order to enable the customer to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

10. Insurance intermediaries and insurance undertakings shall:

- (a) assess and periodically review – at least annually – the conflicts of interest policy established in accordance with this article and to take all appropriate measures to address any deficiencies, and
- (b) keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of the one or more customers has arisen or, in the case of an ongoing service or activity, may arise.

11. Where established, senior management of the insurance intermediary or insurance undertaking shall receive on a frequent basis, and at least annually, written reports on these situations.

6. Inducements

Background/mandate

Extract from the Commission's request for advice (mandate)

"EIOPA is invited to provide technical advice on:

- the conditions under which payments and non-monetary benefits paid or received by insurance intermediaries or insurance undertakings in connection with the distribution of an insurance-based investment product may have a detrimental impact on the quality of the relevant service to the customer;*
- the circumstances and situations to take into account when determining whether an insurance distributor or an insurance undertaking paying or receiving inducements complies with its obligation to act honestly, fairly and professionally in accordance with the best interests of the customer.*

The technical advice should specify the methodology to be applied in determining a possible detrimental impact of inducements on the quality of the service and testing compliance with the insurance intermediaries' and insurance undertakings' duty to act in the best interests of its customers. Further clarification should be given with respect to the factual and legal elements and circumstances to take into account in determining whether the conditions set in Article 29(2) are met.

To achieve greater convergence in the application of the detrimental impact criteria, the technical advice should indicate examples of circumstances where a fee, commission or non-monetary benefit may generally be regarded as having a detrimental effect on the quality of the relevant service to the customer. This could be complemented by an exemplary enumeration of circumstances where third-party payments and benefits are generally considered acceptable. In the same way, it should identify circumstances indicating that an insurance intermediary or an insurance undertaking does not comply with the obligation to act honestly, fairly and in accordance with the best interests of the customer.

The technical advice should be consistent with the line taken in the delegated acts expected to be adopted under Article 24(13) of MiFID II, while recognising the difference in terminology between Article 29(2) (a) of the Directive and Article 24(9)(a) of MiFID II".

1. The relevant provisions in the Insurance Distribution Directive are:

Recital 57:

"In order to ensure that any fee or commission or any non-monetary benefit in connection with the distribution of an insurance-based investment product paid to or paid by any party, except the customer or a person on behalf of the customer, does not have a detrimental impact on the quality of the relevant service to the customer, the insurance distributor should put in place appropriate and proportionate arrangements in order to avoid such detrimental impact. To that end, the insurance distributor should develop, adopt and regularly review policies and procedures relating to conflicts of interest with the aim of avoiding any detrimental impact on the quality of the relevant service to the customer and of ensuring that the customer is adequately informed about fees, commissions or benefits".

Article 29(2):

"Without prejudice to points (d) and (e) of Article 19(1) and Article 22(3), Member States shall ensure that insurance intermediaries or insurance undertakings are regarded as fulfilling their obligations under Article 17(1), Article 27 or Article 28 where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the customer or a person on behalf of the customer only where the payment or benefit:

- (a) does not have a detrimental impact on the quality of the relevant service to the customer; and*
- (b) does not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers."*

Article 29(4):

"Without prejudice to paragraph 3 of this Article, the Commission shall be empowered to adopt delegated acts in accordance with Article 38 to specify:

- (a) the criteria for assessing whether inducements paid or receive by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the customer;*
- (b) the criteria for assessing compliance of insurance intermediaries and insurance undertakings paying or receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer."*

Analysis

2. The Commission's request for advice refers to the "*payments and non-monetary benefits paid or received by insurance intermediaries or insurance undertakings in connections with the distribution of an insurance-based investment product*".
3. Although IDD does not entail an explicit definition of an "inducement", Article 29(2), IDD clarifies that it refers to the payment of any fee or commission as well as the provision of any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any third party except the customer or a person on behalf of the customer. Unlike Article 17(3), IDD, Article 29(2) does not comprise internal payments from insurance distributors to their employees. In addition, the Commission's mandate makes explicit reference to "third party payments and benefits".
4. Therefore, **EIOPA's conclusion is that the Commission is seeking advice in relation to fees or commissions as well as non-monetary benefits paid by or to third parties only, but not in relation to internal payments (e.g. fees paid by the customer or internal payments to employees of insurance distributors).**
5. EIOPA would like to emphasise that EIOPA has an impartial view on the business models of insurance distributors and does not advocate for the establishment of a fee-based distribution model against a commission-based distribution model. At the same time, EIOPA acknowledges that conflicts of interest may arise in both instances which oblige the entities concerned to take appropriate measures to manage these conflicts of interest in order to avoid any damage to customers.
6. EIOPA understands the term, "inducement", as any fee, commission, any other monetary or non-monetary benefit which is paid or provided in connection with the distribution of an insurance-based investment product or an ancillary service to or by any party except the customer or a person on behalf of the customer.
7. Moreover, EIOPA understands the term "inducement scheme" to mean a set of rules that govern the payment of inducements and which generally includes a description of the respective obligations of the person paying the inducements and the person receiving the inducements. It normally outlines the criteria which the recipient of the inducements must achieve in order to earn an inducement and specifies the obligations to pay the inducements. It might elaborate on the amount of the inducement or how the inducement is calculated and any other governance measures in relation to the payment of the inducement. For example, an inducement scheme can be included as part of a contract of appointment between a distributor and a manufacturer.
8. The IDD requires insurance intermediaries and insurance undertakings to apply the general rules laid down in Articles 27 and 28 of the IDD for the identification and the specific requirements on inducements as laid down in Article 29(2) IDD (two step approach):
 - a. In a *first* step, insurance undertakings and insurance intermediaries have to identify all inducements which are paid in connection with the distribution of insurance products.
 - b. In a *second* step, insurance undertakings and insurance intermediaries have to establish adequate procedures to assess whether the inducements have a detrimental impact and of specific organisational measures as outlined below aiming to address the risks of customer detriment caused by the payment of inducements.

9. EIOPA would like to emphasise that the assessment that a specific inducement or inducement scheme has a detrimental impact on the quality of the relevant service, cannot be counterbalanced by any kind of organisational measure or procedure taken in accordance with the general rules on the management of conflict of interest as outlined above.
10. Furthermore, EIOPA would like to emphasise that the disclosure of inducements is specifically addressed by Article 29(1)(c)²⁸ and the second subparagraph of Article 29(1), IDD, as well as Article 19, IDD which entails more general and simple pre-contractual status disclosure which generally precede the general rules on the disclosure of conflicts of interest (see the policy proposals above), including the disclosure as a step of last resort.
11. The Commission has asked EIOPA to provide technical advice on the conditions under which inducements may have a detrimental impact on the quality of the relevant service to the customer.
12. Although EIOPA has been asked by the Commission to ensure "*as much regulatory consistency as possible in the conduct of business standards for IBIPs and financial instruments under MiFID II*", EIOPA notes that the IDD uses different terminology than the respective rules introduced by MiFID II which form the basis of ESMA's technical advice for MiFID II.
13. Whereas MiFID II requires that the inducement "*is designed to enhance the quality of the relevant service to the client*"²⁹, the IDD requires that the inducement does "*not have a detrimental impact on the quality of the relevant service to the customer*"³⁰. From EIOPA's point of view, it is important to adequately consider these differences, which have been agreed upon by the European legislators, when establishing implementing measures for specifying the conditions under which inducements have a detrimental impact on the quality of the services.
14. In view of the cross-sectoral implications, EIOPA believes, however, that the approach for IDD should offer as much compatibility as possible to avoid any unnecessary burden for market participants and to further pursue the goal of a level playing field across the different financial sectors.
15. Against this background, EIOPA proposes to introduce a methodology which is based upon a high-level principle stating the circumstances under which an inducement might have a "*detrimental impact on the relevant service to the customer*". This high-level principle is complemented by a non-exhaustive list of criteria to be considered when assessing whether inducements increase the risk of detrimental impact on the quality of the relevant service to the customer. For the sake of consistency, the high level principle mirrors the general requirement in Article 17(1) of the IDD requiring that "*insurance distributors always act honestly, fairly and professionally in accordance with the best interests of their customers*" when carrying out insurance distribution.
16. According to the methodology proposed by EIOPA, insurance undertakings and insurance intermediaries are required to consider whether one or more of the listed instances increases the risk of detrimental impact on the quality of service. Even if this is the case, this need not automatically lead to the conclusion that the inducement or inducement scheme is detrimental on the quality of the relevant service to the customer. This decision ultimately depends on an overall analysis which should take into consideration all relevant factors which may

²⁸ See the reference to "also encompassing any third party payments".

²⁹ Article 24(9)(a), MiFID II

³⁰ Article 29(2)(a), IDD

increase and decrease the risk of detrimental impact, as well as all organisational measures taken by the insurance undertaking or insurance intermediary aiming to ensure that the inducements do not provide any incentive to carry out the insurance distribution activities in a way which is not in accordance with the best interest of the customer (a "holistic assessment").

17. If none of the listed instances arise in a given situation, the high-level principle still applies. In this case, the focus of the assessment lies on the question whether the inducement or inducement scheme encourage the insurance undertaking or insurance intermediary to carry out distribution activities in a way which is not in accordance with the best interests of the customer. The latter depends on factors such as the respective type, size, design and structure of the inducement or inducement scheme. Here again, the assessment should be based on a holistic assessment which also takes into consideration organisational measures as referred to above.
18. For the sake of clarification, EIOPA would like to point out that, generally speaking, inducements which have a detrimental impact on the quality of the relevant service to the customer, also impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers (Article 29 (2)(b) IDD). **For this reason, although the Commission's mandate mentions these two aspects separately, they have been analysed together for the purposes of this technical advice.**
19. As outlined, EIOPA proposes to supplement the aforementioned high-level principle with a list of criteria to comply with the Commission's request for EIOPA to list "*examples of circumstances where a fee, commission or non-monetary benefit may generally be regarded as having a detrimental effect on the quality of the relevant service to the customer*".
20. EIOPA would like to clarify, however, that **this list is not supposed to introduce a legal assumption of detrimental impact, but to specify criteria to be considered when assessing whether an inducement or inducement scheme increases the "risk" of exposure to a detrimental impact on the quality of the relevant service to the customer.** EIOPA acknowledges that commission-based distribution is still a widespread practice in some Member States and that commissions are a percentage of the premium paid by the customer for coverage based upon the intermediary's agreement with the insurance undertaking which are, in principle, meant to compensate for services linked to the conclusion of the contract or services provided during the lifetime of the insurance contract. **Therefore, EIOPA would like to emphasise that the objective of this list is not to introduce a *de facto* prohibition on the receipt/payment of inducements, but to provide guidance to market participants in assessing inducements and to point out specific circumstances where there is an increased risk of a detrimental impact. The list builds upon supervisory work of national competent authorities**³¹

³¹ For example:

- The NL AFM reported in 2011 about **excessive commissions in the context of the distribution of payment protection insurance (PPI) products** where commissions of up to 86% of the single insurance premium were paid. It was also reported about the successful introduction of national legislation to eliminate "hit and run" practices which are initiated by revenue-related boni. Although referring to non-IBIPs products, this example shows the practical relevance of this issue: <https://www.rijksoverheid.nl/documenten/kamerstukken/2009/06/16/bijlage-provisies-voor-bemiddelaars-in-krediet-beschermers>

and entails payments such as contingent commissions³², profit commissions, upfront commissions and excessive sales targets.

21. With regard to the request from the Commission to provide "an exemplary enumeration of circumstances where third-party payments and benefits are generally considered acceptable", EIOPA would like to emphasise that a "positive list" outlining circumstances generally considered acceptable, entails the high risk of creating loopholes for regulatory arbitrage and might restrict the ability of national competent authorities to take prohibitive action in relation to inducements both *ex ante* and *ex post*. In addition, there is the risk that such a list can become outdated and does not reflect current market and technological developments. It could be very challenging for a supervisory authority to "future-proof" a white list or construct it in such a way so as to ensure that insurance undertakings or insurance intermediaries do not misinterpret it more widely than is intended and in such a way as to circumvent the inducement rules. By way of an example, one national competent authority's supervisory experience was that similar safe harbour provisions in their national law, foiled the achievement of the legislative purpose of strengthening the protection of customers³³.

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- UK FCA guidance on inducements published in January 2014 also provides a steer (<https://www.fca.org.uk/static/documents/finalised-guidance/fq14-01.pdf>). For example, paragraph 2.25 identifies examples of poor practice in relation to payments by providers for development by intermediaries of IT facilities. Similarly, paragraph 2.31 identifies generic examples of poor practices linked to **excessive payments by life insurers to advisory firms to attend their seminars and conferences**. Also para 2.36 refers to amounts of "unreasonable value" when providing gifts/prizes and hospitality.
 - In order to create a sounder market for advice on financial products, the Swedish Finansinspektionen (FI) has proposed a **ban on commissions in connection with investment advice and mediation of life insurance with elements of saving**. FI has specifically highlighted the problems with commissions paid out directly in connection with signing up for products or entering insurance agreements, known as **up-front commissions**. In 2014, the FI conducted a survey of commission income on the advisory market, covering around 200 insurance intermediaries, and firms authorised to conduct securities business. The survey showed that "**among both insurance intermediaries and investment firms, it is very common to have commissions that are paid out in direct connection with the customer purchasing the product, known as upfront commissions**"....."**Upfront commissions are particularly problematic because they also incentivise firms to recommend that consumers frequently switch investments, with the sole purpose of generating fresh commission income for the firm**": http://www.fi.se/upload/90_English/20_Publications/10_Reports/2015/konsumentrapp_2015engNY.pdf
 - In **EIOPA's Third Annual Consumer Trends Report**, it was reported that DE, IE and NO carried out supervisory reviews of selling practices in response to mis-selling cases which found, for example, that sales incentive schemes might have components (**such as the use of thresholds/targets to unlock incentives, 100% variable remuneration**), which encouraged poor sales behaviour. The incentive schemes did not place sufficient emphasis on linking fair treatment of customers (or deterring/penalising poor treatment of customers) with the receipt of incentives: https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-14-207-Third_Consumer_Trends_Report.pdf
 - In **EIOPA's Fourth Annual Consumer Trends Report**, it was reported that "*some NCAs also reviewed possible conflicts of interest arising from the selection of the underlying funds. If adequate governance and control frameworks are not in place, there is a risk that investments are made on the basis of those which provide the **highest commission from fund managers** and not in the best interests of the consumer*": https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-15-233%20-%20EIOPA_Fourth_Consumer_Trends_Report.pdf

³² Contingent commissions and profit commissions were also identified by the Commission, as sources of conflict of interest, in the context of its Sector Inquiry on business insurance in 2007 (notwithstanding that this inquiry was primarily focussed on non-life products in the non-retail sector): "*Conflicts of interest that could jeopardise the role of brokers and multiple agents in stimulating competition in the insurance marketplace can also arise from a number of sources, linked to their remuneration, including contingent commissions and fees from services rendered to insurers*". http://ec.europa.eu/competition/sectors/financial_services/inquiries/final_report_annex.pdf

³³ In the UK FCA's Inducement rules, it was recognised that some payments or benefits offered by providers to advisory firms can be in the customer's best interests, and the conflicts of interest arising can be managed. Two thematic projects by the FCA following the introduction of the Retail Distribution Review (RDR) showed how some firms took an overly broad interpretation of this to justify a wide range of benefits that in the FCA's view, did not meet the inducements rules. In the end, the FCA was obliged to issue further guidance to dispel any ambiguity around the interpretation of the white list: <https://www.fca.org.uk/publications/finalised-guidance/fq14-1-supervising-retail-investment-advice-inducements-and>

22. Therefore, EIOPA recommends not including such a positive list in the technical advice. However, EIOPA acknowledges that specific circumstances may be considered to decrease the risk of detrimental impact on the quality of the relevant service to the customer and could be taken into consideration as part of an overall assessment.
23. Without prejudice to additional requirements of IDD applicable to insurance distribution, in particular Article 30 IDD, the possibility of Member States to impose stricter requirements as stated in Article 29(3), IDD and the outcome of a thorough overall analysis of all relevant circumstances, the following practices may be considered to decrease the risk that inducements have a detrimental impact on the quality of the service to the customer, if they are appropriately taken into account:
- The inducement scheme allows the insurance undertaking to claim back any inducement in cases where the interests of a customer have been harmed while carrying out insurance distribution activities to the customer;
 - The inducement scheme provides for the prompt refunding of any inducements if the product lapses or is surrendered at an early stage; or
 - The inducement is solely or predominantly based on qualitative criteria, reflecting compliance with the applicable regulations, fair treatment and satisfaction of customers and the quality of services provided to customers on a continuous basis.
24. This list is non-exhaustive and is not intended to create a legal “safe harbour” and should be understood as examples of criteria to be applied in an overall analysis, only. They are deemed to promote more customer-centric behaviour by distributors. **It should be noted that insurance undertakings and insurance intermediaries are, in any case, not relieved from a thorough assessment whether an inducement has a detrimental impact and that these practices may not be adequate or sufficient to mitigate the risk of detrimental impact in an appropriate way, depending on the specific circumstances of the individual case.**
25. Furthermore, EIOPA considers it important that specific organisational measures are introduced to support and ensure that the substantive requirements are fulfilled by regulated entities on an ongoing basis. EIOPA considers that the responsibility and the types of organisational measures will be different for those who pay inducements and those who receive them.
26. Insurance undertakings and insurance intermediaries who pay inducements should have organisational measures in place to assess the design and structure of any inducement scheme which they pay to insurance distributors to ensure it is compliant with Article 29(2). In this context, EIOPA would like to emphasise that insurance undertakings and insurance intermediaries are not required to assess any individual inducement which is paid following the sale of an insurance contract to a particular customer, but only to assess the generic inducement which is paid for selling a particular type of product.
27. Insurance intermediaries and insurance undertakings who receive inducements need to consider the inducement schemes which they are party to, both individually and collectively, and ensure that there are organisational measures in place to ensure that inducements do not lead to detriment for customers and

do not hinder their ability to act honestly, fairly and in accordance with the best interests of their customers.

Inducement and Inducement Scheme

1. An inducement is any fee, commission, or any other monetary or non-monetary benefit which is paid or provided in connection with the distribution of an insurance-based investment product or an ancillary service to or by any party except the customer or a person on behalf of the customer.

2. An inducement scheme is a set of rules that govern the payment of inducements. It generally includes the criteria under which inducements are paid.

Methodology and criteria for assessing the detrimental impact

3. An inducement or inducement scheme has a detrimental impact on the quality of the relevant service to the customer if it is of such a nature and scale that it provides an incentive to carry out insurance distribution activities in a way which is not in accordance with the best interests of the customer.
4. Insurance undertakings and insurance intermediaries shall assess all relevant factors which increase or decrease the risk of detrimental impact on the quality of the relevant service to the customer.
5. Insurance undertakings and insurance intermediaries shall, in particular, take into consideration the following criteria in order to assess whether inducements or inducement schemes increase the risk of detrimental impact:
 - a) the inducement or inducement scheme encourages the insurance intermediary or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when the insurance intermediary or insurance undertaking could, from the outset, propose a different available product or service which would better meet the customer's needs;
 - b) the inducement or inducement scheme is solely or predominantly based on quantitative commercial criteria and does not take into account appropriate qualitative criteria, reflecting compliance with the applicable regulations, fair treatment of customers and the quality of services provided to customers;
 - c) the value of the inducement is disproportionate when considered against the value of the product and the services provided in relation to the product;
 - d) the inducement is entirely or mainly paid upfront when the product is sold without any appropriate refunding mechanism if the product lapses or is surrendered at an early stage;
 - e) the inducement scheme does not provide for an appropriate refunding mechanism if the product lapses or is surrendered at an early stage;
 - f) if the inducement scheme entails any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a sales target based on volume or value of sales.
6. The list of criteria as laid down in paragraph 5 is non-exhaustive.

Organisational requirements

7. Insurance undertakings and insurance intermediaries shall establish, implement and maintain appropriate organisational arrangements and procedures in order to assess on an ongoing basis and ensure that the generic inducement paid for a particular type of contract and the structure of inducement schemes which they pay to or receive:
 - a. do not lead to a detrimental impact on the quality of the service provided to customers; and
 - b. do not prevent the insurance intermediary or insurance undertaking from complying with their obligation to act honestly, fairly and professionally and in accordance with the best interests of their customers.
8. The assessment shall be based upon an overall analysis which takes into consideration:
 - a) all relevant factors which may increase or decrease the risk of detrimental impact; and
 - b) appropriate organisational measures taken by the insurance undertaking or insurance intermediary to decrease the risk of detrimental impact, which aim to ensure that the inducements do not provide any incentive to carry out the insurance distribution activities in a way which is not in accordance with the best interests of the customer.
9. Insurance undertakings and insurance intermediaries as referred to in paragraph 7 shall ensure that any inducement scheme is approved by the insurance undertaking or insurance intermediary's senior management.
10. Insurance intermediaries and insurance undertakings shall document the assessment referred to in paragraph 8 in a durable medium.
11. As part of the conflicts of interest policy [*as outlined under Section 5 of this technical advice*], insurance intermediaries and insurance undertakings shall set up a gifts and benefits policy that stipulates what gifts and benefits are acceptable and what should happen where limits are breached.

7. Assessment of suitability and appropriateness and reporting to customers

Extract from the Commission's request for advice (mandate)

"EIOPA is invited to provide technical advice on the information to obtain when assessing the suitability or appropriateness of insurance-based investment products for their customers, whereby a distinction has to be made between the situation when advice is provided and the situation when no advice is provided".

"EIOPA is invited to provide technical advice on the content and format of records and agreements for the provision of services to customers".

"EIOPA is invited to provide technical advice on the content and format of periodic reports to customers on the services provided."

1. The following provisions in the Insurance Distribution Directive are relevant to this topic:

Recital 10:

Current and recent financial turbulence has underlined the importance of ensuring effective consumer protection across all financial sectors. It is appropriate, therefore, to strengthen the confidence of customers and to make regulatory treatment of the distribution of insurance products more uniform in order to ensure an adequate level of customer protection across the Union. The level of consumer protection should be raised in relation to Directive 2002/92/EC in order to reduce the need for varying national measures. It is important to take into consideration the specific nature of insurance contracts in comparison to investment products regulated under Directive 2014/65/EU of the European Parliament and of the Council (1). The distribution of insurance contracts, including insurance-based investment products, should therefore be regulated under this Directive and be aligned with Directive 2014/65/EU. The minimum standards should be raised with regard to distribution rules and a level playing field should be created in respect of all insurance-based investment products.

Recital 56:

Insurance-based investment products are often made available to customers as potential alternatives or substitutes to investment products subject to Directive 2014/65/EU. To deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that insurance-based investment products are subject, in addition to the conduct of business standards defined for all insurance products, to specific standards aimed at addressing the investment element embedded in those products. Such specific standards should include provision of appropriate information and requirements for advice to be suitable...

Article 2(1)(18):

'durable medium' means any instrument which:

(a) enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information; and

(b) allows the unchanged reproduction of the information stored.

Article 20(1):

Prior to the conclusion of an insurance contract, the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision.

Any contract proposed shall be consistent with the customer's insurance demands and needs.

Where advice is provided prior to the conclusion of any specific contract, the insurance distributor shall provide the customer with a personalised recommendation explaining why a particular product would best meet the customer's demands and needs.

Article 23(1):

All information to be provided in accordance with Articles 18, 19, 20 and 29 shall be communicated to the customer:

(a) on paper;

(b) in a clear and accurate manner, comprehensible to the customer;

(c) in an official language of the Member State in which the risk is situated or of the Member State of the commitment or in any other language agreed upon by the parties; and

(d) free of charge.

Article 29(1):

1. Without prejudice to Article 18 and Article 19(1) and (2), appropriate information shall be provided in good time, prior to the conclusion of a contract, to customers or potential customers with regard to the distribution of insurance-based investment products, and with regard to all costs and related charges. That information shall include at least the following:

(a) when advice is provided, whether the insurance intermediary or insurance undertaking will provide the customer with a periodic assessment of the suitability of the insurance-based investment products recommended to that customer, referred to in Article 30.

Article 30(1):

Without prejudice to Article 20(1), when providing advice on an insurance-based investment product, the insurance intermediary or insurance undertaking shall also 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 that person's ability to bear losses, and that person's investment objectives, including that person's risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer or potential customer the insurance-based investment products that are suitable for that person and that, in particular, are in accordance with that person's risk tolerance and ability to bear losses.

Member States shall ensure that where an insurance intermediary or insurance undertaking provides investment advice recommending a package of services or products bundled pursuant to Article 24, the overall bundled package is suitable.

Article 30(2):

Without prejudice to Article 20(1), Member States shall ensure that an insurance intermediary or insurance undertaking, when carrying out insurance distribution activities other than those referred to in paragraph 1 of this Article, in relation to sales where no advice is given, asks the customer or potential customer 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 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 24, the assessment shall consider whether the overall bundled package is appropriate.

Where the insurance intermediary or insurance undertaking considers, on the basis of the information received under the first subparagraph, that the product is not appropriate for the customer or potential customer, the insurance intermediary or insurance undertaking shall warn the customer or potential customer to that effect. That warning may be provided in a standardised format.

Where customers or potential customers do not provide the information referred to in the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the insurance intermediary or insurance undertaking shall warn them that it is not in a position to determine whether the product envisaged is appropriate for them. That warning may be provided in a standardised format.

Article 30(4):

The insurance intermediary or insurance undertaking shall establish a record that includes the document or documents agreed between the insurance intermediary or insurance undertaking and the customer that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

Article 30(5):

The insurance intermediary or insurance undertaking shall provide the customer with adequate reports on the service provided on a durable medium. Those reports shall include periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.

When providing advice on an insurance-based investment product, the insurance intermediary or the insurance undertaking shall, prior to the conclusion of the contract, provide the customer with a suitability statement on a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the customer. The conditions set out in Article 23(1) to (4) shall apply.

Where the contract is concluded using a means of distance communication which prevents the prior delivery of the suitability statement, the insurance intermediary or

the insurance undertaking may provide the suitability statement on a durable medium immediately after the customer is bound by any contract, provided both of the following conditions are met:

- (a) the customer has consented to receiving the suitability statement without undue delay after the conclusion of the contract; and*
- (b) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract in order to receive the suitability statement in advance of such conclusion.*

Where an insurance intermediary or an insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics of the customer.

Article 30(6):

The Commission shall be empowered to adopt delegated acts in accordance with Article 38 to further specify how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article when carrying out insurance distribution activities with their customers, including with regard to the information to be obtained when assessing the suitability and appropriateness of insurance-based investment products for their customers..... Those delegated acts shall take into account:

- (a) the nature of the services offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;*
- (b) the nature of the products being offered or considered including different types of insurance-based investment products;*
- (c) the retail or professional nature of the customer or potential customer.*

2. The following provisions in Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ("MiFID II") are relevant to this topic:

Article 25(2)(3):

2. When providing investment advice or portfolio management the investment firm shall obtain the necessary information regarding the client's or potential client'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 investment firm to recommend to the client or potential client the investment services and financial instruments that are suitable for him and, in particular, are in accordance with his risk tolerance and ability to bear losses.

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.

3. 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.

Where the investment firm considers, on the basis of the information received under the first subparagraph, that the product or service is not appropriate to the client or potential client, the investment firm shall warn the client or potential client. That warning may be provided in a standardized format.

Where clients or potential clients do not provide the information referred to under the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the investment firm shall warn them that the investment firm is not in a position to determine whether the service or product envisaged is appropriate for them. That warning may be provided in a standardized format.

3. The following provisions in the draft Commission Delegated Regulation under MiFID II are relevant for this topic:

Article 54 - Assessment of suitability and suitability reports (Article 25(2) of Directive 2014/65/EU):

1. Investment firms shall not create any ambiguity or confusion about their responsibilities in the process when assessing the suitability of investment services or financial instruments in accordance with Article 25(2) of Directive 2014/65/EU. When undertaking the suitability assessment, the firm shall inform clients or potential clients, clearly and simply, that the reason for assessing suitability is to enable the firm to act in the client's best interest.

Where investment advice or portfolio management services are provided in whole or in part through an automated or semi-automated system, the responsibility to undertake the suitability assessment shall lie with the investment firm providing the service and shall not be reduced by the use of an electronic system in making the personal recommendation or decision to trade.

2. Investment firms shall determine the extent of the information to be collected from clients in light of all the features of the investment advice or portfolio management services to be provided to those clients. Investment firms shall obtain from clients or potential clients such information as is necessary for the firm to understand the essential facts about the client and to have a reasonable basis for determining, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:

(a) it meets the investment objectives of the client in question, including client's risk tolerance;

(b) it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;

(c) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

3. Where an investment firm provides an investment service to a professional client it shall be entitled to assume that in relation to the products, transactions and services

for which it is so classified, the client has the necessary level of experience and knowledge for the purposes of point (c) of paragraph 2.

Where that investment service consists in the provision of investment advice to a professional client covered by Section 1 of Annex II to Directive 2014/65/EU, the investment firm shall be entitled to assume for the purposes of point (b) of paragraph 2 that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

4. The information regarding the financial situation of the client or potential client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

5. The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

6. Where a client is a legal person or a group of two or more natural persons or where one or more natural persons are represented by another natural person, the investment firm shall establish and implement policy as to who should be subject to the suitability assessment and how this assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives should be collected. The investment firm shall record this policy.

Where a natural person is represented by another natural person or where a legal person having requested treatment as professional client in accordance with Section 2 of Annex II of Directive 2014/65/EU is to be considered for the suitability assessment, the financial situation and investment objectives shall be those of the legal person or, in relation to the natural person, the underlying client rather than of the representative. The knowledge and experience shall be that of the representative of the natural person or the person authorised to carry out transactions on behalf of the underlying client.

7. Investment firms shall take reasonable steps to ensure that the information collected about their clients or potential clients is reliable. This shall include, but shall not be limited to, the following:

(a) ensuring clients are aware of the importance of providing accurate and up-to-date information;

(b) ensuring all tools, such as risk assessment profiling tools or tools to assess a client's knowledge and experience, employed in the suitability assessment process are fit-for-purpose and are appropriately designed for use with their clients, with any limitations identified and actively mitigated through the suitability assessment process;

(c) ensuring questions used in the process are likely to be understood by clients, capture an accurate reflection of the client's objectives and needs, and the information necessary to undertake the suitability assessment; and

(d) taking steps, as appropriate, to ensure the consistency of client information, such as by considering whether there are obvious inaccuracies in the information provided by clients.

Investment firms having an on-going relationship with the client, such as by providing an ongoing advice or portfolio management service, shall have, and be able to demonstrate, appropriate policies and procedures to maintain adequate and up-to-date information about clients to the extent necessary to fulfil the requirements under paragraph 2.

8. Where, when providing the investment service of investment advice or portfolio management, an investment firm does not obtain the information required under Article 25(2) of Directive 2014/65/EU, the firm shall not recommend investment services or financial instruments to the client or potential client.

9. Investment firms shall have, and be able to demonstrate, adequate policies and procedures in place to ensure that they understand the nature, features, including costs and risks of investment services and financial instruments selected for their clients and that they assess, while taking into account cost and complexity, whether equivalent investment services or financial instruments can meet their client's profile.

10. When providing the investment service of investment advice or portfolio management, an investment firm shall not recommend or decide to trade where none of the services or instruments are suitable for the client.

11. When providing investment advice or portfolio management services that involve switching investments, either by selling an instrument and buying another or by exercising a right to make a change in regard to an existing instrument, investment firms shall collect the necessary information on the client's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.

Article 55 Provisions common to the assessment of suitability or appropriateness (Article 25(2) and 25(3) of Directive 2014/65/EU)

1. Investment firms shall ensure that the information regarding a client's or potential client's knowledge and experience in the investment field includes the following, to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, including their complexity and the risks involved:

(a) the types of service, transaction and financial instrument with which the client is familiar;

(b) the nature, volume, and frequency of the client's transactions in financial instruments and the period over which they have been carried out;

(c) the level of education, and profession or relevant former profession of the client or potential client.

2. An investment firm shall not discourage a client or potential client from providing information required for the purposes of Article 25(2) and (3) of Directive 2014/65/EU.

3. An investment firm shall be entitled to rely on the information provided by its clients or potential clients unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

Article 56 Assessment of appropriateness and related record-keeping obligations (Article 25(3) and 25(5) of Directive 2014/65/EU)

1. Investment firms, shall determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded when assessing whether an investment service as referred to in Article 25(3) of Directive 2014/65/EU is appropriate for a client.

An investment firm shall be entitled to assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the client is classified as a professional client.

7.1 Assessing the suitability or appropriateness of insurance-based investment products

Information to obtain when assessing the suitability and appropriateness of insurance-based investment products

1. Many stakeholders agreed with EIOPA that the assessment of suitability is one of the most relevant regulatory obligations for the purposes of consumer protection. In accordance with this obligation, distributors providing advice have to provide suitable personal recommendations regarding insurance-based investment products to their customers or potential customers. Suitability has to be assessed against the customer's knowledge and experience, financial situation and investment objectives.

Relationship between the "demands and needs" test and the suitability and appropriateness assessments

2. The assessment of suitability and appropriateness is, according to Article 30(1) and 30(2) of IDD, respectively, without prejudice to the "demands and needs" test of Article 20(1) of IDD. (This point is also explicitly recognised in the technical advice below). Before concluding an insurance contract and irrespective of whether this contract is concluded on an advised or non-advised basis, the distributor has to specify the **demands and the needs** of a customer and has to provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision. For that reason, not just insurance-based investment products, but any insurance contract proposed has to be consistent with the customer's insurance demands and needs. Where advice is provided prior to the conclusion of an insurance contract, the distributor should inform the customer why a particular product would best meet the customer's demands and needs.
3. EIOPA appreciates that there is a close relationship between the "demands and needs" test in Article 20(1) of IDD and the suitability/appropriateness assessment under Article 30 of IDD. Although this close relationship exists, EIOPA does not consider it appropriate, at this stage, to develop rules on the demands and needs test in the context of distribution of insurance-based investment products. It is EIOPA's understanding that, due to the fact that the Commission's empowerment for delegated acts on this issue under Article 30(6) of IDD is limited to the "information to obtain under the suitability/appropriateness assessment" (and not the "demands and needs" test) and the fact that this is also reflected in the Commission's Request for Advice, its technical advice should be limited to the information to obtain under the suitability/appropriateness assessment only. This is also in line with the request by the Commission to EIOPA to ensure regulatory consistency with the line taken in the Commission Delegated Regulation under MiFID II.

Information to be obtained from the customer under the suitability and appropriateness assessments

4. Advice is defined as *"the provision of a personal recommendation to a customer, either upon their request or at the initiative of the insurance distributor, in respect of one or more insurance contracts"*³⁴. Therefore, advice is not limited just to the point of sale, but can be provided at any time during the customer relationship. Situations, where periodic advice is provided and recurring

³⁴ Article 2(1)(15), IDD

assessments of suitability are carried out, are just one example of advice during the customer relationship. Every personal recommendation given to the customer has to be suitable, which includes, for example, whether or not to switch embedded investment elements or to hold or sell an insurance-based investment product.

5. The customer's knowledge and experience is a common criterion when assessing suitability or appropriateness. Therefore, assessing the customer's knowledge and experience is relevant to the assessment of suitability and appropriateness equally.
6. The Technical Advice below sets out requirements with regard to the information to obtain for the assessment of suitability and appropriateness and has been adjusted to take into account, specificities arising from the insurance sector:
 - a) Where concepts/terminology contained in MiFID II (e.g. execution of orders, portfolio management) do not exist in the insurance sector;
 - b) Where the MiFID framework allows for assumptions with regard to the assessment of suitability and appropriateness of professional clients³⁵, as there is no specific client classification provided for in IDD (other than an exemption in certain cases for "large risks"³⁶).
7. In addition, in the case of Article 54(9)³⁷ of the draft MiFID II Delegated Regulation, there is perceived to be an overlap with the envisaged Level 2 provisions on product oversight and governance. For this reason, Article 54(9) has not been replicated in the technical advice below. Copying across Article 54(9), could, in EIOPA's view, create some confusion and legal uncertainty with the product oversight and governance provisions in the envisaged Delegated Act under IDD. At the same time, EIOPA differentiates product oversight and governance clearly from the assessment of suitability and appropriateness by specifying that the rules for the latter apply only when there is direct customer contact while carrying out insurance distribution activities.
8. Furthermore, EIOPA also sees the following difference between the equivalent Level 1 provisions of MiFID II and IDD: There is no comparable provision in Article 25 of IDD, to subparagraph 2 of Article 24(2) of MiFID II which states that an "investment firm shall understand the financial instruments they offer or recommend.....". There is an equivalent provision in subparagraph 4 of Article 25(1) of IDD with subparagraph 4 of Article 16(3) of MiFID II, which refers to the fact that the "insurance undertaking shall understand and regularly review the insurance products it offers or markets". The IDD text does not go as far as referring to a "recommendation". A "recommendation" would provide an obvious link to the suitability assessment under Article 30(1) of IDD. Furthermore, the provision in subparagraph 4 of Article 25(1) of IDD only applies to insurance undertakings and not insurance intermediaries, whereas Article 30(1) of IDD covers both insurance intermediaries and insurance undertakings.
9. EIOPA is of the view that a personal recommendation can only be provided, where the relevant information is available to the distributor. EIOPA acknowledges that understanding the consequences of not being able to provide a personal recommendation is important for distribution activities. Where feasible

³⁵ Article 22(1)2), IDD

³⁶ Article 22(1)(1), IDD. N.B. "Large risks" only cover certain non-life products in Annex I of the Solvency II Directive.

³⁷ "Investment firms shall have, and be able to demonstrate, adequate policies and procedures in place to ensure that they understand the nature, features, including costs and risks of investment services and financial instruments selected their clients and that they assess, while taking into account cost and complexity, whether equivalent investment services or financial instruments can meet their client's profile".

under national law, if a suitability assessment cannot be performed because the necessary information about the customer's financial situation and investment objectives cannot be obtained, an appropriateness assessment could be performed instead on a non-advised basis. However, in cases of Article 30(2) of IDD, in relation to non-professional customers, it would need to be clear to the customer or potential customer that he is not receiving a personal recommendation.

Assessment of suitability

1. The insurance intermediary or insurance undertaking when carrying out an insurance distribution activity, shall determine the extent of the information to be collected from the customer in light of all the features of the advice to be provided to the customer or potential customer.
2. Without prejudice to the fact that any contract of insurance proposed shall be consistent with the customer's insurance demands and needs under Article 20(1) of Directive (EU) 2016/97, an insurance intermediary or insurance undertaking shall obtain from customers or potential customers such information as is necessary for the insurance intermediary or the insurance undertaking to understand the essential facts about the customer and to have a reasonable basis for determining that the personal recommendation satisfies the following criteria:
 - (a) it meets the customer's investment objectives, including that person's risk tolerance;
 - (b) it meets the customer's financial situation, including that person's ability to bear losses;
 - (c) it is such that the customer has the necessary knowledge and experience in the investment field relevant to the specific type of product or service.
3. It may be the case that some information to be obtained for the suitability assessment is obtained already under Chapter V of Directive (EU) 2016/97.
4. The insurance intermediary or the insurance undertaking shall not create any ambiguity or confusion about their responsibilities in the process when assessing the suitability in accordance with Article 30(1) of Directive (EU) 2016/97. The insurance intermediary or insurance undertaking shall inform customers, clearly and simply, that the reason for assessing suitability is to enable them to act in the customer's best interest.
5. When advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system, the responsibility to undertake the suitability assessment shall lie with the insurance intermediary or insurance undertaking providing the service and shall not be reduced by the use of an electronic system in making the personal recommendation.
6. The necessary information regarding the customer's or potential customer's financial situation including that person's ability to bear losses, shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments. The level of information gathered shall be appropriate to the specific type of product or service being considered.
7. The necessary information regarding the customer's or potential customer's investment objectives, including that person's risk tolerance, shall include, where relevant, information on the length of time for which the customer wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment. The level of information gathered shall be appropriate to the specific type of product or service being considered.

8. With reference to group insurance as referred to in recital 49 of Directive (EU) 2016/97, where an insurance contract is concluded on behalf of a group of members, where the individual member cannot take an individual decision to join, the insurance intermediary or insurance undertaking shall establish and implement policy as to who shall be subject to the suitability assessment and how this assessment will be done in practice, including from whom the information about knowledge and experience, financial situation and investment objectives shall be collected. The insurance intermediary or the insurance undertaking shall record this policy.
9. The insurance intermediary or insurance undertaking shall take reasonable steps to ensure that the information collected about the customer is reliable. This shall include, but shall not be limited to, the following:
 - (a) ensuring customers are aware of the importance of providing accurate and up-to-date information;
 - (b) ensuring all tools, such as risk assessment profiling tools or tools to assess a customer's knowledge and experience, employed in the suitability assessment process are fit-for-purpose and appropriately designed for use with their customers, with any limitations identified and actively mitigated through the suitability assessment process;
 - (c) ensuring questions used in the process are likely to be understood by the customer, capture an accurate reflection of the customer's objectives and needs, and the information necessary to undertake the suitability assessment; and
 - (d) taking steps, as appropriate, to ensure the consistency of customer information, such as considering whether there are obvious inaccuracies in the information provided by the customer.
10. If the insurance intermediary or insurance undertaking does not obtain the information required under Article 30(1) of Directive (EU) 2016/97, the insurance intermediary or the insurance undertaking shall not provide advice on insurance-based investment products to the customer or potential customer.
11. When providing the advice, an insurance intermediary or the insurance undertaking shall not make a recommendation where none of the products are suitable for the customer.
12. When providing advice that involves switching between underlying investment assets, such as by exercising a contractual right to make a change in regard to an underlying investment asset, the insurance intermediary or insurance undertaking shall also collect the necessary information on the customer's existing underlying investment assets and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.

Provisions common to the assessment of suitability or appropriateness

13. The necessary information regarding the customer's or potential customer's knowledge and experience in the investment field, shall include, where relevant the following to the extent appropriate to the specific type of product or service:
 - (a) the types of service, transaction, insurance-based investment product or financial instrument with which the customer is familiar;
 - (b) the nature, volume, and frequency of the customer's transactions in insurance-based investment products or financial instruments and the period over which they have been carried out;
 - (c) the level of education, and profession or relevant former profession of the customer or potential customer.
14. An insurance intermediary or the insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of Article 30(1) and (2) of Directive (EU) 2016/97.
15. An insurance intermediary or the insurance undertaking shall be entitled to rely on the information provided by its customers or potential customers unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

Assessment of appropriateness

16. Without prejudice to the fact that any contract of insurance proposed shall be consistent with the customer's insurance demands and needs under Article 20(1) of Directive (EU) 2016/97, the insurance intermediary or insurance undertaking, when carrying out insurance distribution activities other than those referred to in Article 30(1) of Directive (EU) 2016/97, in relation to assessing the appropriateness of sales where no advice is given, shall determine whether that customer has the necessary experience and knowledge in order to understand the risks involved in relation to the product proposed.

7.2 Retention of records

Analysis

1. The technical advice developed by ESMA on MiFID II and the Delegated Regulation under MiFID II adopted by the European Commission on 25 April 2016 have served as a basis for this part of the technical advice. The results of EIOPA's online survey in early 2016³⁸ showed a general support for alignment with MiFID II requirements, which was reinforced by the outcome of the public consultation. Respondents agreed that insurance specificities should be taken into account in the technical advice.
2. EIOPA acknowledges that the draft MiFID II Delegated Regulation covers record-keeping in an appropriateness scenario only, and does not introduce specific rules for the content of records for the suitability assessment. Furthermore, the draft MiFID II Delegated Regulation does not provide more information about the format for records. EIOPA has taken note of ESMA's Guidelines on certain aspects of the MiFID suitability requirements³⁹, where certain expectations with regard to record-keeping of the assessment of suitability were set.
3. With particular reference to the content of the agreements for the provision of services to customer, the draft MiFID II Delegated Regulation does not reflect specificities of the insurance sector. In particular, it refers to the written basic agreement between the investment firm and the retail client, which Member State will require the investment firm to enter into with the latter, as provided by Article 58, draft MiFID II Delegated Regulation. Taking into account that the same written basic agreement is not foreseen by IDD, the reference to "*the agreements for the provision of services to customers*" mentioned by the Commission's request for advice, does not seem to be applicable in the IDD context. IDD mentions the documents agreed between the parties only, but does not introduce the concept of a written basic agreement.
4. Therefore, the reference to the written basic agreements for the provision of services to the customer could be interpreted as a reference to the contractual terms and conditions in which the essential rights and obligations of the parties are regulated. Member States might want to introduce this concept at their own discretion or have done so already.
5. In fact, although from a formal point of view, IDD does not introduce the concept and the requirement of the written basic agreement (but only mentions the documents agreed between the insurance intermediary or insurance undertaking and the customer), the content of the written basic agreement does not appear inconsistent with the IDD framework, except for those features specifically referred to under MiFID II and not adapted to the specificities of the insurance market (e.g. the reference to portfolio management, custody services and financing transactions).

Retention of records on suitability assessments

6. As regards the Commission's request for advice about the content of the agreements for the provision of services to customers, it was also pointed out by many respondents to EIOPA's online survey that the fact that the content of insurance contracts is already regulated at national level, should be also taken into account. Therefore, the definition of the information to be included in the contract at EU level could interfere with national civil law. For this reason, with

³⁸ <https://eiopa.europa.eu/Pages/Consumer-Protection/Online-survey-Call-for-Advice-from-EC-IDD.aspx>

³⁹ Section V.IX on Record-keeping: https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387_en.pdf

reference to the documents agreed between the insurance intermediary or insurance undertaking and the customer setting out the rights and obligation of the parties which the insurance intermediary or insurance undertaking is obliged to record, the rules on retention of records remain high level.

7. As regards the content of records on suitability assessments, the insurance intermediary or insurance undertaking should keep a record of the insurance-based investment products that were recommended, but not record all potential products that could have been alternatives. This ensures that the provision of advice and the record-keeping obligations for this service are aligned.

Format of the documents agreed between the parties

8. In relation to the Commission's request for advice about the format of records and agreements for the provision of services to customers, Article 30(5) of IDD already refers to "durable medium" in relation to periodic reports to customers on the services provided and to the suitability statements to be provided to the customer.
9. EIOPA has taken note that the draft MiFID II Delegated Regulation has a number of provisions on format, such as Articles 46 and Article 58. Accordingly, the technical advice specifies the format for record-keeping and reporting purposes to make Article 30 of IDD, more practical and allow national competent authorities to supervise market practice.
10. Therefore, it would be sufficient to make a reference to the notion of durable medium as defined by Article 2(1)(18) of IDD, which states the following:
"durable medium" means any instrument which:
 - (a) enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information; and*
 - (b) allows the unchanged reproduction of the information stored".*
11. EIOPA acknowledges the challenges for distributors with regard to providing documents in the most suitable format. EIOPA believes it is useful to make a reference to the general provisions on the information conditions laid down by Article 23 of IDD (as regards the use of paper or another durable medium and the use of the official language of the Member State in which the risk is situated or of the Member State of the commitment or in any other language agreed upon by the parties).
12. Article 23 introduces certain criteria when deviating from the default paper-based format. These criteria should be understood in a pragmatic way that is in accordance with the best interests of the customer.

Retention of records

1. Without prejudice to the application of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Rules), the insurance intermediary or insurance undertaking shall keep orderly records of information obtained where the insurance intermediary or the insurance undertaking is required to produce a suitability statement or the customer information obtained to assess appropriateness.

Record-keeping obligations for the assessment of suitability

2. The insurance intermediary or the insurance undertaking shall at least:
 - (a) maintain adequate recording and retention arrangements to ensure orderly and transparent record-keeping regarding the suitability assessment, including any advice provided, the result of the suitability assessment and all changes to the underlying investment assets; in order to not prevent competent authorities from fulfilling their supervisory objectives with particular reference to the detection of failures;
 - (b) ensure that records kept are accessible for the relevant persons within the insurance intermediary or insurance undertaking, and for competent authorities; and
 - (c) have adequate processes to mitigate any shortcomings or limitations of the record-keeping arrangements.
3. The insurance intermediary or the insurance undertaking shall record all relevant information about the suitability assessment, such as information about the customer, and information about insurance-based investment products recommended to the customer or purchased on the customer's behalf. Those records shall include:
 - (a) any changes made by the insurance intermediary or the insurance undertaking regarding the suitability assessment, in particular any change to the customer's risk tolerance;
 - (b) the recommended insurance-based investment products that fit that profile and the rationale for the individual assessment, as well as any changes and the reasons for them.

Record-keeping obligations for the assessment of appropriateness

4. Insurance intermediary or insurance undertaking shall maintain records of the appropriateness assessments undertaken which shall include the following:
 - (a) the result of the appropriateness assessment;
 - (b) any warning given to the customer where the product was assessed as potentially inappropriate for the customer, whether the customer asked to proceed with concluding the contract despite the warning and, where applicable, whether the insurance undertaking or the insurance intermediary accepted the customer's request to proceed with concluding the contract; and
 - (c) any warning given to the customer where the customer did not provide sufficient information to enable the insurance undertaking or the insurance

intermediary to undertake an appropriateness assessment, whether the customer asked to proceed with concluding the contract despite this warning and, where applicable, whether the insurance undertaking or the insurance intermediary accepted the customer's request to proceed with concluding the contract.

Format

5. With reference to the format, the documents as referred to in paragraph 1 shall be kept and provided:
 - a) in an official language of the Member State in which the risk is situated or in the Member State where the consumer has his habitual residence under the conditions of Article 6 of the Regulation 593/2008 on the law applicable to contractual obligations (Rome I) or in any other language agreed upon by the parties;
 - b) in a clear and accurate manner, comprehensible to the customer;
 - c) in the format as defined by Article 2(1)(18) of Directive (EU) 2016/97.

7.3 Reports to customers on the services provided

Analysis

1. EIOPA has been asked to provide advice on periodic reports to customers on the services provided. Notwithstanding that the suitability statement is a one-off document, EIOPA has included the suitability statement in this part of the analysis and advice. EIOPA is of the view that providing the one-off statement and a periodic suitability assessment should be dealt with together.
2. Reporting obligations should include a fair and balanced review of the activities undertaken and of the performance during the relevant period. The reports on the services provided, should be provided in a durable medium.

Suitability statement

3. EIOPA acknowledges that distributors, when providing advice, will usually take into account all information available. The IDD includes in Chapter V, the demands and needs test, which existed already in the IMD and is applicable to all insurance contracts. According to Article 20(1) of IDD, prior to the conclusion of an insurance contract, the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer. EIOPA expects that the suitability statement will focus on the elements of the suitability assessment and does not intend to introduce with its technical advice, any form of mandatory "demands and needs statement".
4. When an advice is provided to the customer regarding insurance-based investment products, the suitability statement has to provide feedback on the customer-specific information, which has been gathered and analysed in order to make the recommendation of a suitable contract, transparent.
5. The suitability statement should therefore contain at least:
 - An outline of the advice given; and
 - How the recommendation provided, is suitable for the customer.

Periodic Suitability report

6. EIOPA considers the periodic suitability report referred to in Article 30(5) of IDD to be an on-going and regular revision of the initial suitability assessment, to be agreed upon by the parties, with the aim of determining whether the product is still in accordance with the best interests of their customers. Taking into account that insurance-based investment products have usually medium to long recommended holding periods, a frequency of one year is appropriate to meet the objectives.
7. EIOPA considers it proportionate that a periodic suitability report covers in certain circumstances only, changes in the services or investments embedded in the insurance-based investment product and/or the circumstances of the customer and may not need to repeat all the details of the first report.
8. In the cases where a periodic assessment of suitability is agreed, a customer should be able to trust that this review takes place at least annually. However, if the assessment shows that the product is not in accordance with the best interests of the customer anymore, the customer should be informed without undue delay after the assessment.
9. If the assessment shows that the product is still suitable, EIOPA considers it sufficient to refer to the periodic assessment in the periodic communications to

the customer. This would also be proportionate and would not overwhelm the customer with too much information.

Periodic communications to customers

10. EIOPA understands that adequate reports on the service provided are mandatory according to Article 30(5) of IDD. In practice, they might not be separable from other customer communication and could be delivered together with other documents or even electronically.
11. EIOPA refers in its technical advice to services provided to and transactions undertaken on behalf of customers. This is due to the fact that IDD specifies that *"reports shall include periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer"*. EIOPA expects the periodic communication to disclose to the customer the costs that are incurred by transactions, which is understood with regard to changes to the underlying investment assets in insurance-based investment products.
12. The recommended frequency of adequate reports on the service provided should be yearly. EIOPA acknowledges that reporting under MiFID II in the case of portfolio management, foresees quarterly reporting. However, substantial differences exist in EIOPA's view between reporting with regard to portfolio management and periodic communications with regard to insurance-based investment products. Mainly, in the case of insurance-based investment products, the recommended holding period is generally several years, whereas portfolio management can encompass all sorts of financial instruments to report on.
13. At the same time, EIOPA recognises the similarities of portfolio management and periodic communications with regard to insurance-based investment products. Therefore, EIOPA considers it important to report on relevant information. EIOPA has reviewed such information in light of the responses received during the public consultation. It is not EIOPA's intention to call into question the reporting already foreseen under Article 185 of Solvency II. Furthermore, the reporting criteria should be in principle applicable to all kinds of insurance-based investment products. Therefore, EIOPA is putting forward a proposal for core elements of relevant customer information, while acknowledging that other information provision clauses exist in relevant legislation.
14. With the proposed amendments to the list of elements required for meaningful periodic communication to customers, EIOPA expects in practice a clearer demarcation of reporting obligations for insurance undertakings (reporting foreseen by Article 185 of Solvency II) and periodic communications following from the direct customer relationship, Article 30(5) of IDD. EIOPA expects that the periodic communication goes beyond the criteria prescribed, if the products involved or the nature of the service provided warrant for the communication of additional elements. Ultimately, customers should be informed about the necessary developments while not being overloaded with too much information.

Suitability statement

1. When providing advice, the insurance intermediary or insurance undertaking shall provide a statement to the customer that includes an outline of the advice given and how the recommendation provided is suitable for the customer, including how it meets the customer's investment objectives, including that person's risk tolerance; the customer's financial situation, including that person's ability to bear losses; and the customer's knowledge and experience.
2. The insurance intermediary or insurance undertaking shall draw the customer's attention to, and shall include in the suitability statement, information on whether the recommendation is likely to require the customer to seek a periodic review of their arrangements.
3. Where an insurance intermediary or insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the subsequent reports after the initial service is established, may only cover changes in the services or underlying investment assets and/or the circumstances of the customer and may not need to repeat all the details of the first report.
4. Insurance intermediary or insurance undertaking providing a periodic suitability assessment shall review, in accordance with the best interests of their customers, the suitability of the recommendations given at least annually.
5. The frequency of this assessment shall be increased depending on the characteristics of the customer, such as the risk tolerance of the customer, and the insurance-based investment product recommended.
6. The insurance intermediary or insurance undertaking providing a periodic suitability assessment pursuant to paragraph 3, shall disclose all of the following:
 - (a) the frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment;
 - (b) the extent to which the information previously collected will be subject to reassessment; and
 - (c) the way in which an updated recommendation will be communicated to the customer.

Periodic communications to customers

7. Without prejudice to Article 185 of Directive 2009/138/EC (Solvency II), the insurance intermediary or insurance undertaking shall provide the customer with a periodic statement in a durable medium of the services provided to and transactions undertaken on behalf of that customer.

8. The periodic statement required under paragraph 7, shall provide a fair and balanced review of the services provided to and transactions undertaken on behalf of that customer and shall include the following information:
 - (a) Services provided to and transactions undertaken on behalf of the customer during the reporting period and, where applicable, the costs associated with these services and transactions (if any);
 - (b) Value of each underlying investment asset, where appropriate;
9. The periodic statement referred to in paragraph 7 shall be provided at least annually.

8. Execution-only sales - criteria to assess “other non-complex insurance-based investment products”

Extract from the Commission’s request for advice (mandate)

“EIOPA is invited to provide technical advice on the criteria to assess non-complex insurance-based investment products for the purposes of point (ii) of point (a) of paragraph 3 of Article 30”.

1. The following provisions in the IDD are relevant to this topic:

Article 30(3)(a):

3. Without prejudice to Article 20(1), where no advice is given in relation to insurance-based investment products, Member States may derogate from the obligations referred to in paragraph 2 of this Article, allowing insurance intermediaries or insurance undertakings to carry out insurance distribution activities within their territories without the need to obtain the information or make the determination provided for in paragraph 2 of this Article where all the following conditions are met: (a) the activities refer to either of the following insurance-based investment products (i) contracts which only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU and do not incorporate a structure which makes it difficult for the customer to understand the risks involved; or (ii) other non-complex insurance-based investments for the purpose of this paragraph;

Article 30(6):

The Commission shall be empowered to adopt delegated acts in accordance with Article 38 to further specify how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article when carrying out insurance distribution activities with their customers, including with regard to...the criteria to assess non-complex insurance-based investment products for the purposes of point (ii) of point (a) of paragraph 3 of this Article...Those delegated acts shall take into account:

(a) the nature of the services offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;

(b) the nature of the products being offered or considered including different types of insurance-based investment products;

(c) the retail or professional nature of the customer or potential customer”.

2. The following provisions in the draft Commission Delegated Regulation under Directive 2014/65/EU (“MiFID II”) are relevant for this topic:

Article 57 - Provision of services in non-complex instruments (Article 25(4) of Directive 2014/65/EU):

A financial instrument which is not explicitly specified in Article 25(4)(a) of Directive 2014/65/EU shall be considered as non-complex for the purposes of Article 25(4)(a)(vi) of Directive 2014/65/EU if it satisfies the following criteria:

(a) it does not fall within Article 4(1)(44)(c) of, or points (4) to (11) of Section C of Annex I to Directive 2014/65/EU;

(b) there are frequent opportunities to dispose of, redeem, or otherwise realise that instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

(c) it does not involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument;

(d) it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment;

(e) it does not include any explicit or implicit exit charges that have the effect of making the investment illiquid even though there are technically frequent opportunities to dispose of, redeem or otherwise realise it;

(f) adequately comprehensive information on its characteristics is publicly available and is likely to be readily understood so as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument."

Analysis

3. In accordance with paragraphs 1 and 2 of Article 30 of IDD an assessment of the suitability or appropriateness of an insurance-based investment product for the customer by the insurance distributor is generally required as part of an advised or non-advised sale. However, Article 30(3) of IDD allows Member States to derogate from these obligations and to not require either a suitability or appropriateness test to be conducted, where various conditions are satisfied. This type of sale is often referred to as an "execution-only" sale, as the insurance undertaking or insurance intermediary executes the transaction requested by the customer without any prior vetting of the customer's knowledge, experience, financial situation and investment objectives. The sale is carried out only at the initiative of the customer or the potential customer. However, it is important to note that, in accordance with Article 20(1) of IDD, it is still necessary for the insurance distributor to specify the demands and needs of the customer prior to the conclusion of the contract.
4. Since the assessment of whether the conditions in Article 30(3) of IDD are satisfied is only necessary where Member States choose to exercise the derogation, and thereby allow for the execution-only sale of insurance-based investment products, the application of the term "other non-complex insurance-based investments" for the purposes of Article 30(3)(a) will only be directly relevant within those Member States which make use of the derogation.

5. One of the conditions specified in Article 30(3) to determine whether an insurance-based investment product can be distributed as an execution-only sale relates to the complexity of the insurance-based investment product. This assessment is based on the nature of the financial instruments to which the insurance-based investment provides investment exposure, as well as the structure of the contract between the insurance undertaking or insurance intermediary and the customer (Article 30(3)(a), IDD).
6. Under Article 30(3)(a)(i) of IDD insurance-based investment products can be considered non-complex when they only provide investment exposure to the financial instruments deemed non-complex under MiFID II and do not incorporate a structure which makes it difficult for the customer to understand the risks involved. The list of specified non-complex financial instruments in MiFID II is relatively short – it is limited to certain types of shares, bonds, money-market instruments and structured deposits, and non-structured UCITS, as set out in Article 25(4)(a) of MiFID II:
 - (a) shares admitted to trading on a regulated market or an equivalent third country market (that is, one which is included in the list which is published by the European Commission and updated periodically) or on a MTF⁴⁰, where those are shares in companies, and excluding shares in non-UCITS collective investment undertakings and shares that embed a derivative;
 - (b) bonds or other forms of securitised debt admitted to trading on a regulated market or on an equivalent third country market or on a MTF, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;
 - (c) money-market instruments, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;
 - (d) shares or units in UCITS, excluding structured UCITS as referred to in the second subparagraph of Article 36(1) of Regulation (EU) No 583/2010;
 - (e) structured deposits, excluding those that incorporate a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term; or
 - (f) other non-complex financial instruments.
7. In accordance with Article 25(8) of MiFID II, the Commission is empowered to adopt delegated acts on the criteria identify “other non-complex financial instruments” referred to in Article 25(4)(a)(vi) of the same Directive. The current text of the MiFID II delegated acts is included in paragraph 2 of this section above. ESMA has also drafted Guidelines on complex debt instruments and structured deposits to clarify the application of the list in Article 25(4)(a) of MiFID II (and included in the previous paragraph of this section). All of these provisions are therefore relevant when assessing whether the investment exposure of an insurance-based investment product is limited to financial instruments deemed non-complex under MiFID II.
8. Article 30(3)(a)(ii) of IDD acknowledges the possibility that an insurance-based investment product may not fall within the scope of Article 30(3)(a)(i), but may

⁴⁰ Multi-lateral trading facility

still be deemed a non-complex product. EIOPA considers that where an insurance-based investment product incorporates a structure which makes it difficult for the customer to understand the risks involved, it is in all cases not fit for distribution via an execution-only sale. For this reason, the technical advice below contains a provision to exclude cases where the insurance-based investment product incorporates a structure which makes it difficult for the customer to understand the risks involved (point (e) below in the sub-section "Technical Advice"). This criterion mirrors the drafting of Article 30(3)(a)(i). Adding it in the technical advice below aims to achieve symmetry within point (a) of Article 30(3).

9. EIOPA is also working on further specifying which structures can make it difficult for the customer to understand the risks involved in accordance with the empowerments to develop Guidelines in Articles 30(7) and (8) of IDD and will publish shortly a consultation paper on those Guidelines⁴¹. For the purpose of this technical advice, EIOPA has considered whether there are cases where an insurance-based investment product provides some kind of investment exposure to complex financial instruments⁴² or to other variables, but overall the product can still be fit for distribution via execution-only.
10. The results of EIOPA's evidence-gathering⁴³ on suitability and appropriateness with regard to Article 30(3)(a)(ii) of IDD indicate that there are a limited number of insurance-based investment product types currently sold execution-only. Whilst numerous Member States allow for the sale of certain products on a non-advised basis, only a limited number allow for products to be sold by means of execution-only transactions. An example of an insurance-based investment product, which may already be sold on this basis, is a limited term "investment bond-type" product, either with single or regular premiums, which has life insurance cover.
11. EIOPA is also mindful of the importance of the assessments of suitability and appropriateness to ensure good outcomes for customers, and therefore the need to carefully circumscribe the types of products that can be sold without these protection measures. At the same time, EIOPA is aware that to unduly restrict these sales, as well as to minimise the development of future products for sale by execution-only, could be seen as anti-competitive or as resulting in financial exclusion by limiting the development of low-cost simple products.
12. Some Member States have advocated retention of some discretion over the assessment of complexity at local level, in view of the differences in markets and product features across Member States. It can also be noted that, in view of the minimum harmonisation aim of IDD as well as the fact that for execution-only sales specifically customers do not benefit from the protection of some of the relevant conduct of business rules, some national supervisory authorities have indicated that they may maintain or introduce more stringent national provisions in this area. The drafting of the criteria therefore bears in mind the need for them to be capable of general application by Member States having regard to their specific statutory regimes.

⁴¹ Under Article 30(7) EIOPA has to issue those Guidelines by 23 August 2017. There is no deadline for the empowerment in Article 30(8).

⁴² This means that they would not satisfy the conditions in Article 30(3)(a)(i).

⁴³ EIOPA conducted a survey in preparation for this technical advice, the responses to which can be found [here](#).

13. EIOPA has noted the draft Commission Delegated Regulation under MiFID II regarding criteria for the assessment of other non-complex financial instruments. Where these criteria address product features, which are considered to be equally applicable to insurance-based investment products, these provisions are included in EIOPA's technical advice. This includes provisions on the ability to redeem (i.e. surrender) a product before the contractual maturity date, the nature of the exit (i.e. surrender) charges and fact that they should not be punitive or prohibitive, and the existence of clauses or triggers which alter the risk of the product. However, in these cases it was still necessary to modify some of the MiFID II requirements to appropriately reflect the insurance sector. In particular, regarding the provision in point (d) of the technical advice, given that exit penalties have been a feature of long-term insurance-based investment products that are considered to have led to consumer detriment, this is intended to exclude products with unreasonable exit charges, including fiscal penalties.
14. The provisions in Article 57 sub paragraph 1, points (a), (c) and (f) of the MiFID II draft Commission Delegated Regulation were not considered applicable to insurance-based investment products. Point (a) is considered to be specific to MiFID II as it concerns the complexity of the underlying financial instruments. Regarding point (c) it is not considered to be possible for an insurance-based investment product to result in a liability for the customer, which exceeds the amount of the premiums to be paid. Regarding point (f), this is not considered to be necessary given that adequately comprehensive information should be available for all insurance-based investment products, not only those sold via execution-only, in accordance with Articles 20(1) and 29(1) of IDD, as well as Regulation 1286/2014 on Key Information Documents (KID) for Packaged Retail and Insurance-based Investment Products (PRIIPs).
15. Another relevant consideration is the **nature of any guarantee** provided by the insurance undertaking. Where the insurance undertaking provides a guarantee regarding the surrender and maturity value of an insurance-based investment product, the customer is not fully exposed to the performance of the financial instruments in which the insurance undertaking has invested or to which the customer's benefits are linked. In view of this, depending on the nature of the guarantee, insurance-based investment products could be regarded as non-complex, even though the contract may provide investment exposure that is not limited to financial instruments deemed non-complex under MiFID II. In this case, EIOPA considers that as a minimum the customer should be guaranteed to receive, at both surrender and maturity, at least the amount of the premiums that they have paid, minus legitimate costs levied. Furthermore, whilst the provision of a guarantee significantly limits the extent to which the customer is exposed to market fluctuations, there will still be an investment element to the product which determines the extent to which the maturity value is above the guaranteed level. For this reason, as stated in paragraph 8 above, it is critical that the insurance-based investment product also does not incorporate a structure which makes it difficult for the customer to understand the risks involved.
16. **Notwithstanding the process for adopting the delegated acts referred to in Article 30(6) of IDD, as determined by the Commission, in view of the close connection between this technical advice and the Guidelines based on the empowerments in Article 30(7) and (8) of IDD, EIOPA considers that it may be appropriate to review its technical advice in light of the comments received during the public consultation on the Guidelines.**

Technical Advice

An insurance-based investment product shall be considered as non-complex for the purposes of Article 30(3)(a)(ii) of Directive (EU) 2016/97 if it satisfies all of the following criteria:

- (a) the contractually guaranteed minimum surrender and maturity value is at least the amount of premiums paid by the customer minus legitimate costs levied.
- (b) it does not incorporate a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk or pay-out profile of the insurance-based investment product;
- (c) there are options to surrender or otherwise realise the insurance-based investment product at a value that is available to the customer;
- (d) it does not include any explicit or implicit charges which have the effect that, even though there are technically options to surrender the insurance-based investment product, doing so may cause unreasonable detriment to the customer, because the charges are disproportionate to the cost to the insurance undertaking of the surrender;
- (e) it does not in any other way incorporate a structure which makes it difficult for the customer to understand the risks involved.

Annex I: Impact Assessment

Procedural issues and consultation of interested parties

The Commission has requested EIOPA to provide technical advice on possible delegated acts concerning Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (hereinafter "IDD"). In particular, the Commission seeks EIOPA's technical advice regarding the following issues:

- A. Product oversight and governance,
- B. Conflicts of interest,
- C. Inducements and
- D. Assessment of suitability and appropriateness and reporting to customers.

According to the Commission's request, EIOPA should justify its advice by identifying, where relevant, a range of technical options and undertaking a qualitative, and as far as possible, quantitative assessment of the costs and benefits of each. Where administrative burdens and compliance costs on the side of the industry could be significant, EIOPA should where possible quantify these costs.

The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

The draft technical advice and its impact assessment have been subject to public consultation between 4 July and 3 October 2016. Stakeholders' responses to the public consultation were duly analysed and served as a valuable input for the revision of the draft technical advice and its impact assessment. Additionally, the opinion from the Insurance and Reinsurance Stakeholder Group, provided in Article 37 of EIOPA Regulation, has been considered.

As part of the public consultation, stakeholders were specifically requested to provide their views on the estimated costs and benefits of the proposals included in the draft technical advice in general, as well as, in particular, the estimated costs for manufacturers and distributors of the proposals regarding POG. 65 responses were received on this respect. The main messages from stakeholders can be summarised as follows:

- Costs of implementation of IDD are expected to be substantial;
- A quantification of the costs is very difficult;
- Main costs include, among others, costs in term of information provision and recording at the point of sales, compliance costs (including eventual outsourcing), training, adaptation of IT system, etc.

Although the majority of responses refer indistinctly to costs from the proposed technical advice and costs from the requirements already in IDD, EIOPA has considered all comments received to improve this impact assessment. In particular, EIOPA acknowledges the stakeholders' concerns regarding any additional costs.

The comments received and EIOPA's responses to them are summarised in the section Feedback Statement of the Final Report.

Baseline scenario

When analysing the impact from proposed policies, the Impact Assessment methodology foresees that a baseline scenario is applied as the basis for comparing policy options. This helps to identify the incremental impact of each policy option considered. The aim of the baseline scenario is to explain how the current situation would evolve without additional regulatory intervention.

EIOPA has applied as a baseline scenario to assess the potential costs and benefits from the provisions in the technical advice, the IDD requirements. This impact assessment report is not intended to analyse the costs and benefits arising from the requirements already established in the IDD. Such costs and benefits were duly analysed by the Commission and documented in the impact assessment report accompanying the text of the Directive⁴⁴.

⁴⁴ See link: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012SC0191>

A. Product Oversight & Governance

With respect to the technical advice on product oversight and governance, EIOPA has also taken into account all the relevant input provided by stakeholders during the policy development process of EIOPA Preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors⁴⁵. A first public consultation of the draft Guidelines and their impact assessment took place between 27 October 2014 and 23 January 2015 and a second public consultation between 30 October 2015 and 29 January 2016. Additionally, in accordance with Article 16, EIOPA Regulation, the Insurance and Reinsurance Stakeholder Group was consulted and provided a formal Opinion.

A.1 – Problem definition

Article 25, IDD introduces product oversight and governance requirements for insurance manufacturers and distributors, to mitigate the risk of customer detriment from unsuitable and/or poorly designed products.

As this matter is being addressed by ESMA and EBA⁴⁶, there is also potential for the coexistence of different regulatory/supervisory approaches in the three financial sectors.

Baseline scenario.

With respect to Product Oversight and Governance, EIOPA has applied the IDD requirements in Article 25 and the EIOPA Preparatory Guidelines on product oversight and governance arrangements for insurance undertakings and insurance distributors, as a baseline scenario in order to assess the potential costs and benefits from the provisions in the technical advice.

A.2 – Objectives

The objectives of the technical advice are:

- Objective 1: to specify the product oversight and governance principles and ensure that manufacturers and distributors of insurance products comply with those principles.
- Objective 2: to identify product manufacturer and distributor responsibilities in a proportionate manner, taking into account the nature of the product and service provided.

⁴⁵ <https://eiopa.europa.eu/Publications/Reports/Final%20report%20on%20POG%20Guidelines.pdf>

⁴⁶ Regarding the work done in respect of the other sectors of the market:

- Directive 2014/65/EU (MIFID II) includes product oversight and governance requirements for investment firms. On 25th April 2016 the Commission has adopted a delegated regulation supplementing MiFID II, which includes product governance provisions.

- On 22nd March 2016, the EBA approved product oversight and governance guidelines for retail banking products.

- Objective 3: to enhance cross-sectoral consistency with product oversight and governance arrangements for credit institutions and investment firms, to prevent regulatory arbitrage.

These objectives are consistent with the IDD aim of providing a consistent level of policyholder protection.

A.3 – Policy options

With the intention to meet the objectives set out in the previous section, EIOPA has analysed different policy options throughout the policy development process.

Taking into account that the technical advice contains several proposals based on the policy work developed by EIOPA for the development of the Preparatory Guidelines, part of the policy issues identified during the drafting process of the guidelines are deemed to be relevant for this impact assessment. Those policy issues are:

- The principle of proportionality;
- Product testing;
- Frequency of the review process for the product oversight and governance arrangements;
- Outsourcing of product design;
- Exchange of information between manufacturers and distributors; and
- Documentation of product oversight and governance arrangements.

For the sake of completeness and transparency, the analysis of the different options considered for those policy issues has also been included in this impact assessment.

During the drafting process of the technical advice the following policy issues were identified:

- The definition of insurance intermediary acting as manufacturer;
- The relationship between and respective responsibilities of the insurance undertaking and the intermediary when acting as a manufacturer;
- The identification of the target market; and
- The frequency of the review process for products.

Policy issue 1: Principle of proportionality

The impact of POG requirements will differ depending on the size (level of the undertaking), on their type of business (product level) and also depending on the risks inherent in the product. Insurance products are quite heterogeneous, in particular their complexity varies (example: general liability insurance vs. with-profit life insurance). Thus, the question arose whether regulation should be more prescriptive and differentiate between insurance business classes or whether it would be sufficient to apply the principle of proportionality more generally. A further option would be to further develop and complement the approach above by some guidance

regarding what the applicability of the principle of proportionality could mean in relation to insurance business classes. The following options were considered:

- **Option 1.1** – specific requirements by line of business: to differentiate between insurance business classes within the product oversight and governance provisions.
- **Option 1.2** – general application of the principle: not to differentiate between insurance business classes, but to take account of the applicability of the principle of proportionality in general.
- **Option 1.3** – specific guidance on application of the principle: not to differentiate between insurance business classes, but to give supervisors and insurance undertakings some guidance on details of applicability of the principle of proportionality for product and governance processes.

Policy issue 2: Need for including requirements for product testing

Product governance requirements stipulate that manufacturers should define a target market and make sure that the product is aligned with the interests, objectives and characteristics of the target market.

In order to comply with this requirement, it is important that the manufacturer tests the product thoroughly before they are brought to the target market. The conditions and methods applied for product testing, including scenario analysis, where relevant, are the responsibility of the manufacturer. It can be argued that these conditions and methods differ depending on the type of product that will be manufactured or reviewed and on the risks that the product bears for customers. Product testing may include qualitative and, where appropriate, quantitative testing or scenario analyses in order to properly assess whether the product is in line with the interests, objectives and characteristics of the target market.

Various options were examined:

- **Option 2.1** - no requirement: not to require product testing for any insurance product.
- **Option 2.2** - requirement for insurance-based investment products (IBIPs): to only require product testing for IBIPs.
- **Option 2.3** - requirement for all products: to require product testing for life and non-life insurance products.

Policy issue 3: Need for a specific provision on outsourcing of product design

The manufacturer may outsource different tasks and processes – in particular, the design of products - to third parties. This organisational choice does not mean that the manufacturer can outsource his responsibility for the outcome or for applying the relevant requirements for the outsourced process. The following options were considered:

- **Option 3.1** - specific provision: provision meaning that when product design is being outsourced, the manufacturer stays ultimately responsible regardless of the outsourcing
- **Option 3.2** – do nothing: meaning that the responsibility for applying the requirements is not especially described in case of outsourcing.

Policy issue 4: Need to strengthen the exchange of information between manufacturers and distributors of insurance products

The increasing complexity and variety of insurance products pose new challenges to insurance distributors selling insurance products manufactured by third parties. To a large extent, distributors rely on the product information provided by the manufacturers of insurance products. However, the supervisory practice has proven that distributors do not always obtain all relevant information in order which is necessary to fully understand the product characteristics and the group of customers for which the products are designed for. In order to address this issue, the following options were considered:

- **Option 4.1** – do nothing: not to specify the general requirement that the manufacturer provides all appropriate information on the product to the distributor.
- **Option 4.2** - list of information to be exchanged: to specify the information on the product and on the distribution of the product which the manufacturer and distributor should exchange.

Policy issue 5: Documentation of product oversight and governance arrangements

From an internal governance and supervisory point of view, it is important that all relevant actions taken by manufacturers and distributors in relation to the product oversight and governance arrangements are duly documented. The following policy options were considered in this regard:

- **Option 5.1** - for manufacturers and distributors: to require manufacturers and distributors to document all relevant actions in relation to the product oversight and governance arrangements and product distribution arrangements, respectively.
- **Option 5.2** – for manufacturers: to require manufacturers only to document all relevant actions in relation to the product oversight and governance arrangements, but not distributors.
- **Option 5.3** – do nothing: not to require manufacturers and distributors to document all relevant actions in relation to the product oversight and governance arrangements and product distribution arrangements.

Policy issue 6: Insurance intermediary acting as a manufacturer of insurance products

Article 25(1), IDD applies certain product governance requirements to "*insurance undertakings, as well intermediaries which manufacture any insurance product for sale to customers*". The IDD is silent on when insurance intermediaries should be considered "manufacturers" and there is no definition of "manufacturing". It is therefore useful to consider the circumstances under which an intermediary may also be acting as a manufacturer.

The following options were considered:

- **Option 6.1** – Cumulative conditions: identification of a cumulative list of conditions where an insurance intermediary could also be considered a manufacturer.
- **Option 6.2** – General criteria: identification of general criteria where an insurance intermediary could be considered a manufacturer and circumstances where an intermediary would be likely, and would not be likely, to be considered a manufacturer.

Policy issue 7: Target market

Product oversight and governance requirements set out systems and controls which firms must put in place to design, approve, market and manage products throughout their lifecycle to ensure they meet the needs, objectives and characteristics of a defined target market. These processes help to mitigate mis-selling. The identification of the target market is an important component of the POG arrangements.

Insurance products are varied in nature, ranging, for example, from simple products, compulsory products such as motor insurance, through to complex IBIPs. The policy issue centres on identifying how best to address the question of target market granularity level while maintaining firm responsibility and discretion over product manufacturing.

The following options were considered:

- **Option 7.1** - No principles to identify the target market: One option would be to introduce no principles to identify the target market for products and allow manufacturing and distribution on a broader, more generic basis.
- **Option 7.2** – High-level principles to identify the target market: Another possibility would be to adopt high-level principles to identify the target market. This means it would be possible to emphasise that the target market can differ depending on the type of product being developed.
- **Option 7.3** – Detailed requirements to identify the target market: Another possibility would be to enforce detailed requirements and describe requirements per category of products. A mandatory target market could be based on specified criteria e.g. financial situation, age, experience etc.

Policy Issue 8: Frequency of review process

Any internal process should be reviewed periodically in order to assess the permanence of the attitude and capability to reach the objectives. In light of this, the product and arrangements established by manufacturers on product oversight and governance should both be reviewed to ensure that they are still valid and up to date and amended where appropriate. Furthermore, the distributor's distribution arrangements should also be reviewed and amended where appropriate.

Regarding the frequency of the review process three options were examined:

- **Option 8.1** - Annual review: Article 41, Solvency II Directive requires insurance undertakings to review written policies on an annual basis. An annual review of product governance arrangements would be in line with this.
- **Option 8.2** - At least, review every three years.
- **Option 8.3** - No pre-determined frequency of review.

A.4 – Analysis of impacts

Policy issue 1: Proportionality principle and differentiation between insurance classes of business

Summary of options considered:

Option 1.1: to differentiate between insurance business classes within the POG requirements.

Benefits:

- For customers: minimized risk of mis-selling due to detailed rules considering all eventualities (incl. specificities of insurance business classes).

Costs:

- For NCAs and industry: among the three options considered, the highest implementation costs due to most detailed requirements. Too prescriptive provisions could also become an obstacle for product innovation.

Option 1.2: not to differentiate between insurance business classes within the POG requirements, taking account of the applicability of the principle of proportionality in general.

Benefits:

- For customers: minimum risk of mis-selling due to clear rules on product oversight and governance.

Costs:

- For NCAs and industry: implementation costs; considered the lowest among the three options compared.

Option 1.3: not to differentiate between insurance business classes within the POG requirements but to give supervisors and insurance undertakings

some guidance on details of applicability of the principle of proportionality for product and governance processes.

Benefits:

- For customers: minimized risk of mis-selling due to detailed rules considering all eventualities (incl. specificities of insurance business classes).
- For NCAs: compared to Option 1, higher level of flexibility.

Costs:

- For NCAs and industry: among the three options compared; the second highest implementation costs.
- For EIOPA: potential for the evolution of diverging supervisory practices.

Policy issue 2: Need for including requirements for product testing

Various options were examined:

Option 2.1: Not to require product testing for any insurance product.

Benefits:

- For industry: out of the options compared, the lowest or no implementation costs.
- For customers: potentially more options/product variants to choose from.

Costs:

- For industry: there is a risk that the product will not at all times fulfil the identified needs of the target market. This may harm the trust customers have in the insurance undertaking or insurance intermediary.
- For customers: out of all options compared, the highest risk of detriment occurs, as the product's design may not be entirely suitable for the customer. At a certain moment in time, the product can be the right choice, yet the customer does not know what will happen when the circumstances change.

Option 2.2: to only require product testing for life insurance products.

Benefits:

- For industry and customers: more certainty that the life insurance product fulfil the identified need of the target market at all times. The maintenance/ rebuild of trust in undertakings and their products will benefit both undertakings and customers.

Costs:

- For customers: risk of potential detriment in the case of non-life products.
- For industry: higher implementation costs than under Option 4.1. Product

testing may also hinder innovation as it can prove to be time consuming and may delay the development and issuance of new insurance products.

Option 2.3: to require product testing for both life and non-life insurance products.

Benefits:

- For industry and customers: out of all options compared, the highest certainty that any insurance product (incl. non-life) will fulfil the identified need of the target market at all times. The maintenance/rebuilding of trust in financial institutions and their products will benefit both financial institutions and their customers.

Costs:

- In general, more requirements lead to higher costs. Product testing may also hinder innovation as it can prove to be time consuming and may delay the development and issuance of new insurance products.

Policy issue 3: Need for a specific provision on outsourcing of product design

The following options were considered:

Option 3.1: specific provision when product design is being outsourced; meaning that the manufacturer remains ultimately responsible, regardless of the outsourcing.

Benefits:

- For customers: Customer protection is ultimately assured, regardless of the governmental structure and the internal decisions taken by the manufacturer on how to organise the designing of its products.
- For industry: The manufacturer faces no reputational risk in the case that the product design is being outsourced and that the arrangements on POG are not applied at the third party service provider level. The manufacturer keeps the ultimate responsibility, meaning he has the right to continuously monitor and therefore can ensure that the products offered comply with all arrangements requested. The manufacturer has the possibility to request in its contract with the third party service provider that the POG requirements are part of their contract.
- For national competent authorities (NCAs): When supervising the manufacturer, the supervisory authority concerned has one point of contact, the manufacturer and not unknown third parties like the service provider. It is assumed that the supervisor is engaging in several dialogues with the insurance undertaking, i.e. due to Solvency II requirements, and therefore already has a good understanding of the manufacturer and its governmental structures.
- For EIOPA: The Solvency II requirements in the system of governance

require the ultimate responsibility of the AMSB for any outsourced important function. To provide technical advice with the same underlying principle assures a better and consistent approach of customer protection throughout different areas.

Costs:

- For customers: Customers may face higher costs for insurance products. The risks are that the manufacturer who is going to outsource product design may face higher product costs himself. Those costs may be passed onto the buyer of the product, namely the customer.
- For industry: As described above, the manufacturer may face higher costs when outsourcing its product design. Secondly, the possibility could be that not all service providers want to apply the POG requirements or are not familiar with them which may lead to lower availability of possible service providers.

Option 3.2: no specific provision; meaning that the responsibility for applying the requirements is not specifically described in case of outsourcing.

Benefits:

- No particular benefits in comparison to Option 3.1 were identified, as the manufacturer remains responsible for any outsourced activities.

Costs:

- For customers: The customer could face insufficient customer protection when buying an insurance product which has not been designed by the manufacturer himself, but by a service provider. In many, if not all, cases, the customer has no knowledge of how the product has been designed. Therefore, insufficient information is provided, which does not allow the customer to make a clear choice.
- For NCAs: Outsourcing may hinder the competent authority's ability to take supervisory action if needed and deemed necessary in order to request that customers' interest are addressed by the third party service provider in the development phase of the product. Supervisory powers would be limited and the objective of enhanced customer protection could not be realised.
- For EIOPA: The system of governance under Solvency II includes requirements on outsourcing. In case of a different approach under POG regulation, no consistent approach would be ensured. This could result in an unlevel playing field from the perspective of risk-based supervision.

Policy issue 4: Need to strengthen the exchange of information between manufacturers and distributors of insurance products

Option 4.1: not to specify the general requirement that the manufacturer provides all appropriate information on the product to the distributor.

Benefits:

- For industry: allows for flexibility and discretion regarding the information which is exchanged between manufacturer and distributor.

Costs:

- For industry: if regulation does not specify the relevant information which manufacturers and distributors should exchange, the exchange of information depends highly on the willingness of the manufacturer and distributor to exchange information; this can have a negative impact on the exchange of information which is relevant for both in order to fulfil their regulatory requirements with regard to the product and customers.
- For NCAs: a possible need to specify the information to be exchanged through guidance at a later point in time.

Option 4.2: to specify the information on the product and on the distribution of the product which the manufacturer and distributor should exchange.

Benefits:

- For industry: strengthens the position of the distributor and manufacturer to ask for and obtain the information necessary to fulfil the distributor's duties towards the customer.
- For NCAs: no need to specify the information to be exchanged through further guidance at a later point of time.

Costs:

- For industry: cost of implementation and ongoing costs related to the increase of information to be exchanged between distributor and manufacturer.

Policy issue 5: Documentation of product oversight and governance arrangements

Option 5.1: to require manufacturers and distributors to document all relevant actions in relation to the product oversight and governance arrangements and product distribution arrangements, respectively.

Benefits:

- For industry: facilitates the internal monitoring and review of processes and measures taken in relation to the product oversight and governance arrangements.
- For NCAs: facilitates the supervision and the assessment of how the provisions are implemented by the undertakings.

Costs:

- For industry: additional costs following from the requirement to document all relevant actions in relation to the product oversight and

governance arrangements.

Option 5.2: to require manufacturers only to document all relevant actions in relation to the product oversight and governance arrangements, but not distributors.

Benefits:

- For industry: distributors would not bear additional costs to document all relevant actions in relation to the product oversight and governance arrangements; this would be for the benefit of small distributors which would potentially suffer more than large undertakings.

Costs:

- In general: would create unlevelled playing field and regulatory arbitrage between distributors and manufacturers.

Option 5.3: not to require manufacturers and distributors to document all relevant actions in relation to the product oversight and governance arrangements and product distribution arrangements.

Benefits:

- For industry: no additional costs to document all relevant actions in relation to the product oversight and governance arrangements.

Costs:

- For industry: will make it more difficult for undertakings to monitor and review actions taken in relation to the product oversight and governance arrangements.
- For NCAs: will make it more difficult for NCAs to supervise and assess the implementation of the provisions by the undertakings.

Policy issue 6: Intermediary acting as manufacturer of insurance products

Option 6.1: - Cumulative conditions

Benefits:

- For industry: industry would be provided with specific circumstances when they may or may not be considered to be manufacturers. This could also, however, restrict innovation.

Costs:

- For customers: a restrictive approach could result in circumstances where an intermediary is involved in the manufacturing process, but this is not captured in the list. This could mean the intermediary does not put in place, product governance arrangements they would otherwise have put in place, had they been considered the product manufacturer.

Option 6.2: - General criteria

Benefits:

- For customers: general criteria to identify a manufacturing function could allow for local conditions to be taken into account
- For industry: Since the general criteria are complemented with the identification of activities which are likely, and which are not likely, to be considered as activities of manufacturing, uncertainty for insurance intermediaries is limited.

Policy issue 7: Target market

Option 7.1: - No principles to identify the target market

Benefits:

- For industry and customers: Greater scope for product innovation due to wider market provisions.
- For industry: Manufacturers have full discretion and responsibility over product manufacturing.

Costs

- For industry: when there are no principles to identify the target market, this could lead to legal uncertainty for manufacturers. They may not know if they meet the IDD requirements to identify a target market.
- For customers and in general: Greater risk of miss-selling. Could undermine the aim of the product governance requirements which are intended to ensure products meet the needs and characteristics of the target market. If these are not the relevant characteristics in a particular context then it is unlikely they will be helpful and could even drive the development of product which runs counter to customer interest and limits innovation.
- For NCAs: If there are no principles to identify the target market, it could be difficult and costly to supervise the IDD requirements.

Option 7.2: – High level principles to identify the target market

Benefits

- For customers, industry and in general: high-level principles may help industry to identify the needs and characteristics of the target market more clearly and manufacture products which are in line with the specifications of the target market. This would likely lead to a reduction in mis-selling and provide industry with discretion to innovate when manufacturing insurance products.
- For NCAs: High level principles would provide NCAs with the legal basis to act if products run counter to customer interest.

Costs

- For customer and industry: High level principles could potentially lead to more implementation costs than no principles at all. This could result in increased product costs for the customer.

Option 7.3: – Detailed requirements to identify the target market

Benefits

- For industry: Detailed regulation will provide (legal) certainty to manufacturers.

Costs

- For industry and customers: Detailed regulation would likely result in higher implementation costs which may be passed on to the customer through higher product prices. Furthermore, prescriptive regulation would reduce manufacturer discretion and responsibility. It could also limit product innovation and the manufacturer's ability to respond to changing circumstances that could benefit customers.
- It might also be disadvantageous for smaller firms because they would be less likely to absorb the costs.
- For NCAs: Prescriptive legislation could reduce NCAs' ability to act if detailed requirements are fulfilled but the product produced is not in line with the interest of customers. It would also reduce NCA options to organise their assessments more efficiently and effectively. This could lead to higher supervision costs.

Policy issue 8: Frequency of the review

Option 8.1: - At least annual review

Benefits:

- For customers: Alignment with Solvency II review requirements would deliver a consistent approach for customers.
- For industry: Alignment with the Solvency II review provisions could enable firms to develop efficiencies and consistency of approach.

Costs:

- For industry: Annual reviews of POG arrangements may be costly for smaller manufacturers or distributors which also play a role in manufacturing where the product offering does not change on a yearly basis.

Option 8.2: - At least, review every three years

Benefits:

- For industry and in general: Certainty about the minimum frequency of the review without imposing an annual review, which may be too costly

(in particular for small manufacturers).

- For customers: Reduce the risk of customer detriment by avoiding that a review would not take place as often as necessarily.

Costs:

- For industry and general: Not alignment with the annual review of written policies in Solvency II.

Option 8.3: – No uniform pre-determined frequency

Benefits:

- For customers: Manufacturers could undertake POG reviews more frequently if no specific timeframe is imposed. This could be appropriate for new products introduced throughout the year.
- For industry: The manufacturer would have discretion over the most relevant and appropriate timing based on the product offering and risk profile.

Costs:

For industry and in general: POG reviews which are not aligned to the Solvency II annual governance review requirement could result in an inconsistent approach which could potentially lead to additional costs for the firm.

A.5 – Comparison of options

Policy issue 1: Proportionality principle and differentiation between insurance classes of business

When comparing the costs and benefits of the different options, it became apparent that the anticipated benefits would be largely similar in all cases. Based on the assessment of costs, Option 1.2 seemed preferable. Besides, the criteria for the proportionality principle as well as for its application are being referred to in the IDD⁴⁷ and the Solvency II Directive⁴⁸.

Taking this into consideration, **option 1.2 (not to differentiate between insurance business classes, taking account of the applicability of the principle of proportionality in general)** was chosen. It points out that the principle of proportionality does not mean only to ensure a proportionate application of the requirements in order to limit burden on small size manufacturers/distributors, but also to avoid too burdensome processes for insurance business classes with lower risk and/or complexity.

An explicit reference has been inserted in the proposed technical advice to clarify that product oversight and governance arrangements and product distribution

⁴⁷ Article 25 (1) IDD: "The product approval process shall be proportionate and appropriate to the nature of the product."

⁴⁸ Article 29 (3) Solvency II: "Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking."

arrangements need to be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the insurance distributor.

Policy issue 2: Need for including requirements for product testing

A quantitative test can be run in order to see whether risk and return are well balanced under different scenarios for unit-linked investments. For non-life insurance, the coverage of the product can be looked at, for instance, to see under what conditions, or in which "scenarios", an overlap with other products occur. Based on this analysis, the manufacturer can align the coverage of the product with the other products he offers in order to prevent or reduce overlap in coverage.

Scenario analysis should therefore be seen in a broader context, and should be considered as a useful method in order to make sure that the product is aligned with the interests, objectives and characteristics of the target market during the life cycle of the product. Due to the fact that the technical advice capture all types of insurance products, it was decided that **option 2.3 (to require product testing for life and non-life insurance products)** is the most appropriate level of requirement.

Policy issue 3: Need for a specific provision on outsourcing of product design

In the system of governance requirements under Solvency II, the insurance undertaking remains ultimately responsible when outsourcing important tasks or key functions. EIOPA deems this principle to be one of the most important for good governance. Cases in the market where this rule has not been applied can serve as examples of failures not only in governance and therefore as failures for the insurance undertaking, but even serve as examples of very poor customer protection.

It was concluded that in order to ensure that the product design complies with and serves the overall objective of this technical advice to enhance customer protection - even in those cases where the manufacturer has chosen to outsource this tasks -, a specific provision in the technical advice was needed. Hence **option 3.1 (specific provision when product design is being outsourced)** is the preferred option. This option does not prevent the manufacturer from organising his internal processes to best fit his business and to avoid customer detriment at the same time.

Policy issue 4: Need to strengthen the exchange of information between manufacturers and distributors of insurance products

As outlined in the presentation of policy issue 4, the supervisory practice has shown that distributors do not always receive all relevant information, which is necessary to fully understand the products they intend to distribute. Deficits in information may impede the proper assessment and thorough understanding of insurance products, as well as negatively affect the quality of services provided to the customer, eventually leading to poor quality of services and raising the risk of customer detriment.

Strengthening the exchange of information on the product between manufacturer and distributor seems the appropriate way of overcoming this risk. Against this background, **option 4.2 (to specify the information on the product and on the distribution of the product which the manufacturer and distributor should exchange)** is the preferred option.

Policy issue 5: Documentation of product oversight and governance arrangements and product distribution arrangements

As outlined in the presentation of policy issue 5, it is important from an internal governance and supervisory point of view, to duly document all relevant actions in relation to the product oversight and governance arrangements. For insurance distributors, an appropriate documentation facilitates the compliance, internal monitoring and review of processes and measures taken in relation to product oversight and governance arrangements.

For national competent authorities, a proper documentation facilitates the supervision of implementation. This does not only apply with regard to manufacturers, but also for distributors. Therefore, a distinction between manufacturers on one side and distributors on the other side does not seem appropriate. Against this background **option 5.1 (to require manufacturers and distributors to document all relevant actions in relation to the product oversight and governance arrangements and product distribution arrangements, respectively)** is the preferred option. In order to limit this requirement, it has been specified that the documentation should be kept for a minimum period of five years (which is in line with the approach taken by MiFID I and MiFID II).

Policy issue 6: Intermediary acting as product manufacturer

Intermediaries should be considered manufacturers where they have a decision-making role in product design and development. Distribution strategies across Member States vary, which means it can be challenging to identify specific circumstances where the intermediary is involved in product manufacturing.

According to this, **option 6.2 (general criteria)** was followed. Non-exhaustive criteria can be used to determine the intermediary's role as manufacturer on a case-by-case basis. This should be based on an overall analysis of the specific activities of the insurance intermediary in the product design.

Policy issue 7: Target market

EIOPA's preferred policy option is **option 7.2 (high-level principles to identify the target market)**. High level principles support the aim of the POG arrangements to produce insurance products which are in line with the interest and characteristics of the target market. It will give more legal certainty for the industry, but will also leave discretion and responsibility with the manufacturer. Furthermore, it will give NCAs a legal basis to challenge products, which do not meet customer interests.

Policy issue 8: Frequency of the review

The benefit of option 8.1 (annual review) is that it provides consistency with Solvency II, which requires insurance firms to annually review governance arrangements. EIOPA considered an annual review to be too costly particularly for small undertakings or to those that do not frequently design new products. On the other hand, an annual review could be seen as not sufficiently effective for larger insurance undertakings or for those that frequently design new product lines.

Bearing these concerns in mind, **option 8.3 (no frequency requirements)** was followed. The technical advice does not specify the frequency of the process, leaving such decisions to the manufacturer. This option allows each manufacturer to adapt the frequency of the review process in line with the timing of the internal design product, also taking into account the size, scale and complexity of the insurance undertaking and of the different products that it manufactures.

B. Conflicts of Interest

B.1 – Problem definition

Articles 27 and 28, IDD comprise new organisational requirements for insurance undertakings and insurance intermediaries with regard to conflicts of interest that arise in the context of the distribution of insurance-based investment products.

Article 27 requires insurance undertakings and insurance intermediaries to take all reasonable steps to prevent conflicts of interest from adversely affecting the interests of their customers.

Article 28(1) requires insurance undertakings and insurance intermediaries to identify and manage conflicts of interest that arise in the course of carrying out insurance distribution activities.

Article 28(4) empowers the Commission to adopt delegated acts to further define the steps insurance undertakings and insurance intermediaries have to take to identify, prevent, manage and disclose conflicts of interest, as well as to establish criteria for determining the types of conflict of interest that may damage the interests of the customer.

An equivalent set of rules for investment firms providing investment services in financial instruments has already been introduced through the Directive 2006/73/EC implementing Directive 2004/39/EC of the European Parliament and of the Council as regards the organisational requirements and operating conditions for investment firms (hereafter “MiFID Implementing Directive”) and are now embodied in a Delegated Regulation under MiFID II, which has recently been adopted by the Commission⁴⁹.

The underlying rationale of Articles 27 and 28, IDD is that insurance-based investment products are often made available to customers as potential alternatives or substitutes to financial instruments (Recital 56, IDD). In order to provide consistent protection for customers and ensure a level playing field between similar products, it is important that the distribution of insurance-based investment products is subject to comparable regulatory requirements. Therefore, the objective pursued by the European legislator is to address the issue of an uneven playing field across the different financial sectors hindering fair competition in the market, as well as to abolish regulatory inconsistencies leading to a patchwork of consumer protection.

Articles 27 and 28, however, neither specify which criteria should be applied for the identification of conflicts of interest that may arise with regard to the distribution activities of insurance undertakings and insurance intermediaries, nor stipulate organisational measures to be considered for the management of conflicts of interest identified by insurance undertakings and insurance intermediaries.

Different from the regulatory regime under MiFID II as circumscribed above, the provisions in IDD, due to their abstract wording, would leave a broad discretion to National Competent Authorities (NCAs) and regulated entities as to how these

⁴⁹ Commission Delegated Regulation supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

requirements are applied in practice. This would result in a divergent implementation and application contrary to the objective to foster a level playing field.

In order to avoid regulatory arbitrage and to contribute to a homogenous application of the new organisational requirements for insurance undertakings and insurance intermediaries it is therefore necessary to specify these requirements through implementing measures.

As the data provided by stakeholders in response to the EIOPA's Consultation Paper on Conflicts of Interest is not sufficiently representative to allow a reliable assessment of the quantitative impacts, the following analysis will focus on the qualitative impacts following from the Technical Advice.

With respect to studies mandated by the Commission, which have addressed the question of how the application of the rules of conduct and the organisational requirements of MiFID would impact the insurance sector the following analyses are of particular importance:

- Impact Assessment accompanying the Commission's Proposal to recast the Directive on Markets in Financial Instruments (published on 20 October 2011): http://ec.europa.eu/internal_market/securities/docs/isd/mifid/SEC_2011_1226_en.pdf
- Study on the Costs and Benefits of Potential Changes to Distribution Rules for Insurance Investment Products and other Non-MiFID Packaged Retail Investment Products (published on 29 October 2010): http://ec.europa.eu/internal_market/consultations/docs/2010/prips/costs_benefits_study_en.pdf
- Impact Assessment accompanying the Commission's Proposal to recast the Directive on Insurance Mediation: http://ec.europa.eu/finance/insurance/docs/consumers/mediation/20120703-impact-assessment_en.pdf

Baseline scenario

With respect to conflicts of interest, EIOPA has applied as a baseline scenario to assess the potential costs and benefits from the provisions in the technical advice, the IDD requirements in Articles 27 and 28 applicable to insurance undertakings and insurance distributors.

B.2 – Objectives

The empowerment of the Commission to adopt delegated acts to specify the organisational measures insurance undertakings and insurance intermediaries should take in order to identify and manage conflicts of interests was introduced in the IDD which provided for general rules of conduct in relation to insurance-based investment products.

The Recitals of the IDD indicate that the objectives of the legislator are to deliver consistent protection for retail customers and to ensure a level playing field between similar products. Against this background, the objectives of the Technical Advice are:

- to enhance consumer protection through provisions addressing conflicts of interest arising in the context of the distribution of insurance-based investment products and potentially creating the risk of consumer detriment.
- to encourage consistent application of the organisational measures insurance undertakings and insurance intermediaries should take to manage conflicts of interest that arise in the course of carrying out distribution activities in insurance-based investment products;
- to foster a level playing field regarding the distribution of financial products, which compete with each other and are substitutable from a consumer point of view;

B.3 – Policy options

With the intention to meet the objectives set out in the previous section, EIOPA has analysed different policy options throughout the policy development process. In particular, EIOPA has analysed different policy options with respect to:

- criteria for the identification of conflicts of interest; and
- steps to manage conflicts of interest.

Policy Issue 1: Criteria for the identification of conflicts of interest

With regard to the Commission's request to establish appropriate criteria for the identification of conflicts of interest EIOPA has considered the following options:

- **Option 1.1** - Criteria in MIFID II Delegated Regulation

To implement Article 33 of the MiFID II Delegated Regulation defining the criteria regulated entities are required to apply for the identification of conflicts of interest.

Article 33 of the draft Delegated Regulation under MiFID II reads as follows:

"For the purposes of identifying the types of conflict of interest that arise in the course of providing investment and ancillary services or a combination thereof and whose existence may damage the interests of a client, investment firms take into account, by way of minimum criteria, the question of whether the investment firm or a relevant person, or a person directly or indirectly linked by control to the firm, is in any of the following situations, whether as a result of providing investment or ancillary services or investment activities or otherwise:

(a) the firm or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the client;

(b) the firm or that person has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome;

(c) the firm or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client;

(d) the firm or that person carries on the same business as the client;

(e) the firm or that person receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service."

- **Option 1.2** - Criteria in MIFID II with amendments

To modify Article 33 of the MiFID II Delegated Regulation in order to mirror two additional instances where EIOPA believes that conflicts of interest may arise: In contrast and in addition to Option 1.1, this Option would classify third-party payments as well as the involvement of the insurance distributor in the product development as typical instances where conflicts of interest may arise.

This Policy Option reads as follows:

"For the purpose of identifying the types of conflict of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail the risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, including their managers, employees or any person directly or indirectly linked to them by control, have an interest related to the insurance distribution activities which is distinct from the customer's interest and which has the potential to influence the outcome of the services at the detriment of the customer. Insurance intermediaries and undertakings shall also identify conflicts of interest between one customer and another.

For the purpose of identifying conflicts of interests as outlined in paragraph 1, insurance intermediaries and insurance undertakings shall take into account, by way of minimum criteria, any of the following situations:

a. the insurance intermediary, insurance undertaking, including their managers, employees or any person directly or indirectly linked to them by control is likely to make a financial gain, or avoid a financial loss, to the detriment of the customer;

b. the insurance intermediary, insurance undertaking, including their managers, employees or any person directly or indirectly linked to them by control has a financial or other incentive to favour the interest of another customer or group of customers over the interests of the customer;

c. the insurance intermediary, insurance undertaking, including their managers, employees or any person directly or indirectly linked to them by control receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer.

d. the insurance intermediary, persons working in an insurance undertaking responsible for the distribution of insurance-based investment products or linked person are substantially involved in the management or development of the insurance-based investment products, in particular if they have an influence on the pricing of those products or its distribution costs."

Policy Issue 2: Steps to manage conflicts of interest

With regard to the Commission's request to define steps insurance undertakings and insurance intermediaries should take to manage conflicts of interest.

With regard to Commission's request to specify the organisational measures insurance undertakings and insurance intermediaries should take in order to manage conflicts of interest EIOPA has considered the following options:

- **Option 2.1** - General principle in MiFID II

Only to introduce the general principle of Article 34 of the MiFID II Delegated Regulation, obliging insurance undertakings and insurance intermediaries to establish an effective conflicts of interest policy in writing in order to ensure that the relevant activities are provided at an appropriate level of independence without specifying concrete organisational measures undertakings should consider for that purpose.

- **Option 2.2** - General principle combined with concrete organisational measures

To introduce the general principle of Article 34 of the MiFID II Delegated Regulation combined with specific organisational measures and procedures, insurance undertakings and insurance intermediaries should take to manage conflicts of interest (e.g. effective procedure to prevent or control the exchange of information).

Article 34 of the MiFID II Delegated Regulation reads as follows (wording would have to be aligned to the insurance vocabulary, e.g. "client" has been replaced by "customer"):

"1. Investment firms shall establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to the size and organisation of the firm and the nature, scale and complexity of its business.

Where the firm is a member of a group, the policy must also take into account any circumstances, of which the firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

(a) it must identify, with reference to the specific investment services and activities and ancillary services carried out by or on behalf of the investment firm, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients;

(b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.

3. The procedures and measures referred to in paragraph 2(b) are designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in paragraph 2(a) carry on those activities at a level of independence appropriate to the size and activities of the investment firm and of the group to which it belongs, and to the risk of damage to the interests of clients.

For the purposes of paragraph 2(b), the procedures to be followed and measures to be adopted shall include such of the following as are necessary and appropriate for the firm to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out investment or ancillary services or activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate investment or ancillary services or activities where such involvement may impair the proper management of conflicts of interest.

4. Investment firms shall ensure that disclosure to clients, pursuant to Article 23(2) of Directive 2014/65/EU, is a measure of last resort that shall be used only where the effective organisational and administrative arrangements established by the investment firm to prevent or manage its conflicts of interest in accordance with Article 23 of Directive 2014/65/EU are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the client will be prevented.

The disclosure shall clearly state that the organisational and administrative arrangements established by the investment firm to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented. The disclosure shall include specific description of the conflicts of interest that arise in the provision of investment and/or ancillary services, taking into account the nature of the client to whom the disclosure is being made. The description shall explain the general nature and sources of conflicts of interest, as well as the risks to the client that arise as a result of the conflicts of interest and the steps undertaken to mitigate these risks, in sufficient detail to enable that client to take an informed decision with respect to the investment or ancillary service in the context of which the conflicts of interest arise.

5. Investment firms shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with paragraphs 1 to 4 and shall take all appropriate measures to address any deficiencies. Over-reliance on disclosure of conflicts of interest shall be considered a deficiency in the investment firm's conflicts of interest policy.

- **Option 2.3** - Alternative measures

This Option builds upon Article 34 of the MiFID II Delegated Regulation. In view of the specificities of the insurance sector, the wording of paragraph 4 has been substantially modified, allowing insurance undertakings and insurance intermediaries to demonstrate that alternative measures and procedures are appropriate to ensure that the distribution activities are carried out in accordance with the best interest of the customer and are not biased by conflicting interests.

This Policy Option reads as follows:

"1. Insurance intermediaries and insurance undertakings shall establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business. Where the insurance intermediaries or insurance undertaking is a member of a group, the policy must also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

(a) it must identify, with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more customers;

(b) it must specify procedures to be followed and measures to be adopted in order to manage and prevent such conflicts from damaging the interests of the customer of the insurance intermediary or insurance undertaking, appropriate to the size and activities of the insurance intermediaries or insurance undertaking and of the group to which they belong, and to the risk of damage to the interests of customers.

3. For the purpose of paragraph 2(b), the procedures to be followed and measures to be adopted shall include, where appropriate, in order to ensure that the distribution activities are carried out in accordance with the best interest of the customer and are not biased by conflicting interests of the insurance undertaking, the insurance intermediaries or another customer, the following:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may damage the interests of one or more customers;

(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out insurance distribution activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in insurance distribution activities where such involvement may impair the proper management of conflicts of interest.

4. *If insurance intermediaries and insurance undertakings demonstrate that those measures and procedures are not appropriate to ensure that the distribution activities are carried out in accordance with the best interest of the customer and are not biased by conflicting interests of the insurance undertaking, the insurance intermediaries or another customer, insurance intermediaries and insurance undertakings must adopt adequate alternative measures and procedures for that purpose.*

5. *The measures and procedures taken by the insurance intermediaries and insurance undertakings according to [this Policy Option] are without prejudice to the specific rules on inducements, in particular the obligation to assess the detrimental impact of inducements on the quality of the relevant service to the customer.*

6. *Insurance intermediaries and insurance undertaking shall avoid over reliance on disclosure and shall ensure that disclosure, pursuant to Article 28 (2), IDD, is a step of last resort that can be used only where the effective organisational and administrative measures established by insurance intermediaries and insurance undertakings to prevent or manage conflicts of interest in accordance with Article 27, IDD are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the customer will be prevented.*

7. *Insurance intermediaries and insurance undertaking shall make that disclosure to customers, pursuant to Article 28(2), IDD, in a durable medium. The disclosure shall:*

(a) include a specific description of the conflict of interest, including the general nature and sources of the conflict of interest, as well as the risks to the customer that arise as a result of the conflict and the steps undertaken to mitigate these risks,

(b) to clearly state that the organisational and administrative arrangements established by the insurance intermediary or insurance undertaking are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests to the customer will be prevented, in order to enable the customer to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

8. Insurance intermediaries and insurance undertakings shall:

(a) assess and periodically review – at least annually – the conflicts of interest policy established in accordance with this article and to take all appropriate measures to address any deficiencies, and

(b) keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of the one or more customers has arisen or, in the case of an ongoing service or activity, may arise.

9. Where established, senior management shall receive on a frequent basis, and at least annually, written reports on these situations”.

B.4 – Analysis of impacts

As the Policy Options with regard to the Policy Issue 1 and Policy Issue 2 are closely linked and complementary to each other, it is appropriate and necessary to analyse their impacts all together. This is supported by the fact that the respective Policy Options differ only slightly and the following analysis focus on the qualitative aspects, only.

Benefits:

For insurance undertakings and insurance intermediaries, the Policy Options with regard to Policy Issues 1 and 2 as could provide the following benefits:

- Prevention of customer detriment and legal action: The Policy Proposal will lower the risk of consumer detriment resulting from an improper management of conflict of interests and consequently lower the risk that costumers take legal action because of damages suffered.
- Increased customer confidence and decreased reputational risks: As outlined, the Policy Proposal will lower the risk of consumer detriment which simultaneously increase the customer’s confidence and decrease reputational risks.
- Enhanced corporate governance: The policy proposal will enhance corporate governance mechanisms by which insurance undertakings and insurance intermediaries are supervised and directed.
- Prevention of regulatory arbitrage: Harmonised rules ensure equal treatment of entities located in different Member States (regulatory arbitrage with regards of entities of different origin) as well as alike treatment of entities distributing products different with regard to legal nature and regulation (cross sectorial regulatory arbitrage).

For customers, the Policy Options with regard to Policy Issues 1 and 2 could provide the following benefits:

- **Enhanced consumer protection:** The Policy Proposal aims to ensure that insurance undertakings and insurance intermediaries provide their services in the best interest of their customers and conflicts of interest are not improperly resolved, to the detriment of the customer.
- **Counterbalance to the customer's paucity of information:** The Policy Proposal aims to counterbalance the customer's paucity of information since customers do not generally have the full picture of the extent to which insurance undertakings and insurance intermediaries are facing conflicts of interest.

For NCAs, the Policy Options with regard to Policy Issues 1 and 2 could provide the following benefits:

- **Enhanced legal certainty:** Implementing measures facilitate the application and understanding of Level 1 – requirements

Costs:

For insurance undertakings and insurance intermediaries, the Policy Options with regard to Policy Issues 1 and 2 could involve the following costs:

- **One-off costs** as insurance undertakings and insurance intermediaries are required to take organisational and procedural measures for implementation (e.g. costs associated with project management and/or engagement with external consultants, the identification of conflicts of interest, the development or revision of conflicts of interest policies, the introduction of new IT systems, staff training).
- **Ongoing costs** as insurance undertakings and insurance intermediaries are required to periodically review and adapt their organisational measures and procedures, if necessary (including the periodic identification of conflicts of interest and revision of conflicts of interest policies, if necessary).

For customers, the Policy Options with regard to Policy Issues 1 and 2, could involve the following costs:

- **Additional costs** insurance undertakings and insurance intermediaries have to bear in order to implement the new regulatory requirements may be transferred to customers, rendering services and products more expensive.

For NCAs, the Policy Options with regard to Policy Issues 1 and 2, could involve the following costs:

- The need to supervise and enforce new rules.

B.5 – Comparison of options

• **Policy Issue 1: Criteria for the identification of conflicts of interest**

With regard to Option 1.1 (Criteria in MIFID II Delegated Regulation) and Option 1.2 (Criteria in MIFID II with amendments), EIOPA considers it generally appropriate to make recourse to Article 33 of the MiFID II Delegated Regulation and to transfer its principles in order to define appropriate criteria for the

identification of conflicts of interest that may arise in the course of carrying out insurance distribution activities.

Even though the wording in Article 33 of the MiFID II Delegated Regulation addresses investment firms only, EIOPA notes that the instances circumscribed in the provision are of a broad and abstract nature, such that they, in principle, can be applied very broadly across the different sectors of the financial services. The instances rather describe situations where conflicts of interest commonly arise when a commercial activity is pursued and the interests of customers are at stake. The interest to make a financial gain at the expense of the customer is a good example. Consequently, EIOPA considers that the principles as laid down in Article 33(a)–(e) of the MiFID II Delegated Regulation are also relevant for insurance intermediaries and insurance undertakings in the course of carrying out insurance distribution activities.

Nevertheless, EIOPA is of the opinion that Article 33 should be modified in order to address the following issues.

Firstly, a general circumscription of conflict of interest should be introduced to facilitate the understanding and application of the provision. This clarifies that the specific instances listed in letter (a) - (d) are only of exemplary nature and insurance undertakings and insurance intermediaries should focus on the general question whether they pursue interests which are distinct from the customer's interests and which have the potential to influence the services rendered at the detriment of the customer.

Secondly, it should be clarified that conflicts of interest may also arise if the distributors are substantially involved in the development or management of products. For example, conflicts of interest arise where an intermediary exercises influence over how distribution costs that benefit the intermediary are embedded in the design of a product or where an intermediary is rewarded with a percentage of the management costs.

Thirdly, it should be clarified that conflicts of interest arise whenever the insurance intermediary receives a commission or fee paid by a third party, independent from the question whether the commission or fee corresponds with the market standard or not. This follows from the intermediary's own interest to make a financial gain when providing services to the customer.

Against this background, **Option 1.2 (Criteria in MIFID II with amendments)** seems to offer the preferable solution from EIOPA's point of view.

- **Policy Issue 2: Steps to manage conflicts of interest**

Option 2.1 (general principle in MIFID II) would offer insurance undertakings and insurance intermediaries a broad discretion and flexibility how to implement the organisational requirements. In addition to that, Option 2.2 (Concrete organisational measures) would require the entities to consider whether a catalogue of proposed measures is necessary and appropriate in order to manage conflicts of interest properly and ensure the prerequisite independence. EIOPA believes that the measures of Article 34 of the MiFID II Delegated Regulation do

not only apply for investment firms, but have also a particular relevance to manage conflicts of interest arising in the context of the insurance distribution activities. For example, "measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries ... services or activities" may play a role in the relationship between a sales manager and employees advising customers with regard to insurance-based investment products.

If the entities come to the conclusion and can demonstrate that the proposed measures and procedures are not appropriate, the entities are entitled, under **Option 2.3 (alternative measures)**, to adopt alternative measures to ensure that the services provided are not biased by conflicting interests of those entities. From EIOPA's perspective, **Option 2.3** therefore offers the most appropriate solution.

C. Inducements

C.1 – Problem definition

The IDD introduces new requirements in relation to insurance-based investment products. These requirements are additional to those applying to all insurance products within scope of the IDD. Chapter VI of the IDD sets out the additional requirements, covering conflicts of interest, costs and charges, inducements, suitability, appropriateness and reporting to customers.

The IDD requirement to which this technical advice on inducements relates, is covered in Article 29(2). It obliges Member States to ensure that insurance intermediaries and undertakings are meeting their obligations under the IDD where they pay or receive any fee, commission, or other non-monetary benefit, in connection with the distribution of an insurance-based investment product or ancillary service. Article 29(2) introduces a test that the payment or benefit must: a) not have a detrimental impact on the quality of the relevant service to the customer; and b) not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers.

In the impact assessment accompanying the draft proposal to amend the Insurance Mediation Directive (IMD) in 2012, the Commission found that general problems with insurance products were more pronounced in the case of insurance-based investment products due to their complexity. One area identified as a heightened risk was conflicts of interest stemming from remuneration structures.

The Commission went on to state that consumer protection standards for the sales of these products were not sufficient at EU level, as these products were sold under the general IMD rules for the sales of insurance even though insurance-based investment products are very different in nature and generally represent higher risks for retail consumers.⁵⁰

The disparity between consumer protection standards under IMD and those under MiFID was considered a deficiency. While some Member States had sought to address the disparity by introducing stricter rules for these products, the vast majority (21 out of 27 Member States) had left the area unregulated. This meant that consumers in different Member States were not protected to the same extent, and there is an uneven playing field between Member States and within Member States in respect of sellers of insurance with investments and those only selling investment products.⁵¹

The particular issue with inducements is their potential to influence the distributor's product offer or advice. As stated by the Commission, consumer harm can arise in two slightly different ways: either through a lock-in of intermediaries into quasi-exclusive dealing arrangements with a single upstream insurance company (whereby consumers

⁵⁰ Commission Staff Working Document Impact Assessment: Accompanying the document Proposal for a Directive of the European Parliament and of the Council on Insurance Mediation (SWD/2012/0191 final), *Section 3.2 Problems relating to Packaged Retail Investment Products (PRIIPs)*.

⁵¹ IBID, *Section 3.1.2 Conflicts of interest*

turning to the intermediary will not have sufficient choice to best satisfy their needs), or through biased advice to the consumer.

On the demand-side, inducement bias can lead to customers purchasing products they do not need or want. This, in turn, can result in unnecessary costs, dissatisfaction and distrust of the industry. Given that insurance-based investment products are purchased for the purpose of building up savings, the impact of mis-purchasing can be significant, either through the customer taking on too much (or little) risk, with potential thereby for loss of savings, or through the customer being exposed to poor performance and high costs, also with a negative impact on savings.

It can also negatively impact the supply-side of the market. Biased advice or offerings may mean that providers with higher quality and lower cost products may not be receiving the returns expected because other similar products have higher inducements being made. These inducements can therefore have an impact on competition between providers. In addition, where customers are dissatisfied or distrustful, this can lead to more costs due to complaints and lower sales.

The Commission's mandate sets out the parameters for the technical advice, and therefore the scope of the policy options considered. The mandate requests advice on measures specifying the rules on fees, commissions or non-monetary benefits in connection with the distribution of insurance-based investment products laid down in Article 29(2) of the Directive:

- The criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the customer
- The criteria for assessing compliance of insurance intermediaries and insurance undertakings paying or receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer.

The Commission further sets out matters that the measures should take into account as well as a guide to the approach (for example, that the technical advice should build on the results of previous work carried out by EIOPA and ESMA).

Baseline

With respect to inducements, EIOPA has applied as a baseline scenario to assess the potential costs and benefits from the provisions in the technical advice, the IDD requirements in Article 29 applicable to insurance undertakings and insurance distributors.

C.2 – Objectives

Taking account the Commission's mandate, the objectives of the technical advice are to:

- Enhance consumer protection and foster a level playing field by having a consistent approach to the identification and assessment of inducements at risk

of having a detrimental impact on the quality of service provided to the customer, as well as those practices which may mitigate the risks associated with an inducement.

- Encourage consistent application of organisational measures that insurance undertakings and intermediaries should have in place to ensure that inducements do not lead to a detrimental impact on the service provided to the customer or prevent the intermediary or undertaking with acting honestly, fairly and in the best interests of their customers.
- Improve market dynamics, by supporting a consistency of approach (where possible) between insurance-based investment products and products within scope of MiFID II. This should reduce risks associated with regulatory arbitrage, but also support businesses who are competing with substitutable or similar products.

C.3 – Policy options

With the intention to meet the objectives set out in the previous section, EIOPA has analysed different policy options throughout the policy development process. In particular, EIOPA has analysed different policy options with respect to:

- The need for a general principle on inducements at risk of causing a detrimental impact;
- The identification of inducements that are considered to increase the risk of having a detrimental impact;
- The identification of circumstances that may be considered to reduce the risks that inducement have a detrimental impact; and
- Organisational requirements related to inducements.

Policy Issue 1 - Inducements at risk of causing a detrimental impact: high-level principle

The IDD sets out the overarching requirement that determines whether an inducement can be paid, but is on silent on when an inducement has a detrimental impact. The Commission has requested that EIOPA provide advice on the criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking in connection with the distribution of insurance-based investment products have a detrimental impact on the quality of the relevant service to the customer.

EIOPA has considered the following options to address this issue:

- **Option 1.1** - do not introduce a high-level principle
- **Option 1.2** - introduce the criterion of quality enhancement similar to Article 24(9) of MiFID II and further specified in the Commission's proposal for a delegated Directive under MiFID II requiring that an additional or higher level of service to

the client is provided, that the inducement does not directly benefit the recipient firm, and that an on-going benefit is provided to the client.

- **Option 1.3** - introduce a high-level principle based upon Article 17 IDD stating that inducements have a detrimental impact if they provide an incentive to carry out the distribution activities in a way which is not in accordance with the best interest of the customer, while promoting compatibility with the approach under MiFID II.

This option would read as follows:

"An inducement or inducement scheme has a detrimental impact on the quality of the relevant service to the customer if it is of such a nature and scale that it provides an incentive to carry out the insurance distribution activities in a way which is not in accordance with the best interest of the customer".

Policy Issue 2 - Inducements at risk of causing a detrimental impact: high risk inducements

The Commission has requested EIOPA to indicate examples of circumstances where an inducement may generally be regarded as having a detrimental effect on the quality of the relevant service to the customer.

EIOPA has considered the following options to address this issue:

- **Option 2.1-** Do nothing

It means not to identify inducements that are considered to constitute a high risk of having a detrimental impact.

- **Option 2.2-** Definition of inducements not enhancing quality of service

This option apply the rationale which underlies the Commission's Delegated Directive under MiFID II and defines the circumstances where inducements (do not) enhance the quality of the relevant service.

The relevant part can be found in Article 11(2) of the proposed delegated Directive stating:⁵²

A fee, commission or non-monetary benefit shall be considered to be designed to enhance the quality of the relevant service to the client if all of the following conditions are met:

(a) it is justified by the provision of an additional or higher level service to the relevant client, proportional to the level of inducements received, such as:

(i) the provision of non-independent investment advice on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third party product providers having no close links with the investment firm;

(ii) the provision of non-independent investment advice combined with either: an offer to the client, at least on an annual basis, to assess the continuing

⁵² http://ec.europa.eu/finance/securities/docs/isd/mifid/160407-delegated-directive_en.pdf

suitability of the financial instruments in which the client has invested; or with another on-going service that is likely to be of value to the client such as advice about the suggested optimal asset allocation of the client; or

(iii) the provision of access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third party product providers having no close links with the investment firm, together with either the provision of added-value tools, such as objective information tools helping the relevant client to take investment decisions or enabling the relevant client to monitor, model and adjust the range of financial instruments in which they have invested, or providing periodic reports of the performance and costs and charges associated with the financial instruments

(b) it does not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the relevant client;

(c) it is justified by the provision of an on-going benefit to the relevant client in relation to an on-going inducement.

A fee, commission, or non-monetary benefit shall not be considered acceptable if the provision of relevant services to the client is biased or distorted as a result of the fee, commission or non-monetary benefit.

- **Option 2.3** - List of inducements with risks

This option consists in developing a distinctive list of criteria which insurance undertakings and insurance intermediaries should consider when assessing the detrimental impact on the quality of the relevant service to the customer.

This option would read as follows:

Insurance undertakings and insurance intermediaries shall assess all relevant factors which increase or decrease the risk of detrimental impact on the quality of the relevant service to the customer.

Insurance undertakings and insurance intermediaries shall take consideration into the following criteria in order to assess whether inducements or inducement schemes increase the risk of detrimental impact:

a) the inducement or inducement scheme encourages the insurance intermediary or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when the insurance intermediary or insurance undertaking could, from the outset, propose a different available product or service which would better meet the customer's needs;

b) the inducement or inducement scheme is solely or predominantly based on quantitative commercial criteria and does not take into account appropriate qualitative criteria, reflecting compliance with the applicable regulations, fair treatment of customers and the quality of services provided to customers;

c) the value of the inducement is disproportionate when considered against the value of the product and the services provided in relation to the product;

- d) *the inducement is entirely or mainly paid upfront when the product is sold without any appropriate refunding mechanism if the product lapses or is surrendered at an early stage;*
- e) *the inducement scheme does not provide for an appropriate refunding mechanism if the product lapses or is surrendered at an early stage;*
- f) *if the inducement scheme entails any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a sales target based on volume or value of sales.*

Policy Issue 3 – Circumstances that may reduce the risk of detrimental impact

The Commission's request for advice allows discretion for EIOPA to complement the Technical Advice: "*This could be complemented by an exemplary enumeration of circumstances where third-party payments and benefits are generally considered acceptable*".

EIOPA has considered the following options to address this issue:

- **Option 3.1.** – Exemplary enumeration of circumstances that may reduce the risk of detrimental impact
- **Option 3.2.** – Amend the organisational requirements on inducements, in particular introduce organisational measures for the assessment of detrimental impact
- **Option 3.3.** – Do nothing

Policy Issue 4 - Organisational requirements related to inducements

Policy options

- **Option 4.1** - Not specific organisational requirements related to inducements
- **Option 4.2** – Requirements in MIFID II

That is to apply the same organisational requirements as outlined in the Commission's proposal for a Delegated Directive for MiFID II

The relevant part can be found in Article 11 (4) of the proposed Delegated Directive:⁵³

"Investment firms shall hold evidence that any fees, commissions or non-monetary benefits paid or received by the firm are designed to enhance the quality of the relevant service to the client:

- (a) by keeping an internal list of all fees, commissions and non-monetary benefits received by the investment firm from a third party in relation to the provision of investment or ancillary services; and*

⁵³ http://ec.europa.eu/finance/securities/docs/isd/mifid/160407-delegated-directive_en.pdf

(b) by recording how the fees, commissions and non-monetary benefits paid or received by the investment firm, or that it intends to use, enhance the quality of the services provided to the relevant clients and the steps taken in order not to impair the firm's duty to act honestly, fairly and professionally in accordance with the best interests of the client."

- **Option 4.3** – Specific requirements for insurance

This option consists in developing organisational requirements based on the specificities of insurance intermediaries and undertakings distributing insurance-based investment products. The policy proposal requires insurance undertakings and insurance intermediaries to take adequate organisational measures to assess the detrimental impact of inducements. The policy proposal clarifies that the assessment should be based upon an overall analysis which takes into consideration all risk-increasing and risk-reducing factors.

This would be read as follows:

"Insurance undertakings and insurance intermediaries should maintain and operate organisational arrangements procedures in order to assess on an ongoing basis and ensure that the generic inducement paid for a particular type of contract and the structure of inducement schemes which they pay to or receive:

- a. do not lead to a detrimental impact on the quality of the service provided to customers and*
- b. do not prevent the intermediary or insurance undertaking from complying with their obligation to act honestly, fairly and in accordance with the best interests of their customers.*

The assessment should be based upon an overall analysis which takes into consideration all relevant factors which may increase or decrease the risk of detrimental impact, and appropriate organisational measures taken by the insurance undertaking or insurance intermediary to decrease the risk of detrimental impact which aim to ensure that the inducements do not provide any incentive to carry out the insurance distribution activities in a way which is not in accordance with the best interest of the customer.

Insurance undertakings and insurance intermediaries as referred to in paragraph 1 should ensure that any inducement scheme is approved by the insurance undertaking or insurance intermediary's senior management.

Insurance intermediaries and insurance undertakings as referred to in paragraph 1 should document the assessment referred to in paragraph [x - above] in a durable medium.

As part of the conflicts of interest policy (as outlined under ...) insurance intermediaries and insurance undertakings should set up a gifts and benefits policy that stipulates what benefits are acceptable and what should happen where limits are breached".

C.4 – Analysis of impacts

Policy Issue 1 - Inducements at risk of causing a detrimental impact: high-level principle

Option 1.1 – do not introduce a high-level principle

Benefits:

- For customers: no specific benefits identified
- For industry: no specific benefits identified
- For NCAs: wide discretion on how to interpret and apply in practice the abstract term “detrimental impact” enabling to take into account specificities of national markets and existing business models

Costs:

- For customers: Different level of customer protection across the Member States as a result of the development of diverging understanding of detrimental impact
- For industry: No additional guidance on the understanding of detrimental impact would cause legal uncertainty for market participants leading to additional costs to comply with the new requirements; bespoke diverging understanding of detrimental impact will also have negative impact on cross-border distribution of insurance-based investment products as insurance undertakings and insurance intermediaries will be confronted with different national understanding of detrimental impact
- For NCAs: need to develop a national understanding of detrimental impact to provide guidance to participants of the respective national markets

Option 1.2 – introduce the criterion of quality enhancement

Benefits:

- For customers: Increased customer protection and quality of service as inducements would be beneficiary and serve the customer’s interests; equivalent level of customer protection, not only across Member States, but also from a cross-sectoral perspective.
- For industry: Legal certainty about the understanding of detrimental impact would reduce advisory/compliance costs for implementation; level playing field across Member States and different financial sectors; in the long run increased confidence and trust of customers in the services provided.
- For NCAs: No need to develop national understanding of detrimental impact; provides support and guidance for consistent application and implementation in national law.

Costs:

- For customers: Extensive understanding of detrimental impact may have negative consequences for existing business models leading to a reduced competition and choice of products/providers/services in the market

- For industry: Extensive understanding of detrimental impact may have negative consequences for existing business models (lower revenues), in particular those which are entirely financed by commissions; some entities might be required to change the structure of their income; training costs for employees.
- For NCAs: Costs for supervision and enforcement. Training costs for employees.

Option 1. 3 – introduce a high-level principle based upon Article 17 IDD

Benefits:

- For consumers: Increased customer protection as the risk of conflicts of interest arising from inducements is addressed; equivalent level of customer protection across the Member States providing a level playing field, whereas not identical, but compatible with policy requirements developed under MiFID II.
- For industry: Legal certainty about the understanding of detrimental impact would reduce advisory/compliance costs for implementation; level playing field across Member States; in the long run increased confidence and trust of customers in the services provided.
- For NCAs: No need to develop national understanding of detrimental impact; provides support and guidance for consistent application and implementation in national law.

Costs:

- For customers: Negative consequences on competition and choice of products/providers/services as outlined under Policy Option 2 less relevant, even though not to be excluded from the outset.
- For industry: Even though less relevant, impact on existing business models (lower revenues) cannot be excluded as some common inducements might be considered as having a detrimental impact; training costs for employees.
- For NCAs: Costs for supervision and enforcement. Training costs for employees.

Policy Issue 2 - Inducements at risk of causing a detrimental impact: high risk inducements

Option 2.1 – do not identify inducements that are considered to be high risk of having a detrimental impact

Benefits:

- For customers: no specific benefits identified
- For industry: no specific benefits identified
- For NCAs: wide discretion on how to interpret and apply in practice the high-level principle enabling them to take into account specificities of national markets and existing business models

Costs:

- For customers: less consistent application of the high-level principle will lead to a diverging level of customer protection across the Member States. This may lead to a situation where some Member States develop a very strict and rigid understanding of detrimental impact, whereas other Member States follow a more flexible and less severe approach.
- For industry: No guidance on the high-level principle. Differences in national regulation will hamper the cross-border distribution of insurance products and contravene the principle of a level playing field across Europe.
- For NCAs: No guidance on the high-level principle and the need to develop a proper understanding on national level.

Option 2.2 - apply the rationale which underlies the Commission's Delegated Directive under MiFID II

Benefits:

- For customers: As inducements are supposed to provide an additional or higher level of service to the customer, inducements directly benefit the customer.
- For industry: Increased confidence and trust of customers in the services provided which will be beneficiary for the industry in the long run.
- For NCAs: Detailed guidance on the legitimacy of inducements provides legal certainty and supports NCA's in their implementation and supervision.

Costs:

- For customers: Possible negative consequences for existing business models, in particular those which mainly rely on commissions to finance their business models as well as small intermediaries, leading to a reduced competition and choice of products/providers/services in the market
- For industry: Possible negative consequences for existing business models (lower revenues), in particular those which are entirely financed by commissions; some entities might be required to change the structure of their income; training costs for employees.
- For NCAs: Costs for supervision and enforcement. Training costs for employees.

Option 2.3 - develop a distinctive list of inducements which are considered to have a high risk of leading to a detrimental impact on the quality of the relevant service to the customer

Benefits:

- For customers: A distinctive list of inducements makes insurance intermediaries and insurance undertakings aware of inducements which entail a high risk of detrimental impact on the service provided and requires either, if possible, to take appropriate organisational measures to mitigate the risks, or, if not

possible, to abstain from paying or receiving these inducements. Therefore, the distinctive list strongly supports the legislative purpose to avoid any detrimental impact on the quality of service provided to the customer.

- For industry: Increased confidence and trust of customers in the services provided which will be beneficiary for the industry in the long run.
- For NCAs: A distinctive list of inducements will help NCAs to supervise and enforce the new requirements on inducements as laid down in Article 29 IDD.

Costs:

- For customers: Although less relevant as for policy option 2, possible negative consequences for existing business models, in particular those which mainly rely on commissions to finance their business models as well as small intermediaries, leading to a reduced competition and choice of products/providers/services in the market
- For industry: Although less relevant as for policy option 2, possible negative consequences for existing business models (lower revenues), in particular those which are entirely financed by commissions which are considered to have a high risk of detrimental impact; some entities might be required to change the structure of their income; training costs for employees.
- For NCAs: Costs for supervision and enforcement. Training costs for employees.

Policy Issue 3 – Circumstances that may reduce the risk of detrimental impact

Policy Option 3.1 - Exemplary enumeration of circumstances that may reduce the risk of detrimental impact

Benefits:

- For customers: No specific benefits identified
- For industry: More guidance on circumstances under which the risk of detrimental impact is reduced provides more legal clarity and certainty for market participants (a “safe harbour”).
- For NCAs: More guidance on circumstances under which the risk of detrimental impact is reduced may provide more legal clarity and certainty for NCAs for the purposes of supervision and enforcement (a “safe harbour”).

Costs:

- For customers: Enumeration of circumstances raises the risk of loopholes, enabling regulatory circumvention, leading ultimately to a lower level of customer protection
- For industry: No specific costs identified
- For NCAs: Exemplary enumeration of circumstances that may reduce the risk of detrimental impact, will raise the question how to weigh these circumstances against the exemplary list of high-risk practices and may restrict

the ability of NCAs to take prohibitive action regarding inducements both *ex ante* and *ex post*. In addition, it is very challenging for NCAs to future-proof such a list to allow for market and technological developments.

Policy Option 3.2 - Amend the organisational requirements on inducements, in particular introduce organisational measures for a holistic assessment of detrimental impact

Benefits:

- For customers: From a more general point of view, organisational measures aim to ensure that insurance undertakings and intermediaries comply with the regulatory requirements for the benefit of the customer
- For industry: Depending on the organisational measures taken insurance undertakings and insurance intermediaries are in a better position to manage the risk of detrimental impact stemming from specific types of inducements
- For NCAs: Specific organisational measures will help NCAs to monitor and supervise insurance undertakings and insurance intermediaries

Costs:

- For customers: No specific costs identified and the costs of introducing organisational measures should not be passed by insurance undertakings and insurance intermediaries onto customers
- For industry: Costs for the implementation of the organisational requirements, for example, new systems and controls and training of compliance and sales staff
- For NCAs: Potentially, additional costs related to the supervision of insurance undertakings and insurance intermediaries if existing national rules do not address such organisational measures

Policy Option 3.3 – Do nothing

Benefits:

- For customers: No risk of watering down the list of high-risk practices or the creation of loopholes for circumvention, thus maintaining a higher level of customer protection.
- For industry: No specific benefits identified
- For NCAs: No additional costs for supervision and no need to future-proof a list of risk-reducing factors to take account of market and technological developments.

Costs:

- For customers: No specific costs identified
- For industry: no guidance on circumstances under which the risk of detrimental impact is reduced

- For NCA: no guidance on circumstances under which the risk of detrimental impact is reduced

Policy Issue 4 - Organisational requirements related to inducements

Policy Option 4.1 – not specify organisational requirements related to inducements

Benefits:

- For customers: No specific benefits identified
- For industry: No additional costs resulting from the establishment and maintenance of organisational arrangements; more discretion regarding the choice of organisational measures.
- For NCAs: No specific benefits identified

Costs:

- For customers: As organisational measures aim to ensure that entities comply with regulatory requirements, a lack of specification may prove disadvantageous from a customer point of view
- For industry: No guidance on organisational requirements related to inducements may cause additional costs to set up corresponding measures
- For NCAs: No guidance on organisational requirements related to inducements

Policy Option 4.2 and 4.3 – to specify organisational requirements related to inducements

As Policy Option 2 and Policy Option 3 have many similarities and share the same legislative purpose to ensure that entities comply with the regulatory requirements on inducements which have been introduced through the respective sectoral legislation, the costs and benefits analysis below covers both options at the same time.

Benefits:

- For customers: From a more general point of view, organisational measures aim to ensure that insurance undertakings and intermediaries comply with the regulatory requirements for the benefit of the customer
- For industry: Having good systems and controls in place supports firms' compliance with inducement requirements
- For NCAs: Record keeping requirements enable better supervision and assessment of where firms are not complying with requirements

Costs:

- For customers: Potential costs passed through from increased compliance costs
- For industry: Costs for setting up new systems and controls, whereas the specific costs depend on the organisational requirements required
- For NCAs: Additional material to assess

C.5 – Comparison of options

Policy Issue 1 - Inducements at risk of causing a detrimental impact: high-level principle

Not introducing a high-level principle (as proposed by Option 1.1) would lead to legal uncertainty for market participants and the development of different level of customer protection across the Member States as a result of a divergent understanding of detrimental impact by market participants and NCAs in the Member States. This would result in obstacles for cross-border business and, therefore, hamper the further development of a single market in Europe.

Against this background, EIOPA considers it necessary to provide further guidance in Level 2 under which circumstance inducements entail the risk of having a detrimental impact on the service provided to customers.

With regard to Policy Option 1.2 (introduce the criterion of quality enhancement), EIOPA would like to note that it would ensure a maximum alignment with the regulatory requirement under MiFID II leading to a cross-sectoral level playing field. However, EIOPA acknowledges that the corresponding Level 1 provisions in IDD differ fundamentally in terminology and language and set a different standard, even though they pursue the same legislative goal to foster the protection of customers.

For that purpose, EIOPA considers it appropriate and essential to develop a methodology which is compatible with MiFID, but takes into account the specificities of the insurance sector and differences in terminology used in the corresponding Level 1 provisions. For that reason, EIOPA favours **Option 1.3 (introduce a high-level principle based upon Article 17 IDD)** which provides an adequate level of legal certainty about the understanding of detrimental impact which is based upon the general principle in Article 17(3), IDD requiring insurance undertakings and intermediaries to act in accordance with the best interests of their customers.

This approach will help to develop a common understanding of detrimental impact across the Member States (further refined by list of inducements which are considered to have a high risk of detrimental impact, see below) and to foster the goal of a single market. At the same time, the impact of Option 1.3 on existing business models is presumably less significant than under Option 1.2 taking into consideration that Policy Option 1.3 adheres to the principle that business models can be financed by commissions, only.

Policy Issue 2 – Inducements at risk of causing a detrimental impact: high risk inducements

Whereas option 2.1 (do nothing) leaves a broad discretion to market participants and competent authorities on how to apply the high-level principle (as outlined under Policy Issue 1) and to consider specificities of national markets and existing business models, it implies that market participants and competent authorities develop their own understanding and interpretation, leading to a diverging level of customer protection across Member States and between market participants. Differences in national regulation, which are likely to arise as a result, will hamper cross-border

business and contravene the establishment of a single Market in Europe, to the disadvantage of all market participants and customers.

Taking into consideration that option 2.2 (definition of inducements not enhancing quality of service) would require that inducements are used to provide an additional or higher level of service to the customer, existing distribution models which are mainly financed by commission (and are still relevant in some Member States) would be hit hard and be required to find other sources of revenues and to give up their existing business models. Moreover, option 2.2 would not acknowledge the differences between the respective provisions in IDD and MiFID. In view of these implications which have to be assessed against the principle decision that commissions continue to be a valid form of financing distribution, EIOPA has a preference for Policy Option 3 and to single out specific inducements which increase the risk of having a detrimental impact on the services provided to the customer.

EIOPA believes that **option 2.3 (list of inducements with risks)** provides the appropriate balance between the intermediaries' interests to receive commissions to (partly) finance their business and the customer's interest to benefit from unbiased services. Policy Option 2.3 is supposed to preclude inducements only which are of the most regulatory concern from a customer protection perspective as they bear a significantly higher level of risk that the insurance undertaking or insurance intermediary will not act in the best interest of its customers when receiving these kinds of inducements, except if the insurance undertaking or insurance intermediary is able to take appropriate organisational measures to mitigate these risks appropriately (a holistic assessment).

Policy Issue 3 - Circumstances that may reduce the risk of detrimental impact

EIOPA would like to emphasise that an exemplary enumeration of circumstances that could be considered as reducing the risk of detrimental impact (Option 3.1) entails the high risk of creating loopholes for regulatory arbitrage and may restrict the ability of NCAs to take prohibitive action in relation to inducements both *ex ante* and *ex post*⁵⁴.

In addition, there is the risk that such a list can become outdated and does not reflect current market and technological developments. It could be very challenging for an NCA to "future-proof" a white list or construct it in such a way so as to ensure that insurance undertakings or insurance intermediaries do not misinterpret it more widely than is intended and in such a way as to circumvent the inducement rules. This is supported by factual evidence provided by a national competent authority which experienced that similar safe harbour provisions in their respective national law foiled the achievement of the legislative purpose of strengthening the protection of customers.⁵⁵

⁵⁴ See Article 29(3), IDD

⁵⁵ In the FCA's Inducement rules, it was recognised that some payments or benefits offered by providers to advisory firms can be in customers' best interest, and the conflicts of interest arising can be managed. Two thematic projects by the UK FCA following the introduction of the Retail Distribution Review (RDR) showed how some firms took an overly broad interpretation of this to justify a wide range of benefits that in the FCA's view, did not meet the inducements rules. In the end, the FCA was obliged to issue further guidance to dispel any ambiguity around the interpretation of the white list:

Therefore, EIOPA recommends not including such a list in the technical advice. However, EIOPA acknowledges that specific circumstances may be considered reducing the risk of detrimental impact on the quality of the relevant service to the customer and could be taken into consideration as part of an overall-assessment.

Therefore, EIOPA proposes to amend the organisational requirements on inducements for that purpose, in particular to introduce organisational measures for the holistic assessment of detrimental impact where high-risk factors may be counterbalanced with appropriate organisational measures which aim to ensure that the insurance distribution activities are carried out in compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers. In view of the positive effects of Option 3.2, from a consumer protection point of view and from the view of the industry, EIOPA considers it preferable to choose Option 3.3.

Policy Issue 4 - Organisational requirements

EIOPA considers it important to specify the organisational requirements related to inducements as organisational arrangements help to ensure that insurance undertakings and insurance intermediaries comply with the regulatory requirements for the benefit of the customer. Having appropriate organisational arrangements does not only support compliance with the regulatory requirements, but also enables better supervision and assessment by the NCAs.

In view of the underlying requirement to assess whether inducements have a detrimental impact on the quality of service, EIOPA considers **option 4.3 (specific requirements for insurance)** as the most appropriate as it is closely linked to the obligation to undertake an assessment requiring that the assessment is approved by the senior management and is duly documented. In view of its practical relevance for employees, EIOPA considers it also appropriate to require insurance intermediaries and insurance undertakings to set up a gifts and benefits policy which should be made available to all staff members.

D. Assessment of suitability and appropriateness and reporting

a) Information to obtain when assessing the suitability or appropriateness of insurance-based investment products for their customers

1- Problem definition

The recent financial crisis and debates on the quality of advice clearly underline that access to more complex products needs to be strictly conditional on a proven understanding of the risks involved.

More clarity is thus needed as to the kind of service provided by the distributor and to the conditions attached to the provision of advice. Compounded by cases of mis-selling amid the financial crisis and specific national cases more recently, the number of complaints regarding the quality of advice has also been increasing. In view of the complexity of financial markets and products, customers often depend to a large extent on suitable recommendations provided by distributors.

Information should, therefore, be collected from customers in order to define those services or products which are suitable for them. For this purpose two different levels of information are developed:

- a) Level of information related specifically to the appropriateness of product for the customer;
- b) Level of information related specifically to the suitability of the product for the customer (more detailed).

Suitability and appropriateness requirements generally aim at ensuring that distributors only make suitable personal recommendations and that distributors assess whether customers have the necessary expertise, knowledge and financial capacity to do business in financial products and to understand associated risks given their investment objectives.

The IDD seeks to ensure a higher level of consumer protection, which includes more specific standards for the distribution of insurance-based products. *Inter alia*, the IDD sets out a framework of professional and organisational requirements⁵⁶ for insurance distributors and the additional requirements with regard to the information to obtain for the assessment of suitability and appropriateness of insurance-based investment products, complement those requirements and are necessary in order to ensure that insurance distributors act "*honestly, fairly and professionally in accordance with the best interests of their customers*"⁵⁷. When distributing insurance-based investment products, the insurance intermediary or insurance undertaking should gather the necessary information to ensure that they can assess in a proportionate way the appropriateness or suitability of such products.

The following provisions of the IDD are relevant in this context:

⁵⁶ Article 10, IDD

⁵⁷ Article 17(1), IDD

- Article 30(1), IDD provides for a so-called “**suitability assessment**” whereby, where the insurance intermediary or insurance undertaking provides advice to the customer on the distribution of an insurance-based investment product, the intermediary or the insurance undertaking has to “also” obtain the necessary information regarding the customer’s knowledge and experience in the investment field, financial situation and investment objectives in order to recommend to the customer the insurance-based investment products that are suitable for that person.
- Article 30(2), IDD provides for a so-called “**appropriateness assessment**” whereby, where the insurance intermediary or insurance undertaking carries out insurance distribution activities regarding insurance-based investment products in relation to sales where no advice is given, the intermediary or insurance undertaking only needs to ask the customer for information on their knowledge and experience in the investment field in order to assess whether the product is appropriate for the customer. The amount of information required is, therefore, lower than the suitability assessment and a risk warning needs to be provided to the customer in case the product is considered inappropriate for the individual customer.

In both cases, both provisions are without prejudice to the requirements under Article 20(1), IDD, to ensure that prior to the conclusion of an insurance contract, the contract proposed is consistent with the customer’s insurance demands and needs (**the “demands and needs test”**).

Under Article 30(6), IDD, the Commission is **empowered to adopt delegated acts** in accordance to further specify how insurance intermediaries and insurance undertakings are to comply with the principles set out in Article 30, IDD, when carrying out insurance distribution activities with their customers, including with regard to the information to be obtained when assessing the suitability and appropriateness of insurance-based investment products for their customers, the criteria to assess non-complex insurance-based investment products for the purposes of execution-only business, and the content and format of records and agreements for the provision of services to customers and of periodic reports to customers on the services provided. The IDD delegated acts should take into account:

- the nature of the services offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;
- the nature of the products being offered or considered including different types of insurance-based investment products;
- the retail or professional nature of the customer or potential customer.

2- Objectives

Taking account the Commission's mandate, the objectives of the technical advice are to:

Objective 1: Promote a consistent level of customer protection and avoid the risk of regulatory arbitrage, but also take into account the specificities of the insurance sector

Objective 2: Clarify the different levels of information that should be acquired to meet the obligations of the suitability and appropriateness assessments

Objective 3: Ensure the information gathered is necessary and proportionate to the objectives pursued

Objective 4: Take into account information needs with respect to the retail or professional nature of the customer or potential customer

These objectives are consistent with the general objectives of the IDD.

3- Policy options

With the intention to meet the objectives set out in the previous section, EIOPA has analysed different policy options throughout the policy development process.

- **Option 1** - Fully consistency with MIFID II

This Option consists in ensuring *full* consistency with the provisions in the draft Commission Delegated Act under Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments ("MiFID II"), pertaining to the information to be obtained from the customer under the suitability and appropriateness assessments, by applying the wording and the concepts of MiFID, without any adaptations of substance or terminology to take into account the specificities of the insurance sector. This option takes into consideration the very close alignment between the provisions on suitability and appropriateness at Level 1 under MiFID II and IDD and would ensure full regulatory consistency with the draft MiFID II Delegated Regulation, as requested by the Commission.

For this Policy Option, to the extent appropriate for the product or service, the types of information to be collected from the customer regarding their *financial situation* under the suitability assessment (distribution of insurance-based investment products with advice) include the following:

- *Financial situation of the customer:*
 - Regular income;
 - Assets (including liquid assets);
 - Investments and real property; and
 - Regular financial commitments
- *Investment objectives of the customer:*
 - The length of time, which the customer wishes to hold the investment;
 - The customer's preferences regarding risk-taking

- The customer's risk profile
- The purposes of the investment

For this Policy Option, to the extent appropriate for the product or service, the types of information to be collected from the customer regarding their *investment objectives* under both the suitability and appropriateness assessments (distribution of insurance-based investment products both with and without advice) regarding their knowledge and experience in the investment field, include the following:

- The types of service, transaction and financial instrument with which the customer is familiar;
- The nature, volume and frequency of the customer's transactions in financial instruments and the period over which they have been carried out; and
- The level of education, and profession or relevant former profession of the customer.

- **Option 2** - MIFID II + adaptation to insurance

This Option consists in ensuring consistency with the provisions in the draft MiFID II Delegated Regulation pertaining to the information to be obtained from the customer under the suitability and appropriateness assessments, but adapting some key elements of the substance and terminology used in those provisions further to reflect insurance specificities.

In addition, notwithstanding the requirement to obtain certain information from the customer under the suitability and appropriateness assessments and the existence of several references already in Article 30, IDD to the "demands and needs" test, a specific legal reference would be included to make clear that the "demands and needs" test under Article 20(1), IDD is mandatory and always has to be fulfilled by the insurance intermediary or insurance undertaking

As with Policy Option 1 above, the information to be obtained would be very similar; however, with some key differences to take into account the specificities of the insurance sector:

- The necessary information to be collected from the customer as regards the customer's knowledge and experience in the investment field under both the suitability and appropriateness assessments, **would capture the nature, volume and frequency of the customer's transactions in both insurance-based investment products and MiFID financial instruments**, providing a more complete picture for the insurance intermediary or insurance undertaking;
- Concepts more closely related to the activity of "**portfolio management**" under MiFID II (for example, **recommendations of specific "transactions"** in insurance-based investment products) would be deleted or adapted in order to take **due consideration of their relevance for the insurance sector**;

- The customer's experience and knowledge to understand the **"investment risks"** in certain types of transactions and **his/her ability to bear those "investment risks"**, would be adapted to refer to the customer's knowledge and experience in the "investment field" and their ability to bear "losses".
- The notion of **"group insurance contracts"**, namely collective contracts where more than one person is insured or participating as a contractual party, would be adequately reflected in the Technical Advice.
- **The "professional customer" regime in Annex II to MiFID II, would not be applied one-to-one to the insurance sector, without consideration of the lack of an existing customer classification regime under the IDD** (notwithstanding an exemption for large risks in certain cases regarding the distribution of non-insurance-based investment products).

In addition, as regards Article 54(9) of the draft MiFID II Delegated Regulation, EIOPA would seek to avoid any confusion or legal uncertainty with provisions on Product Oversight and Governance (POG) in the envisaged Delegated Act under IDD on POG, by not copying across Article 54(9).

- **Option 3** - Specific approach for IBIPs

This Option consists in taking a materially different approach to MiFID II with regard to the assessment of suitability by including, in EIOPA's Technical Advice, a requirement for substantively different types of information to be obtained from the customer in order to fully take into account the customer's "basic needs" and certain "insurance-specific elements" of an insurance-based investment product. The option would put a stronger focus also on the protection elements within the insurance-based investment product (e.g. biometric risk cover). The approach is also linked to argumentation that insurance-based investment products can be particularly complicated products for consumers to understand, as compared to potentially substitutable financial instruments under MiFID II. In addition, not all the provisions envisaged under Articles 54 -56 of the draft MiFID II Delegated Regulation would be copied across.

Depending on the national interpretation of the "the demands and needs test" in Article 20(1), IDD, this might reflect information requirements already required under the "demands and needs" test. However, the scope of the "demands and needs" test is not explicitly referred to in the Technical Advice under this option⁵⁸. In addition, not all the provisions envisaged under Articles 54 -56 of the draft MiFID II Delegated Regulation would be copied across.

This approach has as a starting point **that a homogeneous in-depth analysis** should be carried out by insurance intermediaries or insurance undertakings to safeguard the suitability of the insurance product for the customer.

⁵⁸ As stated on page 5, the Commission's empowerment for delegated acts under Article 30(6), IDD, does not explicitly refer to the information to be obtained under the "demands and needs" test.

This approach would consist in taking the information to be obtained from the customer under the suitability assessment under MiFID II (as set out in Policy Option 1) as a starting point and substantively adapting this not only to the language and concepts of the insurance sector, but most importantly, including other types of information to be collected from the customer in order to ensure that insurance-based investment products meet not only the investment needs of the customer, but also, and in some cases, what is perceived to be the basic insurance-specific needs of the customer.

EIOPA's online survey on the IDD in early 2016⁵⁹ indicated that some stakeholders suggested to include information, under the suitability assessment, such as age, marital status, insurance coverage, risk tolerance, insurance period, health, existing obligations, dependant family (or other) persons, tax and social security, the customer's income and wealth, information on the source of their regular income, and their reason to seek advice from the distributor. The aforementioned criteria of information to collect from customers would differ from the information to collect under the MiFID framework for the assessment of suitability.

Option 3 would capture the following additional information elements to be included in the suitability assessment (a type of "*suitability assessment plus*") to capture all possible relevant aspects for understanding the "insurance-specific needs" of the customer (to the extent that those would not already be captured under the requirements laid down in the MiFID II delegated act⁶⁰) and make a decision whether to buy an insurance-based investment product or not:

- Personal data (customer's age, personal characteristics, the place of residence);
- The reasons for purchasing a life insurance product (retirement, protection of family in case of death, investment);
- Information about persons to be covered/protected under the policy;
- The customer's employment and level of education;
- Information regarding the customer's tax and social security situation.
- The customer's income and wealth;
- The customer's existing investment and insurance portfolio;
- The customer's existing financial obligations (loans, debts etc.);
- the customer's liquidity expectations;
- The reason for seeking advice from the insurance intermediary or the insurance undertaking, in particular expectations from the contract in terms of coverage, duration and any financial risks related to the contract to be concluded.

⁵⁹ Online survey in preparation for the Call for Advice from the European Commission on the delegated acts under the Insurance Distribution Directive: <https://eiopa.europa.eu/Pages/Consumer-Protection/Online-survey-Call-for-Advice-from-EC-IDD.aspx>

⁶⁰ It is also worth noting that some of these elements have been addressed by ESMA regarding MiFID in their Guidelines on certain aspects of the MiFID suitability requirements 21 August 2012 | ESMA/2012/387, see para. 22 on page 6: https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387_en.pdf

4- Analysis of impacts

Option 1 - Fully consistency with MIFID II

Impact on insurance intermediaries and insurance undertakings' economic position

The impact will differ depending, in particular, on whether the insurance intermediary or insurance undertaking in question are already subject to MiFID II provisions (for example, if they are already licensed to carry out regulated activities under MiFID II). In this case, additional costs would be avoided and insurance intermediaries or insurance undertakings would not need to adopt new procedures. In the case of insurance intermediaries or insurance undertakings, which are not yet subject to MiFID II provisions, insurance intermediaries would benefit from the knowledge and procedures already available for the distribution of financial instruments to retail clients under MiFID II provisions.

However, the application of MiFID II concepts to the insurance sector could have potential cost implications if these MiFID concepts do not fit with the distribution of insurance-based investment products. This is namely the case, where concepts/terminology contained in MiFID II (e.g. execution of orders, portfolio management) do not exist in the insurance sector and where the MiFID framework allows for assumptions with regard to the assessment of suitability and appropriateness of professional clients, as there is no specific client classification in IDD (other than an exemption for "large risks").

Impact on customer protection

This policy option would ensure a high level of *consumer protection*, notwithstanding that the assessment of suitability and appropriateness according to Article 30, IDD would need to be complemented by the "demands and needs" test of Article 20(1), IDD. In the latter case, the distributor has to specify the demands and the needs of a customer and has to provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision.

Impact on competition and market structures:

From a competition perspective, this option promotes a consistent level of protection of customers and a level playing field across financial sectors, in line with Recital 56, IDD and the fact that the provisions of Article 30, IDD are virtually identical to equivalent provisions in MiFID II.

Option 2 - MIFID II + adaptation to insurance

This Option consists in reflecting insurance specificities with regard to the information to be acquired, by the intermediary and insurance undertakings, under the suitability and appropriateness assessments, while ensuring consistency with the assessment of suitability and appropriateness under the draft MiFID II Delegated Regulation. In addition, notwithstanding the requirement to obtain certain information from the customer under the suitability and appropriateness assessments, a specific legal reference to the fact that the "demands and needs" test under Article 20(1), IDD, always has to be carried out, has been added.

Under this policy option, EIOPA would:

- (i) Set the level of detail of information to be collected from the customer at an appropriate level and deliver consistent investor protection and avoid the risk of regulatory arbitrage by ensuring regulatory consistency with the draft MiFID II Delegated Regulation, as requested by the European Commission;
- (ii) Notwithstanding the existing reference at Level 1 to the “demands and needs” test, explicitly recognise at Level 2 that the “demands and needs” test is mandatory and always needs to be fulfilled, even in the case of the suitability and appropriateness assessments. The “demands and needs” is left to further national interpretation during the IDD implementation; and
- (iii) Take account of the fact that concepts/terminology contained in MiFID II (e.g. execution of orders, portfolio management) do not exist in the insurance sector and other concepts (e.g. collective insurance contracts) would need to be introduced.

Through this option, EIOPA delivers regulatory consistency to the extent possible with the equivalent provisions in the draft MiFID II Delegated Regulation (taking into account, the particular specificities of insurance products/distribution channels compared to MiFID financial instruments/firms) and thereby promotes a consistent level of consumer protection across financial sectors and a level playing field for firms.

Analysis according to the estimated impact on stakeholders

The following stakeholders and impacts have been assessed and are elaborated in slightly more detail than the other two policy options due to the fact that it is EIOPA’s preferred policy option:

- Impact on customer protection.

Pros

In this respect, this policy option has the following *positive* impacts in terms of customer satisfaction:

In case of the *appropriateness assessment*:

- Customer selection is made directly on the products required and there are lower costs and a prompter service for the customer, which takes into account their risk appetite, is provided. Customers are also not required to bear additional costs arising from the provision of advice, unlike with the suitability assessment.
- Potential additional costs passed on to the customer through the need for the insurance intermediary and insurance undertaking to request additional information over and above what is required when purchasing a suitable substitutable product, can be avoided.
- The explicit inclusion of insurance-specific concepts provides more legal certainty under the delegated acts.

In case of the *suitability assessment*:

- Customers are helped to achieve the level of awareness of their knowledge on key issues related to insurance-based investment products. Support is provided to understand the characteristics, benefits and limitations of the insurance product. This focuses information on the investment element of the life insurance product, given that such products can incorporate a structure, which makes it difficult for customers to understand them and makes the consumer aware of the increased risk that can be connected to the investment element so that the product is more suited to their own needs.
- A number of additional questions to the customer relating to their personal situation (see Option 3 below), irrespective of his/her level of financial literacy, would be avoided, with the avoidance of additional costs for the customer to bear and a possible deterrent effect for purchasing insurance-based investment products.
- The explicit inclusion of insurance-specific concepts provides more legal certainty under the delegated acts.

Cons

On the other hand, also this policy option may have the following *negative* impacts:

- Questions to the customer which relate to their personal situation, depending on the relevance of these questions in relation to the level of sophistication of the customer and the extent to which they are not captured under "*knowledge and experience in the investment field*" in Article 30(2). EIOPA could mitigate this potential negative impact further by issuing guidance on aspects relating to the personal situation of the customer, which are not caught by "*knowledge and experience in the investment field*".
- *Impact on the economic position of insurance intermediaries and insurance undertakings:*

Pros

In this respect, this policy option has the following *positive* impacts:

- Depending on the approach taken at national level, the insurance intermediary or insurance undertaking would be not required to collect more information from the customer, irrespective of their level of financial literacy and would be required to collect more information when selling an insurance-based investment product, as opposed to a substitutable product such as a UCIT, leading to additional compliance costs. If the insurance intermediary or insurance undertaking is licensed under both the IDD and MiFID II, they would

not be required to comply with two different sets of rules, leading to additional compliance costs and regulatory arbitrage.

- Customer loyalty towards the company, even in the case of the appropriateness assessment as a sophisticated investor can appreciate the benefits in terms of cost and efficiency of a non-advised sale as less information has to be collected from the customer;
- Both assessments (appropriateness and suitability) protect insurance intermediaries or undertakings with reference to the customer's choices.

Cons

In the other direction, this policy option may have the following *negative* impacts:

- An extensive list of information to mechanically gather customer data should not have the unintended consequence of leading to a mere “tick-box” exercise by insurance intermediaries and insurance undertakings in collecting information from the customer whilst not increase the quality of the actual advice provided.
- Where only the appropriateness assessment is performed, the insurance undertaking or insurance intermediary manages limited information. It is possible that in some Member States, where additional information is currently collected when an insurance-based investment product is sold based on the “demands and needs” test, less information to be collected on the basis of the suitability and appropriate assessments may result in increased costs related to implementing procedures to supervise the information obtained by the insurance intermediary or insurance undertaking and costs related to reviewing the documentation on the basis of the information they receive and provide information to the customer in order to ensure compliance with the new regulations.
- *Impact on competition and market structures:*
 - From this perspective, this option promotes a consistent level of protection of customers and a level playing field across financial sectors, in line with Recitals 10 and 56, IDD and the fact that the provisions of Article 30, IDD are virtually identical to equivalent provisions in MiFID II.
 - The option generates, within Europe, an aligned behaviour across financial sectors. The assessment of the investment component of the insurance product will be aligned to other sectors such as banking and securities, with the result that this will facilitate intermediaries/undertakings that sell both insurance-based investment products and MiFID financial instruments, thus substantially reducing compliance costs and assisting consumers in comparing between insurance-based investment products and substitutable products such as UCITS. For insurance products with an investment element, EIOPA seeks in its technical advice to adequately take into account the specificities of

insurance products (*namely, protection of customers against risks linked to human life*) and the distribution channels.

Option 3_- Specific approach for IBIPs

This Option consists in EIOPA developing relevant criteria to assess whether an insurance-based investment product is suitable for a customer, whereby EIOPA would take a materially different approach to MiFID II by including, in its Technical Advice, a requirement for substantively different types of information to be obtained from the customer in order to fully take into account the customer's "basic needs" and certain "insurance-specific elements" of an insurance-based investment product.

Impact on customer protection

This policy option could ensure a suitably high level of *customer protection* as with Option 2, but this approach would require substantively more information to be obtained from customers, irrespective of whether they are purchasing an insurance-based investment product or a substitutable product and irrespective of their level of financial literacy. That said, it could be assumed that more information under this type of "suitability assessment plus" could lead to a better assessment of the insurance contract and might be justified by the need for the insurance undertaking or insurance intermediary to provide additional advice, focussed specifically on the investment element of the insurance product.

However, customers would face different questions when shopping for retail investment products and could get the impression of different levels of consumer protection. In addition, the impact could be more pronounced in Member States where national regulation does not regulate the timing of obtaining information from, or delivering information to, the customer. In Member States where such legislation already exists on the timing of obtaining or delivering information, the customer might already be used to provide information related to their needs and conditions.

Impact on the economic position of insurance intermediaries and insurance undertakings

Distributors also subject to MiFID II requirements (i.e. licensed to carry out regulated activities under MiFID II) would need to ask their customers a number of additional questions to gather the necessary information to assess the suitability of substitutable investment products. This would result in potentially increased operational and compliance costs.

In addition, as mentioned in relation to Option 2 above, an extensive list of information to mechanically gather customer data should not have the unintended consequence of leading to a mere "tick-box" exercise by insurance intermediaries and insurance undertakings in collecting information from the customer whilst not increase the quality of the actual advice provided. This could potentially be seen as transferring legal risk/liability from the distributor to the customer, due to the fact that the distributor has to follow extensive rules, but not necessarily needs to reflect what is necessary and best for customers, whereas a more principles-based approach could avoid the unintended consequence of a "tick-box" approach.

Impact on competition and market structures:

From this perspective, this option creates additional entry barriers for the distribution of insurance-based investment products. Additional information to be collected from the customer could create the impression for the customer that insurance-based investment products are more complicated or would need more granular information to achieve the same level of consumer protection compared to other investment products. At the same time, customer loyalty could increase due to a more deep and complete analysis of personal needs. This could also reduce cancellation rates of insurance-based investment products which are not kept until maturity, thus ultimately increasing the economic benefit to policyholders. To date, no evidence suggests that all products with insurance-based investment elements would require more detailed and more burdensome distribution requirements, than potentially substitutable MiFID II financial instruments.

As referred to above, this approach has the potential to create a heightened risk of regulatory arbitrage, depending on whether an insurance intermediary or insurance undertaking is or is not licensed to carry out regulated activities under MiFID II, as well as IDD.

5- Comparison of options

Regarding the policy issue on the information to obtain under the suitability and appropriateness assessment, the Impact Assessment compares the three options developed on the basis of the analysis above.

The preferred policy option for this policy issue is **Option 2 (MIFID II + adaptation to insurance)**. Both Options 1 (fully consistency with MIFID II) and 2 are very similar in terms of the benefits and costs which they generate and in promoting a consistent level of consumer protection across financial sectors and preventing a risk of regulatory arbitrage. However, the advantage of Option 2 is that insurance specificities are reflected and thus reducing costs due to a lack of insurance specificity for insurance undertakings, insurance intermediaries and national competent authorities.

Option 3 (specific approach for IBIPs) would take into account more the "basic needs" of the customer (regardless of their level of financial literacy) and potentially some more insurance-specific elements. However, this approach could create substantial additional costs for the implementation of the assessment of suitability and appropriateness, while arguably not going beyond the level of consumer protection achieved under policy option 2. Furthermore, policy option 3 might involve a possible risk of regulatory arbitrage. Therefore, the additional costs of policy option 3 are not justified by tangible benefits for consumers.

b) **The content and format of records and agreements for the provision of services to customers**

1- **Problem definition**

Failure of insurance intermediaries and insurance undertakings to keep adequate records of their insurance distribution activities may prevent competent authorities from adequately fulfilling their supervisory objectives and taking necessary enforcement action. In that respect, insurance-based investment products represent a potentially increased risk to consumers.

Failure to keep adequate records of whether an insurance intermediary or insurance undertaking has complied with all relevant conduct of business obligations regarding the distribution of an insurance-based investment product, can be particularly damaging to customers for example, where a customer subsequently suffers financial detriment as a result of the product sold.

The Insurance Mediation Directive (IMD) did not include formal record-keeping obligations for insurance intermediaries regarding their insurance mediation activities, although some Member States may have introduced such obligations in their national frameworks, given the minimum harmonising nature of the IMD.

The IDD introduces a new framework for record-keep regarding the distribution of insurance-based investment products under Article 30(4), IDD, which is closely aligned with the approach taken under the MiFID I and MiFID II Directive to ensure a consistent level of protection for consumers and prevent regulatory arbitrage. Currently, insurance undertakings or insurance intermediaries with regulatory licences under both MiFID and IMD are only obliged to maintain records with regard to the sale of MiFID financial instruments, leading to regulatory arbitrage.

2- **Objective**

Objective 1: To ensure effective record-keeping requirements regarding the distribution of insurance-based investment products so as to:

- (i) Enable national competent authorities to fulfil their supervisory tasks and to impose sanctions under the IDD, where appropriate; and
- (ii) Ascertain whether insurance undertakings and insurance intermediaries have complied with all relevant conduct of obligations with respect to the distribution of insurance-based investment products.

Objective 2: In line with Recital 56, IDD⁶¹, the technical advice should, to the extent possible, bearing in mind the minimum harmonising nature of the IDD and the particular specificities of insurance products/distribution channels compared to MiFID financial instruments/firms, ensure regulatory consistency with the delegated acts under MiFID II in the area of record-keeping.

⁶¹ "Insurance-based investment products are often made available to customers as potential alternatives or substitutes to investment products subject to Directive 2014/65/EU. To deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that insurance-based investment products are subject, in addition to the conduct of business standards defined for all insurance products, to specific standards aimed at addressing the investment element embedded in those products. Such specific standards should include provision of appropriate information, requirements for advice to be suitable and restrictions on remuneration".

Objective 3: Bearing in mind Objective 1, it seems appropriate to have a common understanding of the records which should be kept by the insurance intermediary or insurance undertakings pursuant to Article 30(4) of the IDD, taking into account the specificities of insurance products/distribution channels.

3- Policy options

With the intention to meet the objectives set out in the previous section, EIOPA has analysed different policy options throughout the policy development process.

The section below reflects the most relevant policy options that have been considered in relation to the respective **policy issue, namely information in terms of the documents which should be kept pursuant to Article 30(4), IDD.**

We have also listed relevant options which have been discarded in the policy development process.

- **Option 1**- Documentation of appropriateness assessment only

Under this option the record-keeping obligation should include only the documentation relating to the appropriateness assessment, in line with Article 56 of the draft MiFID II Delegated Regulation, thus promoting a consistent level of consumer protection across financial sectors and preventing regulatory arbitrage. However, specific record keeping rules for the assessment of suitability were not introduced in the MiFID II Delegated Regulation.

- **Option 2** – Documentation of suitability and appropriateness

Under this option the recording-keeping should include not only the documentation relating to the appropriateness assessment, but also with regard to the suitability assessment, thereby going beyond the requirements of Article 56 of the draft MiFID II Delegated Regulation, but enhancing the level of customer protection due to creating the need for clear documentation of the suitability assessment.

4- Analysis of impacts

Option 1 –_Documentation of appropriateness assessment only

This option lists the documentation relating to the appropriateness assessment only.

This option is in line with the MiFID II Delegated Regulation and the technical advice has been adapted in several places to take into account the specificities of the insurance sector. Member States could introduce this concept at their own discretion. This approach promotes a consistent level of consumer protection and prevents regulatory arbitrage across financial sectors. However, the specific record keeping rules for the assessment of suitability were introduced by ESMA Guidelines and would not be matched by rules in the insurance sector, as the scope of the ESMA Guidelines is limited and does not include insurance distributors.

Option 2 – Documentation of suitability and appropriateness

This option lists the documentation relating to both the suitability and appropriateness assessments.

This option goes beyond the draft MiFID II Delegated Regulation, but enhances the level of customer protection. This option can be viewed as specifying the general

obligation of record-keeping further for insurance undertakings and insurance intermediaries and, therefore, could lead to higher compliance costs. For firms that are subject to both the record-keeping rules set in ESMA Guidelines and the record-keeping rules set in future IDD delegated acts, the compliance costs would be not increased.

5- **Comparison of options.**

Regarding the policy issue on the record-keeping with regard to the suitability and appropriateness assessment, the Impact Assessment compares the two options developed on the basis of the analysis above.

The preferred policy option for this policy issue is **Option 2 (documentation of suitability and appropriateness)**. Policy option 2 sets clear expectations for the record keeping of the suitability assessment, which is of pivotal importance when providing personal recommendations to customers. The proper record-keeping of these events can be expected anyway from distributors under the IDD. Policy option 2 allows for the record-keeping in a more uniform way, also allowing national competent authorities to understand more easily if all underlying regulatory requirements were met.

c) **Content and format of periodic reports to customers on the services provided**

1- **Problem definition**

Insurance-based investment products represent a potentially increased risk to consumers. Failure of insurance intermediaries and insurance undertakings to report periodically to customers on the services they provide to those customers, for example, on costs information associated with transactions carried out in relation to insurance-based investment products, may potentially have adverse financial consequences for customers. This may be the case where those products do not continue to meet the customer's preference, objectives and other characteristics. Failure to provide periodic reports may, in the long run, inhibit the customer's ability to seek legal redress against those entities in the event of mis-selling.

The Insurance Mediation Directive (IMD) did not include formal periodic reporting obligations for insurance intermediaries regarding their insurance mediation activities, although some Member States may have introduced such obligations in their national frameworks, given the minimum harmonising nature of the IMD.

The IDD introduces a new framework for periodic reporting regarding the distribution of insurance-based investment products under Article 30(5), IDD, which is closely aligned with the approach taken under the MiFID I and MiFID II Directive to ensure a consistent level of protection for consumers and prevent regulatory arbitrage. Currently, insurance undertakings or insurance intermediaries with regulatory licences under both MiFID and IMD are only obliged to report periodically to customers with regard to the sale of MiFID financial instruments, leading to regulatory arbitrage.

2- **Objective**

Objective 1: Periodic reporting by insurance intermediaries and insurance undertakings is a key element to ensure transparency, simplicity, accessibility and fairness across the internal market for consumers. A proactive approach is needed to restore trust in the financial sector by ensuring that consumers are adequately protected from the risk of detriment. Consumers are becoming more aware of their rights and rightfully demand greater transparency, comparability and integrity on the part of firms.

Objective 2: To ensure effective periodic reporting by insurance intermediaries and insurance undertakings regarding the services provided in relation to the distribution of insurance-based investment products so as to:

- (i) Keep customers adequately informed on whether the insurance-based investment products they have purchased continue to meet their preferences, objectives and other characteristics; and
- (ii) Enable customers to seek appropriate legal redress in the event of mis-selling by those insurance intermediaries and insurance undertakings.

Objective 3: In line with Recital 56, IDD⁶², the technical advice should, to the extent possible, bearing in mind the minimum harmonising nature of the IDD and the particular specificities of insurance products compared to MiFID financial instruments, ensure regulatory consistency with the delegated acts under MiFID II in the area of periodic reporting to customers on the services provided.

Objective 4: Bearing in mind Objective 1, it seems appropriate to have a common understanding of the content and format of periodic reports to customers on the services provided pursuant to Article 30(5) of the IDD, taking into account the particular specificities of insurance products compared to MiFID financial instruments.

3- Policy options

With the intention to meet the objectives set out in the previous section, EIOPA has analysed different policy options throughout the policy development process in relation to the content and format of periodic reports to customers on the services provided pursuant to Article 30(5) of the IDD.

- **Option 1:** Solvency II approach (Article 185)

The periodic communications to customers should only reiterate what was already introduced by Article 185 of Directive 2009/138/CE (Solvency II), thus promoting a consistent approach between IDD and Solvency II.

- **Option 2** - Solvency II approach +additional info where relevant

The periodic communications to customers should complement Article 185 of Directive 2009/138/CE (Solvency II), where relevant, with information such as values of each investment element embedded in the insurance-based investment product and costs associated with the transactions and services undertaken on behalf of the customer during the reporting period. A list of information relevant for insurance-based investment products should be introduced. This would extend the information to be communicated to the customer, but would enhance the level of consumer protection.

4- Analysis of impacts

Option 1- Solvency II approach (Article 185)

The impact would vary. As the Insurance Distribution Directive has introduced the concept of periodic communications to customers, limiting the information to existing information creates no additional burden for insurance undertakings. Furthermore, the ways of sharing this information with customers should be already established for insurance undertakings under Solvency II and reiterating this information periodically should not create additional compliance costs, as Article 185 of Directive 2009/138/CE (Solvency II) foresees already that the policyholder has to be kept informed throughout the term of the contract of certain changes. Costs for insurance

⁶² "Insurance-based investment products are often made available to customers as potential alternatives or substitutes to investment products subject to Directive 2014/65/EU. To deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that insurance-based investment products are subject, in addition to the conduct of business standards defined for all insurance products, to specific standards aimed at addressing the investment element embedded in those products. Such specific standards should include provision of appropriate information, requirements for advice to be suitable and restrictions on remuneration".

intermediaries would depend on the concrete way of gathering and communicating such information.

Option 2: Solvency II approach +additional info where relevant

The impact would vary depending on the relevance of individual information elements which would need to be communicated periodically to customers. The list of information would need to be created, which requires monitoring and compiling of such information.

5- **Comparison of options**

Regarding the policy issue on periodic communications to customers, the Impact Assessment compares the two options developed on the basis of the analysis above.

Option 2 (Solvency II approach +additional info where relevant) is the preferred option. The list of criteria allows for taking into account the type and the complexity of insurance-based investment products involved. Furthermore, option 2 makes the costs associated with the transactions and services undertaken on behalf of the customer transparent, which is required to enhance consumer protection and attain the above mentioned objectives.

E. The criteria to assess non-complex insurance-based investment products for the purposes of point (ii) of point (a) of paragraph 3 of Article 30

E.1 - Problem definition

Contracts for insurance-based investment products can be complicated and difficult to understand for consumers. Distributors, either insurance undertakings or insurance intermediaries, therefore play an important role in processing information for the consumer and guiding consumers in choosing suitable insurance policies.

Prior to the advent of the IDD, consumer protection standards for the sales of insurance-based investment products were not considered sufficient at EU level to reduce the risk of mis-selling of those products, as the IMD did not contain specific rules for the sale of life insurance products with an investment element. This was despite the fact that these products are generally more complicated and represent higher risks for retail consumers than other insurance products.⁶³ In view of this situation, IDD stipulates additional conduct of business rules for the sale of insurance-based investment products.

At the same time, it is important to bear in mind that certain types of customers may be interested in receiving execution-only services and may not be willing to pay for additional services they do not consider necessary. This may be the case, for instance, for customers who have a sufficient knowledge of financial markets (a high level of financial literacy) and are able to make their own investment choices.

In the interests of striking an appropriate balance between the competing considerations described in the paragraphs above, IDD provides a differentiation between complex and non-complex insurance-based investment products. Where an insurance-based investment product is considered to be non-complex, Member States may allow insurance distributors to not undertake some of the assessments (suitability and appropriateness) during the sales process that are normally necessary for the distribution of insurance-based investment products. Since, in these cases, the consumer does not benefit from the corresponding protection provided by these assessments, it is critical that only those products that are genuinely non-complex are sold in this way. The technical advice is concerned with the criteria to identify when certain types of insurance-based investment products are non-complex.

During the policy development process, the potential substitutability of financial instruments within the scope of the MiFID II Directive and insurance-based investment products governed by IDD needed to be borne in mind, as indicated by the Commission's Impact assessment on Packaged Retail Investment Products⁶⁴ and the

⁶³ These products are sold under the general rules that apply to the sale of all insurance products.

⁶⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009SC0556> – Annex 1 – “what are packaged retail investment products?": “We do not consider all of the products under consideration to be perfect substitutes. Moreover, while they do compete for retail savings, it is not always accurate to treat them as being in direct competition. For example, unit-linked life policies often serve simply as a ‘wrapper’ for an investment in an underlying fund. In this case

Commission's call for evidence regarding "substitute" retail investment products, dated 26.10.2007⁶⁵.

Baseline scenario

Without binding technical rules regarding the identification of non-complex insurance-based investment products, there is likely to be different approaches implemented by different Member States. In particular, this creates the risk of an inadequate level of consumer protection and in turn risks resulting in cases of mis-selling of insurance products where consumers are sold products on an execution-only basis, the risks of which they do not properly understand.

For the analysis of the potential related costs and benefits of the proposed delegated acts for non-complex insurance-based investment products, EIOPA has applied as a baseline scenario the effect from the application of the Directive requirements in Article 30(3)(a)(ii), IDD.

E.2 - Objectives

The Commission's mandate invites EIOPA to provide technical advice on the criteria to assess "other non-complex insurance-based investment products" for the purposes of Article 30(3)(a)(ii), IDD. It is important to note that the IDD provides for a separate category of non-complex insurance-based investment products under Article 30(3)(a)(i), IDD. This section of the technical advice aims to:

1. facilitate the identification of "other non-complex insurance-based investments", such that only those products for which the risks are readily understood by customers are able to be sold by execution-only;
2. promote the consistent application of the IDD with respect to the identification of "other non-complex insurance-based investments"; and
3. be consistent with the line taken in the delegated acts expected to be adopted under Article 25(8) of MiFID II.

These aims are consistent with the objectives of IDD, which has three general objectives:

1. to improve insurance regulation in a manner that will facilitate market integration;
2. to establish the conditions necessary for fair competition between distributors of insurance products; and
3. to strengthen consumer protection, in particular with regards to insurance-based investment products.

the 'competing product' is more accurately described as an alternative channel for the distribution of the investment fund".

⁶⁵ http://ec.europa.eu/finance/finservices-retail/docs/investment_products/feedback_statement_srips_en.pdf

E.3 - Policy Options

With the intention to meet the objectives set out in the previous section, EIOPA has analysed different policy options throughout the policy development process.

The section below reflects the most relevant policy options that have been considered in relation to non-complex insurance-based investment products.

Policy option 1 – Extremely restrictive criteria for “other non-complex insurance-based investments” which existing types of products, not within the scope of Article 30(3)(a)(i), would not satisfy: On the basis that insurance-based investment products are considered to be complex where the investment exposure is not limited to non-complex MiFID II financial instruments, this Option would be to effectively prevent insurance undertakings and intermediaries from distributing, via an execution-only, insurance-based investment products that are not within the scope of Article 30(3)(a)(i), IDD.

Policy option 2 – Criteria for “other non-complex insurance-based investments” based on the criteria in MiFID II for “other non-complex financial instruments” (Preferred Option): Another possibility would be only to prevent insurance undertakings and intermediaries from distributing, via an execution-only sale, “other non-complex insurance-based investments” where they do not meet criteria related to the complexity of the product, or its features, taking those defined in the draft MiFID II delegated regulation as a starting point.

Policy option 3 – Very general or otherwise limited criteria to restrict the execution-only sale of “other non-complex insurance-based investments”: This would be based on the perspective that significant discretion is needed on a national or product level to determine whether a product is complex. It would also reflect the perspective that the existing provisions in IDD, such as the “demands and needs test”, already provide adequate safeguards for customers, as well as potentially the fact that additional provisions can be introduced on a Member States level where they are judged to be necessary.

E.4 - Analysis of impacts

Option 1 – Extremely restrictive criteria for execution-only sales of IBIPs not within the scope of Article 30(3)(a)(i)

Benefits:

- **For customers:** The rationale of this option is that customers may not be able to understand the risks involved in such products. Therefore, where the conditions in Article 30(3)(a)(i), IDD are not satisfied, the distributor would be required to collect appropriate information from the customer to assess whether the insurance product is suitable or appropriate for them. In this way, provided the distributor

properly undertakes these assessments, the risk that the customer purchases a product that is not apposite for them, or not in their best interests, should be very small. Therefore, this option provides the highest level of customer protection.

- **For industry:** A very restrictive approach reduces the risk that insurance products are sold which are not in the best interests of the customer. Therefore, this would reduce the risk of mis-selling products, thereby avoiding negative impacts on the reputation of the industry, or costs to compensate customers.
- **For NCAs:** Option 1 would have the benefit of higher legal certainty for NCAs. This is because, where a product does not comply with Article 30(3)(a)(i), IDD they should not need to further assess whether its features are complex. In turn, they should also not need to assess the distributor's governance or sales processes relating to such execution-only sales. Based on this Option, NCAs would essentially only need to verify that such products were not sold via execution-only. The advantage of Option 1 is therefore that it can be relatively easily monitored and enforced.

Costs:

- **For customers:** This Option would limit the customer's choice and freedom to buy insurance-based investment products as responsible adults without the need to provide information to the distributor on their knowledge and investment experience.
- **For industry:** A very restrictive approach as proposed under Option 1, may lead to a negative impact on the business model of certain insurance undertakings and intermediaries in those Member States where insurance-based investment products can currently be sold via execution-only, and thus it may act as a restraint of trade. The costs of having to conduct at a minimum an appropriateness assessment may render certain lower cost products as less cost-efficient, or, in the extreme case, unviable. Where a distributor predominantly or exclusively sells products via execution-only, this Option is likely to have an impact on their administration costs, since they would need to modify their sales process and associated governance framework.
- **For NCAs:** Where the existing regulatory regime allows for execution-only sales, having to restrict the existing regulatory regime in this way could increase monitoring and enforcement costs for NCAs, in particular at the implementation stage.

Option 2 – Criteria for execution-sales of “other non-complex insurance-based investments” based on the comparative criteria in MiFID II

Benefits:

- **For customers:** Option 2 aims to provide an appropriate level of customer protection, while, compared to Option 1, enabling greater flexibility regarding the

means of distribution for “other non-complex insurance-based investments”. This Option, thereby, has the benefit that the overall costs of distribution should be lower for “other non-complex insurance-based investments”, and thus, in turn, these products ought to be less costly for customers.

- **For industry:** If the criteria to identify “other non-complex insurance-based investments” are effective in excluding complex products, the benefits outlined for Option 1 should also apply for Option 2 that the risk of products being mis-sold is minimised. At the same time, the benefit of Option 2 compared to Option 1 for the industry is that they would be able to continue to sell a wider range of non-complex products, or to design such products for sale, via execution-only. This means that it may be more cost efficient for them to sell non-complex products. In addition, distributors may be able to sell such products to customers who would otherwise have been deterred by the need to seek advice or provide information on their knowledge and investment experience. Therefore, this Option may have a positive impact on the sales or revenues of insurance undertakings and intermediaries.
- **For NCAs:** Option 2 will be of benefit to NCAs which do not already have rules for assessing the complexity of insurance-based investment products by establishing common principles for evaluating complexity.

Costs:

- **For customers:** In contrast to Option 1, Option 2 would enable insurance undertakings and intermediaries to offer some, but still a relatively limited, range of “other insurance-based investments”, which do not satisfy the conditions in Article 30(3)(a)(i), for sale via execution-only. Based on Option 2, depending on the current framework within the Member State, customers may be able to purchase a wider or a narrower range of products via execution-only than they are currently able to. If the criteria proposed by EIOPA result in less insurance-based investment products being available for sale via execution-only, then it can be expected that the costs of purchasing those products may increase. On the other hand, if the criteria proposed by EIOPA result in more insurance-based investment products being available, there is in theory a risk that customers may not understand the structures of those products, and as a result purchase products that are not in their best interests. However, provided that the criteria are effective in delineating between complex and non-complex insurance-based investment products, this risk should not be increased by this Option.
- **For industry:** As with the costs for customers, the costs for the industry will depend on the current framework within the Member State. This will determine whether, as a result of the criteria to identify “other non-complex insurance-based investments”, they will be able to sell a wider or a narrower range of products via execution-only than they are currently able to. If the criteria proposed by EIOPA result in less products being available for sale via execution-only, then it can be expected that the costs of distributing those products may increase. These costs would be similar to those outlined for Option 1, but would

be less in their extent. On the other hand, if the criteria proposed by EIOPA result in more products being available for sale via execution-only, there is in theory a higher risk that customers are sold products that are not appropriate for them, with in turn potential negative impacts for the reputation of the industry. However, provided that the criteria are effective in delineating between complex and non-complex insurance-based investment products, this risk should not be increased by this Option.

- **For NCAs:** Option 2 will result in costs for NCAs to verify that insurance distributors are appropriately applying the criteria. It may also result in costs for NCAs if the criteria are different from any existing rules in that Member State for the evaluation of the complexity of insurance-based investment products.

Option 3 – Very general or otherwise limited criteria to restrict the execution-only sale of “other non-complex insurance-based investments”

Benefits:

- **For customers:** This Option depends on how Member States implement the general criteria and the principle of complexity set out in the Directive or the existing national provisions. Where a wide range of products that do not satisfy the conditions in Article 30(3)(a)(i), IDD are deemed to be non-complex and are eligible for sale via execution-only, this approach may positively impact those retail customers who are highly financially literate. These customers should therefore be able to benefit from the ability to purchase a wide range of products at a lower cost. Where only a limited number, or no, products are deemed non-complex the benefits would be similar to Options 1 and 2.
- **For industry:** Option 3 is likely to provide insurance distributors with a high degree of discretion, although it would depend on the approach taken in the Member State. In this case, distributors would have greater flexibility to determine whether a particular product or product feature is non-complex, for example based on customer feedback.
- **For NCAs:** Where NCAs have more developed regimes which impose more detailed requirements already (following IMD), they are likely to retain those rules and thus benefits are not envisaged. Where NCAs do not currently have rules in this area, they will have the benefit of greater flexibility to determine the appropriate framework for the particular national market.

Costs:

- **For customers:** As stated, this option depends on how Member States implement the general criteria. In the absence of a more prescriptive approach on a national level, Option 3 entails the risk that customers are sold products which are not appropriate for them, or that they do not understand the risks of. This Option therefore heightens the risk of products being mis-sold. This is because without reasonably precise restrictions on the types of products that are

non-complex, insurance distributors may consider certain products to be non-complex, when in fact some customers are not able to understand the associated risks.

- **For industry:** In the absence of a more prescriptive approach on a national level Option 3 entails the risk of a lower level of customer protection, and thus that market participants can be expected to continue to face reputational risk due to mis-selling cases.
- **For NCAs:** In the presence of only very general or limited restrictions on what constitutes “other non-complex insurance-based investments”, it may be more difficult for NCAs to supervise and enforce the requirement that insurance undertakings or intermediaries should only distribute non-complex insurance-based investment products via an execution-only sale. However, where NCAs already have a more detailed framework these costs would not apply.

E.5 - Comparison of options

When comparing the costs and benefits of the different policy options, it became apparent that an overly strict approach would not only be disadvantageous for insurance undertakings and insurance intermediaries, but also for customers and potentially for NCAs.

As policy option 1 (extremely restrictive criteria) would contradict the principle of the customer being responsible for their decisions, and limit the customer’s flexibility in how they purchase insurance-based investment products, as well as increase regulatory costs, this Option does not seem adequate. Furthermore, it is questionable whether the Directive intends for there to be such a restrictive approach at EU level.

Conversely, policy option 3 (very general criteria) does not seem adequate either, as it does not address adequately the risk of insurance-based investment products being mis-sold due to the customer not understanding the risks involved.

Therefore, policy option 2 (criteria based on MiFID II) is considered to find the appropriate balance between the interests of insurance distributors and those of their customers. It also enables an appropriate degree of flexibility at NCA level, in providing criteria for other “non-complex insurance-based investments” at EU level which are still consistent with a minimum harmonising approach. From a customer’s perspective it seems reasonable to prevent insurance undertakings and insurance intermediaries from making insurance products available for sale via execution-only which do not meet the criteria, while enabling customers to execute an order for products if the criteria are met.

Annex II: Resolution of consultation comments

Summary of Comments on Consultation Paper EIOPA-CP-16-006

Technical Advice on Insurance Distribution Directive

EIOPA would like to thank Allianz SE, AMICE, AMUNDI, ANASF, Association of International Life Offices, Assuralia, BEUC, BFV - Bundesarbeitsgemeinschaft zur Förderung, BIPAR, BNP Paribas, British Bankers Association (BBA), Bund der Versicherten (BdV – German Association of, Bundesverband Deutscher Vermögensberater e. V. 603, BVI Bundesverband Investment und Asset Management, BVK Germany, CNCIF - Chambre Nationale des Conseillers en, CSCA French broker Association, 91, rue Saint Laza, Czech Insurance Association CAP, EFAMA - The European Fund and Asset Management, Eurofinas, European Federation of Financial Advisers and Fina, EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb, Eurosif Aisbl, Fachverband der Versicherungsmakler und Berater in, Fédération Française de l'Assurance (FFA), Federation of Finnish Financial Services, FG2A (Fédération des Garanties et Assurances Affin, Financial Services Consumer Panel, FNMf, 255 rue de Vaugirard, 75015 PARIS, Forum per la Finanza Sostenibile (FFS), FRENCH BANKING FEDERATION, Genossenschaftsverband Bayern e.V. (GVB – Bavarian, German Association of Actuaries (DAV), German Association of Private Health Insurers (PKV, German Banking Industry Committee (GBIC), German Insurance Association (GDV), Institute and Faculty of Actuaries, Insurance Europe, Insurance Sweden/ Svensk Försäkring, Intesa Sanpaolo S.p.A., IRSG, Italian Banking Association, Liechtenstein Insurance Association (LVV), MALTA INSURANCE ASSOCIATION, Mediterranean Insurance Brokers (Malta) Ltd., Slovenian Insurance Association, The Danish Insurance Association, Unipol Gruppo Finanziario S.p.A., Verband der Automobilindustrie e.V., Verband Deutscher Versicherungsmakler e. V. (VDVM), Verband öffentlicher Versicherer (Association of G, Verbraucherzentrale Bundesverband e.V., and Zurich Insurance Company, CH 8045 Zurich

The numbering of the paragraphs refers to the Consultation Paper EIOPA-CP-16/006

No	Name	Reference	Comment	Resolution
1	Allianz SE	General Comment	<input type="checkbox"/> Allianz welcomes the opportunity to comment on IDD Level 2 proposals. <input type="checkbox"/> Allianz shares the general intent of IDD incl. Level 2 proposals to promote consumer protection and needs-based distribution of insurance products <input type="checkbox"/> Based on Art. 290 TFEU, Level 2 delegated acts need to be based on the Level 1 texts and must not exceed the material scope of the Level 1 text. <input type="checkbox"/> Based on this principle, several of the proposals need further consideration, in particular in the following areas	Noted. We have made amendments to the technical advice to address a large number of the concerns raised.

			<ul style="list-style-type: none"> o Product Oversight and governance (POG) rules: split of responsibilities and liability between manufacturer and distributor, definition of target market and open-ended requirements based on many undefined legal terms. While the goals are appropriate and acceptable, appropriate flexibility needs to be granted to undertakings in defining individual operating solutions which may take many forms. o Conflicts of interest (COI) rules for insurance-based investment products (IBIPs): may lead to certain open-ended requirements based on many undefined legal terms. In particular, it should be clarified that general COI rules should not be used to introduce more restrictive rules on inducements than those which are covered under the specific rules for inducements o inducements for IBIPs: the simplistic de facto black list approach as proposed in the consultation paper is not covered by Level 1 and would lead to unjustified restrictions and discrimination of commission-based sales models while not giving appropriate room for risk mitigation and holistic assessment. o advice (suitability and appropriateness) for IBIPs: limit requirements to areas with clear benefits for customers 	
2	AMICE	General Comment	<p>AMICE, the voice of the mutual and cooperative insurance sector in Europe welcomes the opportunity to respond to EIOPA’s Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive (IDD).</p> <p>We are convinced that it is vital to ensure transparency, simplicity, accessibility and fairness across the internal market for consumers. The mutual and cooperative business model is based on customer trust and accountability. Through their different ownership structure, mutuals have been established to serve their customer-owners rather than shareholders. This means that not only do they have an in-built advantage in not having to run their business in the short-term interests of outside shareholders, but they can concentrate on running the business in a way that best meets the needs of their customers with no conflict of interests between owner and customer. Thus, they have an inherent interest in achieving customer satisfaction and customer needs are already taken into account in the product design process and distribution of insurance products.</p> <p>In order to ensure an effective improvement of consumer protection in</p>	Noted. The general remarks made have been addressed to a large extent through amendments made to the technical advice. In addition, it is not EIOPA’s intention to create a de facto ban on commissions.

			<p>insurance distribution, AMICE considers it be of paramount importance to underline the following general remarks:</p> <ul style="list-style-type: none"> - The final delegated acts should be fully consistent with the IDD level 1 text. - Given the varied complexity and heterogeneity of insurance products, we believe that the policy proposals should remain high-level and flexible. - It is also important to ensure that the industry is given sufficient time to implement the requirements set out in the delegated acts. In this regard, the industry should be provided with the final requirements as soon as possible and a proportionate and pragmatic approach should be taken in order to avoid unnecessary burden and costs. - Regarding the product oversight and governance provisions, sufficient flexibility should be allowed in the determination of the target market. Further clarifications are needed with regard to the possibility to sell outside the target market and the requirement for a negative target market definition. - Commission-based remuneration should not be considered systematically as a conflict of interests. - The types of inducements listed in the technical advice as having a high risk of leading to a detrimental impact on the quality of the relevant service to the customer should not result in imposing a de facto ban on commissions. - When developing any provisions concerning organisational arrangements, documentation and reporting requirements, EIOPA should take into account the principle of proportionality. - The final technical advice should be consistent with the Solvency II Directive and its delegated acts which have increased the requirements in terms of internal control and underwriting policies. 	
3	AMUNDI	General Comment	<p>Amundi is the No.1 European Asset Manager and in the Top 10 worldwide with AUM up to €1,000 billion worldwide at the end of June 2016.</p> <p>Located at the heart of the main investment regions in more than 30 countries, Amundi offers a comprehensive range of products covering all asset classes and major currencies. Amundi has developed savings solutions</p>	Noted.

			<p>to meet the needs of more than 100 million retail clients worldwide and designs innovative, high-performing products for institutional clients which are tailored specifically to their requirements and risk profile.</p> <p>The Group contributes to funding the economy by orienting savings towards company development.</p> <p>Amundi welcomes the possibility of providing an answer to this consultation as far as life insurance contracts are a major distribution channel for our retail funds. We do appreciate the sound approach taken by EIOPA on many topics in this consultation. We understand that it is not possible to ignore MiFID 2 as well as previous works of the Commission and ESMA in the field of investor protection. Nevertheless, as long as the development of capital markets in the EU is a key objective of the Commission and of the Council and Parliament, it is essential to have more retail investors taking some risk when investing their savings. This is also essential in order to provide them with a minimum level of return in the present context of interest rates.</p>	
4	Association of International Life Offices	General Comment	<p>AILO is grateful for the opportunity to comment upon the draft Technical Guidance and where appropriate to offer comments specifically in regard to cross border operations of life insurers.</p>	Noted.
5	Assuralia	General Comment	<p>Assuralia is the Belgian Insurance Association and the representative body for mutual, co-operative and joint-stock insurance companies in Belgium since 1920. It represents more than 98 % of the Belgian insurance market (de Meeûsquare 29, 1000 Brussels, European Transparency Register nr. 0026376672-48).</p> <p>As a general remark Assuralia wishes to highlight the importance of sufficient implementation time for the industry. The further elaboration of the requirements on product oversight and governance, inducements, suitability and appropriateness, conflicts of interest and reporting could require significant changes to current business models and organizational structures. After the Commission adopts the delegated acts, Member States still have to transpose the requirements into national law. Therefore it is key that (i) the industry is provided with the final requirements as soon as possible and (ii) a proportionate and pragmatic approach is taken in order to avoid unnecessary burden and costs. Such approach should leave room for an efficient</p>	<p>Noted. We appreciate the importance of sufficient implementation time for the industry. EIOPA intends to comply with the deadline for providing the technical advice, provided by the European Commission.</p>

			implementation of the IDD requirements at national level. Existing national rules that pursue the same objectives and reflect the principles in the technical advice, should not be adapted for the sake of formality only.	
6	BEUC	General Comment	<p>BEUC welcomes EIOPAs draft which sets out reasonable conditions to ensure that the enhanced consumer protection framework, as coined by the Insurance Distribution Directive (IDD), is being put to practice.</p> <p>Product Oversight and Governance requirements are a welcome step towards preventing consumer detriment in the first place. In this perspective we would like to stress that the POG rules covering e.g. the target market, the product testing and monitoring should be detailed sufficiently and should cover all insurance products under the IDD, including non-life insurance policies.</p> <p>Additionally, we recommend that POG rules should be publicly available, for the sake of transparency and enforcement.</p> <p>Next to this we strongly support EIOPAs stance on scrutinising very specific types of inducements, which are highly prone to causing detriment to consumers. This draft does not introduce an overall prohibition of inducements, but gives more guidance on how to cope with the clear IDD provision that inducements don't have a detrimental impact on the quality of the relevant service to the consumer.</p> <p>In that perspective, this approach warns explicitly for specific types of remuneration schemes. Schemes whereby e.g. the distributor receives substantial additional benefits upon reaching certain sales targets or whereby distributors touch excessively high commissions are impossible to align with the obligation to act in the best interest of consumers.</p> <p>Therefore, we strongly back EIOPAs ambition to reduce the mis-selling of insurance-based investment products in order to restore consumer's trust in this sector.</p> <p>We suggest that a Delegated Regulation is highly preferable to ensure consistent implementation across member states.</p>	Noted.
7	BFV - Bundesarbeit	General Comment	Die Ausgestaltung der 'technical advice' durch mögliche delegierte Rechtsakte sollte nicht den in den Trilog-Verhandlungen erzielten Konsens in Frage	Noted.

	<p>sgemeinschaft zur Förderung</p>	<p>stellen oder sogar widersprechen. Begründung:</p> <p>Neben EU-Kommission haben EU-Parlament und EU-Rat an den Trilog-Verhandlungen teilgenommen. Letztere beiden sind die Entscheidungsorgane der EU-Rechtssetzung. Der EU-Rat repräsentiert (mit jeweils einem Vertreter) die Regierungen der EU-Mitgliedstaaten. Daher werten wir die Ergebnisse der Trilog-Verhandlungen auch als maßgeblichen Wunsch der Mitgliedstaaten, dass verschiedene Regelungen in ihrer Ausgestaltung bzw. Tiefe der jeweiligen nationalen Gesetzgebung vorbehalten bleiben soll. Insbesondere zu nennen ist hier die (Abschluss)Vergütung der Versicherungsvermittler, Provisionen (Versicherungsvertreter) und Courtagen (Versicherungsmakler). Hierzu erfolgt in der IDD kein Provisionsverbot, sondern ausdrücklich die Regelung (in Artikel 22), dass die Mitgliedstaaten die Annahme oder den Erhalt von Provisionen (oder anderen monetären oder nichtmonetären Vorteilen) im Zusammenhang mit der Vermittlung von Versicherungsprodukten beschränken oder untersagen können.</p> <p>Daher befürworten wir, dass weder durch EU-Kommission noch durch EIOPA über die Ausgestaltung delegierter Rechtsakte Verschärfungen erfolgen bzw. den extra den Mitgliedstaaten vorbehaltenen Regelungen vorgegriffen wird oder die nationalen Regelungsmöglichkeiten nachträglich eingeschränkt werden.</p> <p>Dass die Mitgliedstaaten in dem vorgesehenen Rahmen frei entscheiden können, ob sie es bei den Vorgaben der IDD belassen oder partiell weitergehende Regulierungen vornehmen, ist sinnvoll. Denn dadurch kann nationalen Unterschieden Rechnung getragen werden. Das erläutern wir hier kurz am Beispiel Deutschland: Zu den von der IDD umfassten Versicherungsvermittlern zählen auch Versicherungsmakler. Diese gehören nicht zum Vertrieb der Versicherer sondern sind Dienstleister der Kunden, die diese beauftragen. Der deutsche Gesetzgeber hat u. a. im VVG sehr deutlich gemacht, dass ein Versicherungsmakler, im Gegensatz zu einem Versicherungsvertreter, nicht von einem Versicherer, sondern von einem Kunden mit einem Vermittlungsgeschäft betraut wird. So steht der Versicherungsmakler im Verhältnis zum Versicherer auf der Seite des Kunden als dessen Interessenwahrer und Sachwalter. Das hat auch haftungsrechtlich</p>	
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8	BIPAR	General Comment	<p>BIPAR welcomes the opportunity provided by EIOPA to comment on EIOPA consultation paper on technical advice on possible delegated acts concerning the insurance distribution directive.</p> <p>As referred to by EIOPA in its consultation paper, the IDD aims to establish the conditions necessary for fair competition between distributors of insurance products and to create more opportunities for cross-border business. We believe however that the excessive nature of some of the proposals will act as a deterrent to these key objectives.</p> <p>BIPAR believes that the IDD delegated acts should take the form of directives. This would give some flexibility to the Member States to apply the level 2 rules taking into consideration their national specificities.</p> <p>BIPAR welcomes the principle of proportionality that is introduced in EIOPA policy proposals. However it fails to understand how the so many detail requirements proposed by EIOPA will be complied with by small or micro enterprises intermediaries.</p> <p>For the sake of legal clarity, BIPAR believes that it should be made clearer in EIOPA proposals that bespoke insurance contracts are not covered by EIOPA policy proposals on POG.</p> <p>BIPAR believes that it is crucial that EIOPA policy proposals on POG do not lead to a loss of entrepreneurial autonomy for insurance intermediaries.</p> <p>BIPAR is the European Federation of Insurance and Financial Intermediaries. It groups 53 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance intermediaries</p>	Noted. A number of the concerns raised have been addressed to a large extent in revisions madeto the final technical advice.

			(agents and brokers) and financial intermediaries in Europe. More information on BIPAR and on the important role of intermediaries can be found on: www.bipar.eu .	
9	BNP Paribas	General Comment	BNP Paribas welcomes EIOPA's consultation on technical advice on possible delegated acts concerning the Insurance Distribution Directive and is pleased to contribute its views.	Noted.
10	British Bankers Association (BBA)	General Comment	<p>INTRODUCTION</p> <p>The BBA is the leading trade association for the UK banking sector with 200 member banks headquartered in over 50 countries with operations in 180 jurisdictions worldwide. Eighty per cent of global systemically important banks are members of the BBA. As the representative of the world's largest international banking cluster the BBA is the voice of UK banking.</p> <p>We have the largest and most comprehensive policy resources for banks in the UK and represent our members domestically, in Europe and on the global stage. Our network also includes over 80 of the world's leading financial and professional services organisations. Our members manage more than £7 trillion in UK banking assets, employ nearly half a million individuals nationally, contribute over £60 billion to the UK economy each year and lend over £150 billion to UK businesses.</p> <p>BBA welcomes the chance to comment on the Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive. Our comments are focused on our main area of concern amongst our members, Section 4, which addresses the roles of 'manufacturer' and 'distributor'. In doing so we are keen to reinforce the view that retail banks are (in general) distributors, not manufacturers, of insurance products.</p>	Noted.
11	Bund der Versicherten (BdV – German Association of	General Comment	As Germany's most important NGO of consumer protection related to private insurances (with about 50.000 members) we would like to thank EIOPA for the opportunity to publish comments on this consultation. We consider IDD as one of the most important legislative projects on EU level – besides KID for PRIIPs and PPP/PEPP – in order to enhance consumer protection which, as EIOPA has confirmed many times, is "at the centre of its strategy".	Noted, in particular regarding the concerns on so-called non-complex IBIPs, where we have substantially amended our technical advice on execution-
			IDD aiming only at a "minimum harmonizing" needs strong and precise Level	

			<p>2 Delegated Acts, because in some Member States like Germany the already achieved level of consumer protection must not be lowered by the forthcoming national implementation of IDD. That is why we welcome this Draft Technical Advice mainly on POG, on inducements, and on suitability and appropriateness assessment.</p> <p>But we do not see any practical use and advantage of so-called non-complex IBIPs (Q 19 to 21). Quite the contrary we definitely see the danger that the proposed criteria of non-complex IBIPs may be mis-used by manufacturers and by distributors in order to override the IDD regulation on suitability and appropriateness assessment as well as to counter-balance the PRIIPs-Regulation which tries to establish a level-playing field between retail investors products and insurance-based investment products. We clearly try to show how to minimize the importance of this product category, which may be useful for retail investor products but not for IBIPs.</p> <p>Our comments on this consultation are of course deeply linked and updated to the comments we already had published on the former consultations related to IDD:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Online survey in preparation of the Call for Advice from the European Commission on the delegated acts under the Insurance Distribution Directive, EIOPA, January 2016 <input type="checkbox"/> Proposal for Guidelines on product oversight & governance arrangements by insurance undertakings and insurance distributors, EIOPA, January 2016 <input type="checkbox"/> Guidelines for Cross-Selling Practices, ESAs, March 2015 <input type="checkbox"/> Proposal for Guidelines on product oversight & governance arrangements by insurance undertakings , EIOPA, January 2015 <input type="checkbox"/> Conflicts of Interest in direct and intermediated sales of insurance-based investment products, EIOPA, July and December 2014 <p>Additionally we had elaborated comments on the two EIOPA consultations on PPP/PEPP in October 2015 and April 2016 as well as on KID for PRIIPs (EIOPA / ESAs, February and August 2015, January 2016). For further information EIOPA may take into consideration these comments or just contact us directly.</p>	only business.
12	Bundesverband Deutscher	General Comment	Wir bedanken uns für die Gelegenheit, im Rahmen der EIOPA-Konsultation zu den Level 2-Maßnahmen im Rahmen der IDD eine Stellungnahme abgeben zu	Noted.

	<p>Vermögensberater e. V. 603</p>	<p>dürfen. Diese nutzen wir gerne und führen wie folgt aus:</p> <p>I.</p> <p>Als ältester und mitgliederstärkster Berufsverband vertreten wir seit 1973 die Interessen von derzeit rund 11.000 Mitgliedern und Mitgliedsunternehmen mit insgesamt mehr als 37.000 Vermögensberatern, die monatlich über 400.000 Beratungs- und Verkaufsgespräche führen. Zugleich fühlen wir uns auch den Interessen der rund 6 Millionen Kundinnen und Kunden unserer Verbandsmitglieder verpflichtet.</p> <p>Die Beratungs- und Vermittlungsleistungen unserer Mitglieder beschränken sich satzungsgemäß nur auf bundesaufsichtsamtlich geprüfte Produkte des Finanzdienstleistungsmarktes. Hierzu zählen zahlreiche Altersvorsorgeprodukte, Versicherungsverträge jeglicher Art, Bausparverträge, Investmentfondsprodukte sowie die Vermittlung von Baufinanzierungen. In der Regel sind unsere Mitglieder Kleinunternehmen, die nahezu ausschließlich als natürliche Personen arbeiten.</p> <p>Ausdrücklich möchten wir betonen, dass unseren Verbandsmitgliedern die Vermittlung von Produkten des sog. Grauen Kapitalmarktes satzungsgemäß untersagt ist.</p> <p>Wir legen an dieser Stelle besonderen Wert auf die Feststellung, dass die Mitglieder unseres Verbandes sich bei ihrer Arbeit zudem seit über vier Jahrzehnten bereits an den 1973 vom Bundesverband Deutscher Vermögensberater für seine Mitglieder aufgestellten „Richtlinien für die Berufsausübung“ und den „Grundsätzen für die Kundenberatung“ orientieren. Lange bevor Begriffe wie Vertriebscompliance aufkamen, war dies in unserem Verband schon gelebte Praxis.</p> <p>II.</p> <p>Die Zielrichtung der europäischen Insurance Distribution Directive (IDD) begrüßen wir.</p> <p>Wir haben sowohl die Entwicklung der IMD, wie später auch der IDD auf europäischer Ebene von Anfang an aktiv begleitet. Im Rahmen des nun vorgelegten Konsultationspapiers zu den möglichen Delegierten Rechtsakten halten wir einige grundsätzliche Ausführungen aber für dringend erforderlich, um auch sicherzustellen, dass die Level 2-Maßnahmen der tatsächlichen Intention der Richtlinie entsprechen – und diese nicht konterkarieren.</p> <p>Wir gehen dabei im Folgenden nur auf einige besondere Aspekte – gerade</p>	
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			aus Sicht eines Vertreibers - ein, die jedoch für die Mitglieder unseres Verbandes von sehr großer Relevanz sind.	
13	BVI Bundesverband Investment und Asset Management	General Comment	<p>As representatives of the German fund and asset management industry, BVI has been following the IDD negotiations from the onset for reasons of level playing field. We are convinced that equal standards for conduct of business at the point of sale are indispensable in order to achieve effective investor protection and create a fair competitive environment for all investment products marketed to retail investors. BVI therefore welcomes the opportunity to comment on EIOPA's draft suggestions for the technical implementation of the Insurance Distribution Directive.</p> <p>Against this background, we fully agree with the approach described in the Commission's mandate that alignment with the MiFID II regime should be sought in every area in which there is no fundamental difference in the wording of the provisions in the IDD and MiFID II respectively. In our view, the draft technical advice presented by EIOPA strikes the right balance between accounting for peculiarities of insurance products and distribution models on the one hand and striving for consistency with MiFID II in specific wording, or at least in the quality of regulation, on the other. We highly appreciate the efforts dedicated to this challenging exercise and would like to strongly support and encourage EIOPA to remain committed to this general approach.</p> <p>Delegated acts are, however, not foreseen for every relevant aspect of the IDD regime. As regards information about costs, for instance, the Level 1 framework does not explicitly mandate specification of further requirements at Level 2. Nonetheless, since the wording of the relevant Article 29(1)(c) and second subparagraph of IDD on cost disclosure is nearly identical with the wording of Article 24(4)(c) and second subparagraph of MiFID II, we would welcome an initiative by EIOPA to work towards further alignment in detail by appropriate Level 3 measures.</p> <p>As regards the policy proposals for IDD implementation, we would like to comment on the following selected aspects of the consultation paper:</p>	Noted, in particular regarding EIOPA working on disclosure of inducements at Level 3.
14	BVK Germany	General Comment	<p>First of all we like to say that we fully agree with the comments given by BIPAR. But we like to stress that we also refer to our letter sending to EIOPA on the 30.5.2016 in which we give some comments on the guideline 13 pp(for the intermediary who does not manufacture a product)</p>	Noted. Revisions have been made to EIOPA's technical advice on product oversight and governance, which

			<p>Regarding guideline 13 – the aspect of proportionality is very important. There should be also no mixture of responsibility between the insurer and the intermediary. Guideline 16 – the requirement of obtaining all necessary information is much to far and can violate the legal obligation of § 86 HGB.</p> <p>Regarding guideline 18- the obligation of giving information can not be wider than the obligation regulated by the German law (§ 86 Abs.2 HGB)</p>	<p>address some of these concerns. Proportionality is important for EIOPA, but also ensuring a consistent level of consumer protection across the market.</p>
15	CSCA French broker Association, 91, rue Saint Laza	General Comment	<p>The Chambre Syndicale des Courtiers d'assurance (CSCA) is the sole employers' organisation representative of insurance and reinsurance broking in France. It has around 900 members representative of 22,000 employees and over 70% of the sales realised by the profession.</p> <p>It participates actively in the work of BIPAR and associates itself fully with research being conducted by the latter as part of the EIOPA consultation on delegated acts.</p> <p>Nevertheless the CSCA wishes to highlight here certain specific features of the French market and also the way broking is carried on in France.</p> <p>The CSCA stresses that the French market for the distribution of insurance has the following features:</p> <ul style="list-style-type: none"> - an extremely open architecture that allows all forms of distribution (direct, general agents and brokers, representative agents); - a dense network across the whole country; - strong competition between the different forms of distribution; - a wide variety of products; - a general duty of advice set down in writing imposed on the different categories of insurance mediation vis a vis private and corporate clients in distribution accessible to all clients; - remuneration, for most players, charged in the form of recurring commissions which guarantees, at the same time, the recurrence of advice to the insureds at a cost necessarily less than a billing in fees for each time advice is given throughout the life of the contract. <p>As regard broking, all company sizes are catered for from very small SMEs to large accounts even though the there is a very high proportion of SMEs</p>	<p>Noted. Revisions have been made to the technical advice which address, to a large extent, the concerns raised.</p>

		<p>(88%) resulting in strong proximity to customers.</p> <p>It is absolutely essential that equivalent conditions of competition in the various forms of distribution are guaranteed and which are also respectful of the status of those insurance intermediaries and of the characteristics of the national market so as not to penalize any particular form of insurance distribution or impede client access to a free choice of market player. It would be particularly interesting to see how compatible the demands advanced by EIOPA are with a market consisting, for the very large majority, in small companies.</p> <p>It is also fundamental that the conditions for the exercise of the profession favour the customer's interests particularly when it comes to advice and support throughout the life of the contract.</p> <p>A factor also giving structure to the market, if put into effect, is the principle of proportionality stated in the Directive taking into account therefore the business carried on, the nature of the insurance products sold and the type of distributor.</p> <p>As regards POG, we will come back to this below. The approach (1) must take into account the fundamentally different forms of administrative licensing to which insurance undertakings and distributors are subject, (2) the fact that some EU member countries are characterised by non-advisory selling which means that there should not be monolithic application which does not take account the types of national requirements relating to regulated distribution professions.</p> <p>Furthermore, remuneration in the form of a commission should not be stigmatized out of principle since it is remuneration for the provision of a service. In addition, it should also be seen here in the context of national legislation that already provides for an imperative obligation of advice-giving.</p> <p>The CSCA confirms that French domestic legislation has already introduced a legal arrangement - soft law - that is particularly binding as regard the written obligations falling on the distributor (insurance intermediary) and which fully justifies the charging of a commission which when revealed to the customer, whatever form it takes (proportional remuneration in the form of a commission or fee) crystallizes sufficiently the necessary counterparty to work carrying a high liability risk for the distributor and cancels any risk of conflict of interest.</p> <p>The CSCA would, finally, remind you that a delegated act relates solely to a</p>	
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			non-essential act which is not a characteristic of the subjects which EIOPA has been called upon to comment. The CSCA supports the view that these acts should follow the legal regime of the Directive leaving the Member State all the latitude and flexibility to transpose the resultant provisions into their own national legislation.	
16	Czech Insurance Association CAP	General Comment	On the offset, we would like to emphasize the need for sufficient implementation time for insurance companies. Delegated acts will bring completely new requirements and processes. Especially, the SMEs that are mostly established in our market, may experience difficulties to implement: develop, launch, test and monitor all requirements within provided timeline (if the deadline is not sufficiently long enough). The shorter implementation period the higher costs it will bring.	Noted. EIOPA appreciates the need for sufficient implementation time for firms, although it is ultimately a matter for the European Commission, rather than EIOPA.
17	EFAMA - The European Fund and Asset Manageme	General Comment	<p>EFAMA welcomes the opportunity to comment on EIOPA's draft suggestions for the technical implementation of the Insurance Distribution Directive (IDD).</p> <p>We agree with the approach described in the Commission's mandate that alignment with the MiFID II regime should be sought in every area in which there is no fundamental difference in the wording of the parallel provisions in the IDD and MiFID II. We agree that, given the substitutability of products covered by IDD and by MiFID II, the starting point should be alignment between the two sets of requirements unless differences in the Level-1 texts exist and there are clearly justifiable reasons for reasons of investor protection to create diverging approaches. In our view, the draft Technical Advice presented by EIOPA strikes the right balance between accounting for peculiarities of insurance products and distribution models on the one hand and striving for consistency with MiFID II in specific wording, or at least in the quality of regulation, on the other. We highly appreciate the efforts dedicated to this challenging exercise and strongly support and encourage EIOPA to remain committed to this general approach.</p> <p>Delegated acts are not foreseen for every relevant aspect of the IDD regime, thus requiring EIOPA's further efforts. Especially with regards to information about costs the Level-1 framework does not explicitly mandate specification of further requirements at Level-2. Nonetheless, since the wording of the relevant Article 29(1)(c) and second subparagraph of IDD on cost disclosure is nearly identical with the wording of Article 24(4)(c) and second</p>	Noted, in particular regard the request for EIOPA to work on disclosure of inducements at Level 3.

			subparagraph of MiFID II, we see no justifiable reason why EIOPA should not continue to work towards further detailed alignment by appropriate Level-3 measures.	
18	Eurofinas	General Comment	<p>Eurofinas Response to the EIOPA Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive</p> <p>Eurofinas, the voice of consumer credit providers at European level welcomes the opportunity to respond to the Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive.</p> <p>Eurofinas supports the work of the European Insurance and Occupational Pensions Authority (EIOPA) in promoting transparency, simplicity and fairness in the market for insurance products and services across Europe.</p> <p>Who we are and why we are concerned</p> <p>As a Federation, Eurofinas brings together associations throughout Europe that represent finance houses, universal banks, specialised banks and captive finance companies of car or equipment manufacturers.</p> <p>The products sold by Eurofinas members include all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. Consumer credit facilitates access to assets and services as diverse as cars, furniture, electronic appliances, education etc. It is estimated that together the Eurofinas members financed over 423 billion Euros worth of new loans during 2015 with outstandings reaching 981 billion Euros at the end of the year.</p> <p>In addition to the provision of consumer loans, companies represented by Eurofinas distribute insurance products on an optional and ancillary basis. Insurance products distributed include, among others, asset protection insurance, loan protection insurance and liability insurance. These insurance products are distributed either directly by consumer credit firms or by partners (retailers, dealers, etc.) that are part of their supply chain.</p> <p>Eurofinas represents a specific part of the insurance mediation sector that is very different from traditional brokerage. Eurofinas members, as well as their partners, play a crucial role in the distribution of insurance products across Europe. They are in direct contact with both insurance undertakings and policy holders.</p>	Noted. Revisions have been made to the technical advice which address, to a large extent, the concerns raised.

		<p>Especially product oversight and governance (POG) arrangements are of key importance for the Eurofinas constituency as it may impact product creation and distribution alike. Since our members only distribute retail insurance products, please note that this response only covers EIOPA's technical advice with regard to POG.</p> <p>We contributed to the earlier consultations of the EIOPA on guidelines for (draft) preparatory guidelines on POG. In our response, we highlighted the specificities of insurance distributors. Hence, we welcome EIOPA's new proposals on POG and take this opportunity to reiterate our position on the topic.</p> <p>Introductory observations</p> <p>We understand the background of the EIOPA's work on technical advice in the context of the Insurance Distribution Directive and we support the objective to enhance firms' diligence with regard to product design and distribution.</p> <p>In fact, "product validation" processes are common features within financial organisations including insurance companies. These processes are very similar to the proposed POG arrangements and have often been put in place as a voluntary initiative to improve internal practices. Ultimately, both processes can contribute to improving the internal understanding of product characteristics and contractual conditions for all staff involved in their creation and distribution. However, we do not think that POG arrangements can address the specifics of each transaction and prevent individual conflicts between manufacturers and end users. They should therefore remain a high-level set of standards.</p> <p>The Insurance Distribution Directive was developed to encompass a wide range of insurance products, including investment-based insurance products. We see an important role for the EIOPA to ensure that rules that were designed for investment-based insurance shall be applied only to these type of products.</p> <p>Specific observations</p> <p>Relevance of concepts</p> <p>We think that many concepts used in the EIOPA's proposals are especially of</p>	
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		<p>relevance to investment type products. They do not match the characteristics of mass market products of fairly basic technical nature. For example, the identification of a target market makes sense when establishing an investor profile but is of little use when the product is designed to serve, by definition, a large market.</p> <p>Also, the concept of "consumer interest" is very subjective and difficult to implement in practice. Although we agree that products should be created and distributed to respond to end users' interest, this concept cannot be used as a standard to assess providers' behavior. For example, if this concept may be implemented in the context of an advisory and personalised transaction, it would not be realistic to transpose it in other distribution models.</p> <p>Responsibility</p> <p>We strongly believe that individual responsibility should be at the heart of supervisors' policy. This is valid for firms and consumers alike.</p> <p>Ultimately, the responsibility of contracting an insurance policy lies with the consumer. Consumers are free to select the insurance product offered to them. This obviously requires from consumers to compare different offers and "shop around". The industry should not endorse the responsibility of restricted market search activity by consumers.</p> <p>We also think it is important to make a distinction between the responsibility of manufacturers and distributors. In this respect, we agree with the EIOPA that new rules on POG should not extend and transfer to distributors the responsibilities of manufacturers' vis-à-vis their products. The main responsibility for product oversight and governance of insurance products remains with manufacturers, as is the case in the banking field.</p> <p>Proportionality</p> <p>We very much agree with the EIOPA that product oversight and governance arrangements must be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity.</p> <p>We believe that mis-selling is primarily the result of corporate decisions taken by individual firms – which may not be shared by other market participants and can be corrected by enhanced enforcement and supervision. We feel that adding on a layer of standards may in fact be counter-productive unless sufficient flexibility is guaranteed to adjust to various business models and</p>	
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			<p>products.</p> <p>Sufficient flexibility should also be allowed to adapt to the number and diversity of industry operators, market characteristics and products. Against this background, we think EU legislation, such as the Insurance Distribution Directive (IDD), should be used as a reference standard against which compliance can be assessed. We fear that without the introduction of such standard, there will not be any uniformity in the application of these guidelines.</p>	
19	European Federation of Financial Advisers and Fina	General Comment		
20	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	General Comment	<p>One of MiFID II main innovations is the requirement that investment institutions ensure and prove that persons who provide investment advice and information about financial products and services are adequately trained and have the necessary knowledge in order to be competent to fulfill their obligations set out in article 25 of MiFID II.</p> <p>In the same way, IDD recognizes on its Recital 28 the importance of guaranteeing a high level of professionalism and competence among insurance, reinsurance and ancillary insurance intermediaries and the employees of insurance and reinsurance undertakings who are involved in the sales of insurance and reinsurance policies. Therefore, the standard of professional knowledge of intermediaries and employees is established in article 10 and Annex I of IDD.</p> <p>Professional standards within ethics codes, which need to be lifted, are the most effective way of ensuring the compliance of these requirements. These are cross-cutting requirements. They must match the level of complexity of activities preparatory to, during and after the sales of insurance and reinsurance policies. Ancillary insurance intermediaries should be required to know the terms and conditions of the policies they distribute and, where applicable, rules on handling claims and complaints.</p> <p>As the Consultation Paper states, the Commission mandate invited EIOPA to</p>	<p>Noted, in particular regarding request for EIOPA to provide some guidance on knowledge and competence, specially in relation to conflicts of interest, inducements and assessment of suitability and appropriateness.</p>

			<p>achieve as much consistency as possible in the conduct of business standards for insurance-based investment products under IDD on the one hand and financial instruments under MiFID II on the other, where there is no fundamental difference in the wording of the provisions on the IDD and corresponding provisions in MiFID II.</p> <p>Consequently, it is essential that EIOPA monitors the implementation of provisions stated in article 10 of IDD, which are oriented towards the protection of clients. So that, as Member States may have different staff training plans to achieve the required knowledge and ability (ex. Article 10 IDD), EFPA would like to suggest the appropriateness that EIOPA provides some guidance in order to ensure a consistent level of staff knowledge and competence in all Member States for better protection of clients. In this sense, as the Consultation itself states in Question 18 that it might be useful for EIOPA to provide some guidance on that issue “given that this point is not addressed in this technical advice”, EFPA suggests that EIOPA provides some guidance on knowledge and competence, specially in relation to conflicts of interest, inducements and assessment of suitability and appropriateness.</p> <p>According to this approach, EFPA, whose main objective is to promote the compliance of high professional standards and ethical codes, is pleased to response to EIOPA’s Consultation.</p> <p>To sum up, EFPA considers that the importance of article 10 of IDD is beyond doubt, and may be remarked among all the innovations that are introduced by IDD. To raise standards in the insurance advice, and to ensure staff training and the exclusion of persons who lack the appropriate skills, knowledge and expertise, constitute a priority in order to achieve a provision of insurance services governed by principles of honesty and integrity.</p>	
21	Eurosif Aisbl	General Comment	<p>Eurosif promotes the inclusion of Environmental, Social and Governace considerations in retail insurance products. These considerations should be taken into account throughout the investment life-cycle and in the marketing and distribution strategy. Retail investors need to be able to understand the risks of the products in which they invest by assessing the financial risks and ESG-related risks. An important aspect to be considered is that different products will not have the same type of risk attached and avoiding a “one-size-fits-all” approach is essential. As already mentioned in previous consultations, techniques such as visual approaches to make the risk information more accessible to retail investors are worth exploring and can</p>	Noted.

			<p>have greater impact if combined with textual risk description. Finally, Eurosif wishes to draw attention to the importance of a forward-looking approach in assessing risks, whether financial or ESG-related, in order to complement the historical, backward looking approach. To make successful long-term decisions, an investor needs to understand not only the past performance and risks involved of a certain fund, but more importantly, to understand how current risks are dealt with and what the forward-looking approach is on risk-management (i.e. carbon emissions, corporate governance practices, etc).</p>	
22	Fachverband der Versicherungsmakler und Berater in	General Comment	<p>The Professional Association of Insurance Brokers and Insurance Consultants in the Austrian Federal Economic Chamber is the Federation of all (about 4.000) Austrian Insurance Brokers.</p> <p>Most of the Austrian Insurance Brokers are small or micro enterprises (SME), established near to the consumer in the High Street of each and every city and village. They render personalised services to mostly local private clients and smaller businesses. They are confronted with growing competition from alternative forms of distribution. Many intermediaries are SME type enterprises servicing SME's in all sectors of the economy at regional or national level. These brokers follow increasingly their clients abroad when they export or import or set up branches or subsidiaries outside their national borders.</p> <p>The Professional Association of Insurance Brokers and Insurance Consultants in the Austrian Federal Economic Chamber welcomes the opportunity provided by EIOPA to comment on EIOPA consultation paper on technical advice on possible delegated acts concerning the insurance distribution directive.</p> <p>As referred to by EIOPA in its consultation paper (paragraph 3.3), the IDD seeks to establish the conditions necessary for fair competition between distributors of insurance products and to create more opportunities for cross-border business. We believe however that the excessive nature of some of the proposals will act as a deterrent to these key objectives.</p> <p>We believe that the IDD delegated acts should take the form of Directive. This would give some flexibility to the Member States to apply the level 2 rules taking into consideration their national specificities.</p> <p>We welcome the principle of proportionality that is introduced in EIOPA policy proposals. However it fails to understand how the so many detail</p>	<p>Noted. A number of the concerns raised around, for example, product oversight and governance, have been addressed through revisions to the technical advice.</p>

			<p>requirements proposed by EIOPA will be complied with small or micro enterprises intermediaries.</p> <p>For the sake of legal clarity, we believe that it should be made clearer in EIOPA proposals that bespoke insurance contracts are not covered by EIOPA policy proposals on POG.</p> <p>We believe that it is crucial that EIOPA policy proposals on POG do not lead to a loss of independence for insurance intermediaries.</p>	
23	<p>Fédération Française de l'Assurance (FFA)</p> <p>26 bo</p>	General Comment	<p>Different distribution models are currently in place in Europe depending on national consumers' protection provisions and local conditions and practices. While Anglo-Saxon model prescribes a ban of commission and allows execution only sales, other models, like in France, favour a general duty of advice, the cost of which is shared by all customers throughout commission based remuneration.</p> <p>These differences were acknowledged by IDD legislators which allowed Member states to opt for one system or another.</p> <p>As a consequence, EIOPA's technical advice for delegated acts should not place one model above others nor call into question different solution working out well in several markets.</p> <p>In this respect, the FFA considers that :</p> <ul style="list-style-type: none"> <input type="checkbox"/> EIOPA should take better account of existing national rules that pursue the objective of providing the customer with a product which fits its objectives, interests and characteristics. As an example, we hardly see the advantages of a granular definition of the target market where mandatory advice, as in France, requires to ensure that the product will be adapted to the personal situation, needs and demands of a specific customer. On the contrary we do think that a granular definition of a target market at the product design level would reduce customers' choice and even exclude them from having a suitable insurance coverage. <input type="checkbox"/> Commission-based remuneration should not in itself be viewed as giving rise to conflicts of interests. From our point of view, Eiopa's choice as to conflicts of interests should not lead to stigmatize one type of remuneration or situation but instead should allow a case by case examination of potential detrimental effect on customers, in consistency with Member states' own regulation and distribution model. 	<p>Noted. The concerns raised have been largely addressed through amendments made to the technical advice. In particular, EIOPA would like to stress that its policy proposals do not favour one form of remuneration model over another.</p>

24	Federation of Finnish Financial Services	General Comment	<p>We welcome that EIOPA has taken proportionality as a starting point in the product governance rules. This is important as intermediaries acting as distributors are normally very small undertakings or actors. As many intermediaries usually distribute several insurance products from several several insurance companies, there should not be overlapping or accumulating duties for the intermediaries. In addition, tied agents will be mostly covered already by insurance company’s POG principles, as they are tightly connected to the insurance company’s business and distribution structure. In addition, proportionality is important as the Guidelines deal with all kinds of insurance products (simple and complex products, risk insurance and investment related insurance).</p> <p>We also welcome EIOPA’s approach to place Preliminary Guidelines on product governance as a basis for product governance rules on IDD level 2 measures. As the insurance undertakings and intermediaries are already implementing these preliminary rules, any unnecessary changes to these rules should be avoided as much as possible. However, we are concerned by potential retroactive application of the proposed POG requirements. The POG requirements should apply only to newly designed products and products that will “significantly change” after the implementation date of such provisions. This also ensures consistency with Article 25 of the IDD.</p> <p>Rules on product governance should also leave room for product innovation and create a suitable environment for recent and future digital development in the ways products are developed and distributed.</p> <p>We also find it very important that EIOPA will stick to the mandate given at level 1 IDD directive. This concerns both EIOPA proposals on product governance and other parts of conduct of business rules in the consultation.</p> <p>We welcome the high level principle approach in the other parts of EIOPA proposals.</p>	Noted, in particular as regards proportionality. As regards retroactive application of POG requirements, this is ultimately a question of legal interpretation of the Level 1 text for the European Commission.
25	FG2A (Fédération des Garanties et Assurances Affin	General Comment	The FG2A France (“Fédération des garanties et assurances affinitaires France”) is a federation bringing together industry players operating on the affinity and add-on insurance and warranty market in France. Our federation comprises leading French and international market participants. Insurance products distributed by our members include, but are not limited to, mobile phone insurance, motor insurance, travel insurance and services and payment insurance.	Noted.

			<p>We welcome the opportunity to answer this consultation on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive.</p> <p>Affinity products are “niche” products that are very specific both in terms of the nature of the risks covered, small premiums, and their ancillary nature. These characteristics justify that such products are treated differently than other insurance products. Hence, we would like to remind that the vast majority of “affinity products” distributed by our members will fall under the exemption regime stated by the Article 1 3) of the Directive and therefore will not have not to comply with its new requirements, for instance the Product Oversight and Surveillance (POG) provisions.</p> <p>However, the FG2A France believes that, whatever the legal regime to which they are subject to, all the players of an affinity value chain have a common interest in defining more clearly a common vision of their role and responsibilities within the value chain. This is fully aligned with the objectives pursued by the product and oversight surveillance regime as stated by POG in IDD. Only this common and agreed vision can ensure products sustainability and customer trust. Therefore FG2A France is committed to communicating these standards to all our its members in order to promote best practice in our industry.</p> <p>Moreover, in exceptional cases, it may happen that certain affinity products will fall outside the scope of the exemption regime and thus have to comply with the Directive. Our comments provided hereafter relate to these products. Since most of our members distribute or, less often, manufacture non-life insurance products, we have limited our answers to questions 2 to 8 on product oversight and governance arrangements (POG).</p>	
26	Financial Services Consumer Panel	General Comment	<p>The Financial Services Consumer Panel is an independent statutory body, set up to represent the interests of consumers in the development of policy for the regulation of financial services in the UK.</p> <p>The Panel welcomes this opportunity to comment on EIOPA’s proposed Technical Advice on possible delegated acts concerning the Insurance Distribution Directive (IDD).</p> <p>The Panel is broadly supportive of the proposed draft Technical Advice. The proposals are detailed and far-reaching and generally introduce enhanced rules for the protection of consumers, in line with the objectives of the IDD.</p>	Noted.

27	FNMF, 255 rue de Vaugirard, 75015 PARIS	General Comment	We consider that the project of technical advices is too restrictive and burdensome for our members (Mutual societies), particularly for medium and small operators. Our activity in France (health insurance essentially) is already over regulated in terms of guarantee, price and consumer legal information. The notion of granularity of the target market is not appropriate for our specialized traditional operators (our members have been specialized in health insurance for more than 60 years). At least, if we understand the necessity to avoid a commission based remuneration encouraging conflicts of interests, we do not support the technical advice approach which tends to systematically stigmatise the commission based remuneration.	Noted. EIOPA has an impartial view on the business models of insurance distributors and does not favour the establishment of fee-based distribution models over commission-based distribution models.
28	Forum per la Finanza Sostenibile (FFS)	General Comment	FFS believes that environmental, social and governance (ESG) aspects have to be taken into account by the retail insurance industry, both when designing, testing and monitoring the insurance products and when defining the marketing and distribution strategy. Insurance industry play a key role in influencing clients' investment decisions: considering ESG factors is crucial not only from an ethical and reputational standpoint but also from a financial one, as ESG aspects might have strong impacts on performances. Therefore, non-financial information need to be properly communicated to the target audience, that has to be duly informed about ESG risks and opportunities related to the products.	Noted.
29	FRENCH BANKING FEDERATION	General Comment	As general comments, the French banking industry would like to highlight that EIOPA's advice is only drafted for Member States where there is a non-mandatory advice service. Although IDD leaves the Member States free to introduce a duty to advise into their national law, EIOPA does not take such an option into account. Furthermore, some recommendations go far beyond the mandate given by IDD to the Commission. In particular, regarding the definition of a negative target market which is not required by the level 1 text, or the determination of a fixed frequency for the product review. Finally, the FBF would like to stress that EIOPA's advice should not weaken the existing national distribution scheme which already ensure a high level of consumer protection.	Noted. A number of the comments raised have been addressed through revisions to the technical advice. In particular, EIOPA does not mandate a fixed frequency for the product review.
30	Genossenschaftsverband	General Comment	In the present consultation document it is defined, among other things, in which cases it is permitted to pay commissions for the distribution of	Noted. EIOPA is aware that a formal ban on

	Bayern e.V. (GVB – Bavarian		<p>insurance. After lengthy discussions in Brussels, as part of the trialogue negotiations between the European Commission, the European Parliament and the Council, the Insurance Distribution Directive (IDD) includes a national option to keep a system of commissions in insurance distribution. Thereafter inducements shall be allowed formally, as long as they do not have a detrimental impact on the quality of the relevant service to the customer. However, in the Draft Technical Advice on inducements on pp. 54 et seq., there is defined a whole bunch of criteria to be met by insurance intermediaries or insurance undertakings. These conditions will lead to a de facto prohibition of commissions in insurance distribution. Therefore the national option to maintain commissions is eroded and the intention of the EU legislators is clearly disregarded.</p> <p>The rules of the Draft Technical Advice are clearly to the expense of the European consumers. Because commissions are allowing a competent and comprehensive financial advice, as offered by the Bavarian Volksbanken and Raiffeisenbanken in their well-equipped branches that are always held up-to-date technologically. An essential part of these advisory services is the distribution of insurance. Also from the perspective of consumer protection the basic risks of life of the customers, such as liability or occupational disability, have to be covered before they should start with the accumulation of their financial assets. In view of the increasing information and documentation requirements from Brussels, commissions are also necessary to ensure, in the future, a holistic and affordable insurance advice for everyone.</p> <p>The EU legislators clearly wanted to allow a juxtaposition of commission-based and fee-based advisory services. The standards need to be revised accordingly so that commission-based advisory services remain feasible. This is the only way for the banks to still being able to offer comprehensive financial advisory services to everyone.</p>	<p>the receipt/payment of commissions was not included in the Level 1 text of IDD and would like to reiterate and stress that the intention of a list of criteria for assessing whether an inducement increases the risk of detrimental impact, is not to introduce a ban on commission through the backdoor. The aim of the list is to make market participants aware that the interests of their customers are put at risk and the likelihood of customer detriment exists, if these types of inducements are paid or received. The Technical Advice rather outlines the possibility to take appropriate organisational measures which aim to address these risks and ensure that customer detriment is avoided.</p>
31	German Association of Private Health	General Comment	The German Association of Private Health Insurers (PKV) welcomes the main IDD's objective and fully supports the statements filed by the German Insurance Association (GDV).	Noted.

	Insurers (PKV)			
32	German Banking Industry Committee (GBIC)	General Comment	<p>The German Banking Industry Committee (GBIC) is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband deutscher Banken, for the private commercial banks, the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken, for the cooperative banks, the Bundesverband Öffentlicher Banken Deutschlands, for the public banks, the Deutscher Sparkassen- und Giroverband, for the savings banks finance group, and the Verband deutscher Pfandbriefbanken, for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.</p> <p>GBIC warmly welcomes the opportunity to comment on EIOPA’s consultation paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive (IDD).</p> <p>GBIC represents a wide range of banks which distribute insurance products additionally to the financial products on sale. Therefore, EIOPA’s Technical Advice on delegated acts concerning the IDD is highly relevant to banks regarding all aspects of the distribution of insurance products.</p> <p>Since there are terms used in the IDD that can also be found in legislation regarding financial regulation, most notably the MiFID II, there is a clear need for an aligned definition and application in order to guarantee fair competition across sectors.</p> <p>Furthermore, the German banking industry has the interest to act in the best interest of the customers. However, the competent European authorities should pay attention that rules in different European regulations follow the same principles. For example, the “Target Market” is a crucial point in MiFID II, PRIIPs Regulation as well as in IDD. For the financial institutions it is of utter importance to have the same interpretation of the Target Market, where possible. We would also appreciate if the ESAs, where possible and bearing in mind the differences in Level I, would establish the same rules and/or interpretations regarding MiFID II and IDD to avoid any misinterpretations between both Directives and to facilitate the application in the banks. We would therefore really appreciate if the ESAs would find a coherent interpretation of all the provisions in the relevant rules (MiFID II, PRIIPs Regulation and IDD). Especially with regard to the needs of customers - transparency, honesty and fairness - the European authorities and the</p>	Noted.

			Member States should guarantee the consistence of the content of the different regulations as mentioned.	
33	German Insurance Association (GDV)	General Comment	<p>The German Insurance Association holds the view that the Insurance Distribution Directive (IDD) can serve as a solid foundation for a European insurance market. The IDD's objective of improving the general level of consumer protection is expressly welcomed. Moreover, a fair balance of interests between all market participants has been achieved.</p> <p>The Delegated Acts to be developed by the EU Commission will have to respect the framework set by the European co-legislator's Level 1 provisions. EIOPA's technical advice on Product Oversight & Governance (POG) and special rules for insurance-based investment products can effectively improve consumer protection if the rules for distribution by insurance companies and intermediaries are designed with a sense of proportion and practicability.</p> <p>For the most part, this goal has been achieved. However, it would be highly appreciated if some points could be amended in the final version of the technical advice:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Article 29 (3) IDD expressly leaves the decision on a ban on commissions to the Member States. For this reason, the German Insurance Association has concerns about the list of risk types for the assessment of the effects of inducements proposed by EIOPA and about the related remarks on its application. In its current design, the list will result in a factual ban on commissions – despite the fact that such ban is explicitly not intended, including by EIOPA. <input type="checkbox"/> The rules on conflicts of interest have to take the insurance-specific particularities of insurance-based investment products more carefully into account. <input type="checkbox"/> Provisions on Product Oversight and Governance (POG) should be better targeted to their objectives: It should be clarified that the POG are not intended to introduce external price controls. It should also be made clear that the POG do not require manufacturers to terminate existing contracts because national contract law continues to apply in this field. While flexible provisions are needed for the target market, the current proposals are still in need of modification. Unnecessary bureaucracy should be avoided. <input type="checkbox"/> Proportional distribution provisions regarding the fields of advice, documentation and reporting can help increasing acceptance by the stakeholders dealing with them in day-to-day business. However, some of 	<p>Noted. The points mentioned have been, to a large extent, addressed in the revised technical advice. In particular, EIOPA is aware that a formal ban on the receipt/payment of commissions was not included in the Level 1 text of IDD and would like to reiterate and stress that the intention of proposing a list of criteria for assessing whether an inducement increases the risk of detrimental impact, is not to introduce a ban on commission through the backdoor. The aim of the list is to make market participants aware that the interests of their customers are put at risk and the likelihood of customer detriment exists, if these types of inducements are paid or received. The Technical Advice rather outlines the possibility to take appropriate</p>

			the EIOPA proposals are overly bureaucratic, thereby placing a disproportionate burden on insurers and intermediaries.	organisational measures which aim to address these risks and ensure that customer detriment is avoided.
34	Institute and Faculty of Actuaries	General Comment	<p>The Institute and Faculty of Actuaries (IFoA) welcomes the opportunity to respond to the European Insurance and Occupational Pensions Authority's (EIOPA) consultation paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive. Members of the IFoA's Life and General Insurance Standards and Consultations Sub-committees and Life Board have led the drafting of this response.</p> <p>The IFoA believes that these proposals generally represent a proportionate and sensible approach to elaborating on the requirements of Directive (EU) 2016 / 97 (Insurance Distribution Directive) for investment-based insurance products consistent with the requirements of the second Markets in Financial Instruments Directive (MiFID II).</p> <p>Monitoring distribution channel activities and examining on a regular basis whether the product is distributed to customers belonging to the relevant target market has the potential to add value to both manufacturers and distributors, as well as the potential of being in the consumers' interest.</p> <p>However, this could result in significantly increased costs, arising from new arrangements for sharing information, particularly in the case of independent distributors, which would require investment in an automated solution to be workable.</p> <p>Furthermore, in the specific case of non-life insurance products, the requirements to assess and monitor suitability of the product and sales to the target market may be onerous. These products provide short term (usually annual) cover against specific events and for retail customers are often distributed widely without advice. The potential costs of implementing the oversight and governance proposals could be borne by these customers so such monitoring needs to be considered in a proportionate manner, so that the outcome is in the public interest.</p> <p>We believe that the standard does not reflect the differing circumstances where insurance clients are corporate institutions (e.g. corporate insurance brokers), where the normal retail customer information asymmetry does not</p>	<p>Noted. EIOPA appreciates the concerns raised, in particular, as regards product oversight and governance requirements, where the technical advice has been amended to some extent, to address the concerns raised.</p>

			<p>exist.</p> <p>A related point is that the proposals do not differentiate between contracts drawn up on an individual or group basis; this would mean that the governance requirements would cease at the level of the 'corporate' client, rather than extending to the individuals in any group arrangement.</p>	
35	Insurance Europe	General Comment	<p>Insurance Europe welcomes the opportunity to comment on EIOPA's draft technical advice on possible delegated acts under the Insurance Distribution Directive (IDD). It is crucial that the delegated acts that will be developed by the European Commission respect the framework that has been agreed by the co-legislators at Level 1. As such, we would like to provide our comments on EIOPA's draft technical advice to ensure not only that the delegated acts will be fully consistent with the IDD Level 1 text, but also to ensure that the proposed provisions lead to an effective improvement of consumer protection in insurance distribution and result in a proportionate approach in their application. With this in mind, we would like to make the following general remarks:</p> <p>Product oversight and governance (POG)</p> <ul style="list-style-type: none"> <input type="checkbox"/> EIOPA should ensure that the POG requirements can be implemented at national level as efficiently as possible. Insurance Europe believes that for this to happen, EIOPA should recognise that existing national rules that pursue the same objectives and reflect the same principles as the ones EIOPA is putting forward in the technical advice, meet the POG requirements. <input type="checkbox"/> The POG provisions should be better targeted to their objectives. To this end, a flexible product-specific approach to the determination of the target market would be welcomed. <input type="checkbox"/> In particular, distributors should be able to sell outside of the target market where relevant, while there should be no requirement to specify a 'negative' target market. <input type="checkbox"/> It should also be made explicitly clear that the POG proposals are not intended to lead to any price controls or detailed provisions on product design. <p>Conflicts of interest</p> <ul style="list-style-type: none"> <input type="checkbox"/> The rules on conflicts of interest need to take the insurance-specific characteristics of Insurance-Based Investment Products (IBIPs) more carefully into account. 	<p>Noted. EIOPA appreciates the comments made and would like to emphasise that a large number of these concerns have now been addressed through amendments made to the final technical advice.</p>

			<p><input type="checkbox"/> Commission-based remuneration should not in itself be viewed as a conflict of interest.</p> <p>Inducements</p> <p><input type="checkbox"/> There is no overarching ban on commissions under the IDD. The co-legislators instead opted to ensure that the possibility for such a ban remains as an option for member states. EIOPA must therefore avoid introducing rules that will give rise to a de facto ban on commissions. By specifying a broad list of inducements that are considered to pose a high risk of a detrimental impact on the quality of the service to the customer, EIOPA is in effect undermining the content of the IDD Level 1 text.</p> <p>Assessment of suitability and appropriateness</p> <p><input type="checkbox"/> The cumulative list of high-level criteria to assess non-complex insurance-based investment products will result in a de facto ban on execution-only products. All products are deemed complex under the list besides products with a unit-linked investment element. This approach would seriously undermine the explicit member state option in the IDD that permits the execution-only sale of non-complex IBIPs.</p> <p>Reporting to customers</p> <p><input type="checkbox"/> Any provisions for distributors regarding organisational arrangements, documentation and reporting requirements must be developed in a proportionate manner to avoid placing a disproportionate and unjustified administrative burden on distributors. These provisions should have a clear proven benefit to the customer to be justified.</p> <p>Timing / implementation</p> <p><input type="checkbox"/> It is extremely important that the overall process for finalising the delegated acts is completed as soon as possible. Many of the requirements will require significant changes to current business models and organisational structures, which will take time and significant costs to implement. Companies must therefore be left with sufficient time following the confirmation of the final Level 2 measures to effectively prepare and prevent additional and unnecessary costs.</p>	
36	Insurance Sweden/ Svensk	General Comment	Insurance Sweden is the industry organisation for insurance companies in Sweden. About 50 insurance companies are members of Insurance Sweden and together they account for more than 90 per cent of the Swedish	Noted.

	Försäkring		insurance market. Insurance Sweden fully supports Insurance Europes response to EIOPA’s technical advice on IDD delegated acts but we would like to add a few important remarks concerning question 11 and 19.	
37	IRSG	General Comment	<p>The Insurance and Reinsurance Stakeholder Group (IRSG) welcomes the opportunity provided by EIOPA to comment on EIOPA consultation paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive.</p> <p>The IRSG generally welcomes EIOPA’s draft technical advice which sets out conditions to ensure that the enhanced consumer protection framework, as coined by the IDD, is being put to practice. More specifically the IRSG supports EIOPA’s proposals on POG which should be sufficiently detailed to ensure their effectiveness and consistency with similar cross-sectoral measures.</p> <p>The IRSG recognizes the importance of product oversight and governance arrangements. POG requirements will enhance consumer protection by strengthening the controls before a product is launched at the producer level (insurer or manufacturer) and then minimize the risk of products and services being proposed to the public that could lead to consumer detriment.</p> <p>On page 7 (paragrapgh 3.3) of its Consultation Paper, EIOPA recalls that the IDD seeks to establish the conditions necessary for fair competition between distributors of insurance products and to create more opportunities for cross-border business. The IRSG is fully supportive of the IDD objectives and encourages EIOPA to pursue them.</p> <p>The IRSG welcomes the principle of proportionality that is introduced in EIOPA policy proposal based on previous EIOPA preparatory work that states that POG distribution arrangements shall “be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity”.</p> <p>The IRSG is of the opinion that the delegated acts of the Directive on Insurance Distribution, should take the form of directives. This would allow Member States to apply the rules taking into account their national specificities.</p> <p>Some members of the IRSG are wondering whether the timing of the process is realistic and will guarantee proportionality and high quality regulation.</p>	Noted.

38	Italian Banking Association	General Comment	<p>In general terms ABI observes that the Commission’s mandate given to EIOPA requires to achieve as much consistency as possible in the conduct of business standards for insurance based investment products under IDD, on the one hand, and financial instruments under MiFID II, on the other, where there is no fundamental difference in the wording of the provisions in the IDD and corresponding provisions in MiFID II. Actually the approach adopted by the consultation paper provides many important differences between the draft Delegated Acts under IDD and the Delegated Acts under MiFID II. The gap does not seem justified by a different substantial provisions between IDD and MiFID II nor by the differences between financial instruments and insurance investment based products. The issues we refer to affect the majority of the obligations applicable to distributors in the field of:</p> <ul style="list-style-type: none"> <input type="checkbox"/> product governance arrangements, as the C.P. does not provide any role for the distributor in defining the target market, while MiFID II delegated acts regulate a double level of target market according to which “investment firms manufacturing financial instruments that are distributed through other investment firms shall determine the needs and characteristics of clients for whom the product is compatible based on their theoretical knowledge of and past experience with the financial instrument or similar financial instruments, the financial markets and the needs, characteristics and objectives of potential end clients” and “Investment firms (distributors) shall determine the target market for the respective financial instrument, even if the target market was not defined by the manufacturer. Investment firms (distributors) shall appropriately identify and assess the circumstances and needs of the clients they intend to focus on, so as to ensure that clients’ interests are not compromised as a result of commercial or funding pressures”; <input type="checkbox"/> suitability/appropriateness assessment, as the C.P. does not regulate the collection of information about investors knowledge and experience/financial situation/investment objectives as an activity which, in case of on-going relationship with investors, must be done initially and then maintained up-dated, as provided for by MiFID II delegated acts. <p>The above mentioned differences raise a very different method and process in distributing insurance investment products under the IDD compared to that one related to the distribution of financial instruments under MiFID II, which:</p> <ul style="list-style-type: none"> <input type="checkbox"/> make unclear the way distributors shall implement in their selling procedures insurance based investment products; 	<p>Noted. EIOPA appreciates the concerns raised about ensuring consistency between IDD and MiFID II, but, as regards product oversight and governance arrangements, it is important to recognise that the IDD covers a broader spectrum of products, namely non-life insurance products, which are not directly substitutable with MIFID II financial instruments.</p>
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39	Liechtenstein Insurance Association (LVV)	General Comment	<p>The Liechtenstein Insurance Association supports the statement of the German Insurance Association. The most relevant points have been stated in this paper.</p> <p>However, the Liechtenstein Insurance Association has high doubts in the practicability of the Insurance Distribution Directive. Especially smaller insurance companies and intermediaries will have problems with the implementation. And there will be substantial costs for the undertakings.</p>	Noted.
40	MALTA INSURANCE ASSOCIATION These comments have b	General Comment	No comment	
41	Mediterranean Insurance Brokers (Malta) Ltd.	General Comment	<p>This comment response is being sent on behalf of the members within the Maltese Association of Insurance Brokers.</p> <p>We welcome the opportunity provided to comment on this Consultation Paper. Primarily we believe that the IDD Delegated Acts should take the form of directives. This would give some flexibility to Malta to apply the level 2 rules taking into consideration our national specificities.</p> <p>Whilst we welcome the principle of proportionality as introduced in EIOPA policy proposals, we fail to understand how the so many detail requirements proposed by EIOPA will be complied with small or micro enterprises intermediaries. Important to bear in mind that the Maltese intermediaries are most of them classified as small or micro enterprises intermediaries.</p>	Noted. The legal instrument chosen for Level 2 measures is ultimately a decision for the European Commission. We appreciate concerns raised on proportionality, but we also see the need for a consistent level of consumer protection as equally important.

42	The Danish Insurance Association	General Comment	<p>The Danish Insurance Association welcomes the opportunity to comment on EIOPA’s draft technical advice on possible delegated acts under the Insurance Distribution Directive. It should, however, be noted that our comments only concern the questions related to Product Oversight & Governance (1-8).</p> <p>In general, the DIA supports effective product oversight and governance (POG) arrangements and recognizes that with the transposition of the Insurance Distribution Directive (IDD) as of early 2018 such arrangements will apply to insurance undertakings and distributors in all member states.</p> <p>It is in the interest of both costumers and the industry that insurance undertakings bring appropriate insurance products to the market - i.e. that customers are in focus and that their needs and interests have been considered prior to the introduction of the products to the market. This is why even today, insurance undertakings have established internal procedures and processes to ensure that the products they market meet the needs of the costumers. The alternative is that either the product is not sold or the company suffers a reputational risk.</p> <p>Besides that, in Denmark, POG is not an unregulated area; there is already legislation in place that prevents poor quality products to enter the market. Furthermore, the Danish Financial Supervisory Authority has the option to intervene in the event of the introduction of a product which should not have been placed on the market.</p> <p>With this in mind the DIA would like to highlight some of our main concers of a more general nature as to the technical advice on POG.</p> <p>First of all we believe that it is crucial that the delegated acts to be adopted by the European Commission are fully consistent with the IDD Level 1 text – i.e. does not go beyond the framework of the IDD - and that the proposed provisions lead to an effective improvement of consumer protection in insurance distribution and result in a proportionate and pragmatic approach in their application to avoid unnecessary costs and burdens.</p> <p>Secondly it is crucial that the industry and member states have a sufficient time period for implementation of the delegated acts. Once the level 2 legislation has been adoptend by the Commission member states would need to transpose the requirements into national law and the industry would need time to make changes to current business models and organisational structures. Hence the DIA encourages EIOPA to comply with the scheduled implementation period for the technical advice. This will to enable the</p>	<p>Noted. We appreciate the concerns raised regarding product oversight and governance requirements. The technical advice has been adjusted in some places to reflect these concerns. In particular, it is not EIOPA’s intention to introduce any form of price contract. In addition, it is important to note that issues such as the legal instrument chosen for Level 2 measures, whether there is sufficient time for implementation and whether the POG requirements apply retroactively are ultimately questions to be addressed to the European Commission.</p>
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			above. Actually this clarification was included in EIOPA’s final report on Public Consultation on POG of 6 April 2016 (paragraph 1.17 on page 17 and last paragraph on page 65), but seems to be missing in the draft advice.	
43	Verband der Automobilindustrie e.V. Arbeitskreis	General Comment	<p>The leading automobile manufacturers together with their financial service providers (captives) have been offering their customers the insurance products necessary for unrestricted mobility at the car dealerships for more than 60 years. Such offers include, for example, car-related personal liability insurance as well as partial and fully comprehensive cover.</p> <p>Moreover, the existence of a sales channel through the dealerships represents a further option for consumers to choose from and therefore promotes the competition to provide the best offers in the motor vehicle insurance segment.</p> <p>Insurance brokerage is of great importance for the automotive value-added chain, offering the customer the opportunity of obtaining everything he needs from a single source: the motor vehicle, the financing and the necessary insurance cover. Surveys show that customers want to receive such an offer from their car dealer.</p> <p>On the other hand, insurance products are of particular important for the car retail sector since, in the event of a claim, the customer can rely on the fact that his vehicle will be repaired by a workshop that enjoys his trust and that provides the appropriate high level of quality and service. In view of the stiff competition in the automobile industry, it is above all the car workshop business that is one of the major sources of income for car dealerships.</p> <p>Since captives and car dealers only distribute retail insurance products, our response only covers EIOPA’s technical advice with regard to POG.</p> <p>Preliminary remarks</p> <p>For captives, it is important to make a clear distinction between manufacturers and distributors. Due to closer contacts to customers, distributors help manufacturers to design new products.</p> <p>However, the manufacturer always retains the authority as regards pricing, terms and conditions as well as essential product details. The manufacturer decides on what, when and how a product is marketed and instructs the distributor on how to sell the product to whom.</p>	Noted. EIOPA has adjusted its technical advice to make a clearer distinction between the role of manufacturer and distributor. In particular, EIOPA has provided a higher threshold for when an insurance intermediary is acting as manufacturer, which necessitates a clear “decision-making” role.

			We therefore would like to point out that the main responsibility for product oversight and governance of insurance products should always remain with manufacturers, as is the case in the banking field.	
44	Verband Deutscher Versicherungsmakler e. V. (VDVM)	General Comment	<p>Der Verband Deutscher Versicherungsmakler e. V. (VDVM) ist die Spitzenorganisation der deutschen Qualitätsversicherungsmakler mit ca. 640 Mitgliedsunternehmen und mit etwa 12.000 Beschäftigten.</p> <p>Der VDVM wird über unsere europäische Organisation BIPAR eine Stellungnahme in englisch abgeben, in der die allgemeinen Anmerkungen zum Consultationspapier enthalten sind. Aufgrund des Umstands, dass die Bundesrepublik Deutschland einer der größten Teilmärkte im EU-Bereich ist und über eine Vielzahl von besonderen Regelungen im Versicherungsbereich verfügt, erfolgt hiermit auch noch eine detailliertere Stellungnahme, die insbesondere auf die Regelungen in Deutschland eingeht.</p> <p>Soweit es allgemeine Fragen für Versicherungsunternehmen betrifft, haben wir uns überwiegend die Ausführungen des GDV für die deutsche Versicherungswirtschaft zueigen gemacht, weil insoweit eine weitgehende Interessenidentität besteht. Die deutschen Versicherungsmakler und speziell unsere Verbandsmitglieder haben das unbedingte Interesse in allen Bereichen mit Versicherern zusammenzuarbeiten, die nicht durch übermäßige Bürokratie behindert sind und schlanke Geschäftsprozesse auch und gerade im Interesse der Kunden anbieten können.</p> <p>Vor dem Hintergrund, dass unsere Mitglieder unseren Ausführungen direkt folgen sollen und der Zeit- und der Kostenaufwand für eine Übersetzung relativ hoch ist, wird hierauf verzichtet.</p> <p>Der VDVM und die deutsche Versicherungswirtschaft sieht die Richtlinie über den Versicherungsvertrieb (IDD) als ein tragfähiges Fundament eines europäischen Versicherungsmarkts. Der VDVM bekennt sich ganz ausdrücklich zu dem von der IDD verfolgten Ziel eines erhöhten Verbraucherschutzniveaus. Leider ist in der IDD die Trennung des Schutzes von Verbrauchern und Kunden nicht immer klar geregelt. Wir hätten uns deshalb für den gewerblichen Kundenbereich eine größere Freiheit gewünscht. Nichtsdestotrotz ist mit der IDD ein ausgewogener Interessenausgleich zwischen allen Marktteilnehmern erreicht worden.</p> <p>Die von der EU-Kommission zu erstellenden delegierten Rechtsakte werden</p>	Noted.

		<p>sich innerhalb der auf Level 1 festgelegten Regelungen des europäischen Co-Gesetzgebers bewegen müssen. Die technischen Ratschläge EIOPAs zu Produktüberwachung und Produktgovernance (POG) und Sonderregeln für Versicherungsanlageprodukte können den Verbraucherschutz effektiv stärken, wenn sie verhältnismäßige und praktikable Regelungen für den Vertrieb durch Versicherungsunternehmen und Vermittler schaffen.</p> <p>Das ist in vielen Punkten gelungen. Der VDVM würde es aber begrüßen, wenn vor diesem Hintergrund einige Aspekte für die finale Fassung überarbeitet werden:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Die Entscheidung über ein Provisions- oder Courtageverbot wird laut Art. 29 Abs. 3 IDD ausdrücklich den Mitgliedstaaten überlassen. Wir haben deshalb Einwände gegen die von EIOPA vorgeschlagene Risikotypenliste zur Bewertung der Auswirkung von Anreizen sowie den zugehörigen Anwendungshinweisen. Auf diese Bedenken hat unser geschäftsführender Vorstand Dr. Jenssen auch bereits in Frankfurt am 23.09.2016 hingewiesen. So, wie diese Risikotypenliste formuliert ist, besteht die naheliegende Gefahr, dass ein faktisches Provisionsverbot, das – auch von EIOPA – explizit nicht intendiert ist, eintreten wird. <input type="checkbox"/> Die Regelungen zum Umgang mit Interessenkonflikten müssen die versicherungsspezifischen Besonderheiten von Versicherungsanlageprodukten genauer beachten. <input type="checkbox"/> Vorgaben zu Product Oversight and Governance (POG) sollten noch weiter fokussiert werden: Es sollte deutlich werden, dass eine externe Preiskontrolle nicht beabsichtigt ist sowie, dass POG keine Verpflichtung des Herstellers schafft, Bestandsverträge aufzulösen, sondern hier weiterhin das nationale Vertragsrecht maßgeblich ist. Für den Zielmarkt sind flexible Vorgaben richtig, die konkreten Vorschläge sind aber noch anpassungsbedürftig. Unnötige Bürokratie ist zu vermeiden. Es muß sichergestellt werden, dass nicht praktisch jede intensive Maklertätigkeit diesen bereits zu einem Hersteller macht. <input type="checkbox"/> Verhältnismäßige Vorgaben für den Vertrieb in den Bereichen Beratung, Dokumentation und Reporting erleichtern die Akzeptanz in der Praxis. Einige Vorschläge von EIOPA sind bürokratisch und belasten Versicherer und Vermittler übermäßig. 	
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45	Verband öffentlicher Versicherer (Association of G	General Comment	<p>The public insurers welcome the fact that EIOPA has been timely in submitting its preliminary considerations as regards technical advice for Product Oversight and Governance, Conflicts of Interest, Inducements and Assessment of Suitability – areas in which the IDD has empowered the European Commission to flesh out the regulations by means of delegated acts. The most important thing in relation to these recommendations is that they be proportionate. Only if the principle of proportionality is faithfully and systematically applied, will small and medium-sized insurance companies and intermediaries be in a position to properly implement the IDD. If it is not, the diversity of the European insurance landscape would be in jeopardy – and that would not be in the true interests of the customers.</p> <p>The following General Comment refers solely to the areas of conflicts of interest and inducements, as these are of paramount importance. The IDD is aimed at minimum harmonisation (explicitly stated in Recital No. 3 of the Directive). The commission system was the subject of intensive discussions during the trialogue negotiations, with the result that the IDD does not contain any EU-wide ban on commission. The Directive merely contains the requirement that commission should not have any detrimental impact on the customers. The IDD wording thus deliberately departs in a materially significant way from the MiFID rules. Moreover, in Art. 29(3) the IDD grants the EU Member States – and no other EU institutions – the right to impose stricter national requirements as regards commission systems (up to and including the right to prohibit commission altogether). Consequently, the IDD regulations differ considerably from the MiFID, a fact that also reflects the material differences between the insurance industry and the investment sector.</p> <p>The IDD deliberately grants each EU Member State leeway to regulate commission systems differently, and this scope must not be restricted after the fact. Delegated acts are designed to make Level-1 legislation more specific, not to contradict it. In the present paper, however, EIOPA imposes stricter requirements, which would in fact lead to a Europe-wide prohibition of commission systems in their accustomed, tried-and tested form. This, however, is neither consistent with the IDD, nor do we consider it to be appropriate or even necessary. The delegated acts must respect both the framework given at Level 1 and adhere to the meaningful diversity of structures across the EU Member States.</p> <p>From the public insurers’ standpoint, there are a number of different points</p>	<p>EIOPA appreciates the feedback received. In particular, EIOPA is aware that a formal ban on the receipt/payment of commissions was not included in the Level 1 text of ID. EIOPA would like to reiterate and stress that the intention of proposing a list of criteria for assessing whether an inducement increases the risk of detrimental impact, is not to introduce a ban on commission through the backdoor. The aim of the list is to make market participants aware that the interests of their customers are put at risk and the likelihood of customer detriment exists, if these types of inducements are paid or received. The Technical Advice rather outlines the possibility to take appropriate organisational measures which aim to address these risks and ensure that customer detriment is</p>
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		<p>to which special attention should be given during the consultation process:</p> <ul style="list-style-type: none"> • We believe it much more appropriate to formulate principles-based regulations, rather than the detailed provisions that appear in many instances throughout the consultation paper. Individual aspects are always the result of viewing things in isolation, and are of only limited informational value because they often do not adequately reflect actual practice in the insurance industry. The focus must always fall on the service as a whole. Individual aspects of this kind can be found, in particular, in the negative list drafted by EIOPA, which should not be included in either the Technical Advice or the delegated acts. If, despite all reservations, EIOPA insists on a negative list, it is then absolutely necessary to include a non-exhaustive positive list in the Technical Advice as well. However, the points in the positive list included in the consultation paper are inadequate and do not reflect the features of appropriate, customer-oriented insurance practice. • EIOPA asserts that conflicts of interest typically arise in certain situations. It is worth noting that conflicts of interest do not typically arise in the circumstances given, but only in exceptional cases. The list of situations in which EIOPA assumes a conflict of interest is far too long: <ul style="list-style-type: none"> - It is inexplicable to assert that a conflict of interest arises when the distributor has an interest in selling insurance products from his/her own group. In particular, the tied intermediaries that play such a central role in the insurance industry are subject to a conscious and sensible contractual obligation to sell precisely these products. Art. 19 of the IDD makes detailed prescriptions of what information distributors have to provide to customers (e.g. their status as an intermediary, any holdings they have in insurance companies, etc.). That information already puts the customer in a position to make an informed decision to his/her own benefit. - EIOPA assumes a conflict of interest when a distributor gains financially from the sale of insurance products. This assumption does not reflect the realities of the insurance market. A commission paid to the distributor is primarily intended to cover the latter's costs, i.e. appropriate remuneration for the services rendered to the customer. What is more, in the case of pension insurance products, the distributor has to provide the majority of his/her consultation/support service when the contract is concluded. Service of this nature justifies payment of corresponding remuneration at the time the costs are incurred. Multi-year cancellation liability periods help to avoid any conceivable conflicts of interest between 	<p>avoided.</p>
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			<p>distributors, on the one hand, and customers/insurers, on the other.</p> <ul style="list-style-type: none"> - EIOPA does not consider the potential conflicts of interest posed by other forms of consultation, e.g. fee-based consultation. Remuneration based on the time spent advising the customer can also create incentives that result in consultation that is neither purely customer-oriented nor in line with the latter's requirements. • The consultation paper incidentally leaves aside the socio-politically positive aspect of the commission system. In a system with an insurance infrastructure for everyone consultation is carried out in accordance with the needs and wishes of the customer and without any financial risk for the individual. The scope and intensity of the support provided do not depend on whether the customer ultimately concludes a contract or not, nor on what contract volume or amount of commission is attached to it. At a time when making provision for old age is of key importance only a commission-based system can ensure everyone access to adequate insurance products. • It is problematical to link the admissible commission solely, or even predominantly, to qualitative criteria, which are, generally speaking, not objective. Only quantitative criteria can be measured objectively. In the interests of costing certainty, and to avoid economic risk for insurance companies, the remuneration paid to intermediaries – who are free to decide independently of the insurer the amount and scope of their work – must be geared to the sales they generate and thus to quantitative criteria. <p>At various points, EIOPA asks whether supplementary guidelines for the Directive or the delegated acts are necessary and a sensible option. As the IDD and the delegated acts already provide comprehensive regulations, we do not consider any supplementary guidelines to be needed. Otherwise, there is a danger of too much regulation and of unnecessary red tape.</p> <p>As the delegated acts were formulated as guidelines to supplement MiFID, the delegated acts for the IDD should also be issued as Directive which needs to be implemented nationally. This would also accord with the spirit of the IDD, which aims to achieve a minimum of harmonisation.</p>	
46	Verbraucherzentrale Bundesverba	General Comment	With regard to the cross-sectoral implications concerning IDD we strongly support EIOPA's approach to offer as much compatibility to the MiFID II regime as possible. First of all to avoid any unnecessary burden for market	Noted. EIOPA appreciates the comments received, in

	nd e.V.		<p>participants and secondly to further pursue the goal of a level playing field across the different financial sectors. We acknowledge the limitations occurring from a mandate restricted to technical advice.</p> <p>We agree with the necessity to consider peculiarities of risk coverage connected with an investment component. But in our opinion the main decision has to be made at the level of the „demands and needs“ test. The main question is: Do consumers need a risk coverage and is it necessary to combine it with an investment component? Generally vzbv advocates a separation of saving and risk coverage. Only in case of mandatory bundling by national law a connection of these aspects is unavoidable. Only in that case the suitability and appropriateness test in relation to the investment component has to be provided.</p> <p>vzbv in general believes that every commission has a detrimental impact to sales process of insurance-based investment products (IBIPs) and financial instruments as well. Therefore vzbv postulates a ban of commission as introduced in the Netherlands and United Kingdom in 2013.</p> <p>At the same time we assume that a strict regulation of the distribution of IBIPs leads to an evasive movement to the distribution of well commissioned biometric risk products and substitutive private health insurance where administrative burden is lower.</p>	<p>particular, regarding the relationship between the “demands and needs” test and suitability and appropriateness assessments.</p> <p>As regards commissions, EIOPA has an impartial view on the business models of insurance distributors and does not advocate for the establishment of a fee-based distribution model against a commission-based distribution model.</p>
47	Allianz SE	Question 1	<p>What would you estimate as the costs and benefits of the possible changes outlined in this Consultation? Where possible, please provide estimates of one-off and ongoing costs of change, in euros and relative to your turnover as relevant. If you have evidence on potential benefits of the possible changes, please consider both the short and longer term. As far as possible, please link the costs and benefits you identify to the possible changes that would drive these.</p> <p><input type="checkbox"/> The cost for the implementation of the changes proposed in the regulation put forward will be substantial. It is difficult to quantify, in particular, since many principles and rules leave some room in the specification in the national transpositions.</p> <p><input type="checkbox"/> The benefits relate mostly to the intent of the IDD, i.e. the design, transparency about sale and advice on insurance products, with a special focus on insurance-based investment products (IBIPs).</p>	<p>Noted. EIOPA appreciates the input provided regarding the potential costs and benefits of the changes outlined in the consultation paper. EIOPA has sought to incorporate these elements into an updated Impact Assessment. EIOPA agrees that costs may be difficult to quantify as there is scope for flexibility in national</p>

			<p><input type="checkbox"/> It should be noted that any cost imposed by additional rules – both for implementation as well as for ongoing compliance and related internal administrative efforts - will be priced in the products and ultimately borne by the customers. This calls for a careful assessment of costs and customer benefits. Care should be taken not to jeopardize the effective offerings available to customers, especially in the lower-income end of the market.</p> <p><input type="checkbox"/> While we are unable to provide concrete euro estimates at this point in time, it should be understood that the running cost for the newly established concept of POG, next to additional reporting obligations based on last century’s paper by default obligation create substantial additional regulatory costs of insurance products.</p>	implementation due to the minimum harmonising nature of the IDD.
48	AMICE	Question 1	<p>AMICE is not in a position to properly estimate the costs and benefits of the possible changes outlined in the consultation paper at this moment.</p> <p>In general, EIOPA should allow for an efficient implementation of the IDD requirements at national level in order to avoid unnecessary costs. Existing national and European rules that already pursue the same objectives should not be altered for the sake of formality only.</p>	Noted.
49	Association of International Life Offices	Question 1	Impossible for AILO to quantify on behalf of members.	Noted.
50	Assuralia	Question 1	<p>As the current draft policy proposals leave room for interpretation, Assuralia is not in a position to properly estimate the costs and benefits of the possible changes outlined in the consultation at this moment.</p> <p>In general, Assuralia encourages EIOPA to allow for an efficient implementation of the IDD requirements at national level in order to avoid unnecessary costs. Existing national and European rules that already pursue the same objectives should not be altered for the sake of formality only.</p>	Noted.
51	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 1	-	
52	BIPAR	Question 1	Economic entities active in sectors which are regulated face a number of on-	Noted. EIOPA appreciates the input

			<p>going or recurring costs as a result of such regulations.</p> <p>Although it is difficult or impossible to calculate the exact amounts, it is clear that, considering the many changes that the IDD will bring, the costs for the sector (and afterwards for the consumer and the economy) will be high. Also the costs for the governments and the supervisors will increase drastically because of the imposed (sometimes purely administrative) checks and controls.</p> <p>Recurring indirect regulatory costs</p> <p>Recurring indirect regulatory costs are to a great extent part and parcel of doing business. These costs are a very significant and mostly necessary burden. They comprise the costs of internal and external resources dedicated by an insurance intermediary to comply with the relevant legislative and regulatory framework. They represent a very significant burden in terms of cost. Those costs are ultimately borne by consumers. Because of the hugely significant and growing cost of ensuring compliance which is driven in part by the increasingly draconian consequences of being found in breach of regulations, special attention must be given to NOT further increasing costs, in particular in respect of products where no such problems exist or where they do, their significance in terms of the scale of the market is so negligible, that no additional burden being placed on the rest of the market is justified. Unfortunately the POG regulations in part risk doing just that!</p> <p>BIPAR supports good quality legislation. Legislation is costly in particular for SMEs. It is therefore important to make sure that only necessary, useful legislation is introduced.</p> <p>As we will explain within our responses to the other questions below, the proposals contained within the EIOPA proposed technical advice in respect of obligations on intermediaries that do not manufacture products will result in costs to the sector that will far outweigh any potential benefit to customers.</p> <p>BIPAR would like to remind EIOPA of the Regulatory Fitness and Performance ("REFIT") Programme, which aims to make EU law simpler and to reduce regulatory costs. The excessive weight of proposals put forward within this consultation will achieve the exact opposite and are likely to force a reduction in options for the consumer.</p>	<p>provided, particularly as regards recurring indirect regulatory costs and also supports the objectives of good quality, risk-based and proportionate legislation, which at the same time ensures a high level of consumer protection.</p>
53	BNP Paribas	Question 1	It is too early for us to be able to respond to the question of costs and	Noted. EIOPA appreciates the input

			<p>benefits given the numerous issues that have yet to be clarified.</p> <p>What is clear for now is that these proposed changes would create additional costs related to IT development, marketing, product monitoring, distributor monitoring, etc. It is essential that the any changes adopted do not cause an increased burden on our processes, which would lead inevitably to an increase in the pricing of products, to the detriment of clients. If this were the case, some of our clients may not be able to have access to certain insurance products.</p>	<p>provided regarding the potential areas for costs such as IT development, marketing and product monitoring, which we have sought to factor into an updated Impact Assessment.</p>
54	Bund der Versicherten (BdV – German Association of	Question 1	<p>As a consumer organization (NGO) our personal members get advice related to all issues of private insurances by paying an annual fee (60 Euro). As we do not sell any insurances, IDD will not have any impact on our turnover. But of course we will implement all information requirements related to demands and needs tests and to insurance product information documents for our advice services. For these services we already have such a high level of liability risk coverage, professional training and other juridicial standards that no additional costs will be entailed by IDD.</p>	Noted.
55	CNCIF - Chambre Nationale des Conseillers en	Question 1	<p>The costs entailed by the proposed changes might be significant. However, such costs are difficult to quantify.</p>	Noted.
56	CSCA French broker Association, 91, rue Saint Laza	Question 1	<p>The implementation of the demands for changing the exercising of distribution, structuring of procedures and the monitoring of products especially proposed by EIOPA will entail significant costs which will be far away from those set out in the IDD impact study from July 2012.</p> <p>(You will recall that the estimate of the administrative burden carried out on the basis of the PWC study and industry statistics, adjusted by the Commission’s departments, was approximately EUR 617,000,000 for the first year of application of IDD2, which translates as 0.06 % of total gross written premiums in 2009). In view of the large number of companies concerned (approximately a million), the average cost per firm would be relatively moderate (around EUR 730). Nevertheless, these costs would not be equally distributed between all firms: the burden would be greater for firms selling insurance in the form of PRIR than for those selling insurance products in general).</p>	<p>Noted. EIOPA appreciates the data provided on the potential costs of its policy proposals (via the study by Sia Partners) and also the information on the structural effects of the potential Level 2 measures on the market. EIOPA has sought to factor new elements into an updated Impact</p>

			<p>In fact the Commission's assertion is contradicted by the latest studies. In France, compliance with the provisions of IDD has been estimated at EUR 365m (source Sia Partners – MEDI). This assessment does not include the specific overheads of intermediary organisations (general agents, brokers) It should also be noted that these measures will have structural effects on the supply side of the market inasmuch as many players will not be able nor have the resources to comply with the new obligations. Initially there would be a consolidation phase reinforced by the constraints of compliance that would weigh on insurance undertakings and increase network management costs, which would certainly have an effect on distributor staffing.</p> <p>The costs of implementation of the provisions recommended by EIOPA, in their present state, would unavoidably impact significantly the French distribution system.</p>	Assessment.
57	Czech Insurance Association CAP	Question 1	<p>Costs: Without knowledge of the final delegated acts we are not able to estimate the costs so far. It is evident that upcoming provisions will result in need to launch new processes that will only partly overlap with the current ones. Thus, we assume significant costs on adjustment and testing of the IT systems as well as on the required documentation (especially when default is paper version). The level of cost will correspond to the level of detail of the delegated acts.</p> <p>Benefits: In a long-term view, it may bring better selection of products according to the needs of clients as well as higher literacy of clients. The increasing requirements on the expert knowledge of intermediaries may lead to the cultivation of insurance market. On the other hand, it may mean extensive administrative burdens. Further, the more information and documents customers will be obliged to receive, may result in overload of information and less ability and willingness of clients to actually understand the products.</p>	Noted. EIOPA appreciates the feedback provided on the potential costs and benefits, which we have sought to factor into an updated Impact Assessment in our Final Report.
58	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 1	While estimating costs and benefits of staff knowledge and competence requirements (ex. Article 10 IDD), which are related with all the measures outlined in the Consultation, it is worth to consider that training costs are usually high; and that benefits are connected with the quality of the service. Moreover, measures related with conflicts of interest, inducements and suitability and appropriateness assessment outlined in the Consultation can only be achieved with adequately trained staff.	Noted, in particular with regard to the importance of the link to training staff regarding new conduct of business requirements.
59	Fachverband	Question 1	The cost aspect should have been considered beforehand in a cost benefit	Noted. EIOPA

	<p>der Versicherungsmakler und Berater in</p>	<p>analysis by the European Commission. Economic entities active in sectors which are regulated face a number of on-going or recurring costs as a result of such regulations.</p> <p>A distinction is often made between recurring direct and indirect regulatory costs. It is impossible to calculate the costs because these will be different for each firm. But below we describe what such direct and indirect regulatory costs are in insurance intermediation.</p> <p>Recurring direct regulatory costs</p> <p>Direct regulatory costs include all the fees and levies insurance intermediaries have to pay to their regulator(s)/ supervisor(s) on a regular basis (typically on annual basis) as a condition to be authorised to undertake insurance intermediation activities (There are also other costs for other supervisors and regulators for example in relation to data protection).</p> <p>One-off fees and levies to be paid for obtaining for the first time an authorisation to undertake insurance intermediation activities are not included in recurring direct regulatory costs as, by definition, such fees and levies are only paid once and are not recurring.</p> <p>In many cases the recurring fees and levies are used to fund the regulator. In some countries the funding of the regulator consists entirely of fees and levies imposed on regulated entities while, in other cases, the regulator may be funded entirely by the central government or a mix of central government contributions and fees and levies. Moreover, in some cases, both the insurance-intermediation firm (a legal person) and the owners and employees (i.e. the natural persons owning the intermediation firm and/or employed by the firm) are also subject to compulsory fees and levies.</p> <p>Recurring indirect regulatory costs</p> <p>Recurring indirect regulatory costs include all the expenses incurred by insurance intermediaries in complying with the regulations and other requirements of the relevant authorities.</p> <p>Such recurring indirect regulatory costs include, among others, the costs of internal and external resources dedicated by the insurance intermediary to</p> <ul style="list-style-type: none"> - Complying with the relevant legislative and regulatory framework. <p>This may include additional costs (in terms information provision, recording, etc.) at the point of sales (front office) and / or in the back office, and the costs of any such activities which are outsourced; part of the costs of a</p>	<p>appreciates the input provided, particularly as regards recurring indirect regulatory costs and also supports the objectives of good quality, risk-based and proportionate legislation, which at the same time ensures a high level of consumer protection.</p>
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			<p>compliance department.</p> <ul style="list-style-type: none"> - Managing client funds in segregated accounts. - Meeting the various regulatory reporting requirements. Again, this cost item includes the cost both in-house and outsourced activities. - Verifying that the intermediary is compliant with the legislation, regulations and reporting requirements. Such verification costs include part of the costs of a compliance department, the costs of compliance audits by internal and/or external resources; time and resources spent on preparing visits from the regulator. - Dealing with ad-hoc and /or regular inspection visits from the regulator and other such meetings with regulator. <p>Although it is difficult or impossible to calculate the exact amounts, it is clear that, considering the many changes that IDD will bring the costs for the sector (and afterwards for the consumer and the economy) will be very high. Also the costs for the governments and the supervisors will increase drastically because of the imposed (sometimes purely administrative) checks and controls.</p> <p>As we will explain within our responses to the other questions below, the proposals contained within the EIOPA proposed technical advice in respect of obligations on intermediaries that do not manufacture products will result in costs to the sector that will far outweigh any potential benefit to customers.</p> <p>We would like to remind EIOPA of the Regulatory Fitness and Performance ("REFIT") Programme, which aims to make EU law simpler and to reduce regulatory costs. The excessive weight of proposals put forward within this consultation will achieve the exact opposite and are likely to force a reduction in options for the consumer.</p>	
60	<p>Fédération Française de l'Assurance (FFA)</p> <p>26 bo</p>	Question 1	<p>A consulting firm did a study on IDD's Implantation costs in the French market:</p> <p>France : Le coût de la mise en conformité des directives distribution.</p> <p>Le coût de la mise en conformité des directives distribution. Le cabinet de consulting SIA partners évalue à 365 millions d'euros, pour le marché français, les dépenses occasionnées par la mise en place des dispositions des directives distribution. Il estime la répartition des coûts par chantier de la</p>	<p>Noted. EIOPA appreciates the data provided on potential costs via the consulting firm, Sia Partners. EIOPA has sought, where possible, to factor this</p>

			<p>manière suivante :</p> <p>Systèmes de rémunération 24%</p> <p>Dispositif de gestion des conflits d'intérêts 16%</p> <p>Formations / professionnalisation 08%</p> <p>Gouvernance Produit 18%</p> <p>Information des clients / transparence 17%</p> <p>Processus de vente / Conseil 14%</p> <p>Source : SIA Partners</p> <p>Please find here below some links as to this study</p> <p>http://www.argusdelassurance.com/acteurs/directive-distribution-la-mise-en-conformite-coutera-365-m-au-marche-francais-de-l-assurance-sia-partners.108657</p> <p>http://www.medi-site.fr/index.php/publications/les-brevs/179-france-le-cout-de-la-mise-en-conformite-des-directives-distribution</p> <p>http://www.sia-partners.com/</p> <p>We precise that the study only gives an estimation of the direct administrative costs that professionals will have to face, but not the indirect economic and social costs, difficult to quantify, which will certainly be much higher.</p> <p>In any case, it should be taken into consideration that these costs would notably increase if the position taken by EIOPA leads to the upheaval of the French market system.</p>	<p>data into the updated Impact Assessment in its Final Report.</p>
61	FNMF, 255	Question 1	As mentioned above, the implementation of this IDD technical advice on POG	Noted, in particular as regards the Sia

	rue de Vaugirard, 75015 PARIS		would be burdensome in terms of process, procedures, organisation and, of course, costs. This implementation has been estimated in France by Sia Partners at 365 M€. This cost is adding to the many regulation costs : Solvency 2 in top position, Laundering regulation, FATCA, specific French national regulations. The cost of regulation tends to be no more sustainable.	Partners study.
62	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 1	No comment	Noted.
63	German Association of Private Health Insurers (PKV	Question 1	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
64	German Insurance Association (GDV)	Question 1	<p>The costs entailed by the proposed changes would be considerable. However, it is impossible to give exact numbers. The costs will have to be borne by the collective of insureds. The insurance companies are doing their best to cut costs by streamlining processes and promoting digitalization. Such efforts are undermined where insurers are required to introduce and document new processes.</p> <p>The additional cost burden will result in intermediaries disappearing from the market. Market consolidation is a normal phenomenon, but additional administrative burdens increase this phenomenon to the detriment of consumers. Commission-based distribution enables consumers to access free advice and hear several opinions – the proposed changes would restrict this option.</p>	Noted. EIOPA appreciates the input provided on potential costs and impact on the market, which we have sought to factor into an updated Impact Assessment in our final technical advice.
65	Insurance Europe	Question 1	<p>It is not possible to provide an estimate of the costs and benefits of the possible changes outlined in the consultation paper since the current policy proposals are not final yet.</p> <p>No definite implementation plans can be put in place by insurance companies until they have legal certainty over the content of the final text of the possible delegated acts.</p>	Noted.

			Recommendation: It is crucial that the delegated acts are finalised as soon as possible to allow an effective preparatory period for companies and prevent additional unnecessary costs, while at the same time ensuring effective protection and clarity for consumers.	
66	IRSG	Question 1	The IRSG is of the opinion that this cost aspect should have been considered beforehand in a cost benefit analysis by the European Commission.	Noted.
67	Liechtenstein Insurance Association (LVV)	Question 1	<p>The costs produced by the changes would be substantial. It is not possible to give estimations on these costs. However, the costs will have to be borne by the collective of insureds. The insurance companies are doing their best to cut costs by streamlining processes and promoting digitalization. Such efforts are undermined where insurers are required to introduce and document new processes.</p> <p>Additional administrative burdens would result in further consolidation regarding intermediaries, thus in intermediaries disappearing from the market.</p>	Noted. EIOPA appreciates the input provided on potential costs and impact on the market, which we have sought to factor into an updated Impact Assessment in our final technical advice.
68	MALTA INSURANCE ASSOCIATION These comments have b	Question 1	1 The consultation document provides that the principle of proportionality should be applied in product oversight. However there does not appear to be provision for the different levels of testing which is to be applied depending on the different types of products manufactured. We feel that a clear distinction should be made between the requirements which are particularly applicable for the purpose of the identification of the target market and product testing, depending on the complexity of the product manufactured. This comment is being submitted particularly in view of the fact that most general insurance business products do not involve the complexity and underlying risk which investment and long-term business products involve, and therefore the customer risk is much lower.	Noted.
69	Mediterranean Insurance Brokers (Malta) Ltd.	Deadline 3 October 2016 18:00 CET	Name of Company:	Noted.

70	Mediterranean Insurance Brokers (Malta) Ltd.	Question 1	<p>1. What would you estimate as the costs and benefits of the possible changes outlined in this Consultation?</p> <p>Where possible, please provide estimates of one-off and ongoing costs of change, in euros and relative to your turnover as relevant. If you have evidence on potential benefits of the possible changes, please consider both the short and longer term. As far as possible, please link the costs and benefits you identify to the possible changes that would drive these.</p> <p>An exercise to identify possible costs was not carried out in Malta, hence we cannot comment on the estimate of the costs. However, we'd like to point out that the current regime in Malta is product distribution, and moving into the realm of product oversight and governance will impose new responsibilities on distributors. The following may be a list which will drive the costs upwards:</p> <ul style="list-style-type: none"> a) Additional costs in terms of information provision, recording, etc. at the point of sales b) Additional costs relating to outsourcing and compliance costs c) Costs for additional training d) Various regulatory reporting e) Verification costs for the intermediary to ensure that it is compliant with the legislation, regulations and reporting requirements. These may include costs of a compliance department, costs of compliance audits by internal and/or external resources, time and resources spent on preparing visits from the regulator. f) Ad-hoc and regular inspection visits from the regulator. <p>The above list does not include the costs for the proposed technical advice in respect of obligations on intermediaries that do not manufacture products which will result in costs to the sector will far outweigh any potential benefit to customers. We are afraid that the excessive weight of proposals put forward within this consultation will achieve the exact opposite of making EU law simpler and reduce regulatory costs. This is likely to force a reduction in options for the consumer.</p>	Noted. EIOPA appreciates the input provided on the factors for driving costs upwards and has sought to take these elements into account in its updated Impact Assessment.
71	The Danish	Question 1	At this point in time the DIA is not able to provide an estimate of the costs	Noted.

	Insurance Association		<p>and benefits of the possible changes outlined in the consultation paper, since the current policy proposals leave room for interpretation and are not final yet.</p> <p>As long as the current legal uncertainty continues and consequently no definite implementation plans exist yet in insurance companies, the costs manufacturers will face by meeting these requirements can neither be estimated nor quantified.</p> <p>It should be noted that a short preparatory period would come at a certain cost, particularly in the IT area.</p>	
72	Verband der Automobilindustrie e.V. Arbeitskreis	Question 1	At present, it is difficult to estimate the costs. However, it is obvious that additional costs will bind resources. Benefits for insurance companies are not apparent.	Noted.
73	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 1	<p>1: Was sind Ihrer Einschätzung nach die Kosten und Nutzen der in dieser Konsultation beschriebenen möglichen Änderungen?</p> <p>Bitte geben Sie, sofern möglich, Schätzungen zu den einmaligen und laufenden Kosten einer Änderung in Euro und, soweit relevant, relativ zu Ihrem Umsatz an. Haben Sie Belege für potenzielle Vorteile der möglichen Änderungen, berücksichtigen Sie bitte sowohl kurz- als auch längerfristige Aspekte. Setzen Sie bitte die von Ihnen identifizierten Kosten und Nutzen in Verbindung zu den möglichen Änderungen, die diese auslösen, soweit dies möglich ist.</p> <p>Der durch die vorgeschlagenen Regelungen induzierte Aufwand ist beträchtlich – wenn auch durch den VDVM nicht konkret bezifferbar. Letztlich trägt das Versichertenkollektiv die Kosten dafür. Die Versicherer bemühen sich, die Kosten zu senken, indem sie Abläufe verschlanken und digitalisieren. Das wird durch neu einzuführende und zu dokumentierende Prozesse erschwert.</p> <p>Die zusätzliche Kostenbelastung wird dazu führen, dass Vermittler den Markt verlassen. Zwar ist Marktkonsolidierung ein normales Phänomen, aber dieses Phänomen wird durch administrative Anforderungen verstärkt. Das wäre letztlich nicht förderlich im Sinne des Verbraucherschutzes. Die Möglichkeit,</p>	Noted.

			sich dank des provisionsbasierten Vertriebs quasi kostenlos beraten zu lassen und mehrere Meinungen einzuholen, würde damit für den Kunden beschränkt werden.	
74	Verband öffentlicher Versicherer (Association of G	Question 1	<p>It is not possible to give a reliable estimate of the direct and indirect costs that would be triggered by the proposals contained in the consultation paper. However, the additional effort they would entail should not be underestimated and would be likely to have an impact on the costs for the customers. The proposals, especially process changes at insurance companies and intermediaries, would lead to quite comprehensive changes. The changes concern nearly all corporate areas and would have consequences for distribution management, IT, product development, corporate management, etc.</p> <p>In addition to the direct financial costs that the insurance collective would have to shoulder, considerable human resources would be needed to implement all of EIOPA's proposals. This entails, in particular, the additional administrative burden for activities such as drawing up conflict-of-interest policies and documenting that the commission systems/components are unobjectionable, for recurring additional case reviews and for more stringent reporting obligations on the part of distribution partners. These comprehensive requirements become evident in the following examples, which admittedly represent only one part of the additional burden that would be caused by the EIOPA proposals:</p> <ul style="list-style-type: none"> • All manufacturers of insurance products are supposed to maintain, administer and regularly review product oversight and governance (POG) arrangements. These arrangements are to include adequate measures and procedures targeting the design, monitoring, review and distribution of retail insurance products. Measures also have to be taken with respect to products, which could be detrimental to consumers. • Before a product is launched in the market, when the target market changes or when an existing product is modified, the manufacturer is expected to carry out appropriate checks in order to assess whether the product corresponds to the needs of the target market over its life cycle. • Distributors, too, will have to establish a control or management body to assist in the setting up, implementation and subsequent review of the POG arrangements, to ensure internal compliance with them and to bear ultimate responsibility. 	Noted. EIOPA appreciates the general feedback provided on cost implications, particularly on the process changes required in insurance undertakings and insurance intermediaries. EIOPA has sought to factor some of these elements into its updated Impact Assessment.

			<ul style="list-style-type: none"> • If a distributor determines that a product does not match the interests, needs or characteristics of the target market or that it raises the risk of detriment to the customer, the distributor must inform the product manufacturers of this without undue delay. • Insurance companies and intermediaries are supposed to assess whether they have a different interest in the insurance distribution than the customer. Further, conflicts of interest between the customers themselves have to be identified. • Insurance companies and intermediaries are to set down in writing principles for dealing with conflicts of interest and put these into lasting practice. • In future, insurance companies and intermediaries will have to assess each and every inducement and document it on a permanent data carrier. • Insurance companies and intermediaries are expected to obtain from customers the information required to understand their salient characteristics so that they can reasonably assume that their personal recommendations match the customers' investment goals, risk tolerance and financial situation. • Insurance companies and intermediaries are called upon to take adequate steps to ensure that the information they collect on the customer is reliable. <p>Particularly for small and medium-sized companies/intermediaries, this could entail a prohibitive amount of extra work – work they are unable to carry out. It is therefore once again indispensable to strictly observe the principle of proportionality when it comes to EIOPA's proposals and the delegated acts based on them.</p>	
75	Verbraucherzentrale Bundesverband e.V.	Question 1	-	
76	Allianz SE	Question 2	Do you agree that the policy proposals above provide sufficient detail on product oversight and governance arrangements?	Noted. The technical advice clarifies the purpose of

		<p>□ The proposals in several aspects are even overly detailed and restrictive, e.g. with respect to</p> <ul style="list-style-type: none"> o definition of “detriment” not provided in Level 1: Allianz does not share the view that any potential adverse effect on the customer should be considered a detriment but that this should be limited to objectively unfair developments (sec. 36 (b) 37, p. 18) that are causing a concrete and evident harm to the customer. Insurance products are typically designed to transfer risks from customers to the insurer, i.e. they are explicitly designed to deflect harm from customers. This should lead to only very few cases which may be in effect considered detrimental to customers, especially on the abstract level required for any general needs assessment performed by the manufacturer. o responsibility of manufacturer for outcomes (see e.g. sec. 20, p. 16, bullet 2): manufacturer should not bear responsibility for aspects which are beyond its control, e.g. because the distributor is independent (e.g. in case of brokers) and monitoring activities (see DTA 22, p. 23) are limited. o Product testing: a qualitative high standard product testing concept should allow manufacturers to build a multi-dimensional and comprehensive approach for which the elements listed in sec. 31 – 34 only provide an indicative list. None of these elements should be considered in isolation, namely there should be no strict limitation on product design (sec. 31/32, p. 17) or use of claims ratio as the primary indicator (sec. 34, p. 18) for product approval. For example, in the case of natural catastrophe risks (e.g. earthquake covers), the claims ratio typically is low or even zero in most years, but the product still provides valuable cover. In addition, valuable service components for the customer are not formally part of the claims ratio, but form part of the expense ratio. This should not be neglected. o target market definition: Allianz agrees that the clear definition of a target market is in line with good practices of product design. Any implementation of the target market 	<p>POG arrangement which is to avoid customer detriment following from inappropriate design of products.</p> <p>The policy proposals do not modify the responsibilities of manufacturers and distributors.</p> <p>The technical advice does not require a specific method for product testing but gives sufficient discretion to the manufacturer to choose a way which is appropriate to the respective products.</p> <p>EIOPA shares the view that the definition of the target market cannot substitute the demands and needs test at the point of sale which takes into consideration the specificities of the individual customer.</p>
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		<p>concept in product design has to take into account, that the target market definition has to address customer profile and needs in the abstract and cannot be substituted for the demands and needs test at the point of sale (which needs to be performed by the distributor). This understanding should be clarified in the DTA. The very restrictive approach proposed in the Consultation Paper, in particular with respect to restrictive rules on sales outside the target market (sec. 52/53, p. 20/21), may lead to difficult trade-offs between</p> <ul style="list-style-type: none"> <input type="checkbox"/> effectively cutting off suitable customers (in case of a narrow definition of the target market), <input type="checkbox"/> inclusion of many unsuitable customers within the formal definition of the target market (in case of a very broad definition of the target market) <input type="checkbox"/> excessively granular definitions of the target market in multiple dimensions which are difficult to identify and handle (in case of attempts to become as granular in the target market definition at technically possible), see also Q7 on granularity of target market. <p>In our view, this problem cannot be resolved by more requirements on or higher granularity of the definition of the target market. Instead, the abstract nature of the target market definition should be acknowledged and an element of proportionality should enter the required level of granularity of the target market. In particular, it should be clarified in the DTA that the manufacturer should reach a reasonable level of granularity while the primary responsibility for meeting the individual customer needs should remain with the distributor at the point of sale.</p> <p>Additional remarks:</p> <ul style="list-style-type: none"> <input type="checkbox"/> For IBIP products the granularity of the target market description should not be required to exceed the two dimensions explicitly required in Art. 8 (3) PRIIP Regulation, i.e. ability to bear losses and investment horizon. <input type="checkbox"/> For most non-life products the target market definition will be aligned very closely with the risk coverage 	
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		<p>of the product. An obligation to provide a very detailed definition of a negative target market (i.e. identifying non-target customers) might put a disproportionate burden on the manufacturer in many cases.</p> <ul style="list-style-type: none"> o product testing: scenario analyses are unclear for many product categories (e.g. many non-life products, where proposed criteria in sec. 34, p. 18 are overly simplistic, in particular claims ratio and overlap of coverage as well as possible update to future needs. A qualitative high standard product testing concept should allow manufacturers to build a multi-dimensional and comprehensive approach for which the elements listed in sec 31 – 34 only provide an indicative list. None of these elements should be considered in isolation, namely there should be no strict limitation on product design (sec. 31/32, p. 17) or use of claims ratio as the primary indicator (sec. 34, p. 18) for product approval. For example, claims ratios are low for many important low frequency products (e.g. earthquake insurance). Furthermore, essential service elements may not be included in the claims ratio but be part of the expense ratio. In addition, some (limited) overlap of coverage should not be considered problematic per se, because such restrictive view could in effect block any valuable more comprehensive coverages for customers. Furthermore, an automatic update of the coverage for future needs should not be generally expected (as could be read into sec. 34, p. 18). These aspects should be clarified and a holistic proportionate view should be permissible. o notification to customers (DTA 17, p. 23) probably would prove unnecessary and impractical and also could in some cases trigger erratic or even irrational switching behaviour of customers which may in effect be detrimental to interests of individual customers and the collective of insureds. o distribution channels (DTA 18, 22, 23, p. 23): The scope of obligations (and liability) shifted to the product manufacturer may prove disproportionate in many cases. In particular, for independent distributors manufacturers typically lack powers and instruments for close supervision 	
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			<p>and intervention. Rather than extending (often duplicating) the responsibility (and liability) for the conduct of the (independent) distributor at the point of sale to the manufacturer, it should be made clear that the primary responsibility for this conduct remains with the distributor. The obligations (and liability) of the manufacturer should be limited to aspects, which are within its sphere of influence (e.g., defining a target market for the product). Therefore, in particular DTA 24 (p. 24) should be modified to reflect this point.</p> <ul style="list-style-type: none"> o Remedial action (DTA 16, 17, p. 23): it should be clarified that POG rules only apply to products which are open for sale (not all contracts in force). In particular, it should be clarified that POG rules do not require the adaptation (or cancellation) of existing contracts, which is governed by national contract law. In addition, the proposed notification of remedial action to customers (DTA 17, p. 23) should be deleted, since it is already covered by the requirement to “take appropriate measures” and under some adverse circumstances may jeopardize the collective of the insureds by triggering an unnecessary flight response by customers. o With view to policy proposals for insurance distributors it should be noted that the requirements may not be equally applicable to all types of distributors, especially independent distributors. 	
77	AMICE	Question 2	<p>We believe that the policy proposals based on EIOPA’s preparatory guidelines provide sufficient detail on product oversight and governance arrangements.</p> <p>As rightly mentioned on page 31, insurance products are quite heterogeneous and their complexity varies. Therefore, we believe that the policy proposals should remain high-level and flexible. EIOPA should ensure that the product oversight and governance arrangements can be implemented at national level as efficiently as possible and take into account existing national and European rules that already pursue the same objectives. This approach would ensure that the POG requirements fit the national distribution practices and</p>	<p>Noted.</p> <p>Noted.</p>

		<p>products and limit unnecessary costs and burden for the industry and consumers.</p> <p>With regard to the analysis and concrete proposals contained in the consultation paper, we would like to raise the following comments.</p> <p>Scope of policy proposals</p> <p>Article 25(1) of IDD requires the insurance undertakings, as well as intermediaries which manufacture any insurance product to maintain a product approval process for each insurance product, or significant adaptations of an existing product, before it is marketed or distributed to customers. EIOPA should clarify the scope of application of the POG arrangements. The arrangements should only apply to newly designed products that are brought to the market or existing products that are significantly changed after the implementation date of the IDD. Otherwise, the application of these guidelines to existing products would be too burdensome if companies were obliged to develop new POG arrangements for each of these products. This clarification was included in EIOPA's final preparatory guidelines (EIOPA-BoS-16-071 p.17 and p.65), but seems to be missing in the draft technical advice.</p> <p>Proportionality</p> <p>Article 25(1)(2) of IDD clearly provides that the product approval process should be proportionate and appropriate to the nature of the insurance product. We believe that the proportionality of the POG requirements is of paramount importance. Sufficient flexibility should be allowed to adapt to the number and diversity of market characteristics and insurance products.</p> <p>We welcome the fact that EIOPA has introduced the principle of proportionality in the draft policy proposals (i.e. paragraph 2, page 21 and paragraph 28, page 25). The POG requirements should take into account the complexity of the products and the related risks as well as the nature, scale and complexity of the relevant business of the</p>	<p>Please see EIOPA's feedback statement in the final report with regard to the issue of retro-active application.</p> <p>EIOPA shares the view that the principle of proportionality plays an important role when it comes to product oversight and governance arrangement. For that reason, the policy proposals generally contain high-level and abstract principles (as opposed to prescriptive rules) and make continuous reference to this principle, e.g. see paragraph 2 of section "Establishment of product distribution arrangements" where it is stated that the <i>"arrangements need to be proportionate to the level of complexity and the risks related to the</i></p>
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		<p>manufacturer/distributor involved.</p> <p>There should be a proportionate approach when applying the POG requirements for different types of distributors. The difference between tied agents who act under the responsibility of the insurer involved, and independent intermediaries, such as brokers; needs to be acknowledged. In practice, tied agents often follow the distribution strategy set out by the insurer. In such case, the tied agent should be able to simply join the distribution strategy of the manufacturer.</p> <p>In paragraph 30 (page 17) EIOPA also states that the product testing should be proportionate to the complexity of the product and its risks. The following concrete proposals may help to put this proportionality principle into practice:</p> <ul style="list-style-type: none"> <input type="checkbox"/> insurance undertakings should be allowed to re-use relevant existing product testings and scenario analyses as a basis when they test similar insurance products; <input type="checkbox"/> when changes are introduced to an existing insurance product that has already been submitted to product testing, only these changes should be subject to a new product testing exercise. This is provided that the changes do not impact the rest of the product that already was tested. <input type="checkbox"/> guarantees and product features required by law should not be subject to product testing. <p>Product innovation</p> <p>We believe that POG requirements should not hinder product innovation nor result in unnecessary delay in product development. In view of the growing importance of online distribution channels, EIOPA should also ensure that insurers are given sufficient flexibility when distributing products in case of online sales.</p> <p>Distribution channels</p> <p>Considering that the distribution channels can differ significantly among Member States, we believe that the POG requirements should be applied in a proportionate manner</p>	<p><i>products as well as the nature, scale and complexity of the relevant business of the insurance distributor”.</i></p> <p>EIOPA considers the claim ratio as one important criteria to be considered where appropriate, but would like to point out that other criteria and factors may be relevant and important as well. EIOPA would like to emphasise that it does not intend to introduce a price control via the policy proposals on product oversight and governance. In view of the concerns of some market participants, EIOPA has amended the final Report with a clear statement for the sake of clarification.</p>
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		<p>while taking into account the specificities of the national markets.</p> <p>The draft technical advice does not clearly emphasize the differences between distribution channels, despite the explicit request in the Commission’s mandate. Tied agents and independent intermediaries (brokers) operate in different frameworks with different levels of cooperation with and supervision by the insurance undertaking involved. These differences are not reflected in the draft technical advice (i.e. paragraphs 22 and 23 on page 23).</p> <p>Paragraphs 22 and 23 of the draft technical advice state that the manufacturer shall take all reasonable steps to monitor that distribution channels act in compliance with the objectives of the POG arrangements and shall examine whether the product is distributed to the relevant target market. However, in case of independent intermediaries, manufacturers have less control over how or to whom their products are sold. Monitoring whether an independent distributor acts in compliance with the manufacturer’s POG arrangements would be problematic as it is not possible for manufacturers to interfere in the business of independent distributors.</p> <p>Claims ratio</p> <p>We are concerned that EIOPA refers to the claims ratio and claims payment policies in the analysis accompanying the draft technical advice (paragraph 38, page 18). We believe that insurance undertakings should not be obliged to focus on claims ratio and claims payment policies when monitoring or testing their products. This is due to the fact that claims ratio need to be evaluated over time and not always appropriate to estimate whether a product is valuable to the identified target market.</p> <p>Reference to the concept “value of the product”</p> <p>We have concerns as regards to EIOPA’s reference to the concept “value of the product”. When talking about conflicts of interest, EIOPA specifies that ‘this might imply that</p>	
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			<p>distributors abstain from distributing specific insurance products, for example, in cases where products do not offer any value to the customer, but only a high commission to the distributor’. We are concerned that references to such concepts could result in price control for insurance products. It should be recalled that the price of insurance products does not depend on the nature or complexity of the products but on other factors such as the estimated risks and the guarantees chosen by the customer. Therefore, we urge EIOPA not interfere with the freedom of enterprise and in particular, with companies internal pricing mechanisms.</p> <p>Documentation requirements</p> <p>We are concerned that the increased documentation requirements contained in paragraphs 26 and 37 of the draft technical advice will create a significant administrative burden for manufacturers and distributors. The application of these requirements would not benefit the consumer either. A level of flexibility should be introduced in the policy proposals. In this regard, the documentation requirements should be proportionate to the nature, scale and complexity of the business of the distributor.</p>	
78	AMUNDI	Question 2	<p>Amundi has a long experience of target marketing in cooperation with its banking partners. We consider that target marketing is a good practice and that it may be more relevant for some investment products than for others. Therefore we have considered from the beginning that introducing this topic into the regulation was not appropriate. Facts have proven that it was not : ESMA and NCAs together with stakeholders face a lot of practical difficulties within the context of MiFID level 2 when trying to find ways of implementation of this regulation. In fact, banking networks use to have their own different ways of targeting and it is very difficult to match it with the targeting of manufacturers. For this reason we urge EIOPA to be the less prescriptive as possible in this field. In this respect, for most products, it would rather make sense to privilege the negative approach. For that purpose it would only be necessary to change one word in point 10 of page 22 :</p>	<p>Noted. The language has been revised to address these concerns now stating “Where relevant from a consumer prespective...”</p>

			<p>"Where relevant, the manufacturer shall also only identify groups of customers for whom the product is considered likely not to be aligned with their interests, objectives and characteristics."</p> <p>In fact, many products may fit with the needs of a majority of customers.</p> <p>Let us mentioned that target marketing is current practice in most economic sectors ; financial services would be the only sector where this practice would be regulated.</p>	
79	ANASF	Question 2	<p>The policy proposal strikes a good balance with corresponding MiFID requirements, although further alignment is needed (see our answer to Question 3). Particularly, we appreciate the inclusion of a requirement which cannot be explicitly found under MiFID II: i.e., pursuant to par. 9 of the Draft Technical Advice, "when deciding whether a product is aligned with the interests, objectives and characteristics or not of a particular target market, the manufacturer shall consider the level of information available to the target market and the degree of financial capability and literacy of the target market".</p>	Noted.
80	Association of International Life Offices	Question 2	<p>We consider that the proposals should address the issues of legacy business written before the Guidelines take effect and life insurers in run- off situations. We believe that either the proposals should be proportionately amended or ideally not be applicable to these situations.</p> <p>Target market AILO members only write business on a cross border basis and an independent, rather than tied agent, distribution channel is essential to the success of their business model. An insurer may decide to enter a new market after extensive and costly research as explained to EIOPA previously or after an approach by an intermediary in that market, looking for product to be built for his existing client base. The insurer may justifiably rely on the distributor's local knowledge and familiarity of their clients' needs. The insurer</p>	<p>EIOPA would like to point out that this issue is governed by the application and interpretation of the Level 1 provisions of IDD, mainly Article 25 of the IDD and Article 42 of the IDD. The wording of Article 25 (1) of the IDD can be understood to assume that the product oversight and governance arrangements only</p>

		<p>will research the general good, impacting the product design, and administrative requirements, but will not necessarily carry out the wider market research implicit in the draft advice. The role of the independent distributor should perhaps be more clearly recognised in ensuring the product is suitable for a particular person even if they would not necessarily be considered part of the target market by the manufacturer.</p> <p>Product Monitoring Given the reference to complaints in the analysis, we believe the draft Technical Advice should make clear that monitoring does not extend (absent any specific guarantee) to the investment performance of an IBIP or the assets of a MOP chosen by the policyholder or his adviser. Those may perform badly at times over the policy lifetime. This is not a fault of the product but of Policyholder choice. The Manufacturer will provide regular statements to enable consideration of the possibility of a change to the chosen range of assets.</p> <p>Remedial Action We have concerns that the proposals do not explicitly take account of changes outside of the control of the insurer. In particular for life insurance the long term and contractual basis need to be recognised, i.e. no remedial action can be taken in the absence of agreement between the parties, especially the policyholder, unless the remedial action is beneficial to the policyholder alone. Even then, it may be that the remedial action could in law result in a new contract, i.e. by novation. The guideline needs to recognise that such remedial action could also lead to adverse taxation consequences.</p> <p>The insurer may sell its contracts under a particular tax treatment. Provided it</p> <p>has adequately disclosed the tax treatment before conclusion of the contract, i.e. the</p> <p>rules in force as at the date of the contract and in accordance with its duty as set out</p>	<p>apply to new products which are sold after the transposition date of the IDD or those products which are significantly adapted or changed.</p> <p>However, it is not in EIOPA's remit to address this question as this is a legal question which falls in the competence of the European Commission and ultimately in the competence of the European Court of Justice. Therefore, EIOPA has decided to be silent on this issue.</p> <p>Please also refer to EIOPA's feedback statement in the final report.</p>
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		<p>in the pre-contractual information requirements of the Solvency II Directive. It should not be responsible for detriment to policyholders caused by changes to taxes that are not in its control.</p> <p>Distribution Channels. As stated above, AILO members generally rely on an independent distribution channel which is essential to the success of their business model. This means the manufacturer has no choice as to distribution channel, only between one independent intermediary and another. In practice, the distribution channel approaches the insurer. The only insurer choice in that scenario is whether to provide product to that intermediary or not.</p> <p>While recourse to independent intermediaries is the usual approach for a cross-border manufacturer, AILO recognises that a cross border manufacturer could set up its own tied sales force in a foreign target/host State market. This would be expensive and complex for numerous reasons as previously advised to EIOPA. In order for a cross-border manufacturer to be able realistically to penetrate a new target market with innovative products – and, therefore, to compete against domestic, incumbent manufacturers - independent intermediaries and distribution channels are essential. They are a major contributory factor to the success of the Single Market.</p> <p>The draft Advice should therefore recognise the particular existence and potential differences for the cross border market and in the case of independent intermediary distribution channels, the manufacturer has much more limited rights to supervise the channel in the same way that a principal can supervise a tied agent. Furthermore, the manufacturer cannot easily monitor distribution to the relevant target market, for example the manufacturer may</p>	
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			<p>not be aware of all the details about the client in order to assess whether a product is suitable or not. These are duties of the independent intermediary when recommending the product to its clients.</p>	
81	Assuralia	Question 2	<p>The policy proposals based on EIOPA’s preparatory guidelines (p. 14-26 of the CP) contain sufficient detail. EIOPA rightly points out that a wide range of insurance products, which are heterogeneous and contain different levels of complexity, are subject to the POG requirements (§2 page 31). Taking into account that broad scope and the differences between insurance markets across the EU, Assuralia is of the opinion that the policy proposals should remain high-level and flexible. EIOPA should ensure that the POG requirements can be implemented at national level as efficient as possible and take into account existing national and European rules that already pursue the same objectives. This approach would ensure that the POG requirements fit the national distribution practices and products and limit unnecessary costs and burden for the insurance industry and consumers.</p> <p>Assuralia favors a pragmatic implementation of the POG requirements, taking into account the existing legal framework. Existing national and European rules that pursue the same objectives and reflect the principles in the technical advice should not be adapted for the sake of formality only.</p> <p>With regard to the analysis and concrete proposals contained in the consultation, Assuralia would like to raise the following considerations.</p> <p>Scope</p> <p>The IDD requires manufacturers to maintain a product approval process for each insurance product, or significant</p>	<p>Noted. EIOPA agrees and is of the view that the policy proposals ensure that the POG requirements can be implemented at national level as efficient as possible and take into account existing national and European rules</p> <p>EIOPA would like to point out that this issue is governed by the application and interpretation of the Level 1 provisions of IDD, mainly Article 25 of the IDD and Article 42 of the IDD. The wording of Article 25 (1) of the IDD can be understood to assume that the product oversight and governance arrangements only apply to new products which are sold after the</p>

			<p>adaptations of an existing product, before it is marketed or distributed to customers (art. 25 IDD). Assuralia calls on EIOPA to clarify in the technical advice that the policy proposals only concern (i) newly designed products that are not yet put on the market and (ii) existing products that are significantly changed after the IDD becomes applicable. This clarification was included in EIOPA's final report on the public consultation on preparatory guidelines (EIOPA-BoS-16-071 p.17 and p.65), but seems to be missing in the draft technical advice.</p> <p>Assuralia calls on EIOPA to clarify that the policy proposals only concern (i) newly designed products that are not yet put on the market and (ii) existing products that are significantly changed after the IDD becomes applicable.</p> <p>Proportionality</p> <p>Assuralia strongly supports EIOPA's call for proportionality to avoid too burdensome processes for insurance business classes with lower risk and / or complexity. The POG requirements should take into account the complexity of the products and the related risks as well as the nature, scale and complexity of the relevant business of the manufacturer/distributor involved. This is particularly important for non-complex products.</p> <p>A proportionate approach is key for custom-made products. The POG requirements in the IDD are applicable towards customers, including professionals (cf. EIOPA's interpretation on p.6 of EIOPA-BoS-16-071). One of the main objectives of the POG requirements is to ensure that products are designed to meet the objectives, interests and characteristics of the customer involved. This overarching goal loses value when applied to insurance products for legal entities and profession-</p>	<p>transposition date of the IDD or those products which are significantly adapted or changed.</p> <p>However, it is not in EIOPA's remit to address this question as this is a legal question which falls in the competence of the European Commission and ultimately in the competence of the European Court of Justice. Therefore, EIOPA has decided to be silent on this issue.</p> <p>Noted</p> <p>Noted</p>
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			<p>related insurance products, as they are often fully or partially tailor-made to the specific needs of the customer involved. These products however are not always 'large risks' under the IDD and could therefore be subject to the POG requirements. The same goes for occupational pension schemes which are the result of social negotiations between the employees and the employer and contain legally defined characteristics (for example the end date of the contract has to be fixed at the retirement age by law). Those products would evidently meet the objectives and needs of the customer involved, as they are customised or predetermined by law. Furthermore, it would prove difficult to identify a generic target market for such tailor-made products. A pragmatic and proportionate approach is in order.</p> <p>A proportionate approach is also justified when it comes to the practical application of the POG requirements for different types of distributors. It needs to be acknowledged that there is a big difference between tied agents, who act under the responsibility of the insurer(s) involved, and independent intermediaries such as brokers. In the latter, the insurer has very little control over the broker's conduct of business. That's why, in Belgium, insurers (in their role as manufacturer) and brokers agree on a division of tasks and responsibilities. The manufacturer is responsible for providing the distributor with all necessary information on the product and the identified target market. Such agreements however may stipulate that, once the manufacturer has provided that information, the independent broker is responsible for ensuring that the product is sold in accordance with the product oversight arrangements and conduct of business requirements. Such agreements should be taken into account in the POG framework, as they allow for a practical implementation of the POG requirements. It should also be acknowledged that tied agents act under the responsibility of the insurer(s) involved. In practice, tied agents often follow the distribution strategy set out by the insurer. In such case, the tied agent should be able to simply join the strategy of the manufacturer (e.g. the</p>	<p>EIOPA shares the view that the principle of proportionality plays an important role when it comes to product oversight and governance arrangements. For that reason, the policy proposals generally contain high-level and abstract principles (as opposed to prescriptive rules) and make continuous reference to this principle, e.g. see paragraph 2 of section "Establishment of product distribution arrangements" where it is stated that the "arrangements need to be proportionate to the level of complexity and</p>
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		<p>POG requirements of both the manufacturer and distributor can be dealt with in an integrated POG process).</p> <p>In §30 on page 17 EIOPA also states that the product testing should be proportionate to the complexity of the product and its risks. The following concrete proposals may help to put this proportionality principle into practice:</p> <ul style="list-style-type: none"> - insurance undertakings should be allowed to re-use relevant existing product testings and scenario analyses as a basis when they test similar insurance products; - when changes are introduced to an existing insurance product that has already been submitted to product testing, only these changes should be subject to a new product testing exercise. This is of course provided that the changes do not impact the rest of the product that already was tested. An example could be the addition of an extra cover, that has no influence whatsoever on the other components of the product; - guarantees and product features required by law should not be subject to product testing; - for insurance PRIIPs the PRIIPs-KID requires several performance scenarios. It should be acknowledged that these also serve the purpose, and form part of product testing. <p>Assuralia strongly supports the proportionality principle in order to avoid too burdensome processes for insurance business classes with lower risk and / or complexity. The proportionality principle should ensure a proportionate and pragmatic approach with regard to non-complex products, customized products and the different types of insurance</p>	<p>the risks related to the products as well as the nature, scale and complexity of the relevant business of the insurance distributor”.</p> <p>Please see also EIOPA’s feedback statement in the Final report.</p>
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		<p>distributors.</p> <p>Future proof POG requirements that allow for innovation</p> <p>It is important to ensure that the POG requirements do not hamper the insurance sector in responding to future trends or future needs of customers. In that respect, we invite EIOPA to take into account the following considerations.</p> <p>Firstly, a growing number of customers prefer to buy insurance products online. In, for example, the ESA consultation on automated advice (JC 2015 080) the ESAs conclude that online distribution channels will probably gain importance in the coming years. Assuralia therefore calls on EIOPA to ensure that the policy proposals with regard to POG work efficiently in an online environment. Insurers should be given flexibility when it comes to ensuring that the product is distributed to the target market in case of online sales.</p> <p>Secondly, it is important for manufacturers to be able to respond quickly to market trends, which sometimes are temporary in nature. The POG requirements should not hamper product innovation nor cause unnecessary delay in product development.</p> <p>The POG requirements should not hamper product innovation or cause unnecessary delay in the product development.</p> <p>Distribution channels</p> <p>The draft advice does not pay enough attention to the differences between distribution channels, despite the explicit</p>	
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		<p>request in the Commission’s mandate. Tied agents and brokers, for example, operate in different frameworks with different levels of co-operation with and supervision by the insurance company involved. These differences are not reflected in the draft technical advice (for example §22 and 23 on p.23).</p> <p>Paragraphs 22 and 23 of the draft technical advice state that the manufacturer shall take all reasonable steps to monitor that distribution channels act in compliance with the objectives of the POG arrangements and shall examine whether the product is distributed to the target market. However, in case of brokers, manufacturers have less control over how or to whom their products are sold. Examining proactively whether an independent distributor acts in compliance with the manufacturer’s POG arrangements would be a problem as it is not possible for manufacturers to interfere in the business of independent distributors. It needs to be acknowledged that, in such cases, the manufacturer is in practice not able to organize a full monitoring and can only monitor on the basis of complaints.</p> <p>In general, the actual proactive monitoring of compliance with the POG arrangements by distributors should be carried out by the national supervisory authority (FSMA in Belgium). Only the national supervisor has the necessary tools at his disposal to actively monitor and enforce compliance with POG arrangements, while manufacturers in general do not.</p> <p>Considering that the distribution landscape can differ significantly between member states, Assuralia is of the opinion that the monitoring requirements should be filled in at national level for the different types of distributors. Assuralia therefore invites EIOPA to allow for a pragmatic and proportionate application of the POG requirements at national level.</p>	
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			<p>Manufacturers should provide the necessary information on the product and identified (broad) target market to the distributor. Assuralia considers this information sufficient to enable a distributor to (i) understand and place the product properly on the target market and (ii) identify the target market for which the product is designed and groups of customers for whom the product is likely not appropriate (cf. paragraph 21 of the draft advice). In that respect, we suggest to rephrase the following sentence in §50 on p.20: "An important prerequisite to setting up a distribution strategy is that the insurance distributor has detailed the relevant knowledge about the approval process of the manufacturer, in particular the target market of the individual insurance product, as well as about all other necessary information on the product from the manufacturer in order to fulfil its regulatory obligations towards the customer." EIOPA's final advice should clarify that a manufacturer is not required to share its entire product approval process with a distributor, as this could include a manufacturer's decision with regard to the use or non-use of competing distributors, but only the relevant information on the product and identified target market. Therefore we call on EIOPA to include this specification into the technical advice.</p> <p>Considering that the distribution landscape can differ significantly between member states, Assuralia is of the opinion that the POG requirements should be filled in at national level for the different types of distributors, taking into account the principle of proportionality.</p> <p>Claims ratio's</p> <p>Although there is no mentioning of claims ratio's or claims payment policies in the draft technical advice itself, we regret</p>	
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			<p>that EIOPA refers to these ratio's and policies in the accompanying analysis (page 18 of the consultation paper). Insurers should not be obliged to focus on claims ratio's or claims payment policies in the monitoring of their products or product testings. These criteria are not always appropriate to estimate if the product is of value to the identified target market. Furthermore, claims ratio's need to be evaluated over time. An insurance contract provides cover against certain risks that might or might not occur (take cover against floods as an example). As the claims ratio is linked to the occurrence of the insured risk or not, it is well possible that the insurer has to make little payments in, for example, the first 5 years of the contract because weather conditions were good. However, just one storm or period of heavy rainfall could change this scenario completely overnight. So, the fact that little payments were made in the first years should never be interpreted as a sign that the cover is not valuable to the target market.</p> <p>Assuralia considers that the final technical advice should not contain any references to claims ratio's and claims payment policies.</p> <p>Coherent framework</p> <p>Finally, we agree that the final technical advice should entail a consolidated and comprehensive set of policy principles, as duplications or inconsistencies would only lead to unnecessary burden or legal uncertainty.</p> <p>We call on EIOPA to deliver a consolidated set of POG requirements in the final technical advice, avoiding duplications and inconsistencies.</p>	
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82	BEUC	Question 2	<p>BEUC agrees with the policy proposals on POG requirements. Obliging firms to take into account the consumer interest in every stage of the product life cycle could give them an impetus to create and sell products which truly addresses consumer needs.</p> <p>POG rules covering e.g. the target market, the product testing and monitoring should be detailed sufficiently and should cover all insurance products under the IDD, including non-life insurance policies.</p>	Noted.
83	BFV - Bundesarbeitsge- meinschaft zur Förderun	Question 2	-	Noted.
84	BIPAR	Question 2	<p>In an innovative industry like insurance, entrepreneurial spirit needs to be incentivised. If rules on product oversight and governance are taken too far, it has a potential to stifle innovation.</p> <p>BIPAR believes that EIOPA’s policy proposals based on EIOPA’s policy work on preparatory Guidelines go well beyond Article 25 of the IDD and that EIOPA technical advice should not be built entirely upon it, in particular regarding the requirements for non-manufacturing insurance distributors.</p> <p>Although the European Commission requests that EIOPA’s technical advice, with regard to insurance distributors, should deal “with the arrangements for selecting insurance products for distribution to customers as well as for obtaining all the relevant information on the insurance product from the manufacturer”, it is important to recall that IDD Article 25 rightly places product governance and oversight requirements on “insurance undertakings, as well as intermediaries which manufacture any insurance product” -and not on intermediaries that do not manufacture products.</p>	<p>Noted.</p> <p>EIOPA does not share these concerns in view of the language of Article 25 of the IDD which is sufficiently broad and abstract, empowering the Commission to further specify the principles set out in Article 25 of the IDD.</p>

			<p>Regarding product testing (page 18, point 34), EIOPA explains that in the case of non-life insurance, the assessment could imply considering what the expected claims ratio and the claims payment policy is, what if it is higher or lower than expected, whether the expected claims ratio and claims payment policy suggest that the product is of benefit to customers.</p> <p>In this context it is interesting to note for example that the UK FCA believes that it is not a good measure – e.g. legal expenses insurance – claims ratio does not pick up customers’ use of helplines that come as part of the product (https://www.fca.org.uk/news/fs16-01-general-insurance-value-measures and https://www.fca.org.uk/static/fca/documents/feedback-statements/fs16-01.pdf).</p> <p>Regarding product monitoring (point 40, page 19), EIOPA explains that as a general principle, and, in accordance with national legal framework, the manufacturer can only make changes to the product that are consistent with the interests, objectives and characteristics of the already existing target market and these changes do not have an adverse impact on the customer to which the product has been sold already. BIPAR wonders whether this means that an insurer can never amend a policy’s term to offset a loss ratio of 150% for example?</p> <p>Regarding documentation (point 44, page 19), for SME’s this can represent an important administrative burden and a disproportionate compliance requirements.</p> <p>Regarding obtaining all necessary information from the manufacturer (point 50, page20), EIOPA explains that an important prerequisite to setting up a distribution strategy is</p>	<p>Noted.</p> <p>EIOPA is of the view that the principle of proportionality plays an important role when it comes to product oversight and governance arrangements. For that reason, the policy proposals generally contain high-level and abstract principles (as opposed to prescriptive rules) and make continuous reference to this principle, e.g. see paragraph 2 of section “Establishment of product distribution arrangements” where it is stated that the “arrangements need to</p>
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		<p>that the insurance distributor has detailed knowledge about the approval process of the manufacturer, in particular the target market of the individual insurance product, as well as about all other necessary information on the product from the manufacturer in order to fulfil its regulatory obligations towards the customer. This information helps the insurance distributor to select the insurance products the insurance distributor intends to distribute and to assess to which customers the insurance distributor may advertise and promote the individual insurance products.</p> <p>BIPAR wonders what value to intermediary or customer does knowing that an insurer takes new products to a committee before they launch them, have. Does that mean that any insurance intermediary – wishing to operate on a whole of market basis - will have to have detailed knowledge of the product approval process of every single insurer with whom they could possible place a customer’s insurance risk?</p> <p>Besides, setting the obligation on intermediaries to obtain ‘all other necessary information’ on the product from the manufacturer is not workable. How is an intermediary ever going to be really sure that they have obtained it all?</p> <p>Specific comments on EIOPA draft technical advice re policy proposals for insurance undertakings and insurance intermediaries which manufacture insurance products for sale to customer</p> <ul style="list-style-type: none"> - Regarding the policy proposal on “Objectives of the product oversight and governance arrangements”, BIPAR wonders what positive outcomes for customers these regulations will deliver that the market would not have managed without this level of intervention. - Regarding the policy proposal on “remedial action”, BIPAR 	<p>be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the insurance distributor”.</p> <p>Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>
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		<p>wonders how this proposal will be or can be put into practice. It is not the function of a manufacturer to act as a regulator and as such the use of the word 'remedial' is not appropriate. The manufacturer typically has neither the information rights nor any policing power to enforce such obligation.</p> <p>The title should read "Appropriate action" and the last line of point17 should therefore be amended to read 'the manufacturer should notify any relevant appropriate action (...) ".</p> <p>- Regarding the policy proposal on "distribution channels", BIPAR is worried that this could be read as manufacturers having the right to oversee what a distributor does (including access to records on which other insurers the intermediary is placing what business with). Placing business with a number of insurers could result in the intermediary being audited constantly and so would be a real deterrent to any intermediary from offering their customers a wide choice of products and providers.</p> <p>BIPAR wonders whether these requirements are appropriate and justified. This is an unnecessary and disproportionate intervention in contractual relationships between commercial parties which imposes costs on all products where no problem currently exists. Points 22, 23 and 24 should therefore be deleted.</p> <p>Should point 24 remain, and for reasons explained above, the last line of point 24 should be amended to read "the manufacturer shall take appropriate action towards the distribution channel".</p> <p>Specific comments on EIOPA draft technical advice re policy proposals for insurance distributors which advise on or propose insurance products which they do not manufacture</p>	
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			<p>- Regarding the policy proposals on "Objectives of the product distribution arrangements", BIPAR does not understand the point of having this proposal included in the technical advice and later on in a Level 2 text.</p> <p>The objectives of POG arrangements are clearly stated in the IDD. Therefore BIPAR suggests to delete that proposal.</p> <p>- Regarding the policy proposals on "Obtaining all necessary information on the target market from the manufacturer", BIPAR believes that this section must make specific reference back to the information requirements placed on the manufacturer in paragraph 21. The distributor cannot be expected to source any information that the manufacturer is not obliged to produce and make available.</p> <p>It is essential that distributors receive complete information on the product to be sold and on the target market that the product has been designed for. In this respect EIOPA policy proposals that apply to product manufacturers- require manufacturers to provide sufficient information to distributors. BIPAR does not understand why EIOPA mirrored this obligation in its policy proposals that apply to non-manufacturing distributors. EIOPA even set a more onerous requirement: non-manufacturing distributors must obtain all necessary information from manufacturers. How could a distributor be able to be absolutely sure that they have obtained all the necessary information?</p> <p>This adds an extra layer of administrative burden to the process - on all products where no problem currently exists - and creates confusion in terms of responsibility of the different parties in the process.</p> <p>The value in providing information on the insurance</p>	
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			<p>undertaking's product approval process is highly questionable. That process will no doubt include a challenge mechanism, such as taking all products before a committee to demonstrate their value to customers. It is highly questionable that the distributor knowing this fact about the manufacturer's product approval process, will add any value to distributor's or their customers' understanding of how the product is suitable for their demands and needs).</p> <p>There is a danger in providing useless information to distributors who will receive already a lot of information on all the products they distribute. Useless information can divert distributors' attention from useful information.</p> <p>The policy proposal (Point 32) should be deleted or redrafted as follows:</p> <p>"Obtaining all necessary sufficient information on the target market from the manufacturer</p> <p>The product distribution arrangements shall aim to ensure that the insurance distributor obtains all necessary sufficient information from the manufacturer on the insurance product, the product approval process, the target market in order to understand the customers for which the product is designed for, as well as the groups(s) of customers for which the product is not designed for".</p> <p>The policy proposal (Point 33) deals with information on insurance products. It is redundant with point 32 and should be deleted. In any case the wording "all necessary information" should be deleted.</p> <p>- Regarding the policy proposal on "distribution strategy", BIPAR wonders what if an intermediary - using his specific skills - identifies an alternative suitable market that the manufacturer had not considered or understood. Distributors should be given the possibility to sell products outside of the</p>	
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			<p>target market defined by the manufacturer provided they are able to justify doing so. This would leave flexibility to the distributor and insurer where the product is suitable or appropriate for the customer.</p> <p>This principle was recognised by ESMA in its technical advice to the EC on MiFID 2. In order to ensure a consistent and coherent approach, the same principle should apply here. This possibility is referred to on page 21, point 53 of EIOPA consultation paper but is not reflected in EIOPA draft technical advice.</p> <p>- Regarding the policy proposal on "Provision of sale information to the manufacturer", this places a legal responsibility on the distributor that is not appropriate. The manufacturer is responsible for his products and not the distributor.</p>	
85	BNP Paribas	Question 2	<p>1. General observations</p> <p>– In general terms we are in agreement with the proposed measures which we apply already, either through internal procedures or through Solvency 2, which sets out governance requirements that have reinforced our existing framework. Introducing additional elements would exceed what is needed and limit our ability to innovate. The draft technical standards outline many details that could constitute constraints, notably in terms of innovation and competition. For example, if the list of criteria for the target market is too specific, it will become a break. The manufacturer has to have the freedom to decide whether or not to conduct tests and how it wishes to proceed depending on the product, the distributor, the target market, etc.</p> <p>– As insurers and intermediaries, our business is to offer to clients opportunities in line with their objectives and situation and we must accompany them by proposing new</p>	<p>Noted.</p> <p>Noted. EIOPA considers product testing as an important element of POG arrangement which is necessary for any kind of product. Therefore, the policy proposals include a mandatory obligation to undertake a product testing. The importance of the principle of proportionality has</p>

		<p>products leveraging on new technologies (digital, blockchain...) and new lifestyles and behaviours.</p> <p>– Product oversight and governance arrangements must be proportionate to the nature, complexity and / or the risk inherent to each product or type of product.</p> <p>In addition, only sales of products currently on offer, whether new or already existing, should be covered in the scope. If this were not to be the case (e.g., insurance contract subscribed several decades earlier), it would constitute an overwhelming burden for large companies such as ours (IT and staff costs, etc.) and even worse for the smaller companies and distributors. Logically, this would have repercussions on costs for clients, among others.</p> <p>2. Role of Management</p> <p>BNP Paribas has put in place dedicated functions to guarantee the protection of clients (Compliance, Protection of Client Interests, etc...) as well as a strong validation process for the approval of new activities and products. BNP Paribas Cardif and distributing entities mirror this framework within their own organisations.</p> <p>BNP Paribas Cardif is a major actor in the French insurance market and is committed to protecting its clients. In this context, BNP Paribas Cardif has, since quite long ago, adopted robust procedures for the approval of new products and for significant modifications of products in its existing market offer. The process for the creation of new products has been validated by the Executive Management of BNP Paribas Cardif and has been certified by AFNOR (Association Française de Normalisation).</p> <p>In addition BNP Paribas Cardif has developed its own</p>	<p>been emphasised in throughout the Technical Advice.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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		<p>programmes such as the Customer Centric Programme (see description below).</p> <p>The aim is to better satisfy our customers, improve the customer experience, better serve the partners and develop new business opportunities. To achieve this goal, BNP Paribas Cardif set up key actions together with its partners thanks to a network of Customer Centric Programme representatives in all the countries where it operates. Very briefly, BNP Paribas Cardif adapted its offer to clients' needs, simplified the different communications to customers, defined a new customer experience through the co-creation of Best in class customer journeys and lastly reinforced the listening of the voice of customers.</p> <p>Examples of actions developed in a large number of countries:</p> <p>Raising customer's awareness on insurance products</p> <p>To raise customer's awareness on insurance products and ensure they clearly understand information at all the steps of their journey, countries simplified the Terms & Conditions and commercial brochures, rewrote letters, developed pedagogical features and videos or trained their employees to the B1 language (see attached document " B1 insurance policy example").</p> <p>Collecting customer's feedback through satisfaction surveys</p> <p>BNP Paribas Cardif listens to the voice of customers by regularly conducting surveys.</p> <p>It is important to underline that the profession is increasingly consumer friendly and very aware of the fact that a satisfied</p>	<p>Noted.</p> <p>Noted.</p> <p>EIOPA agrees that the distributor is responsible to verify that the products he proposes corresponds to the needs of the client whereas the manufacturer defines</p>
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			<p>customer brings much more benefits to the company than an unhappy one. Today clients do not hesitate to express their opinions very quickly through social media if they are not satisfied, which carries significant reputational risks for companies. Needless to say, this is monitored very closely by the industry as competition among insurers is very strong.</p> <p>3. Target Market</p> <p>The consultation paper does not make enough of a difference between the design of a product (macro view) and the marketing of the product (micro view):</p> <p>It is the responsibility of the distributor to verify that the product that he proposes corresponds to the needs of the client. The manufacturer defines the general characteristics (pre-retirement product not to be sold to retirees, unemployment insurance not for sale to civil servants, exclusions that make a product unsuitable for military personnel, etc.); but it is the distributor in the end who is responsible for determining what is most suitable for a given client.</p> <p>For certain products (life insurance contracts, credit insurance, for example), the product can be aimed at a very large market. The modalities and options of these products are not compatible with a targeting of the product for specific clients. The manufacturer must be able to define freely the target market and propose products aimed at a large group of customers.</p> <p>The French life insurance contract, for example, is often compared to a Swiss knife, adapted to all clients depending on their needs and means (this adaptation is the responsibility of the distributor).</p>	<p>the target market on a more abstract level.</p> <p>The policy proposals do not forbid the sale outside of the target market. However, EIOPA is of the view that the distribution to customers outside of the target market should occur in rare occasions, only.</p> <p>Noted.</p> <p>Noted.</p>
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			<p>4. In addition, sales outside the target market must remain possible if the client's interest justifies them. In this regard, the duty of advice as it exists in France can provide the necessary justification. The requirement for a negative target market should also be deleted as it would come up against the search for adapted/ suitable solutions for the end client. Product monitoring / Corrective measures</p> <p>The marketing of contracts is the responsibility of the distributor, who has to ensure the appropriate market targeting. The EIOPA proposals lean towards giving manufacturers a duty of control over sales, but no disposition in the directive justifies such as orientation; the monitoring of products must not lead to a control of sales.</p> <p>Moreover, in a context of free competition, such measures, as well as putting in place corrective measures towards distributors, would put into question the independence of distributors in the conduct of their business and would pose for manufacturers a risk of requalification to permanent establishment in the country of distribution.</p> <p>5. Skill, knowledge and expertise of personnel involved in designing products</p> <p>The Insurance Distribution Directive does not provide a basis for these proposals. They are already applied under Solvency 2.</p> <p>6. Selection and monitoring of distribution channels</p>	
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			<p>In accordance to the principles of the insurance intermediation directive already in force which also underlie IDD, only registered individuals who meet all the necessary professional requirements can distribute insurance products. In this context we do not see what additional requirements would need to be imposed on manufacturers for the selection of distributors. Also, the directive would not provide a legal basis for those additional requirements.</p>	
86	Bund der Versicherten (BdV – German Association of	Question 2	<p>Yes, we agree that the policy proposals provide sufficient detail on product oversight and governance (POG). From the customer’s perspective POG arrangements for distributors are as important as those for manufacturers. That is why we fully support the establishment of these arrangements at all. There must not be any difference of the level of consumer protection related to the status of the distributor (belonging to the product manufacturer or not, tied or independent etc.).</p> <p>Most important are the management rules of conflicts of interest, the assessment of target markets, product testing and monitoring, provisions of product and sale information by the manufacturers and the regular review of distribution strategies or arrangements. At least for the German insurance market, we confirm that these provisions are completely new and innovative, and therefore we fully agree upon them in order to minimize consumer detriment. That is why we strongly criticize the decision of the German NCA (BaFin) implementing EIOPA’s Preparatory POG Guidelines which have been published in April 2016, only from February 2018 on when IDD will enter into force definitely.</p> <p>The identification of target markets not only for simple marketing reasons, but as an obligation for the distribution channels to follow, constitutes an innovation of immense importance for insurers. The obligatory identification of groups of consumers for which the product is considered not to meet</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted. EIOPA is aware of the need of establishing a level playing field between the different financial sectors for the sake of consumer protection.</p>

			<p>their interests, objectives and characteristics will be a fundamental provision reducing mis-selling practices. This constitutes an essential step to a level playing field between insurers and investment companies offering their products. More details of our critical view on current distribution practices you will find in our comments below (cf. Q12).</p>	
87	Bundesverband Deutscher Vermögensberater e. V. 603	Question 2	<p>Wie oben dargelegt, vertritt unser Verband die Interessen von Vermittlern von Versicherungs- und sonstigen Finanzanlageprodukten (also der „Vertriebsbereich“) und sieht bei diesem Themenkomplex die wesentlichen Aspekte im „Hersteller-“, also dem Produktgeberbereich.</p> <p>Nicht zuletzt aufgrund der zu diesem Themenbereich engagiert geführten Diskussion bei der EIOPA-Anhörung am 23. September 2016, möchten wir an dieser Stelle noch einige Ergänzungen zum Thema „Definition des Zielmarktes und Verkauf außerhalb des Zielmarktes“ anfügen.</p> <p><input type="checkbox"/> Die „Draft Technical Advices“ hierzu beschreiben im Grundsatz nichts anderes als das, was ohnehin alle Hersteller und Vermittler – und zwar bereits alleine aus kaufmännischem Interesse heraus – schon immer praktizieren. Die Einführung eines Produkts setzt die Identifizierung eines Bedarfs, also eines Zielmarktes voraus. Aus demselben Interesse heraus wird der Erfolg des Vertriebs an das Produkt regelmäßig überwacht (Controlling). Rückmeldungen aus dem Vertrieb an den Hersteller erfolgen natürlich auch, da der Vertrieb bei Problemen ein Interesse daran hat, dass der Hersteller diese gegebenenfalls behebt. Dieser Prozess findet oftmals bereits im institutionalisierten Rahmen statt (sogenannte Produktbeiräte oder Resonanzgruppen). Auch die Informationsbereitstellung an den Vermittler ist selbstverständlich, denn wäre der Vertreter nicht über die Eigenschaften und Besonderheiten eines Produkts informiert, so könnte er es nicht vertreiben.</p> <p><input type="checkbox"/> Im Übrigen werden in jedem Wirtschaftsunternehmen – und das gilt zweifelsfrei auch für Versicherer – Produkte für den Markt, also für die Kunden entworfen. Dies folgt schon der zwingenden Logik, da die Produkte ansonsten</p>	<p>Noted.</p> <p>Taking into account current practices as described and already existing, EIOPA considers that the implementation costs are less burdensome.</p> <p>Th requirements concerning the negative target market has been revised. A definition of a negative target market is required only, if necessary from a consumer protection point of view. Please also refer to EIOPA’s feedback statement in the final report.</p>

		<p>unverkäuflich wären. Insoweit liegt jedem Versicherungsprodukt das Kalkül zugrunde, damit auf Bedarfssituationen einzugehen. Versicherer nunmehr per Gesetz dazu anzuhalten, zu jedem Punkt Zielmärkte zu definieren impliziert, dass Versicherer ihre Produkte zumindest teilweise seither am Markt und am Bedarf der Kunden vorbei entwickeln würden. Es ist daher schon im Ansatz fragwürdig, elementare Kundenmechanismen einer Marktwirtschaft per Gesetz ins Pflichtenheft der Anbieter aufzunehmen.</p> <p>Außerdem werden gerade im Versicherungsbereich Produkte auch schon stark durch Rahmenbedingungen oder normative Vorgaben vordefiniert. So orientiert sich in Deutschland beispielsweise die private Krankenzusatzversicherung exakt an den Versorgungslücken der gesetzlich Versicherten. Und die Zielgruppe für die Riester-Rente als Altersvorsorgeprodukt ist über die gesetzlich geregelte Zulagenberechtigung abschließend definiert.</p> <p>In diesem Zusammenhang bestehen auch gegen die Vorgabe, einen negativen Zielmarkt bestimmen zu müssen, starke Bedenken. Weder ist der IDD der Begriff eines negativen Zielmarktes zu entnehmen, noch dürfte hier eine genaue Abgrenzung rechtssicher möglich sein. Auch sollte, wenn dies vom Kunden beispielsweise eindeutig gewollt ist, ein Verkauf außerhalb des Zielmarktes möglich sein!</p> <p><input type="checkbox"/> Unsere Verbandsmitglieder sind als Vertreter sowohl aufgrund bestehenden deutschen Versicherungsvermittlerrechts als auch aufgrund unserer Verbandsstatuten dazu verpflichtet, im Interesse des Kunden zu beraten. Hierzu gehört auch, dem Kunden nur solche Produkte zu vermitteln, die dessen Bedarf entsprechen. Produktempfehlungen sind deshalb immer das Ergebnis einer ausführlichen Analyse der Gesamtsituation des Kunden. Die Prüfung der Eignung eines Produktes für die individuelle Bedarfsdeckung obliegt also dem Vertreter. Hier muss natürlich darauf geachtet werden, dass durch die Festlegung eines Zielmarktes durch den Anbieter (Produkthersteller) keinerlei Einschränkung für den Vertreter entsteht, auf die</p>	
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			individuelle Bedarfssituation seiner Kunden eingehen zu dürfen.	
88	BVI Bundesverband Investment und Asset Management	Question 2	<p>While not being concerned about the level of detail, we are worried that the proposed approach to distribution strategy might hinder insurance distributors to fully account for the specific needs and individual characteristics of their clients when advising on, or selling, insurance products. In particular, we would like to challenge the interpretation that the distribution strategy shall generally not allow for distribution to customers outside the target market as defined by the manufacturers.</p> <p>We are aware that EIOPA takes a view which is slightly different from MiFID II as regards allocation of responsibilities for product governance and target market definition between product manufacturers and distributors. In particular, according to the consulted policy proposals, insurance distributors shall not be required (or allowed) to make their own assessment of the target market. This difference is understandable in principle given the divergences in regulation of distribution channels under MiFID II and IDD and its respective linkage to product manufacturers. Effectively, however, it means that insurance distributors will need to rely on the target market definition specified by the product manufacturer, even though the distributor is the one in contact with the individual client and able to assess the suitability of the specific product.</p> <p>Specification of the target market by the manufacturer will by definition be made in abstract terms and without knowing, or being able to account for, the needs and characteristics of individual clients at the point of sale, but based on categories of clients. In these circumstances, it must be anticipated that the target market definition will not cover each and every situation in which a product might be of reasonable use for an</p>	<p>Noted. EIOPA would like to clarify that the duty of the insurance intermediary to assess the demands and needs of the individual customer remains unchanged. The intermediary is generally not hindered to set up his proper target market. The Technical Advice reads as follows: “Where the insurance distributor sets up or follows a distribution strategy, it shall not contradict the distribution strategy and the target market identified by the manufacturer of the insurance product.” See further comments in EIOPA’s feedback statement in the Final Report.</p>

			<p>individual. Furthermore, the regulatory aim of the target market concept is to ensure that manufacturers design products according to customers needs in order to strengthen their responsibility. This concept should, however, not limit the responsibility of the distributor in assessing whether a product fits a specific customer. Rather, the distributor should understand the target market and be able to assess individually whether a product in specific circumstances is suitable for an individual client despite the fact that the client might not be within the target market. In addition, should the distributor not be allowed to sell outside the target market, the manufacturer is deprived of the chance to adjust the target market according to distributors' experience. Therefore, it appears important that insurance distributors are granted appropriate leeway for proper performance of suitability or appropriateness tests for individual clients without being restricted by the abstract target market definition. At the very least, insurance distributors should be able to allow for sales outside the target market in their distribution strategies based on the assessment of the overall individual situation and existing investments and obligations of a customer and a positive outcome of suitability testing for a product.</p> <p>We note some considerations in this respect in the analysis supplementing the draft technical advice (para. 52 and 53 on page 20-21). However, given the legal risks corresponding with the distribution outside the specified target market, it would be helpful if a respective clarification could be provided in the text of the technical advice itself, specifically by an addition to para. 34 on page 26.</p>	
89	BVK Germany	Question 2	Please take note of the special comments of BIPAR in this respect	Noted.
90	CNCIF - Chambre Nationale des Conseillers en	Question 2	<p>Yes.</p> <p>We generally agree that the proposals provide sufficient details on product oversight and governance arrangements.</p>	<p>Noted.</p> <p>EIOPA would like to point out that the term "detriment" has been used by the ESA joint</p>

		<p>We believe that product oversight and governance play a positive role in consumer protection. However, we estimate that the proposals are too far-reaching in some aspects while other aspects require further specification.</p> <p>First of all, it would be helpful to have more detailed information about the objectives of the arrangements:</p> <p>EIOPA indicates that “the product oversight and governance arrangements should aim to prevent or mitigate customer detriment, support proper management of conflicts of interest and should ensure that the objectives, interests and characteristics are duly taken into account”. However, the IDD do not provide for a definition of the concept of “customer detriment”. We suggest clarifying this concept to ensure its consistent application.</p> <p>Furthermore, we think that the requirements proposed for distributors are more “ambitious” than the provisions under article 25 IDD (“Where an insurance distributor advises on, or proposes, insurance products which it does not manufacture, it shall have in place adequate arrangements to obtain the information referred to in the fifth subparagraph and to understand the characteristics and identified target market of each insurance product”). For example, requiring the distributor to obtain “detailed knowledge about the approval process of the manufacturer, in particular the target market of the individual insurance product” is not appropriate/feasible.</p> <p>Finally, we suggest taking into account the specific status of the distributor (broker, tied agent...) and its relationship with</p>	<p>position on Manufacturers’ Product Oversight and Governance Processes. For the sake of consumer protection the term should be understood in a very broad sense in order to avoid any customer harm resulting from inappropriate product design from the outset.</p>
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			the manufacturer to implement product oversight and governance arrangements.	
91	CSCA French broker Association, 91, rue Saint Laza	Question 2	<p>Implementation of a policy of product governance and monitoring instituted by article 25 of the directive strengthens consumer protection by requiring to adjust product offerings as much as possible to the customer's real needs. Then there are a large number of stipulations made by EIOPA that raise various substantive issues, in particular when the sale comes with advice. Indeed, the aim of the European bodies in reinforcing consumer protection was to strengthen the issuance of personalized advice. On 3 July 2012 the commissioner Michel Barnier had deplored the fact that more than 70% of insurance sold in Europe came without any relevant advice. The Directive has therefore strengthened significantly the obligations relating to advice and makes distributors and in particular intermediaries, comply with an approach that ensures this. Naturally this also increases liabilities accordingly.</p> <p>Whereas the governance provisions, relating to sales with advice, do in fact rightly strengthen the provisions of Article 20 1 § 1 and 2, the provisions do however clash with the providing of advice which requires "customised recommendation"; This clash is even more abrupt when it comes to advice based on an objective and personalised study of the needs and interests of the customer. So, in order to avoid useless confrontation between advice given to a customer who has their own particular motivations and the appraisal of the needs of a target with clearly less personalised needs, we propose that customised advice be deemed to rank above the technical provisions proposed by EIOPA. We propose introducing an article 34B to read as follows:</p> <p>When advice is provided prior to the conclusion of a specific contract and the distributor or intermediary provides the customer with a customised recommendation, then this shall</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>

			<p>be deemed to rank above those recommendations aimed at a target market. The distributor or the intermediary has no other obligation than to justify their recommendation.</p> <p>We feel this point particularly is structuring for insurance brokers who are the customer's agents and owners of their portfolio and data, who cannot be held to certain evident requirements as to disclosure of inappropriate information at the same time as they are held, elsewhere, to the consequences of the advice given in course of service rendered to customers.</p> <p>There are points to be vigilant of with respect to the obligations of reporting or exclusive selling to a target market, which they appear to transform distributor into a "counter clerk" and which are incompatible with the status of a Broker acting on behalf of their customer looking for the solutions that are most appropriate to meet their requirements.</p> <p>So, if the principle of proportionality is put into the POG, there is no language there to apportion its application to brokers in the absence of any reference to the status of the distributor (especially ownership of the data and information communicated by the customer to their agent).</p> <p>We consider in addition that the content of producer and distributor agreements should not be pre-empted by level 2 provisions that are formatted and not applicable uniformly to all distribution channels.</p> <p>In view of this we propose to introduce an article 24B: The checks to be carried out by the designers of products should not mean interference of such a nature as to restrict, alter or impinge on an intermediary's freedom. Intermediaries</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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		<p>remain fully accountable to their customers for the recommendations they make and the cover proposals that result from these.</p> <p>As regards the issues relating to the use of data: The EIOPA proposals oblige distributors and intermediaries to provide the product designer, on request, information relating to marketing and if necessary information relating to changes in how the product is distributed, in order to enable the designer to undertake changes in the product. This approach is part of an intelligent partnership relationship. It should, nevertheless, be ensured that this relationship is based on confidence and is enhanced by the sharing of knowledge between the intermediaries and the product designers.</p> <p>We propose adding this to article 11 of Chapter IV:: The designer may not make use of the data collected for purposes other than those for which they have been collected. The designer shall provide proof of this.</p> <p>In addition, there are a number of real questions that arise as to the application of POG rules as they are currently defined, when it comes to group insurance policies where membership is compulsory (a French phenomenon), compulsory insurance policies and other contracts where requirements are not laid down by the distributor nor the customer but by a third party (for example, a lessor, an insurance policy covering a loan, etc.)</p> <p>Finally the accumulation of POG requirements does not appear to favour innovation and reactivity of the insurance markets to changes in insurable subject matter, something which is paradoxically contrary to the objectives sought by the directive, i.e. ensuring better customer service.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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92	Czech Insurance Association CAP	Question 2	<p>According to our views, the proposals are detailed enough. Even now the proposals will have huge impact on the industry forcing insurance companies to adjust processes of products manufacturing. POG will lead to massive increase on documenting the process in regards with the audit and supervision.</p> <p>The identification of target market is highly difficult in countries such as the Czech Republic. The insurance companies often operate on the whole Czech market with one product for concrete insurance (e.g. life insurance). Such product is variable and it may be adjusted ad hoc according to needs of concrete customer.</p> <p>Even now, insurance companies test their products to secure that they are stable, suitable for clients and they aim for constant development of their services towards clients. Thus, any more detail in the delegated acts may be actually counterproductive.</p> <p>We would like to note that some of issues are already successfully dealt with in Member States. Therefore, the new POG requirements should not by any cost provide for too detailed rules regardless any national regulations and supervisory practices.</p> <p>Finally, regarding the constantly developing environment of online services we propose that the POG requirements should work not only offline but as well online.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
93	EFAMA - The European Fund and Asset Manageme	Question 2	<p>We support EIOPA's approach, analogue to MiFID II, to separate the product oversight and governance arrangements between insurance undertakings and insurance intermediaries which manufacture products and insurance distributors simply advising or proposing such products.</p>	<p>Noted.</p>

			<p>Nevertheless, one major difference we discovered in relation to the target market concept relates to EIOPA’s suggestion that the distribution shall allow the product to be sold outside the target market as defined by the manufacturers only in exceptional circumstances (paras. 52-54 on pages 20-21 and para. 34 of the draft Technical Advice). We believe that this approach might hinder insurance distributors to fully account for the specific needs and individual characteristics of their clients when advising on, or selling, insurance products and thus would suggest further alignment with the concept proposed under MiFID II’s target market.</p> <p>We are aware that EIOPA takes a view which is slightly different from MiFID II as regards allocation of responsibilities for product governance and target market definition between product manufacturers and distributors. In particular, insurance distributors shall not be required (or allowed) to make their own assessment of the target market. While this difference is understandable in principle given the divergences in regulation of distribution channels under MiFID II and IDD and its respective linkage to product manufacturers, it means, however, that insurance distributors will need to rely on the target market definition specified by the product manufacturer, even though the distributor is the one in contact with the individual client and able to assess the suitability of the specific product.</p> <p>Definition of the target market by the manufacturer will by nature be made in abstract terms and without knowing, or being able to account for, the needs and characteristics of individual clients at the point of sale, but based on categories of clients. In these circumstances, it must be anticipated that the target market definition will not cover each and every situation in which a product might be of reasonable use for an individual. Furthermore, the regulatory aim of the target</p>	<p>From EIOPA’s perspective the distribution to customers outside of the target market should occur on an exceptional basis, only. Insurance intermediaries may define their proper target market within the limits as set out in the Technical Advice. EIOPA agrees that the target market does not relieve the insurance intermediary from its duty to assess the demands and needs of the individual customer. See further comments in EIOPA’s Feedback Statement in the Final Report.</p>
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		<p>market concept is to ensure that manufacturers design products according to customers' needs in order to strengthen their responsibility. This concept should, however, not limit the responsibility of the distributor in assessing whether a product fits a specific customer. Rather, the distributor should understand the target market and be able to assess individually whether a product in specific circumstances is suitable for an individual client despite the fact that the client might not be within the target market. In addition, should the distributor not be allowed to sell outside the target market, the manufacturer is deprived of the chance to adjust the target market according to distributors' experience. Therefore, it appears important that insurance distributors are granted appropriate leeway for proper performance of suitability or appropriateness tests for individual clients without being restricted by the abstract target market definition. At the very least, insurance distributors should be able to allow for sales outside the target market in their distribution strategies based on the assessment of the overall individual situation and existing investments and obligations of a customer and a positive outcome of suitability testing for a product.</p> <p>We note some considerations in this respect in the analysis supplementing the draft Technical Advice (para. 52-54 on pages 20-21). However, given the legal risks corresponding with the distribution outside the specified target market, it would be helpful if a respective clarification could be provided in the text of the Technical Advice itself, specifically by an addition to para. 34 on page 26.</p> <p>Furthermore, we would like to provide the following more technical comments on better aligning the draft advice (page 21-26) with MiFID II's draft Implementing Directive:</p> <p>Para. 1 on the definition of a product manufacturer should be further clarified along the lines of MiFID II's draft Implementing Directive [Art. 9(1)] by stating that manufacturing "encompasses the creation, development,</p>	
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			<p>issuance and/or design of financial instruments”.</p> <p>Para. 2 should include a reference to the “nature of the target market” in order to align the requirements with MiFID II’s draft Implementing Directive [ibidem]:</p> <p>“The product oversight and governance arrangements need to be proportionate to the level of complexity and the risks related to the products and the nature of the target markets, as well as the nature, scale and complexity of the relevant business of the manufacturer.”</p> <p>Para. 28 should also include a reference to the “nature of the target market”:</p> <p>“The product distribution arrangements need to be proportionate to the level of complexity and the risks related to the products and the nature of the target markets, as well as the nature, scale and complexity of the relevant business of the insurance distributor.”</p>	
94	European Federation of Financial Advisers and Fina	Question 2	<p>Do you agree that the policy proposals above provide sufficient detail on product oversight and governance arrangements?</p> <p>Distribution channels/Provision of sale information to the manufacturer</p> <p>We reject the obligation set out in paragraph 22 that the manufacturer shall regularly “monitor” whether distribution channels act in compliance with the objectives of the manufacturers POG arrangements. This is at the core of the obligations of the insurance distributor who in case of FECIF members is a self-employed intermediary and an independent entrepreneur who, for example, has to comply with data protection regulation. The legal relationship between the insurance company and the independent intermediary does not allow any direct control without the written approval of the insurance distributor.</p> <p>Provision of sale information to the manufacturer</p> <p>It is simply impossible to execute this obligation in the daily business of an insurance intermediary representing or acting for more than one insurer. Example: an insurance broker has</p>	<p>Noted. EIOPA has clarified, in the analysis, that the monitoring obligation is limited to the assessment whether the distribution channels carry out their distribution activities in accordance with the product oversight and governance arrangements established by the manufacturer, in particular whether insurance products are distributed to the identified target</p>

		<p>the duty to compare different products for his client in order to eliminate those which do not comply with the target market. In order to do so he usually uses online research tools followed by a second stage assessment to then provide a comparative result of the assessed product providers excluding those "non compliant" with the target market of the customer at the same time. Example: in Germany 50 health insurers are registered. A German insurance broker conducts a market analysis by comparing a sufficient number of providers, e.g. 30 different policies offered by 30 companies. By filtering out 29 of them the broker is finally able to give his "best advice" and to recommend a target market compliant policy to his client. By implication he now has to report to those 29 companies that he filtered out their product, as it was not target market compliant. It is self evident that in this case any distribution business would come to a standstill. We ask for the deletion of this provision.</p> <p>Product distribution arrangements</p> <p>Regarding paragraphs 27 to 29 we question the scope and extent of the so called "product distribution arrangement". None is sufficiently clarified. This lack of definition makes it impossible to determine what EIOPA has in mind with such an arrangement. It is self-evident that any distributor will at first determine and then regularly review the range of products and services he intends to offer to customers. We understand the intention of EIOPA to prevent or mitigate customer detriment and to support a proper management of conflicts of interests. This is already extensively addressed by the concept of the "target market" and therefore needs no additional "arrangement" by distributors. Under the "target-market" regime the distributor is obliged to obtain all necessary information on the product from the manufacturer, the product approval process, the target market in order to understand the customers for which the product is designed for, as well as the group(s) of customers for which the product is not designed for. The distributor also has to set up a distribution strategy which shall not contradict the intended target markets. We therefore suggest that the obligation of an</p>	<p>market. The monitoring obligation does not extend to the general requirements which distributors have to fulfil when carrying out the distribution activities, in particular the conduct of business rules as laid down in IDD.</p>
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			additional "product distribution arrangement" should be cancelled, as it would only replicate already existing regulations without any benefit for consumers or businesses at all.	
95	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 2	Staff training and application of conduct standards are essential in product governance. EFPA strongly supports, in line with §11, that the manufacturer shall ensure that personnel involved in designing products possess the necessary skills, knowledge and expertise in order to properly understand the product's main features and characteristics as well as the interests, objectives and characteristics of the target market.	Noted.
96	Eurosif Aisbl	Question 2	Eurosif believes the product oversight could be further enhanced and supports further level of detail as per the monitoring of the alignment with the interests, objectives and characteristics of the product.	Noted.
97	Fachverband der Versicherungsmakler und Berater in	Question 2	<p>In a necessarily innovative industry like insurance entrepreneurial spirit needs to be incentivised. This concentration of rules on product oversight and governance does not achieve that.</p> <p>We believe that EIOPA's policy proposals based on EIOPA's policy work on preparatory Guidelines go well beyond Article 25 of the IDD and that EIOPA technical advice should not be built entirely upon it, in particular regarding the requirements for non-manufacturing insurance distributors.</p> <p>Although the European Commission requests that EIOPA's technical advice, with regard to insurance distributors, should deal "with the arrangements for selecting insurance products for distribution to customers as well as for obtaining all the relevant information on the insurance product from the manufacturer", it is important to recall that IDD Article 25 rightly places product governance and oversight requirements</p>	<p>Noted. See comments above.</p> <p>Noted. See comments above.</p> <p>Noted. See comments above.</p>

		<p>mostly on “insurance undertakings, as well as intermediaries which manufacture any insurance product” - and not on intermediaries that do not manufacture products. Non-manufacturing intermediaries are very clearly and very specifically required to obtain information and to understand that information - nothing more.</p> <p>Regarding product testing (page 18, point 34), EIOPA explains that in the case of non-life insurance, the assessment could imply considering what the expected claims ratio and the claims payment policy is, what if it is higher or lower than expected, whether the expected claims ratio and claims payment policy suggest that the product is of benefit to customers.</p> <p>In this context it is interesting to note for example that the UK FCA believes that it is not a good measure – e.g. legal expenses insurance – claims ratio does not pick up customers’ use of helplines that come as part of the product (https://www.fca.org.uk/news/fs16-01-general-insurance-value-measures and https://www.fca.org.uk/static/fca/documents/feedback-statements/fs16-01.pdf).</p> <p>Regarding product monitoring (point 40, page 19), EIOPA explains that as a general principle, and, in accordance with national legal framework, the manufacturer can only make changes to the product that are consistent with the interests, objectives and characteristics of the already existing target market and these changes do not have an adverse impact on the customer to which the product has been sold already. We wonder whether this means that an insurer can never amend a policy’s term to offset a loss ration of 150% for example?</p> <p>Regarding documentation (point 44, page 19), for SME’s this can represent an important administrative burden and a disproportionate compliance requirements.</p>	<p>Noted. See comments above.</p> <p>Noted. See comments above.</p> <p>Noted. See comments above.</p> <p>Noted.</p>
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			<p>Regarding obtaining all necessary information from the manufacturer (point 50, page20), EIOPA explains that an important prerequisite to setting up a distribution strategy is that the insurance distributor has detailed knowledge about the approval process of the manufacturer, in particular the target market of the individual insurance product, as well as about all other necessary information on the product from the manufacturer in order to fulfil its regulatory obligations towards the customer. This information helps the insurance distributor to select the insurance products the insurance distributor intends to distribute and to assess to which customers the insurance distributor may advertise and promote the individual insurance products.</p> <p>We wonder what value to intermediary or customer does knowing that an insurer takes new products to a committee before they launch them, have. Does that mean that any insurance intermediary – wishing to operate on a whole of market basis - will have to have detailed knowledge of the product approval process of every single insurer with whom they could possible place a customer’s insurance risk?</p> <p>Besides setting the obligation on intermediaries to obtain ‘all other necessary information’ on the product from the manufacturer is not workable. How is an intermediary ever going to be really sure that they have obtained it all?</p> <p>Specific comments on EIOPA draft technical advice re policy proposals for insurance undertakings and insurance intermediaries which manufacture insurance products for sale to customer:</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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		<p><input type="checkbox"/> Regarding the policy proposal on “Objectives of the product oversight and governance arrangements”, we wonder what positive outcomes for customers these regulations will deliver that the market would not have managed without this level of intervention.</p> <p><input type="checkbox"/> Regarding the policy proposal on “remedial action”, We wonder how this proposal will be or can be put into practice. It is not the function of a manufacturer to act as a regulator and as such the use of the word ‘remedial’ is not appropriate. The manufacturer typically has neither the information rights nor any policing power to enforce such obligation.</p> <p>The title should read “Appropriate action” and the last line of point17 should therefore be amended to read ‘the manufacturer should notify any relevant appropriate action (...)’.</p> <p><input type="checkbox"/> Regarding the policy proposal on “distribution channels”, we are worried that this could be read as manufacturers having the right to oversight what a distributor does (including access to records on which insurers the intermediary is placing what business with). Placing business with a number of insurers could result in the intermediary being audited constantly.</p> <p>We wonder whether these requirements are appropriate and justified. This is an unnecessary and disproportionate intervention in contractual relationships between commercial parties.</p> <p>Points 22, 23 and 24 should be deleted.</p> <p>Should point 24 remain, and for reasons explained above, the last line of point 24 should be amended to read “the manufacturer shall take appropriate action towards the distribution channel”.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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			<p>Specific comments on EIOPA draft technical advice re policy proposals for insurance distributors which advise on or propose insurance products which they do not manufacture :</p> <p><input type="checkbox"/> Regarding the policy proposals on “Objectives of the product distribution arrangements”, we do not understand the point of having this proposal included in the technical advice and later on in a Level 2 text. The objectives of POG arrangements are clearly stated in the IDD. We suggest to delete that proposal.</p> <p><input type="checkbox"/> Regarding the policy proposals on “Obtaining all necessary information on the target market from the manufacturer”, we believe that this section must make specific reference back to the information requirements placed on the manufacturer in para 21. The distributor cannot be expected to source any information that the manufacturer is not obliged to produce and make available.</p> <p>It is essential that distributors receive complete information on the product to be sold and on the target market that the product has been designed for. In this respect EIOPA policy proposals that apply to product manufacturers- require manufacturers to provide sufficient information to distributors. We do not understand why EIOPA mirrored this obligation in its policy proposals that apply to non-manufacturing distributors. EIOPA even set a more onerous requirement: non manufacturing distributors must obtain all necessary information from manufacturers.</p> <p>The value in providing information on the insurance undertaking’s product approval process is highly questionable. That process will no doubt include a challenge mechanism, such as taking all products before a committee to demonstrate their value to customers. It is highly questionable that the distributor knowing this fact about the</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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		<p>manufacturer's product approval process, will add any value to distributor's or their customers' understanding of how the product is suitable for their demands and needs).</p> <p>This adds an extra layer of administrative burden to the process and creates confusion in terms of responsibility of the different parties in the process. How could a distributor be able to be absolutely sure that they have obtained all the necessary information?</p> <p>The policy proposal (Point 32) should be deleted or redrafted as follows:</p> <p>"Obtaining all necessary sufficient information on the target market from the manufacturer</p> <p>The product distribution arrangements shall aim to ensure that the insurance distributor obtains all necessary sufficient information from the manufacturer on the insurance product, the product approval process, the target market in order to understand the customers for which the product is designed for, as well as the groups(s) of customers for which the product is not designed for".</p> <p>The policy proposal (Point 33) deals with information on insurance products. It is redundant with point 32 and should be deleted. In any case the wording "all necessary information" should be deleted.</p> <p><input type="checkbox"/> Regarding the policy proposal on "distribution strategy", we wonder what if an intermediary - using his specific skills - identifies an alternative suitable market that the manufacturer had not considered or understood. Distributors should be given the possibility to sell products outside of the target market defined by the manufacturer provided they are able to justify doing so. This would leave flexibility to the distributor and insurer where the product is suitable or appropriate for the customer.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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			<p>This principle was recognised by ESMA in its technical advice to the EC on MiFID 2. In order to ensure a consistent and coherent approach, the same principle should apply here. This possibility is referred to on page 20, point 53 of EIOPA consultation paper but is not reflected in EIOPA draft technical advice.</p> <p><input type="checkbox"/> Regarding the policy proposal on “Provision of sale information to the manufacturer”, this places a legal responsibility on the distributor that is not appropriate. The manufacturer is responsible for his products and not the distributor.</p>	
98	Fédération Française de l'Assurance (FFA) 26 bo	Question 2	<p>As to EIOPA’s question on providing sufficient detail on POG, we believe that the policy proposals are too detailed and that such proposal risks being too binding for professionals as for customers. Such principles will create too many obstacles to the introduction of new products, while reducing customers’ choice.</p> <p>Please find below our general comment on Product Oversight & Governance (POG):</p> <ul style="list-style-type: none"> o Insurance products are not systematically “detrimental” to customers and this should be acknowledged in the final text. It is essential to underline that customers’ needs are already an essential factor in the existing internal product design process. Moreover, Article 25 of the Directive requires to develop procedures and process and to assess “potential risks to the target market”, which does not mean that all insurance products are per se detrimental. o The granularity of the target market reveals a confusion between the macro approach: defining the target market 	<p>Noted. EIOPA does not share the view that the policy proposals hinder the development of new products at the disadvantage of the customers as they aim to enhance customer protections already at the stage of product design.</p> <p>EIOPA is not of the view that insurance products are detrimental per se, but considers POG arrangement as essential to avoid customer detriment. The complexity of an insurance product may influence the</p>

		<p>through a large categorisation (for example students for health insurance, young couples for home insurance) and the micro approach (adaptation of the contract to individual situations on the basis of detailed criteria). This confusion that leads the technical advice to raise up criteria used at the point of sale to the product design level could undermine the current model in France under which advice duty requires to recommend the contract/guarantees that suits individual situation and needs.</p> <p>That's why the examples of criteria proposed by EIOPA for product testing (page 17-18) are not appropriate.</p> <p>Thus, target market should be defined in a more abstract way. A flexible notion of granularity will allow that the product is adapted to the customer on the individual level. Manufacturers should therefore have sufficient discretion to define the target market on a "macro" basis.</p> <ul style="list-style-type: none"> o The target market definition should not restrict the customer's choice when a product is proving to be consistent and appropriate to him, irrespective of its complexity. <p>As for the example cited that "you may not need full coverage when you have an old car", this is more a question to deal at individual level than a problem of target market definition. The owner of an old car may need or request full coverage for its car. "Open architectural" product with several option of insurance coverage would allow to give the customer a product consistent to its needs and demands.</p> <ul style="list-style-type: none"> o The 'negative' definition of target customers is not provided by IDD nor requested by the European Commission in its demand for delegated acts. It would further restrict the offer to the customer and presents multiple risks of a discriminatory classification of clients. 	<p>granularity of the target market as well other elements of the POG arrangement (such as testing).</p> <p>EIOPA agrees.</p> <p>EIOPA believes that sales outside the target market should be a rare occasion.</p> <p>EIOPA has clarified, in the analysis, that the monitoring obligation is limited to the assessment whether the distribution channels carry out their distribution activities in accordance with the product oversight and governance arrangements established by the manufacturer, in particular whether insurance products are distributed to the identified target market. The monitoring</p>
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		<p>It should be recalled that the aim of the product approval process is to ensure that insurance products meet the needs of the target market (recital 55) and not restrict customers' access to products.</p> <p>o Final text should thus expressly provide for a sale outside of the target market if more suitable for the customer. The principle that the product can be marketed only on exceptional basis outside the target market is not appropriate for the French system where advice is mandatory.</p> <p>o Control over distribution channels is too far reaching: The requirement for the manufacturer to regularly review whether the product is distributed to target market would lead to requesting insurance companies to control the marketing of their products by distributors. EIOPA is also asking for a proactive monitoring of compliance with the POG arrangements by distributors. In the case of independent intermediaries, it is not possible for an insurer to monitor actively if (i) the distributor respects the POG arrangements and (ii) the product is sold correctly to the target market. Moreover, overreaching control over distributors risks to reduce their accountability for distribution which goes against IDD objectives.</p> <p>Thus EIOPA should reword its proposals as to monitoring and verification that the product is being distributed to the target market (pages 23 points 22 and 23 or page 39 point 9).</p> <p>o Proportionality principle should be respected</p> <p>We would stress that product oversight and governance arrangements need to be proportionate to the level of complexity and the risks related to the products (nature of the product) as well as the nature, scale and complexity of the</p>	<p>obligation does not extend to the general requirements which distributors have to fulfil when carrying out the distribution activities, in particular the conduct of business rules as laid down in IDD. Please see also EIOPA's feedback statement in the Final Report.</p> <p>On the collaboration requirement the policy proposal clarify that "the manufacturer shall provide to the insurance distributors all relevant information on the insurance product, the product approval process, the target market and distribution strategy. "</p>
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			<p>relevant business of the regulated entity. This requirement is contained in Article 25(1)(2) IDD.</p> <p>It is important to bear in mind the diversity and wide range of insurance products, as a result of which the POG requirements would not be expected to apply in the same way to all products. These differences need to be recalled more visibly, in order to avoid introducing requirements for all insurance products that are more suited to the investment world.</p> <p>O Product monitoring</p> <p>Equally, proportionality should be visible as to the product monitoring. EIOPA claims for on-going product monitoring while Article 25 (1) paragraph 4 of IDD provides for “regularly understand and regularly review the insurance products it offers or markets”. As a consequence, the wording should be changed (as EIOPA did it in the review section).</p> <p>o Procedures and Documentation</p> <p>We are concerned that the introduction of further procedure and documentation requirements will cause increased administrative burdens and thus trigger price-raising. Increased documentation requirements could slow down production and financial innovation and not be in favour of costumers.</p> <p>Hence, the documentation requirements should be proportionate to the nature, scale and complexity of the business of the manufacturer.</p>	
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			and identified target market. Sharing entire product approval process will prove overly burdening and could additionally impair business secrets and plans.	
99	FG2A (Fédération des Garanties et Assurances Affin	Question 2 : Do you agree that the policy proposa	<p>An effective implementation of the requirements defined by the Directive require to strike a balance between, on one hand, high level criteria to ensure a "level playing field" across countries and different lines of products and, on the other hand, overly specific criteria which may not adapted to capture the variety of markets and products and could stifle products innovation.</p> <p>The FG2A France believes that the Commission and EIOPA should adopt a high level approach and stick to the best extent principle to the proportionality principle.</p> <p>At the national level, sectoral professional associations might be useful actors in promoting best practices (for instance, through adoption of codes of conduct), in order to provide guidance that can take into consideration the specificities of each market and lines of products. The delegated Acts could better recognize this role.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
100	Financial Services Consumer Panel	Question 2	<p>The Panel broadly agrees that the proposals provide a sufficient level of detail. However, as previously argued, we believe that EIOPA should consider urging companies to make their Product Oversight and Governance (POG) arrangements public to allow for greater scrutiny. In addition to increasing transparency, this would ensure rules put in place are more than a simple box-ticking exercise and it would encourage consumer confidence.</p> <p>We remain concerned that EIOPA still appears content for the periodic review as currently foreseen to be conducted entirely internally within each firm. Reviewing POG arrangements independently could mean shortcomings are flagged up</p>	Noted.

			promptly. For example, the review could be covered by a firm's Audit Committee report, and thus be overseen by its auditors.	
101	FNMF, 255 rue de Vaugirard, 75015 PARIS	Question 2	<p>We consider that the policy proposals are too detailed and constraining.</p> <p>For each items, we consider that it's important to specify the necessity to respect the proportionality principle.</p> <p>Target market and granularity of the target market : We consider that the aim of the product approval target is based on the consistency of the product with the target market. It has not been restricted to the customers acces to the product.</p> <p>Control over distribution channels : The requirement consisting in reviewing on a regular basis wether the product is well distributed means that insurance company would have to control the marketing policy used by their distributor. It could increase the level of distribution and administrative costs.</p> <p>Concerning procedures and documentation for POG requirements, once more it will increase administrative cost unnecessarily. We consider that the witten policies required by Solvency 2 regulation are enough to implement a efficient product governance. Moreover, the procedures and documentation requirements have to be well proportionated to the scale and complexity of the operators.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>

102	FRENCH BANKING FEDERATION	Question 2	<p>Point 1 p-21 All POG rules shall apply to any new product before it's been marketed and in case of a substantial change of the product still offered to customers.</p> <p>Point 9 p-22 This recommendation relies on guideline 5 point 3 from the EIOPA « Final preparatory guideline on POG arrangements by insurance undertakings and insurance distributors ». However, we don't understand how such a recommendation could apply to non-life insurance products, when it refers to « the degree of financial capability and literacy of the target market ».</p> <p>Point 10 p-22 This recommendation is not based on IDD provisions. It is very crucial to maintain a positive approach of the target market. Therefore, this recommendation should be deleted.</p> <p>Point 15 p-23 The terms « on-going basis » are too ambiguous. It is impossible to monitor that the product is still in line with the target market on a daily basis. Moreover, such a monitoring would be confusing for the customer and very costly. Therefore, we suggest to replace it by « on a regular basis », which appears to be more realistic.</p>	<p>Noted.</p> <p>The language has been revised now stating "where relevant".</p> <p>The language has been revised now stating "where relevant".</p> <p>The term has been replaced with "continuously" without further specification what this means (which depends on the respective product)</p> <p>Noted.</p> <p>The language has been revised now stating "where relevant". A negative target market is only required where</p>

		<p>Point 19 p- 23</p> <p>This recommendation is not based on IDD provisions which only provides for appropriate distribution channels.</p> <p>It is our understanding that the professional requirements as well as the conduct of business rules provided for by IDD are sufficient enough to lead the manufacturer's choice of distributors.</p> <p>Therefore, this recommendation should be deleted.</p> <p>Point 21 p-23</p> <p>The notion of a negative target market does not exist in IDD. It is clearly imported from MIFID 2 regulation.</p> <p>Therefore, EIOPA should only focus on a positive definition of the target market and this recommendation should be deleted.</p> <p>Points 22- 24 p-23-24</p> <p>These recommendations go far beyond IDD provisions which do not require such a monitoring/control from the manufacturer on the distributor. This recommendation is based on an assumption that distributor would be under the governance of the insurer which is not the case in the French market.</p> <p>Furthermore, such monitoring could even disrupt the contractual balance between the manufacturer and the distributor as it could lead to an unacceptable interference in the distribution management and strategy of the distributor.</p> <p>This recommendation should be deleted.</p> <p>Point 32 p-25</p> <p>As no negative definition of the target market is required by</p>	<p>necessary and relevant from a consumer protection point of view.</p> <p>Noted.</p> <p>Noted.</p>
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			<p>IDD, the reference to « the group(s) of customers for which the product is not designed for » should be deleted. [See our comments on point 21p -23].</p> <p>Point 33 p-25</p> <p>By taking into consideration the “risks and costs” of the products “as well as circumstances which may cause conflict of interests at the detriment of customer”, EIOPA is overruling article 25 (1) §5 and 6 IDD and exceeding its mandate. In addition, these information are not relevant for all insurance product especially non-life insurance products..</p> <p>The information on the « circumstances which may cause a conflict of interests at the detriment of the customer » should not be included into POG requirements as it concerns the conflict of interests.</p>	
103	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 2	No comment	Noted.
104	German Association of Actuaries (DAV)	Question 2	<p><input type="checkbox"/> The German Association of Actuaries (DAV) recommends a reflected approach to product design. It is important to take customer needs appropriately into account.</p> <p><input type="checkbox"/> In the analysis, EIOPA requests insurers to assess the price (e.g. p. 17 no. 31 “Is the price of the policy in balance with the worth of the underlying”, no. 32 “How is the risk reward profile balanced, taking into account the cost structure of the product”) and the benefits of a product taking the claims ratio into account (cf. p. 18 no. 34, 36). It should be clarified that these provisions are not intended to result in price controls or detailed rules for product design.</p> <p><input type="checkbox"/> The DAV agrees with EIOPA that the needs of potential customers should be at the heart of the description of target markets. Defining a negative target market most likely will not be possible in many cases and therefore should not be</p>	<p>Noted.</p> <p>EIOPA would like to emphasise that it does not intend to introduce a price control via the policy proposals on product oversight and governance. In view of the concerns of some market participants, EIOPA has amended the final Report with a clear statement for the sake of clarification.</p>

			<p>required. Moreover, it should be noted that not every customer who does not belong to a specific target market automatically belongs to the negative target market. In addition, the Draft Technical Advice needs to be very clear about selling outside the target market which should remain possible if a proper justification is given (cf. DTA p. 21 no. 53).</p> <p><input type="checkbox"/> While it is acceptable to ask insurers to “take appropriate action”, it would be unnecessary and misleading to require them to inform their customers about relevant remedial actions taken. Considering the interests of the community of insureds, it should be critically assessed whether informing the customers would be appropriate.</p> <p><input type="checkbox"/> Only essential changes require the performance of product tests.</p> <p><input type="checkbox"/> The DAV welcomes the fact that the interests of the community of insureds are taken into account (cf. DTA p. 18 no. 15). From a mathematical point of view, the notion of “risk pooling” is more accurate than “principles of solidarity”.</p> <p><input type="checkbox"/> The fundamental term “insurance product” lacks a definition. The DAV suggests that “risk pooling” should be one of the essential criteria for an insurance product.</p>	Please also refer to EIOPA’s feedback statement in the Final Report.
105	German Association of Private Health Insurers (PKV)	Question 2	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
106	German Banking Industry Committee (GBIC)	Question 2	GBIC understands EIOPA’s intention to implement Product Oversight and Governance (POG) arrangements in order to establish a safeguard for products on sale for retail customers. The duty to establish POG arrangements as described in the Draft Technical Advice (Draft TA) can, however, be interpreted as the need to establish rules that would result in the implementation of a supervisory board responsible exclusively for the supervision of sold products and their review (see No. 31 Draft TA). This would constitute an unbearable burden on small and medium distributors that	Noted. EIOPA does not intend to set up a board which is exclusively responsible for the supervision of sold products and their review.

			<p>may consist of 3-4 involved employees only. A similar burden could occur due to EIOPA's advice regarding the distribution strategy (see No. 34 Draft TA) and the Provision of sale information to the manufacturer (No. 36 Draft TA). This advice might result in additional bureaucracy and costs for small distributors, which may be difficult to implement with limited manpower. We therefore highlight the need to apply the principle of proportionality mentioned under No. 2 Draft TA. If EIOPA's intention is to construct such a board with a duty to supervise, the possibility to implement such a board into already existing structures should remain.</p> <p>The issue of defining a target market is of specific importance for GBIC, since this is an ongoing discussion in the context of MiFID II. We share EIOPA's view that the core of the definition should be the potential customer. However, defining a clear distinction between classes of potential customers remains to be a highly challenging exercise. Therefore, it is of utmost importance that the distribution of products outside the target market remains possible without punitive measures since there may be good reasons to distribute products outside the foreseen target market on an individual basis (as mentioned correctly under Draft TA p. 21 No. 53)</p>	<p>The distribution of products to customers outside of the target market is possible, but should occur only on an exceptional basis, in EIOPA's view.</p>
107	German Insurance Association (GDV)	Question 2	<p>The German Insurance Association is in favour of reflected product design and distribution strategies taking due account of the needs of customers. The policy proposals address the relevant aspects of product oversight and governance. However, they are too far-reaching in some respects and should be optimized further and be better targeted, focusing on the objective of POG. It is of vital importance for the success of the provisions that the underlying processes can be designed efficiently. Unnecessary bureaucracy should be avoided and there should be enough leeway for a company-specific approach. The limitations of external controls need to be clearly indicated in the provisions. It should be made clear that the provisions should not result in price controls or detailed rules on product design. Moreover, it would be sensible to clarify that the POG do not require manufacturers</p>	<p>Noted.</p>

		<p>to terminate or modify existing contracts.</p> <p>Our positions in detail:</p> <p><input type="checkbox"/> No external price control or detailed provisions on product design</p> <p>In its analysis, EIOPA estimates that undertakings should assess the price (e.g. p. 17 no. 31 "Is the price of the policy in balance with the worth of the underlying?", no. 32 "How is the risk reward profile balanced, taking into account the cost structure of the product?") and the benefits of the product, taking into account e.g. the claims ratio (typically relation of claims expenses to earned premiums, c.f. p. 18 no. 34, 36). We recommend explicitly clarifying in the draft technical advice (in the following: DTA) as well as the analysis that it is not intended to introduce an external price control and supervisory requirements on product design (compare EIOPA's clarification that a general price control is not intended in its final report on the consultation of POG guidelines of 18 March 2016, p. 65). Such far-reaching regulation – which is not provided for under IDD – would hamper product innovation and competition, finally resulting in reduced product diversity to the detriment of customers.</p> <p>Moreover, the objectives of the arrangements are in need of further specification (DTA p. 22 no. 4 and p. 25 no. 30).</p> <p><input type="checkbox"/> One of the objectives proposed by EIOPA is to prevent/mitigate customer detriment. Several further provisions make reference to customer detriment also (cf. DTA p. 23 no. 14 and no. 16, p. 25 no. 30, p. 26 no. 36). However, the IDD neither includes a definition of "detriment" nor does it use the term in the context of POG. In its final</p>	<p>EIOPA would like to emphasise that it does not intend to introduce a price control via the policy proposals on product oversight and governance. In view of the concerns of some market participants, EIOPA has amended the final Report with a clear statement for the sake of clarification.</p> <p>Noted.</p>
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		<p>report on POG guidelines, EIOPA takes the view that it would not be appropriate to limit the wording to unfair detriment, stating that “any detriment to the customer should be considered as unfair”. We therefore recommend to clarify in the DTA that the term “detriment” requires an unfair result at the expense of the customer. We believe that the definition proposed by EIOPA in its report of 18 March 2016 (p. 8), according to which a detriment occurs “if the manufacturer or distributor does not act in accordance with the best interests of its customers”, is not suitable to create further clarity.</p> <p><input type="checkbox"/> In addition to that, it would be important to clarify that the objective to “support a proper management of conflicts of interests” is required by legal provisions on conflicts of interests (cf. DTA p. 22 no. 4, p. 25 no. 30). Essential elements can only be stipulated by the legislator.</p> <p><input type="checkbox"/> Appropriate remedial actions</p> <p>Manufacturers review their products. The new provisions require them to “take appropriate action” (cf. DTA p. 23 no. 16) based on the results of their review.</p> <p>We recommend clarifying in the DTA that the POG do not require manufacturers to terminate existing contracts, but that in this regard, only national contract law applies. The national legal framework is mentioned in the analysis (p. 19 no. 40); however, we believe it would be appropriate to further clarify its role and importance. Under contract law, the agreed distribution of risks must be respected – changes may only be required where exceptionally provided for under contract law. The question whether individual customers are to be informed about new tariffs is also answered in the relevant advisory provisions of national contract law. The IDD</p>	<p>The policy proposals do not specify the remedial action the manufacturers are supposed to take. This very much depends on the specificities of the individual case and should not be limited to a predefined catalogue of possible actions.</p> <p>EIOPA would like to point out that this issue is governed by the application and interpretation of the Level 1 provisions of IDD, mainly Article 25 of the IDD and Article 42 of the IDD. The wording of Article 25 (1) of the IDD can be understood to assume that the product oversight and governance arrangements only apply to new products which are sold after the transposition date of</p>
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		<p>does not require on-going advice (without cause). Insurers are free to choose whether or not they wish to go beyond their contractual obligations in offering existing customers new contracts. In any case, it is vital that the collective of insureds remains big enough to allow for appropriate balancing of risks.</p> <p>We recommend deleting the additional separate duty to inform, if relevant, customers about the remedial actions (DTA p. 23 no. 17). It is not necessary, given that there is already a requirement to “take appropriate action”, and might even be misleading. It needs to be critically assessed by insurance undertakings whether such notification of customers is appropriate under insurance law, in particular with regards to the collective of insureds. Policyholders might be incited to terminate their policies, which would be detrimental to the collective of insureds as a whole. In addition, informing customers about short-term negative developments of long-term investments might have rather disadvantageous effects on individual policyholders, too. It could also be running contrary to EIOPA’s intentions of preventing customers from changing their long-term (old age provision) insurance products with an irrational frequency (cf. EIOPA final advice on PEPP, p. 70).</p> <p>For our extensive comments on EIOPA’s analysis regarding product review (p. 35 to 37), please see our answer to question 8.</p> <p><input type="checkbox"/> Temporal scope of application</p> <p>We believe that the POG should focus on products that are still being distributed. The DTA should explicitly stipulate that products that are no longer being distributed do not require POG arrangements. This would set the appropriate priorities</p>	<p>the IDD or those products which are significantly adapted or changed.</p> <p>However, it is not in EIOPA's remit to address this question as this is a legal question which falls in the competence of the European Commission and ultimately in the competence of the European Court of Justice. Therefore, EIOPA has decided to be silent on this issue.</p> <p>Taking into consideration one of the legal objectives of the target market, namely ensuring that insurance products are only distributed to customers, for whom such insurance products are compatible, it seems, from EIOPA’s perspective, appropriate that distribution outside the target market occurs only exceptionally.</p> <p>Therefore, the analysis</p>
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			<p>and also respect the preventive character of POG. In parts of its analysis (p. 19 no. 38, p. 14 no. 16 sentence 1), EIOPA refers to the “product lifetime”, which ends only when “the last product has been withdrawn from the market”. From our point of view, this concept is too far-reaching for POG – given the large number of different contract and tariff generations, disproportionate efforts would follow. The new tariff generations will already include numerous modifications. The supervisory provisions on complaints management sufficiently ensure that important findings on existing contracts will continue to be evaluated and taken into account in the development of new products.</p> <p><input type="checkbox"/> Definition of target market and distribution outside of target market</p> <p>The definition of the target market is of key importance for the entire process. We included our extensive comments on the new, additional proposals regarding the target market under question 7. We agree with EIOPA that a flexible approach is needed and the definition should focus on the needs of potential customers. The concrete proposals should be adapted accordingly.</p> <p>We also suggest reconsidering the requirement to define a negative target market, given that a clear negative delimitation will most likely be impossible in many cases and most insurance products are designed for a broad range of customers. The IDD itself does not call for the definition of a negative target market. Should the concept of a negative target market be maintained, the limiting phrase “where relevant” is appropriate. However, for reasons of practicality it should be clarified that a few significant examples are sufficient (see answer to question 7).</p>	<p>now specifies that the insurance distributor may distribute, on an exceptional basis, insurance products to a customer, who does not belong to the identified target market, provided that the insurance distributor can prove that the respective insurance product meets the demands and needs of the individual customer, and, in the case of insurance-based investment products, is appropriate or suitable for the customer.</p>
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		<p>It would be welcomed if it could be explicitly clarified in the DTA that the distributor may continue to distribute to customers outside of the target market as long as he/she can present an appropriate justification (cf. p. 21 no. 53 of the analysis).</p> <p><input type="checkbox"/> Efficiency and extensive provisions for pure distributors</p> <p>POG provisions must be proportionate in order to take into account the large number of highly heterogeneous insurance products and avoid unnecessary efforts. Hence, the clarification in the DTA (p. 21 no. 2 and p. 25 no. 28) is to be welcomed.</p> <p>As an addition, we recommend further clarifying that differentiating according to the nature of distributors (as also intended under IDD) allows taking into account the status of the intermediary and the different kind of relationship with the insurance undertaking (broker, tied agent), respectively.</p> <p>Moreover, it should be noted that the requirements proposed for pure distributors including duties of documentation are considerably more far-reaching than the provision under Art. 25 (1) subparagraph 6 IDD, which only requires pure distributors to have in place adequate arrangements to obtain appropriate information on the insurance product and the POG procedure and to understand the characteristics and identified target market of each insurance product. This objective is expressly welcomed. However, the German Insurance Association takes a critical view on the following requirements regarding an efficient and practice-oriented design of the provisions: the proposed obligations to coordinate the frequency of reviews and to document the relevant information in written agreements (cf. DTA p. 38 no. 2, 6) and the introduction of several vague information requirements,</p>	
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			<p>e.g. regarding an “added value” (DTA p.41 no. 1, cf. our detailed answer to question 8 II.). Requiring the distributor to have detailed knowledge about the product approval process (in each individual case), as demanded in the analysis on p. 20 no. 50, is too far-reaching and not appropriate. It is of key importance that the distributor knows the product, its target market and is aware that the manufacturer of the product has performed the product approval process.</p> <p><input type="checkbox"/> Additional optimisation and clarification needs</p> <p>- We recommend clarifying the scope of application, especially the exemption of large risks and certain ancillary intermediaries, directly in the DTA (cf. analysis, p. 14 no. 14).</p> <p>- In addition, it should be clarified that product testing in case of changes to an existing product is only required if the changes are essential (cf. DTA p. 23 no. 12 und p. 17 no. 30). Accordingly, the documentation requirements (DTA p. 24 no. 26, p. 26 no. 37, analysis p. 19 no. 44, p. 21 no. 55) should be clearly limited to “essential” measures.</p> <p>- We agree that the interests of the collective of insureds should be taken into account in the design of insurance products (cf. analysis p.15 no. 18). This important principle should also be included in the DTA. However, we recommend removing the term “principles of solidarity” from the text: Despite the fact that it is probably intended to describe the right concept (admissibility of “risk pooling” measures), it might be misleading.</p>	
108	Institute and Faculty of Actuaries	Question 2	We agree with the proposals in general for retail clients. However, governance activities and activities that prevent customer detriment in relation to corporate clients should	Noted. EIOPA would like to point out that the wording of Article

		<p>reflect the reduced likelihood for potential information asymmetries, compared to retail clients and the proposals may not reflect this.</p> <p>A related point is that the proposals do not differentiate between contracts drawn up on an individual or group basis; this would mean that the governance requirements would cease at the level of the 'corporate' client, rather than extending to the individuals in any group arrangement.</p> <p>For commercial customers buying non-life insurance products, there may be a need to consider the sophistication and knowledge of some of these customers and moderate the required governance activities accordingly. Such commercial policyholders can vary from small independent traders who may be expected to act like retail customers through to large multinational corporations.</p> <p>Whilst the technical guidance does not explicitly restrict insurance products from being distributed to those outside of the target market, this is highlighted as an aim in paragraph 52 of the consultation paper and addressed in paragraph 43. In practice there will be products made available to the general public through open market arrangements where the distributor does not provide any advice and has no control over who chooses to buy these e.g. by offering these through price comparison websites. Whilst monitoring may be put in place and product features clearly explained, controlling who buys a product is impractical in such circumstances.</p> <p>The examples given for product testing in paragraph 34 for non-life insurance include assessing whether the coverage of one product overlaps that of another. However without knowing what other products an individual may have purchased, this is not a practical test (or potentially relevant)</p>	<p>25 IDD does not differentiate between different types of customers.</p>
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			to apply for some insurance products such as personal motor insurance.	
109	Insurance Europe	Question 2	<p>Price control / added value</p> <p>EIOPA continues to refer to the concept of value of the product (as in the online survey on the technical advice from January 2016). In paragraph 48 of the analysis on page 20, when talking about conflicts of interest in the section on the establishment of distribution arrangements, EIOPA states that “[...] this might imply that distributors abstain from distributing specific insurance products for example in cases where they do not offer any added value to the customer, only a high commission to the distributor”.</p> <p>Moreover, in paragraph 2 of the draft technical advice on page 41, there is a reference to product costs and the assessment of whether the product offers added value to the customer. The value of the product (as well as the level of commission) is something that will be determined by the market. We are concerned that references to this concept could effectively result in a subjective evaluation of insurance products by supervisory authorities and the introduction of a form of price control. It should be noted that the supervisory authorities are not entitled to introduce price-control mechanisms under Article 21 of the Solvency II Directive.</p> <p>Prices do not depend on the nature or the complexity of the product but on a number of factors, such as the estimated risks and guarantees chosen by the customer. The continued reference to the value of the product is not consistent with Article 25 of the Level 1 IDD text on POG and goes much further than the general principle set out therein. The aim of the product approval process is to ensure that insurance products meet the needs of the target market, as stated in recital 55, which should be properly taken into account here.</p> <p>Recommendation: EIOPA should avoid proposing measures that restrict competition, by interfering with companies’ internal pricing mechanisms.</p> <p>Principle of proportionality</p>	<p>Noted.</p> <p>EIOPA would like to emphasise that it does not intend to introduce a price control via the policy proposals on product oversight and governance. In view of the concerns of some market participants, EIOPA has amended the final Report with a clear statement for the sake of clarification.</p> <p>EIOPA shares the view that the principle of proportionality plays an important role when it comes to product oversight and governance arrangements. For that reason, the policy proposals generally contain high-level and abstract principles (as opposed to prescriptive rules) and make continuous reference to this principle, e.g. see paragraph 2 of</p>

		<p>POG arrangements must also be proportionate to the level of complexity and the risks related to the products, as well as the nature, scale and complexity of the relevant business of the regulated entity. This requirement is enshrined in Article 25(1) paragraph 2 of IDD, which requires the product approval process to be proportionate and appropriate to the nature of the insurance product.</p> <p>It is important to bear in mind the diversity and wide range of insurance products, which means that the POG requirements would not be expected to apply in the same way to all products. These differences need to be respected in order, for example, to avoid introducing requirements for all insurance products that are more suited to the investment world.</p> <p>Recommendation: It is important that the principle of proportionality has been introduced in the policy proposals (eg paragraph 2, page 21 and paragraph 28, page 25). However, in its final report on the public consultation on preparatory guidelines on POG from 6 April 2016, EIOPA further elaborated on this principle in paragraph 1.4 on page 25 and paragraph 1.40 on page 34 of the explanatory text. These paragraphs should be reintroduced in the draft technical advice to provide clarity.</p> <p>Target market</p> <p>Product risk is negligible for most insurance policies sold on a mass-market basis, and many of these products have proven beneficial in the market for years. The majority of these products (including non-life products such as home and motor insurance) are developed for the purpose of covering a particular risk. The persons affected by the risk thus form the natural target group.</p> <p>Recommendation: Undertakings should therefore have sufficient discretion to define the target market. In any case, the target market definition should not restrict customer choice when a product matches their demands and needs even if they are not in the pre-defined target market, irrespective of the nature of the insurance product.</p>	<p>section “Establishment of product distribution arrangements” where it is stated that the “arrangements need to be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the insurance distributor”.</p> <p>Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p> <p>Noted.</p>
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		<p>Retroactive application of POG</p> <p>There should not be any retroactive application of the proposed POG requirements. Companies would be overstrained if they were obliged to establish new POG arrangements for each of their existing products. These arrangements should only apply to newly designed products that are brought to market, or products that are 'significantly changed' and proposed to customers after the implementation date of these provisions. This would also ensure consistency with Article 25 of the IDD.</p> <p>This clarification was included in EIOPA's final preparatory guidelines on POG in paragraph 1.17 of page 17 and the final paragraph of page 65, and should be re-introduced in the final draft advice.</p> <p>Recommendation: In order to enhance legal clarity, EIOPA's policy proposal should be reworded to ensure that there is no retroactive application of the POG requirements unless products are significantly changed.</p> <p>Documentation requirements</p> <p>It is unclear how the increased documentation requirements for both manufacturers and distributors in connection with the POG arrangements will benefit the consumer. We are concerned that the introduction of further documentation requirements will trigger price-raising because of increased administrative burdens. Moreover, the lack of flexibility at the level of documentation requirements will most likely affect smaller companies more than larger companies.</p> <p>Recommendation: EIOPA's policy proposals should explicitly introduce POG documentation requirements that are proportionate to the nature, scale and complexity of the business of the distributor. Additionally, EIOPA should reintroduce paragraph 1.1 on page 25 of its final report on the preparatory guidelines on POG in the policy proposals, where it states that the establishment of POG arrangements does not necessarily mean that new or fully separate arrangements are drafted; it can be sufficient to refer to existing documents</p>	<p>Noted.</p>
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		<p>where these contain the relevant information and just record additional information if and insofar as this is necessary.</p> <p>Review period</p> <p>Any changes to a product that are made on the basis of a review should only affect the further distribution of the product. The framework for making any amendments to existing contracts is provided through national contract law.</p> <p>New products and online distribution</p> <p>The high level of detail in the policy proposals would eventually restrict the introduction of new products and the creation of new trends, thus endangering the freedom of enterprise.</p> <p>A growing number of customers prefer to buy insurance online. In its consultation paper on automated advice, the Joint Committee of the ESAs concludes that online distribution channels will probably gain importance in the coming years.</p> <p>Recommendation: EIOPA must ensure that POG requirements should work well for both the online and offline environment. This would enable the industry to respond quickly with new products in the market.</p> <p>Distribution channels</p> <p>In its draft technical advice, EIOPA does not pay enough attention to the differences between distribution channels, despite the explicit mandate received from the Commission. For example, tied agents and brokers operate in different frameworks with different levels of cooperation with the insurance company involved. These differences are not sufficiently reflected in the draft technical advice.</p> <p>Considering that the distribution landscape can differ significantly from one member state to another, EIOPA should allow the POG requirements to be complemented at national level for the different types of distributors.</p> <p>Recommendation: EIOPA should allow for a pragmatic and</p>	
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			proportionate application of the POG requirements at national level.	
110	IRSG	Question 2	<p>There are certain elements / wording that need to be further refined.</p> <p>For example:</p> <ul style="list-style-type: none"> - it is stated that the manufacturer shall regularly review the product oversight and governance arrangements to ensure that they are still valid and up to date and the manufacturer shall amend them, where appropriate. These arrangements can be revisited at certain minimal intervals, as perbelow. - when deciding whether a product is aligned with the interests, objectives and characteristics or not of a particular target market, the manufacturer shall consider the level of information available to the target market and the degree of financial capability and literacy of the target market. <p>There are two elements that need to be clarified: a) how exactly does one exactly define alignment between the interests of manufacturers and a certain target market and b) how does a manufacturer determines these interests when usually the end seller / distributor is the one closer to the customer?</p> <ul style="list-style-type: none"> - it is also stated that the manufacturer shall select distributors with appropriate care. A refining of this concept would help make the Delegated Acts achieve their purpose. - The technical advice should allow the possibility to sell outside of the intended target market (it should remain possible to sell products outside of the intended target market, provided this is justified in that particular situation, such as when the distributor involved decides on the basis of the demands and needs analysis that the product fits that specific customer’s needs). <p>Although the IRSG agrees with the fact that the manufacturer shall only design and bring to the market, products with features, and through identified distribution channels, which are aligned with the interests, objectives and characteristics of</p>	<p>Noted.</p> <p>With regard the issues “selling outside the target market” and “negative target market” please see EIOPA’s Feedback Statement to the Public Consultation in the Final Report.</p>

		<p>the target market, the IRSG is of the opinion that EIOPA should be careful not to prevent consumers from having the freedom to choose the distribution channel of their choice, which is particularly important given the wide variety of distribution models across Europe. Furthermore the IRSG is of the opinion that innovation is key to a market's development and thus indirectly to consumers everywhere.</p> <ul style="list-style-type: none"> - The technical advice should avoid any specification of a 'negative' target market (i.e. identifying groups of customers for whom the product is typically not aimed, which is not required under IDD). - The IRSG is concerned by any potential retroactive application of the proposed POG requirements as companies would be overstrained if they were obliged to establish new POG arrangements for each of these products. Such arrangements should only apply to newly designed products that are brought to market, or products that are 'significantly changed', after the implementation date of such provisions. This also ensures consistency with Article 25 of the IDD. <p>Hence, IRSG suggest that the wording of EIOPA's policy proposal should be reworded in line with the above.</p> <p>This clarification was included in EIOPA's final Report on Public Consultation on Preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors (EIOPA-BoS-16-071), but seems to be missing in the draft advice.</p> <p>"In view of legal uncertainties which could arise if the Guidelines are applied to existing contracts, EIOPA has taken the decision that the scope of the Guidelines should be limited to new insurance products. From EIOPA's understanding, a product should not only be considered "new" if it is entirely new designed, but should also be assumed if existing products are substantially changed and revised (e.g. redefined insurance coverage or target market, new product features altering the risks to which consumers are exposed to etc.).</p>	
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111	Italian Banking Association	Question 2	<p>In ABI's view the policy proposals about product oversight and governance arrangements have some gaps due to the fact that, differently from MiFID II, do not regulate how the target market defined by the insurance manufacturer shall interact with:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the many conduct rules of distributors (suitability/appropriateness assessment and demands and needs test); <input type="checkbox"/> the obligation of distributors to distribute insurance products within the target market defined by the insurance manufacturer, being the distribution outside the target market defined by the insurance manufacturer permitted exceptionally. <p>The solution adopted by MiFID II Delegated Acts on this regard (i.e. the provision of a double level of target market based on the potential target market to be defined by manufacturers and the identified target market to be defined by distributors) is aimed at ensuring the effectiveness of the product governance rules, since it considers the need to ensure the well-functioning and integration of these rules with the further conduct rules of distributors.</p> <p>The double level of target market does not mean that distributors do not respect the potential target market defined by manufacturer, but on the contrary that the potential target market must be "translated" in the selling procedures of distributors through a deep verification involving both manufacturer and distributors, who have to share in advance the information that the parties deem necessary to exchange for the purpose of their respective product governance obligations.</p>	<p>Noted. EIOPA would like to point out that insurance intermediaries may redefine the target market within the limits set by the manufacturer. The Policy proposals state the following: "Where the insurance distributor sets up or follows a distribution strategy, it shall not contradict the distribution strategy and the target market identified by the manufacturer of the insurance product."</p>
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		<p>The approach regulated by MiFID II Delegated Acts:</p> <ul style="list-style-type: none"> i) helps prevent the distribution of financial products to investors having different characteristics from those of potential investors for which they were conceived and designed by the manufacturer, through a ex-ante coherence check of the parameters indicated by the manufacturer for identifying each product's target market, against the parameters used by the distributor for assessing suitability; ii) implies that the suitability assessment would help to verify whether the products are correctly directed at their target market identified case-by-case in the distribution phase; iii) allows to correctly determine the target market, also considering the portfolio approach adopted by distributors in their suitability assessments. <p>We therefore believe necessary that EIOPA takes into consideration MIFID II approach which, we repeat, is not aimed at weakening the target market defined by the insurance manufacturer, but at strengthening its application, by interpreting the product governance and suitability assessment rules in an integrated manner.</p> <p>Where EIOPA should not believe possible to expressly regulate a double target market level, which clearly admits for a potential target market to be defined by the insurance manufacturer and for an identified target market to be developed by distributors, it is at least necessary to supplement the Technical Advice as follows:</p> <ul style="list-style-type: none"> <input type="checkbox"/> paragraph 9, to admit that insurance manufacturers use the data provided by distributors, thus giving value to the activity of accompaniment of distributors towards 	
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			<p>manufacturers;</p> <p><input type="checkbox"/> the section "Acting as manufacturer", to better clarify that the mere provision by distributors of data about the characteristics of clients is very different from the activities there regulated affecting the technical features of designing insurance products.</p>	
112	Liechtenstein Insurance Association (LVV)	Question 2	<p>The policy proposals are too far-reaching in some respects and should be optimized further and be better targeted, focusing on the objective of POG. It is of vital importance for the success of the provisions that the underlying processes can be designed efficiently. Unnecessary bureaucracy should be avoided and there should be enough leeway for a company-specific approach. The limitations of external controls need to be clearly indicated in the provisions. It should be made clear that the provisions should not result in price controls or detailed rules on product design. Moreover, it would be sensible to clarify that the POG do not require manufacturers to terminate or modify existing contracts.</p>	<p>Noted. Please see EIOPA's feedback in the final report.</p>
113	<p>MALTA INSURANCE ASSOCIATION</p> <p>These comments have b</p>	Question 2	<p>1 Article 25(1)(2) of IDD provides for the product approval process to be proportionate and appropriate to the nature of the insurance product. It is important to bear in mind the diversity and wide range of insurance products, as a result of which the POG requirements would not be expected to apply in the same way to all products. These differences need to be respected, in order to avoid introducing requirements for all insurance products that are more suited to the investment world. Product risk is minor for simple insurance policies sold on a mass-market basis, and many of these products have proven beneficial in the market for years. Moreover, the majority of simple products (including non-life products such as home and motor insurance) are developed for the purpose of covering a particular risk. The persons affected by the risk thus form the natural target group. Undertakings should therefore have sufficient discretion to define the target market. In any case, the target market definition should not restrict the customer's choice when a</p>	<p>Noted. EIOPA is aware of the importance of the principle of proportionality in the context of POG arrangement and has taken it appropriately into consideration when drafting the policy proposals leaving sufficient discretion to take account of the specificities of insurance products and differences in business models.</p> <p>Please also see EIOPA's</p>

			<p>product is proving to be suitable for him, irrespective of the complexity of the insurance product.</p> <p>2 The new arrangements should not apply retrospectively to existing products. They should be brought into effect when new products are introduced or existing products are substantially changed. A retrospective introduction risks introducing administrative and documentation requirements which insurers will not be able to handle leading to an inability to respond to customer demand.</p> <p>3 The TA should state clearly that sales outside the target market should be allowed in exceptional cases. We explain the purpose of this in our answer to question 3.</p> <p>4 The definition of the target market may not be necessary where products are designed for specific clients or specific projects. We explain the purpose of this in our answer to question 3.</p> <p>5 EIOPA’s final advice stipulates that the manufacturer is to duly document all the relevant arrangements and actions in relation to the Product governance and oversight arrangement for audit purposes. Furthermore, such documents are to be made available to the competent authorities upon request.</p> <p>In this regard, EIOPA should clarify that even though such documentation will be made available to the competent authorities upon request, the design and pricing of products will fall out of the supervisory authorities’ oversight responsibilities.</p>	<p>feedback statement in the final report.</p>
114	Mediterranean Insurance Brokers	Question 2	Do you agree that the policy proposals above provide sufficient detail on product oversight and governance	Noted. EIOPA does not share these concerns in

	(Malta) Ltd.		<p>arrangements?</p> <p>We believe that the requirements imposed on non-manufacturers go beyond the requirements of Article 25 of the IDD. When it comes to pure distributors, the IDD requires that the distributor shall have in place adequate arrangements to obtain appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product.</p> <p>With respect to the Maltese market, we feel that the local market is too small to set up a product oversight and manufacturing arrangement on each policy.</p> <p>Referring specifically to the documentation (point 44, page 19) for SME's this can represent an important administrative burden and a disproportionate compliance requirements.</p> <p>Regarding obtaining all necessary information from the manufacturer (point 50, page20) we wonder what value to the intermediary or the customer does knowing that an insurer takes new products to a committee before they launch them have. Does that mean that any insurance intermediary wishing to operate on a whole of market basis, will have to have detailed knowledge of the product approval process of every single insurer with whom they could possible place a customers' insurance risk?</p> <p>Setting the obligation on intermediaries to obtain "all other necessary information" on the product from the manufacturer is not workable. How is an intermediary ever going to be really sure that they have obtained it all?</p> <p>Regarding the policy proposal on distribution channels, we are worried that this could be read as manufacturers have the right to oversee what a distributor does (including access to</p>	<p>view of the language of Article 25 of the IDD which is sufficiently broad and abstract, empowering the Commission to further specify the principles set out in Article 25 of the IDD.</p> <p>Noted.</p> <p>Noted.</p> <p>EIOPA has clarified, in the analysis, that the monitoring obligation is limited to the assessment whether the distribution channels carry out their distribution activities in accordance with the product oversight and governance arrangements established by the manufacturer, in particular whether insurance products are distributed to the identified target market. The monitoring</p>
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			<p>records on which other insurers the intermediary is placing what business with). Placing business with a number of insurers (as is the case for the main brokers in Malta) could result in the intermediary being audited constantly and so would be a real deterrent to any intermediary from offering their customers a wide choice of products and providers. This is an unnecessary and disproportionate intervention in contractual relationships between commercial entities. Hence we feel Points 22,23,24 should be deleted.</p> <p>Let's not go beyond IDD requirements as there are already enough to handle especially from an SME perspective. The rigid policy proposals on obtaining all the necessary information from the manufacturers, including the product approval process, will add no value to the distributor or its customers in understanding of how the product is suitable for their demands and needs.</p> <p>Most importantly, the policy proposal on "Provision of sale information to the manufacturer" places a legal responsibility on the distributor that is not appropriate. The manufacturer is responsible for his products and not the distributor.</p>	<p>obligation does not extend to the general requirements which distributors have to fulfil when carrying out the distribution activities, in particular the conduct of business rules as laid down in IDD.</p>
115	Mediterranean Insurance Brokers (Malta) Ltd.		Disclosure of comments:	Noted.
116	Slovenian Insurance Association	Question 2	<p>We think that policy proposals are too detailed. We believe that main purpose of these proposals is better external supervision of product oversight, distribution of insurance products and supervision of insurance distributors and hence an issue to be answered by national supervisory authorities. Procedures of authorisation of insurance products and supervision of insurance distributors are already realised by insurance companies in Slovenia, so new POG requirements</p>	Noted.

			will not make much difference. We believe that new policy proposals will increase normativism and administrative burdens.	
117	The Danish Insurance Association	Question 2	<p>First of all the DIA finds that the high level of detail in the policy proposals would eventually hamper the introduction of new products and the creation of new trends, thus endangering the freedom of enterprise.</p> <p>As mentioned under the general comments the DIA is concerned that EIOPA refers to the concept of "value of the product" (for instance in the section on "Establishment of distribution arrangements" in paragraph 48 on page 20 and in paragraph 2 of the draft technical advice on page 41). The "value" of the product is something that will be determined by the market. We are concerned that references to such a concept could effectively result in a form of price control for insurance products. While we support the development of good products that bring value to customers, EIOPA should not consider interfering with companies' internal pricing mechanisms, as to do so would inevitably hamper competition. It is also in no way representative of the content of Article 25 of the Level 1 IDD text on POG and goes much further than the principle set out in that provision. Moreover, it should be recalled that the aim of the product approval process is to ensure that insurance products meet the needs of the target market (recital 55).</p> <p>Finally, we would like to underline that under Article 21 of the Solvency II Directive, the supervisory authorities are not entitled to introduce price-control mechanisms.</p> <p>Product risk is minor for simple insurance policies sold on a mass-market basis, and many of these products have proven beneficial in the market for years. Moreover, the majority of simple products (including non-life products such as home and motor insurance) are developed for the purpose of covering a</p>	<p>Noted. EIOPA does not share the view that the policy proposals hinder the development of new products at the expense of the customer. On the contrary, the POG arrangement aim to enhance the protection of customers.</p> <p>No price-control is intended.</p> <p>Noted.</p> <p>The documentation requirement will support competent authorities to supervise the new policy proposals, therefore</p>

		<p>particular risk. The persons affected by the risk thus form the natural target group. Undertakings should therefore have sufficient discretion to define the target market. In any case, the target market definition should not restrict the customer's choice when a product is proving to be suitable for him, irrespective of the complexity of the insurance product.</p> <p>It is unclear how the increased documentation requirements for both insurance undertakings and distributors in connection with the POG arrangements will benefit the consumer. We are concerned that the introduction of further documentation requirements will trigger price-raising because of increased administrative burdens. Moreover, the lack of flexibility at the level of documentation requirements will most likely affect small companies more than large companies.</p> <p>Finally, increased documentation requirements could slow down production and financial innovation and not be in favor of costumers. Hence, the documentation requirements should be proportionate to the nature, scale and complexity of the business of the distributor. This should be introduced in an explicit way in the policy proposal.</p> <p>With respect to documentation requirements, it is also worth noting that EIOPA in its Final report on the Public Consultation on POG of 6 April 2016 (paragraph 1.1. on page 25) reminded that establishment of POG arrangements does not necessarily mean that new or fully separate arrangements are drafted; it can be sufficient to refer to existing documents where these contain the relevant information and just record additional information if and insofar as this is necessary. We would like to see this explanatory text reintroduced in the technical advice, preferably in the policy proposals.</p> <p>Moreover we believe that the actual proactive monitoring of</p>	<p>indirectly benefiting customers.</p> <p>Noted.</p> <p>Noted.</p> <p>In EIOPA's view claim ratio is an important criterion to assess insurance products.</p>
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			<p>compliance with the POG arrangements by distributors should be carried out by the national supervisory authority and not the manufacturer (insurer) involved. In the case of independent intermediaries, it is not possible for an insurer to monitor actively if the distributor respects the POG arrangements and if the product is sold correctly to the target market.</p> <p>Finally we regret EIOPA's reference to the claims ratios or claims payment policies in the accompanying analysis (page 18 of the consultation). Insurers should not be obliged to focus on claims ratios or claims payment policies in the monitoring of their products or during the product testings. These criteria are not always appropriate to estimate if the product is of value to the identified target market.</p>	
118	Unipol Gruppo Finanziario S.p.A.	Question 2	<p>Taking into consideration the "Feedback Statements to the Second Public Consultation" on "Preparatory Guidelines on Product Oversight and Governance Arrangements by Insurance Undertakings and Insurance Distributors", the undersigned, although agreeing on the importance of supporting "cross-sectorial consistency", deem it opportune to point out that the provisions of several of the positions of Chapter 2, and in particular guideline 13, go beyond what is required by Article 25 (1)(6) of the IDD. To this regard, we are aware of the possibility that the delegated acts may go beyond the IDD, but in the specific case no tangible reasons are found to extend provisions that go beyond acquisition of information on the products and on the relevant target markets to the non-manufacturer distributors.</p> <p>Furthermore, it is believed that for the intermediaries bound to the manufacturer by relationships already integrated, e.g. tied agents, will be able to fulfill the requirements of the guidelines with the backing of insurance undertaking.</p> <p>We request, for these cases, application of the principle of proportionality "The product distribution arrangements need</p>	Noted. Please refer to the Feedback Statement in EIOPA's Final Report.

			to be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity”.	
119	Verband der Automobilindustrie e.V. Arbeitskreis	Question 2	The presented product oversight and governance arrangements are more than sufficient.	Noted.
120	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 2	<p>2: Stimmen Sie zu, dass die oben genannten Vorschläge hinsichtlich der POG-Regelungen ausreichend detailliert sind?</p> <p>Der VDVM befürwortet ein reflektiertes Produktdesign und Vertriebsstrategien, die Verbraucherbedürfnissen angemessen Rechnung tragen. Die Vorschläge adressieren die wesentlichen Aspekte von Produktüberwachung und Produktgovernance (POG), sie sind aber zum Teil zu weitgehend und sollten noch weiter gestrafft und fokussiert werden. Der Erfolg der Vorgaben hängt ganz maßgeblich davon ab, dass die Prozesse effizient ausgestaltet werden können. Unnötige Bürokratie sollte vermieden werden und hinreichend Freiraum für eine unternehmensindividuelle Gestaltung bleiben. Grenzen der externen Kontrolle sollten klar aufgezeigt werden. Es sollte deutlich werden, dass die Vorgaben nicht zu einer Preiskontrolle oder zu detaillierten Vorgaben für die Produktgestaltung führen sollen. Sinnvoll wäre auch klarzustellen, dass POG keine Verpflichtung des Herstellers schafft, Bestandsverträge aufzulösen oder anzupassen.</p> <p>Hierzu im Einzelnen:</p> <p><input type="checkbox"/> Keine externe Preiskontrolle oder detaillierte Vorgaben zur Produktgestaltung Die Erläuterungen sehen eine Bewertung des Preises (z. B. Erläuterungen S. 17 Nr. 31 “Is the price of the policy in balance with the worth of the underlying?”, Erläuterungen S. 17 Nr. 32 “How is the risk reward profile balanced, taking into</p>	<p>Noted.</p> <p>In its final report EIOPA has clarified and emphasised that it does not aim</p>

		<p>account the cost structure of the product?“) und die Überprüfung des Vorteils des Produkts unter anderem unter Berücksichtigung der Schadensquote (typischerweise Schadensaufwendungen in Relation zu den verdienten Beiträgen, sog. „claims ratio“, vgl. Erläuterungen S. 18 Nrn. 34, 36) durch das Unternehmen vor. Der VDVM empfiehlt, in den Entwürfen und in den Erläuterungen explizit klarzustellen, dass eine externe Preiskontrolle und Vorgaben für das Produkt-design durch die Aufsicht nicht intendiert sind (zutreffend Ablehnung einer generellen Preiskontrolle in dem finalen Bericht von EIOPA zu der Konsultation zu POG-Leitlinien vom 18. März 2016, S. 65). Eine derart weitreichende Regulierung würde Produktinnovation und Wettbewerb verhindern und letztlich die Angebotsvielfalt zulasten des Kunden beschränken. Sie ist aufgrund der IDD nicht angelegt.</p> <p>Sinnvoll wäre zudem, die Zielbeschreibung der Prozesse noch weiter zu präzisieren [Draft Technical Advice (DTA) S. 22 Nrn. 4 und 30].</p> <p>Diese benennt auch das Ziel, eine Kundenschädigung zu verringern / zu verhindern, auf das auch in weiteren Vorgaben Bezug genommen wird (vgl. DTA S. 23 Nr. 14 und Nr. 16, S. 25 Nr. 30, S. 26 Nr. 36). Der Begriff „detriment“ wird in der IDD nicht definiert und dort auch nicht im Kontext POG verwendet. Eine Klarstellung, dass es sich hierbei um unfaire Schäden handelt, wird in dem finalen EIOPA-Bericht zu den POG-Leitlinien abgelehnt, da jeder Schaden unfair sei. Wir regen daher an, in den Entwürfen entsprechend klarzustellen, dass der Begriff detriment ein objektiv betrachtet unfaires Ergebnis zulasten des Kunden voraussetzt. Die in dem EIOPA-Bericht vom 18. März 2016 (S. 8.) vorgeschlagene Definition des Begriffs als Verstoß gegen ein Handeln in Übereinstimmung mit dem besten Kundeninteresse („... it occurs if the manufacturer or distributor does not act in accordance with the best interests of its customers“) eignet sich nach unserer Ansicht nicht zur Konkretisierung. Wichtig wäre zudem klarzustellen, dass es bei dem Ziel</p>	<p>introducing a price control</p> <p>The term detriment has already been used by the three European Supervisory Authorities (ESAs) in their joint position on product oversight and governance arrangements and does not need further clarification at the moment from EIOPA's perspective.</p> <p>The Technical Advice does not specify which actions should be taken, but leaves sufficient discretion to the respective producer.</p>
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		<p>der Entwicklung neuer Produkte berücksichtigt werden können.</p> <p><input type="checkbox"/> Definition des Zielmarkts und Verkauf außerhalb des Zielmarkts</p> <p>Die Definition des Zielmarkts ist von zentraler Bedeutung für den gesamten Prozess. Der VDVM nimmt zu den neuen, ergänzenden Vorschlägen zum Zielmarkt ausführlich unter Frage 7 Stellung und teilt die Einschätzung, dass ein flexibler Ansatz richtig ist und Kernpunkt dieser Beschreibung die Bedürfnisse des potenziellen Kunden sind. Die konkreten Vorschläge sollten noch entsprechend angepasst werden.</p> <p>Weiter empfehlen wir, die Vorgabe, einen negativen Zielmarkt zu bestimmen, grundsätzlich zu überdenken, da eine klare Negativabgrenzung oftmals nicht möglich sein dürfte. Zudem sind die meisten Versicherungsprodukte für eine breite Masse von Kunden konzipiert. In der IDD selbst ist die Bestimmung eines negativen Zielmarkts nicht vorgesehen. Sollte gleichwohl an dem Konzept eines negativen Zielmarkts festgehalten werden, ist die Einschränkung „where relevant“ richtig, es sollte aber, wie unter Frage 7 dargelegt, zwecks Praktikabilität weiter klargestellt werden, dass hier einzelne signifikante Beispiele genügen.</p> <p>Zu begrüßen wäre, wenn in den Entwürfen selbst ausdrücklich klargestellt würde, dass ein Verkauf außerhalb des Zielmarkts zulässig bleibt, aber zu begründen ist (vgl. S. 21 Nr. 53 der Erläuterung). Dies ist insbesondere für Versicherungsvermittler wichtig, wenn der Kunde trotz ausdrücklichem Hinweis und Aufnahme in die Beratungsdokumentation an einem Produkt festhält.</p>	
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			<p><input type="checkbox"/> Effizienz und umfangreiche Vorgaben für reine Vermittler</p> <p>Vorgaben zu POG müssen verhältnismäßig ausgestaltet werden. So kann der Vielzahl der sehr unterschiedlichen Versicherungsprodukte Rechnung getragen und unnötiger Aufwand vermieden werden. Die entsprechende Klarstellung in den Entwürfen (DTA S. 21 Nr. 2 und S. 25 Nr. 28) ist daher zu begrüßen.</p> <p>Ergänzend regen wir an, noch deutlicher klarzustellen, dass die auch in der IDD vorgesehene Differenzierung nach der Kategorie des Vertreibers gerade auch eine Berücksichtigung des Status des Vermittlers bzw. der unterschiedlichen Bindung an das Versicherungsunternehmen (broker, tied agent) zulässt.</p> <p>Darüber hinaus weist der VDVM darauf hin, dass die hier vorgesehenen Anforderungen für reine Vertreter inklusive Dokumentationspflicht wesentlich über die Vorgaben in Art. 25 Abs. 1 Unterabsatz 6 IDD hinausgehen. Dort wird nur vorgegeben, dass reine Versicherungsvertreiber über angemessene Vorkehrungen verfügen, um sachgerechte Informationen zu dem Versicherungsprodukt und den POG-Verfahren zu erhalten und die Merkmale und den bestimmten Zielmarkt jedes Versicherungsprodukts zu verstehen. Dieses Anliegen unterstützen wir. Mit Blick auf eine möglichst effiziente praxisgerechte Ausgestaltung sind aber in jedem Fall kritisch: die Vorschläge für eine Pflicht zur Koordinierung von Überprüfungszeiträumen, für eine Pflicht zur Spezifizierung der jeweils relevanten Informationen in einer schriftlichen</p>	
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			<p>- Richtig ist, dass bei Versicherungsprodukten den Interessen des Versichertenkollektivs Rechnung zu tragen ist (vgl. Erläuterungen S. 15 Nr. 18). Dieser wichtige Hinweis sollte auch in die Entwürfe selbst aufgenommen werden. Der Begriff „principles of solidarity“ könnte – auch wenn das Richtige (Zulässigkeit kollektiver Ausgleichsmechanismen / „risk pooling“) gemeint sein dürfte – missverständlich sein und der VDVM empfiehlt, auf diesen zu verzichten.</p>	
121	Verband öffentlicher Versicherer (Association of G	Question 2	<p>In principle, the German public insurers support the new requirements concerning product oversight and governance (POG) that have been included in the IDD. However, EIOPA’s proposed POG guidelines need to be amended: they are far too detailed and go well beyond the requirements of the IDD. This does not respect the principle of proportionality neither the European level one legislation and its national implementation. The resources that would be required for companies to implement all these rules are disproportionately large and cannot be afforded neither by small and medium-sized companies (manufacturers) nor by intermediaries. Small-scale intermediaries – some with only a single administrative employee on their payroll – would be ruined if they were obliged, for example, to establish their own dedicated administrative, management or oversight body. The ideas put forward by EIOPA are neither appropriate nor balanced, and do not take distribution realities into account. Apart from that, it is not clear whether and, if so, how such requirements would really serve to benefit customers. In the present paper, EIOPA fails to provide convincing arguments for this proposal.</p>	<p>Noted. EIOPA shares the view that the principle of proportionality plays an important role when it comes to product oversight and governance arrangements. For that reason, the policy proposals generally contain high-level and abstract principles (as opposed to prescriptive rules) and make continuous reference to this principle, e.g. see paragraph 2 of section “Establishment of product distribution arrangements” where it is stated that the “arrangements need to be proportionate to the level of complexity and the risks related to the</p>

				products as well as the nature, scale and complexity of the relevant business of the insurance distributor”.
122	Verbraucherzentrale Bundesverband e.V.	Question 2	Yes, we agree.	Noted.
123	Zurich Insurance Company, CH 8045 Zurich	Question 2	<p>Finally, we suggest that the Paragraph #2 of the draft technical advice should elaborate further to make clear that product oversight and governance arrangements are to be proportionate to the nature, scale and sophistication of the intended market. For example, the Directive exempts “large risks” from the scope of POG arrangements through Article 25(4).</p> <p>While the exemption of “large risks” encompasses unique, large and sophisticated insurance buyers when purchasing most products, there are certain products (such as employer provided Accident, Sickness and Assistance insurance) that similarly would benefit little from the product oversight and governance arrangements but fall outside of the Solvency II definition of “large risks.”</p> <p>Accordingly, we propose that the paragraph 2 be amended to provide:</p> <p>1. The product oversight and governance arrangement needs to be proportionate to the level of complexity and the risks related to the product, the nature and sophistication of the target market, as well as the nature, scale and complexity of the relevant business of the manufacturer.</p>	Noted.

124	Allianz SE	Question 3	<p>Are there any further arrangements, except those outlined below, which you would consider necessary and important?</p> <p><input type="checkbox"/> Yes, adequate clarification should be provided, how manufacturers are allowed to provide access to insurance / risk coverage for self directed, digital customers who might be unwilling to disclose numerous details of their private background information which is usually collected in an advisory context since they deem themselves financially literate and well self-informed. Taking into account the speed of technical revolution as well as change of attitude in the younger generation of customers the IDD should anticipate appropriate flexibility to adopt to customer preferences and needs by avoiding disproportionate administrative hurdles.</p> <p><input type="checkbox"/> In addition please note responses given to Q 16.</p>	Noted. In EIOPA's view this proposal rather concerns the conduct rules at the point of sale than POG requirements in the context of product manufacturing.
125	AMICE	Question 3	<p>We do not consider that any further arrangements would be necessary to introduce. The final policy proposals should be in line with the IDD level 1 provisions and the Commission's mandate for technical advice.</p> <p>As mentioned above, the POG arrangements should be applied in a proportionate way while taking into account the existing national and European legal framework. Existing rules that serve the same objective should not be duplicated by POG requirements in order to reduce administrative burden and unnecessary costs.</p>	Noted.
126	ANASF	Question 3	<p>Yes, there are two additional arrangements:</p> <p>1) Pursuant to Article 9, par. 12, Draft Commission Delegated Directive, supplementing Directive 2014/65/EU, investment firms shall consider the charging structure proposed for the financial instrument, including by examining its transparency and compatibility with return expectations and the needs, objectives and characteristics of the target market. Neither Directive 2016/97/EU (IDD) nor the Draft Technical Advice provide for similar requirements: this absence is likely to create a case of regulatory inconsistency between IDD and</p>	Noted. Intermediaries are required to obtain all relevant information on the product from the manufacturer, including risks and costs, to be in a position to provide high quality services to the customers. Regarding

			<p>MiFID II provisions.</p> <p>2) According to par. 42, p. 19, of the Consultation Paper “the manufacturer needs to select insurance distributors that have the necessary knowledge, expertise and competence to understand the product features and the characteristics of the identified target market, correctly place ...”. We agree with this statement: accordingly, it should be included in the Technical Advice (whereby a similar requirement is already established for the staff involved in designing products, cf. par. 11, p. 22, of the Consultation Paper). Such an amendment would also contribute to level the playing field with MiFID II (cf. Article 10, par. 7, of Draft Commission Delegated Directive, on product governance obligations for distributors).</p>	<p>point 2, manufacturers have to select distribution channels that are appropriate for the target market considering the particular characteristics of the product (see policy proposals).</p>
127	Association of International Life Offices	Question 3	No	Noted.
128	Assuralia	Question 3	<p>Assuralia considers the following aspects to be necessary and important:</p> <ul style="list-style-type: none"> - the POG arrangements should be applied in a proportionate and pragmatic way (see our remarks on proportionality in Q2). In order to achieve this goal, the current legislative framework (both national and European) should be taken into account. Existing rules that serve the same objectives should not be duplicated by POG, in order to reduce unnecessary costs and administrative burden. For example: in Belgium the insurance industry has implemented the MiFID 1 rules on conduct of business only two years ago ('AssurMiFID'). These AssurMiFID rules reflect many of the principles contained in EIOPA’s draft advice. It would generate a disproportionate cost if existing good practices would have to be adapted for the sake of formality only; - the draft advice does not pay enough attention to the differences between distribution channels. For instance, tied 	<p>Noted.</p> <p>The IDD and its implementing measures aim to introduce an European wide standard taking into consideration national specificities. In case where national law already exists and properly corresponds with the new European requirement, there is no duplication required from EIOPA’s view).</p>

			agents and brokers operate in different frameworks with different levels of co-operation with and control by the insurance company involved. This justifies a proportionally differentiated approach of the POG obligations. In this regard, Assuralia calls on EIOPA to allow for an efficient and proportionate implementation of the POG requirements at national level. Considering that the distribution landscape can differ significantly between Member States, the POG requirements should be filled in at national level for the different types of distributors.	
129	BEUC	Question 3	<p>POG requirements should not become a mere tick-box exercise for compliance officers. To this end , more transparency and a stronger involvement of national supervisors and EIOPA in this process should be ensured.</p> <p>Additional requirements should therefore include the following:</p> <ul style="list-style-type: none"> - The requirements for internal reviews should be detailed further (on content & frequency) and require an external check, e.g. by an auditor. - For the sake of transparency, all POG requirements should be made publicly available. - National supervisors should track these POG requirements and hereby check if they effectively prevent inappropriate products from marketed to consumers. Their findings should be reported to EIOPA - If certain product classes are prone to systematic mis-selling practices, according to national supervisors' reviewing of POG requirements, EIOPA should consider introducing a regulatory pre-approval process for these kind of products. <p>Furthermore, remedial action is a key component of POG requirements. Therefore, EIOPA should adopt stricter guidelines. When manufacturers become aware that products are not sold as envisaged or other problems arise, the manufacturer should suspend the selling of this product via the distributor(s) involved.</p>	<p>Noted.</p> <p>EIOPA agrees that the POG arrangement should not become a mere tick-box exercise, but would like to remind that the supervision falls within the competency of national supervisors, first hand.</p>

130	BFV - Bundesarbeitsge- meinschaft zur Förderun	Question 3	-	Noted.
131	BIPAR	Question 3	<p>- BIPAR believes that more clarity could be introduced on the scope of EIOPA policy proposals on POG arrangements.</p> <p>It should be clearly stated that bespoke insurance contracts are excluded from the scope of the proposals.</p> <p>Besides, regarding for example multi risks insurance product or for packaged products, it is not clear whether POG arrangements would have to be complied with for each of the products included in the package or only for the packaged product.</p> <p>- As rightly explained in EIOPA consultation paper on page 14 point 14, EIOPA policy proposals do not apply to insurance products which consist of the insurance of large risks as stated in IDD Article 25(4).</p> <p>However, BIPAR believes that as the market evolves, it is more and more unclear that this will exempt for example the totality of business written as bespoke negotiated contracts in the subscription market.</p> <p>BIPAR believes that:</p> <p><input type="checkbox"/> It is EIOPA intention not to cover bespoke negotiated open market subscription risk - that fell outside the definition of large risk. If it had to follow the very linear process set out in EIOPA policy proposal, BIPAR believes that this will be unworkable.</p> <p><input type="checkbox"/> The process of negotiating any contract may well involve meetings including intermediary, underwriter, the client, sometime the underwriter's reinsurer. Many of the elements of the EIOPA proposals could be covered in such a meeting. For instance, identification of the target market could be achieved by pointing at the client and saying "it's him";</p>	Noted. EIOPA disagrees and considers it important that any kind of insurance product falls within the scope of the POG requirement (except for large risks), including bespoke contracts and multi risk products, taking into consideration that the IDD makes no exemption for those products.

			<p>□ Each contract will be separately negotiated and form a different product in its own right. So the idea of overarching principles around the design etc will be unduly onerous especially given the very close role the client and the intermediary will play in the design;</p> <p>- There is a huge irony that products that have caused significant problems for consumers over the last years, are excluded from the POG arrangements: It is regrettable that some products such as non-life insurance add-ons (mobile phone insurance linked to the sale of mobile phones, travel insurance sold together with airline tickets - see EIOPA fourth Consumer trend report) are not in the scope of the IDD Delegated Act on POG (due the fact that they are excluded from the IDD scope).</p>	
132	BNP Paribas	Question 3	No. In our view the policy direction should rather go towards lessening constraints and improving efficiency. New technologies are at the heart of insurers' and distributors emerging strategies and a level and enabling playing field for all actors is necessary to allow them to innovate and experiment with new, faster, simpler tools and products.	Noted.
133	Bund der Versicherten (BdV – German Association of	Question 3	<p>Unfortunately, the notion of remedial action is not precise enough. Its consequences are not clear. Is it only a promise of information given to the consumer, or are there any juridical consequences to be followed (“Folgenbeseitigungsanspruch”)? As a minimum criterion, it should be stipulated that all contracts, which are already concluded, will have to be subject of any “remedial action” proposed for a product.</p> <p>Related to remedial action (cf. CP, p. 23) we additionally propose that if the sale of a product is stopped, this management decision should be published. This should be done not only for the general public, but also with enough details for experts making possible a transparent reconsideration of the decision. The public has to be informed about such an important decision, because there is no need for business secrets related to that product anymore.</p>	Noted. EIOPA has intentionally not further specified “remedial action” to allow the industry to develop best practices. It should also be considered that the action should be appropriate to respond to specific market development (no “one size fits all”)

134	BVI Bundesverband Investment und Asset Management	Question 3	<p>The interrelation between target market definitions under IDD and MiFID II is not addressed in the consultation paper at hand. As regards insurance-based investment products, however, we consider it of utmost relevance that the target market criteria applicable under IDD are at least compatible with the MiFID II concept of a target market. Optimally, insurance undertakings offering e.g. unit-linked insurance contracts should be able to rely on the target market description provided under MiFID II rules in order to determine whether a fund complies with the target market defined at the level of the insurance product.</p> <p>Therefore, while appreciating that the draft technical advice is confined to general principles concerning target market identification, we would like to encourage EIOPA to work towards consistency in language with the relevant MiFID II and PRIIPs provisions. In particular, the criterion of “literacy” of the target market foreseen in para. 9 on page 22 should be replaced with “knowledge and experience” relevant under MiFID II. Similarly, the “degree of financial capability” could be reworded in “ability to bear losses” which applies to the description of the target investor according to PRIIPs.</p> <p>In this context, it should be noted that ESMA is currently working on a set of criteria relevant to the target market specification under MiFID II which shall be communicated by way of Level 3 guidelines. A public consultation on ESMA’s approach to this topic is expected to be launched in the coming weeks. We believe it important for EIOPA to closely monitor these developments and to liase with ESMA in order to develop a common understanding of regulatory principles underlying the target market definition under both EU frameworks.</p>	Noted. EIOPA is of the view that the criteria applicable under IDD and MiFID are compatible as they are of abstract and broad language allowing sufficient discretion and flexibility. Some language has been refined for better alignment with MiFID.
135	CNCIF - Chambre Nationale des Conseillers en	Question 3	We have no comment.	Noted.

136	CSCA French broker Association, 91, rue Saint Laza	Question 3	<p>No We think, as already pointed out, that the draft standards are already excessive, complex and costly. The standards should be simplified and their obligation limited to a few specific deliverables.</p> <p>The projects put forward by EIOPA should demonstrably be good efficiency for money. The financial consequences of a rise in the cost of business production cannot be neutral in terms of rating and their cost to the customer.</p>	Noted.
137	Czech Insurance Association CAP	Question 3	No.	Noted.
138	EFAMA - The European Fund and Asset Manageme	Question 3	<p>The interrelation between target market definitions under IDD and MiFID II is not addressed in the consultation paper at hand. As regards insurance-based investment products, however, we consider it of utmost relevance that the target market criteria applicable under IDD are at least compatible with the MiFID II concept of a target market. Optimally, insurance undertakings offering e.g. unit-linked insurance contracts should be able to rely on the target market description provided under MiFID II rules in order to determine whether a fund complies with the target market defined at the level of the insurance product.</p> <p>Therefore, while appreciating that the draft technical advice is confined to general principles concerning target market identification, we would like to encourage EIOPA to work towards consistency in language with the relevant MiFID II and PRIIPs provisions. In particular, the criterion of "literacy" of the target market foreseen in para. 9 on page 22 should be replaced with "knowledge and experience" relevant under MiFID II. Similarly, the "degree of financial capability" could be reworded in "ability to bear losses" which applies to the description of the target investor according to PRIIPs.</p> <p>In this context, it should be noted that ESMA is currently working on a set of criteria relevant to the target market</p>	Noted. EIOPA is of the view that the criteria applicable under IDD and MiFID are compatible as they are of abstract and broad language allowing sufficient discretion and flexibility. Some language has been refined for better alignment with MiFID.

			<p>specification under MiFID II which will take the form of Level-3 guidelines. A public consultation on ESMA's approach to this topic is expected to be launched in the coming weeks. We believe it important for EIOPA to closely monitor these developments and to liaise with ESMA in order to develop a common understanding of regulatory principles underlying the target market definition under both EU frameworks.</p>	
139	<p>EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb</p>	<p>Question 3</p>	<p>In relation to the achievement of the objectives of the product distribution arrangements, EFPA considers that policy proposals for insurance distributors which advise on or propose insurance products which they do not manufacture should include reference to the required knowledge, expertise and competence that distributors must have in order to understand the product features and the characteristics of the identified target market, correctly place the product in the market and give the appropriate information to customers.</p> <p>Moreover, EFPA considers that distribution of products should be restricted if there is no previous verification of the qualification of the staff that is going to distribute them.</p>	<p>Noted. EIOPA would like to point out that insurance intermediaries have to obtain all relevant information on the product. Furthermore, the general requirement, in particular Article 10 IDD applies, with regard to the competence etc. of the distributors.</p>
140	<p>Fachverband der Versicherungsmakler und Berater in</p>	<p>Question 3</p>	<p>As explained in EIOPA consultation paper on page 14 point14, EIOPA policy proposals do not apply to insurance products which consists of the insurance of large risks as stated in IDD Article 25(4).</p> <p>However, we believe that as the market evolves, it is more and more unclear that this will exempt for example the totality of business written as bespoke negotiated contracts in the subscription market. Where it does, we would have the following concerns:</p> <p><input type="checkbox"/> The proposals as set out by EIOPA seem to envisage a very regimented sequential process from product design; through identifying the target market; to production of documentation etc. In a negotiation, this is never going to happen. Often all of that could take place within one meeting</p>	<p>Noted. Taking into consideration that the IDD does not exempt any insurance product (except for large risks) EIOPA is of the view that there is no (legal) possibility to introduce a further exemption through implementing measures (which would be contradictory to Level 1)</p>

		<p>between the intermediary and the underwriter;</p> <ul style="list-style-type: none"> <input type="checkbox"/> The process of negotiating any contract may well involve meetings including intermediary, underwriter, the client, sometime the underwriter’s reinsurer. Many of the elements of the EIOPA proposals could be covered in such a meeting. For instance, identification of the target market could be achieved by pointing at the client and saying “it’s him”; <input type="checkbox"/> Each contract will be separately negotiated and form a different product in its own right. So the idea of overarching principles around the design etc will be unduly onerous especially given the very close role the client and the broker will play in the design. <p>One of the objectives of Article 27 is to mitigate mis-selling of products due to poor product design/target, products such as non-life insurance adds-ons (mobile phone insurance linked to the sale of mobile phones, travel insurance sold together with airline tickets - see EIOPA fourth Consumer trend report). However IDD Delegated Act on POG will not apply to services or products that are explicitly exempted from the scope of the IDD (where the insurance covers the risk of breakdown, loss of or damage to the goods or non-use of the service or covers damage to or loss of baggage and other risks linked to travel booked with that provider; and where the amount of the premium for the insurance product does not exceed € 600. In circumstances where the insurance is complementary to the good or service and the duration of that service is equal to or less than three months, the amount of the premium paid per person should not exceed € 200). This is quite a wide exemption. It could exclude most of the insurance distribution activities of the travel or car rental industry. For consumers protection reasons, we strongly regret that situation.</p> <p>We believe that more clarity could be introduced on the scope of EIOPA policy proposals on POG arrangements.</p>	
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141	Fédération Française de l'Assurance (FFA) 26 bo	Question 3	<p>Any further arrangements would not be necessary nor useful.</p> <p>On the contrary, we have concerns that the current level of specification is too far reaching (see our response to Q.2).</p>	Noted.
142	FNMF, 255 rue de Vaugirard, 75015 PARIS	Question 3	Any further arrangements are not necessary.	Noted.
143	FRENCH BANKING FEDERATION	Question 3	No.	Noted.
144	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 3	No comment	Noted.
145	German Association of Actuaries (DAV)	Question 3	<p><input type="checkbox"/> The DAV agrees that manufacturers should be required to employ skilled employees as outlined in Draft Technical Advice no. 11 on p. 21. We would like to emphasize that this necessity should also apply to intermediaries who act as manufacturers.</p> <p><input type="checkbox"/> The necessary skills should not only refer to the products' main features and characteristics and to the target markets, but should also explicitly mention mathematical and actuarial skills. Risk pooling is intrinsic to all insurance products. They can only be manufactured when certain stochastic methods are followed and monitored.</p>	Noted. Please see general requirement as already included in Article 10 of IDD which require appropriate knowledge and skills of those providing the services.

146	German Association of Private Health Insurers (PKV)	Question 3	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
147	German Insurance Association (GDV)	Question 3	No further arrangements are required, with the exception of the clarifications recommended in the answer to question 2.	Noted.
148	Institute and Faculty of Actuaries	Question 3	Governance requirements should include the role of the marketing function to convey product features and disseminate information on the product externally, and how this interacts with the other governance functions and responsibilities of the distributor and manufacturer.	Noted.
149	Insurance Europe	Question 3	It would not be useful or necessary for any further arrangements to be introduced. However, as mentioned in the response to Q.2, the current level of detail is disproportionate and in need of modification.	Noted.
150	Intesa Sanpaolo S.p.A.	Question 3	<p>We think that the proposed arrangements are precise and proportionate to the complexity and risks embedded in the products, as well as to the nature, dimension and complexity of the manufacturer. However, in light of the width of the insurance market, both in terms of variety of products, as well as of target markets, we think it would be important to allow for some flexibility (within the overall framework and principles of POG arrangements) in order to meet the differences of various products or target markets. For example, an exemption from the requirement to prior identify the target market should be set for insurance covers that are mandatory by law, as the target markets are identified by the law itself (e.g. professional insurance cover) or by the insurance contract - which may require to fulfil some particular requirements to be valid (e.g. for property insurance, the contract requires to own a property to be valid).</p> <p>Furthermore, when tailoring the products for the target</p>	<p>Noted. Taking into consideration that the principle of proportionality applies, EIOPA is of the view that the policy proposal already allow sufficient flexibility as requested.</p> <p>Please see the feedback statement in the final report.</p>

		<p>clients, or when defining the target market, the manufacturer may elaborate on information provided by the distributor.</p> <p>The cooperation between manufacturer and distributor on the tailoring of products and on the definition of target market, is key for an effective distributive policy – able to responde to the needs of consumers, as identified in recital 54 of the consultation paper. However, this cooperation does not necessarily entail an overlap between the role of the distributor and that of the manufacturer – hence it should not be considered as “acting as manufacturer”. We think the final advice should clarify this point to ensure an effective dialogue between the distributor and the manufacturer, for the benefit of consumers.</p> <p>With reference to product monitoring (also with reference to guidelines 8 and 9 of EIOPA’s Preparatory Guidelines on product oversight and governance arrangements published in March 2016), we think it should be clarified that the POG arrangements shall apply to products that are still marketed by the time the Directive enters into force. As per products that have been placed but are no longer marketed, we think that one-to-one arrangements under exceptional circumstances can be established in order to avoid a detrimental impact on the customer - as it would be impossible to modify such products, given that are no longer marketed.</p> <p>As per recital 52 and guideline n.18 – we think it would be helpful to further clarify in the final technical advice the exceptional circumstances under which distribution to customer outside the target market is permitted and for which insurance products this is allowed.</p> <p>The fact that the distributor determines in detail the effective target market, does not mean that he/she does not respect the potential target market defined by the manufacturer. To</p>	<p>EIOPA would like to point out that this issue is governed by the application and interpretation of the Level 1 provisions of IDD, mainly Article 25 of the IDD and Article 42 of the IDD. The wording of Article 25 (1) of the IDD can be understood to assume that the product oversight and governance arrangements only apply to new products which are sold after the transposition date of the IDD or those products which are significantly adapted or changed.</p>
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			<p>the contrary, the potential target market must be declined into the selling procedures of the distributor through a deep verification involving both parties, who have to share in advance the necessary information.</p> <p>The requirements asking the manufacturer to provide certain information to the distributor (par. 1.20) and the distributor to obtain those information from the manufacturer (par. 2.32 and 2.33), seem to create an overlap of duties – and consequently a lack of clarity - with regard to respective responsibilities. In order to allow the market to operate efficiently, we think that roles and responsibility should be clearly defined and distributed.</p>	
151	IRSG	Question 3	<p>Many of business/ commercial insurance contracts are business written as bespoke negotiated contracts.</p> <p>For these business:commercial insurance contracts, the IRSG has in this respect the following concerns:</p> <p>a)The proposals as set out by EIOPA seem to envisage a very regimented sequential process from product design; through identifying the target market; to production of documentation etc. In a negotiation, this is never going to happen. Often all of that could take place within one meeting between the intermediary, clients and the underwriter;</p> <p>b) Each contract will be separately negotiated and form a different product in its own right. So the idea of overarching principles around the design etc will be unduly onerous especially given the very close role the client and the intermediary will play in the design; the individual client will be “the target market”.</p> <p>One of the objectives of Article 27 is to mitigate mis-selling of products due to poor product design/target, products such as non-life insurance adds-ons (mobile phone insurance linked to the sale of mobile phones, travel insurance sold together with airline tickets - see EIOPA fourth Consumer trend report). The IRSG notes that the IDD Delegated Act on POG will not apply to services or products that are explicitly exempted from the</p>	Noted.

			<p>scope of the IDD (Article 1) (where the insurance covers the risk of breakdown, loss of or damage to the goods or non-use of the service or covers damage to or loss of baggage and other risks linked to travel booked with that provider; and where the amount of the premium for the insurance product does not exceed €600. In circumstances where the insurance is complementary to the good or service and the duration of that service is equal to or less than three months, the amount of the premium paid per person should not exceed €200).</p> <p>As far as product testing is concerned, some members of the IRSG believe that a unified procedure would ensure that consumers all across the EU will benefit from the same rules in this regard. Otherwise there is the risk of certain manufacturers applying different standards for different markets in testing, in example.</p> <p>Some members of the IRSG also believe that upon request, consumers should be able to be granted access to both the manufacturer's product oversight and governance written arrangements and also to the insurance distributor's product distribution arrangements. This could increase consumers' trust in certain cases.</p>	
152	Italian Banking Association	Question 3	<p>We believe that the proposed arrangements are precise and proportionate to the complexity and risks embedded in the products, as well as to the nature, dimension and complexity of the manufacturer. However, in light of the width of the insurance market, both in terms of variety of products as well as of target markets, we believe it would be important to allow for some flexibility (within the overall framework and principles of POG arrangements) in order to meet the differences of various products or target markets. For example, an exemption from the requirement for prior identifying the target market should be set for insurance covers that are mandatory by law, as the target markets are identified by the law itself (e.g. professional insurance cover) or by the insurance contract - which may require to fulfil some particular requirement to be valid (e.g. for property insurance, the contract requires to own a property to be valid).</p>	<p>Noted.</p> <p>Taking into consideration that the principle of proportionality applies, EIOPA is of the view that the policy proposal already allow sufficient flexibility as requested.</p>

			The requirements asking the manufacturer to provide certain information to the distributor, and the distributor to obtain those information from the manufacturer, seem to create an overlap of duties and consequently a lack of clarity with regard to respective responsibilities. In order to allow the market to operate efficiently, we think that roles and responsibilities should be clearly defined and assigned.	
153	Liechtenstein Insurance Association (LVV)	Question 3	No further arrangements are required.	Noted.
154	MALTA INSURANCE ASSOCIATION These comments have b	Question 3	<p>1 In the case of certain lines of business such as commercial business, an insurer may come across these exceptional projects for which an existing, off-the-shelf product to cover such risks may not be readily available. The product, which may be designed by the re-insurers themselves and targeted at a specific client / project rather than to a target market. The inference is that any kind of product, even if it is targeted at one specific client, may need to go through some formal, product-approval process. Since this is considered to be an exceptional circumstance where the product is designed according to the specific needs of the customer, it should be exempted from a formal product approval process. The technical advice itself covers the whole spectrum of products and does not distinguish between any products. The only factor which may be applied is the 'proportionality' principle, otherwise these rules apply to all. In addition there is also a situation where a sophisticated client, normally assisted by a broker, who designs or specifies the requirements of a product himself. These are exceptional circumstances where the rules as provided should not apply.</p> <p>2 Although sales outside the target market would be rare in case of a broader and more abstractly defined target group, EIOPA should explicitly state in the technical advice that it</p>	Noted.

		<p>remains possible generally to sell products outside of the intended target market, provided that they are justified in that particular situation (for instance when the distributor involved decides on the basis of the demands and needs analysis that the product fits that specific customer's needs). A rigid determination of a target market at the level of product design would lead to the exclusion of numerous customers from suitable insurance coverage, if – for different reasons – they do not form part of the target group, despite the fact that the product still meets their individual need for protection. The distributor has to be able to deviate from the pre-set target group if this is reasonable in a particular case.</p> <p>Furthermore, we feel that such new requirements could hinder product innovation and customer-centricity. Consumers should be able to choose from several product options. This choice should not be narrowed excessively by regulatory intervention. In this regard, EIOPA should recognise the fact that in insurance context, there are numerous possibilities to tailor insurance cover according to the needs of consumers via terms and conditions, sub-limits, risk exclusions or inclusions etc. These conditions are not detrimental to consumers, but are essential in order to be able to provide affordable insurance cover which matches the needs of as many consumers as possible.</p> <p>3 It is normal practice in Malta, that independent brokers acting on behalf of sophisticated clients, design or specify the requirements of a product themselves. In this case, would they be regarded as manufacturers? If so, will it be the responsibility of the independent brokers to ensure that their relevant personnel involved in designing such products, possess the necessary skills, knowledge and expertise?</p> <p>4 EIOPA's advice runs the risk of becoming too</p>	
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		<p>detailed, as there are already many processes that need to be met before taking a product to the market. This will particular be the case if there is a long testing period, hindering innovation and work against the interests of consumers. It will also have a detrimental effect on competition in the marketplace, as the fulfilment of a lengthy product testing requirement will hinder competitors from putting a similar product on the market. In this regard, we would like to ask EIOPA to reconsider its position.</p> <p>5 We do not believe that it is necessary to include provisions on the 'negative' target market (ie identifying groups of customers for whom the product is typically not compatible). For many products, trying to clearly define the negative target group or specifying it in an exhaustive way might prove extremely difficult.</p> <p>6 We do not believe it necessary to define a negative list of customers in respect of whom a product is not appropriate.</p> <p>7 EIOPA is stating that a manufacturer shall select distribution channels that are appropriate for the identified target market. In this regard, we wish to point out that manufacturers do not necessarily know, at the time of designing the product, which distribution channel will ultimately be selected by consumers. We urge EIOPA to reconsider its position so as not to prevent consumers from having the freedom to choose the distribution channel they deem most appropriate for their needs, which is particularly important given the wide variety of distribution models available in today's world.</p> <p>8 We would also like to understand how such POG requirements are to be applied if an authorised insurance undertaking sells its products through an insurance agent and</p>	
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			such agent in turn sells such insurance products via independent intermediaries and tied insurance intermediaries. In this regard, is the authorised insurance undertaking responsible to monitor that all the distribution channels act in compliance with the objectives of its product oversight and governance arrangements?	
155	Mediterranean Insurance Brokers (Malta) Ltd.	Question 3	<p>Are there any further arrangements, except those outlined below, which you would consider necessary and important?</p> <p>Yes, the Maltese market feels that there should be a better definition of complex products. There should also be more clarity on the scope of EIOPA policy proposals on POG arrangements. It should be clearly stated that bespoke insurance contracts are excluded from the scope of the proposals.</p> <p>In case of packaged products, it is not clear whether POG arrangements would have to be complied with for each of the products included in the package or only for the packaged product.</p>	Noted. As outlined above EIOPA would like to point out that the IDD itself does not exempt bespoke products; therefore bespoke products are included in the general scope.
156	Slovenian Insurance Association	Question 3	No. We think that POG requirements should be reduced.	Noted.
157	Verband der Automobilindustrie e.V. Arbeitskreis	Question 3	No.	Noted.
158	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 3	<p>3: Gibt es Ihrer Meinung nach neben den unten aufgeführten noch weitere Regelungen, die notwendig bzw. wichtig wären?</p> <p>Neben den von uns empfohlenen Klarstellungen (Frage 2) sind weitere Regelungen für Versicherungsvermittler nicht</p>	Noted.

			notwendig.	
159	Verbraucherzentrale Bundesverband e.V.	Question 3	-	Noted.
160	Allianz SE	Question 4	<p>What costs will manufacturers and distributors face to meet these requirements? If possible, please estimate the costs through quantitative data.</p> <p><input type="checkbox"/> The cost for the implementation of the changes proposed in the regulation put forward will be substantial. It is difficult to quantify, in particular, since many principles and rules leave some room in the specification in the national transpositions.</p> <p><input type="checkbox"/> It should be noted that any cost imposed by additional rules – both for implementation as well as for ongoing compliance and related internal administrative efforts - will be priced in the products and ultimately borne by the customers. This calls for a careful assessment of costs and customer benefits. Care should be taken not to jeopardize the effective offerings available to customers, especially in the lower-income end of the market.</p> <p><input type="checkbox"/> While we are unable to provide concrete Euro estimates at this point in time, it should be understood that the running cost for the newly established concept of POG, next to additional reporting obligations based on last century’s paper by default obligation create substantial additional regulatory costs of insurance products.</p>	Noted. Please refer to the Impact Assessment of the Final Report.
161	AMICE	Question 4	<p>AMICE is not in a position at this point in time to properly estimate the costs that manufacturers and distributors will face in order to meet the requirements set out in the consultation paper.</p> <p>In general, EIOPA should allow for an efficient implementation of the IDD requirements at national level in order to avoid unnecessary costs.</p>	Noted. Please refer to the Impact Assessment of the Final Report.
162	Association of	Question 4	AILO is not able to quantify.	Noted.

	International Life Offices			Please refer to the Impact Assessment of the Final Report.
163	Assuralia	Question 4	<p>Assuralia is not in a position to provide an estimate or quantitative data on the amount of costs related to the implementation of the POG requirements. However, the following principles need to be taken into account:</p> <ul style="list-style-type: none"> - in order to limit unnecessary costs, the existing legal framework (both European and national) should be taken into account (see our answer to Q2 and Q3); - the principle of proportionality needs to be applied in practice (see our answer to Q2 and Q3); - the policy proposals should only concern (i) newly designed products that are not yet put on the market and (ii) existing products that are significantly changed after the IDD becomes applicable, as required by the IDD. Any retroactive application would significantly raise costs. 	Noted. Please refer to the Impact Assessment of the Final Report.
164	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 4	-	Noted.
165	BIPAR	Question 4	<p>It is worth noting that no study or impact assessment has indicated a particular need for detailed POG requirements for non-life insurance products (e.g. motor, home) or certain pure risk life insurance products.</p> <p>The cost question should have been part of the level I impact assessment. The costs – also for the European economy as an exporter of insurance knowhow- are potentially enormous if one considers the above mentioned legal uncertainty that is created for the entire market.</p>	Noted. Please refer to the Impact Assessment of the Final Report.
166	BNP Paribas	Question 4	See response to question 1	Noted.

167	Bund der Versicherten (BdV – German Association of	Question 4	<p>Generally spoken it is predictable that costs associated with the new requirements are likely to be passed on to the customers, so prices could go up. But we stress that reasonable undertakings should not have any additional costs, because they should already have implemented equivalent requirements in order to prevent from customer detriment. If not, the industry will always find any kind of justifications for an increase of prices, so this is not a specific argument against the POG arrangements.</p> <p>Additional product testings, ongoing products monitorings and enhanced exchange of information between manufacturers and distributors may actually increase product costs. The real detriment of consumers does not consist in an increase of prices due to these necessary procedures by manufacturers and distributors, but on the contrary by the absence of these provisions which have already entailed and will continue to entail severe mis-selling practices. Consumer protection does not mean to offer and buy the cheapest product, but to be able to make an actually best informed decision.</p>	Noted. Please refer to the Impact Assessment of the Final Report.
168	CNCIF - Chambre Nationale des Conseillers en	Question 4	The costs entailed by the proposed changes might be significant. However, such costs are difficult to quantify.	Noted. Please refer to the Impact Assessment of the Final Report.
169	CSCA French broker Association, 91, rue Saint Laza	Question 4	We are not in a position to determine this. They will clearly be variable depending on the organisational structure used but will certainly have an impact on the French distribution scene in view of the fixed and variable costs conferred by formalism.	Noted. Please refer to the Impact Assessment of the Final Report.
170	Czech Insurance Association CAP	Question 4	The current process must be adjusted. Most likely, new mechanism to supervise the POG compliance will have to be developed. Currently, it is not possible to estimate final costs. However, it may amount to hundred thousands of Czech crowns a year (approx. thousands of EUR/year) plus additional costs to hire new employees. We assume that the	Noted. Please refer to the Impact Assessment of the Final Report.

			<p>necessary expenses might have to be projected in the final costs of products, i.e. the price for client.</p> <p>At this point, we would like to clarify that POG requirements apply only to new products or in case of significant changes of the existent. In case of any retroactive application to existent products it will result in huge administrative burden on insurance companies, extensive costs and need for much longer time for the implementation.</p>	
171	European Federation of Financial Advisers and Fina	Question 4	<p>What costs will manufacturers and distributors face to meet these requirements? If possible, please estimate the costs through quantitative data.</p> <p>At this stage it is not possible to estimate the costs for distributors. At first it has to be clarified which obligations will be required and to what extent they become valid.</p>	Noted. Please refer to the Impact Assessment of the Final Report.
172	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 4	-	Noted.
173	Fachverband der Versicherungsmakler und Berater in	Question 4	<p>It is worth noting that no study or impact assessment has indicated a particular need for detailed POG requirements for non-life insurance products (e.g. motor, home) or certain pure risk life insurance products.</p> <p>The cost question should have been part of the level I impact assessment. The costs are potentially enormous if one considers the above mentioned legal uncertainty that is created for the entire market.</p>	Noted. Please refer to the Impact Assessment of the Final Report.
174	Fédération Française de l'Assurance (FFA)	Question 4	See our reply under Q1	Noted.

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175	FG2A (Fédération des Garanties et Assurances Affin	Question 4 : What costs will manufacturers and dis	<p>The FG2A has not yet conducted an impact assessment regarding the costs faced by manufacturers and distributors in the affinity sector to meet the new requirements.</p> <p>However, a first discussion among our members allowed us to identify 3 types of costs that compliance with IDD will entail :</p> <ul style="list-style-type: none"> - Costs associated with the extension of the time period necessary to negotiate and formalize the governance agreements between manufacturers and distributors for their new products. This will also involve consequent legal fees ; - Costs associated with the organised sharing of information within the value chain between the manufacturer(s) and distributor(s). Costs will be significantly higher for market participants working in an open architecture model (involving several manufacturers and distributors). We believe many market participants will need to upgrade their IT systems in order to meet the requirements of the IDD. - Costs associated with the definition of new procedures and process within the organizations for all participants involved in the manufacturing and distribution of insurance products, including controls costs. <p>Regarding the latter, we urge the European Commission to avoid any duplication in the controls performed across the value chain, which would otherwise significantly increase total costs and impair product innovation.</p> <p>With respect to the costs issue, a key parameter that will</p>	<p>Noted. Please refer to the Impact Assessment of the Final Report.</p>

			<p>drive the total costs is the timeframe that will be left to professional to apply the new rules for the different categories of products portfolio :</p> <ul style="list-style-type: none"> - the new programs (for which it seems reasonable to apply the new rules as soon as the directive become effective in national countries); - the existing products but still sold to customers (for which remediation plan will have to be drafted and implemented); - the existing products managed on a "run-off" mode. <p>Depending on the choice of deployment, total costs could be easily multiplied by a factor of 2 to 3. That's the reason why the FG2A France would be in favour of a grandfathering clause of at least 5 years for the existing products still sold to customers (to the extent such products are included in the scope of the Directive).</p>	
176	FNMF, 255 rue de Vaugirard, 75015 PARIS	Question 4	See Answer 1	Noted.
177	Genossenschaftsv erband Bayern e.V. (GVB – Bavarian	Question 4	No comment	Noted.
178	German Association of Private Health Insurers (PKV	Question 4	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
179	German Insurance Association (GDV)	Question 4	The costs entailed by the proposed changes would be considerable. However, it is impossible to give exact numbers. The costs will have to be borne by the collective of insureds. The insurance companies are doing their best to cut costs by streamlining processes and promoting digitalization. Such	Noted. Please refer to the Impact Assessment of the Final Report.

			efforts are undermined where insurers are required to introduce and document new processes. The additional costs will increase the number of intermediaries that are forced out of the market.	
180	Institute and Faculty of Actuaries	Question 4	<p>Monitoring distribution channel activities, and examining on a regular basis whether the product is distributed to customers belonging to the relevant target market, has the potential not only to add value to both manufacturers/ distributors, but also to be in the consumers' interest.</p> <p>However, the testing of suitability may prove challenging: it requires sufficient data on the consumer (which needs to be captured and transmitted to the manufacturer), actuarial analysis and remediation when it has gone wrong.</p> <p>Monitoring distribution channel activities/ distribution to the relevant target market presents wider challenges, with potentially significant costs. In the UK many insurance contracts are distributed by intermediaries who are independent of the manufacturer (including price comparison websites). Therefore new arrangements for sharing information on whether the product is reaching the target market will be necessary. This may require an automated solution and, on an industry-wide level in the UK, the total set up and operating costs could be quite significant to the industry.</p> <p>In addition, many distributors (and in particular for non-life insurance products) will make products generally available without advising on the sale. In such cases the distributors may have very little information about the purchasers on which to assess whether they meet the target market criteria.</p>	Noted. Please refer to the Impact Assessment of the Final Report.
181	Insurance Europe	Question 4	It is not possible to provide an estimate of the costs and benefits of the possible changes outlined in the consultation	Noted. Please refer to the

			<p>paper since the current policy proposals are not final yet.</p> <p>No definite implementation plans can be put in place by insurance companies until they have legal certainty over the content of the final text of the possible delegated acts.</p> <p>Recommendation: It is crucial that the delegated acts are finalised as soon as possible to allow an effective preparatory period for companies and prevent additional costs, while at the same time ensuring effective protection and clarity for consumers.</p>	Impact Assessment of the Final Report.
182	Intesa Sanpaolo S.p.A.	Question 4	The total costs will very much depend on the business model chosen (co-manufacturer model or separate model for manufacture), the level of granularity for defining possible target market and on how the cooperation with the distributor in the monitoring of products to prevent/ mitigate customer detriment operates. Putting in place a co-manufacturer agreement would make the manufacturing model more complex, but we expect that the monitoring activity of the target market would be more effective.	Noted. Please refer to the Impact Assessment of the Final Report.
183	Liechtenstein Insurance Association (LVV)	Question 4	The costs entailed by the proposed changes would be substantial. It isn't possible to give exact numbers.	Noted. Please refer to the Impact Assessment of the Final Report.
184	<p>MALTA INSURANCE ASSOCIATION</p> <p>These comments have b</p>	Question 4	<p>1 Although we have not to date quantified the costs which manufacturers will incur in order to meet the requirements outlined in the consultation document, we envisage that significant costs will be incurred in connection with the following arrangements:-</p> <p>a. Enhancements to the IT system for the purpose of the required monitoring of intermediaries. This is being considered also in the light of the technical requirements of the Insurance Product Information Document, which are addressed in a separate consultation document issued by EIOPA;</p> <p>b. Outsourcing of product testing if required;</p> <p>c. Increased Audit requirements and internal controls;</p>	Noted. Please refer to the Impact Assessment of the Final Report.

			<p>d. Regular training to be provided to all customer facing staff.</p> <p>We believe that, in complying with such POG requirements, insurers' and intermediaries' costs will increase significantly. In this regard, any proposed product oversight and governance provisions should be applied on more demanding, sophisticated insurance products and not on simple products (including non-life products such as home and motor insurance) which are developed for the purpose of covering a particular risk.</p>	
185	Mediterranean Insurance Brokers (Malta) Ltd.	Question 4	<p>What costs will manufacturers and distributors face to meet these requirements? If possible, please estimate the costs through quantitative data.</p> <p>The cost question should have been part of the level I impact assessment. The costs cannot be quantified but are potentially high when one considers the legal uncertainty that is created for the entire market.</p>	Noted. Please refer to the Impact Assessment of the Final Report.
186	Slovenian Insurance Association	Question 4	<p>Estimation of the costs that insurance companies in Slovenia will face in order to meet the new POG requirements:</p> <ul style="list-style-type: none"> - One-time cost of information technology for new documentation requirements: 1‰ of annual income from insurance premiums. - Increase of costs of additional employing and other operating costs for performing new POG requirements, per year: 1,5‰ of annual income from insurance premiums. - Increase of costs for development of new products for approximately 100%, development time will be considerably extended. 	Noted. Please refer to the Impact Assessment of the Final Report.
187	The Danish Insurance Association	Question 4	<p>At this point in time the DIA is not able to provide an estimate of the costs and benefits of the possible changes outlined in the consultation paper, since the current policy proposals leave room for interpretation and are not final yet.</p>	Noted. Please refer to the Impact Assessment of the Final Report.

			<p>As long as the current legal uncertainty continues and consequently no definite implementation plans exist yet in insurance companies, the costs manufacturers will face by meeting these requirements can neither be estimated nor quantified.</p> <p>It should be noted that a short preparatory period would come at a certain cost, particularly in the IT area.</p>	
188	Verband der Automobilindustrie e.V. Arbeitskreis	Question 4	At present, costs cannot yet be estimated.	Noted. Please refer to the Impact Assessment of the Final Report.
189	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 4	<p>4: Welche Kosten werden auf Hersteller und Vertreiber zukommen, wenn sie diese Anforderungen erfüllen? Geben Sie bitte, sofern möglich, eine Schätzung der Kosten mittels quantitativer Daten an.</p> <p>Der durch die vorgeschlagenen Regelungen induzierte Aufwand ist beträchtlich – wenn auch durch den VDVM nicht konkret bezifferbar. Letztlich trägt das Versichertenkollektiv die Kosten dafür. Die Versicherer bemühen sich, die Kosten zu senken, indem sie Abläufe verschlanken und digitalisieren. Das wird durch neu einzuführende und zu dokumentierende Prozesse erschwert. Die zusätzliche Kostenbelastung wird dazu führen, dass Vermittler den Markt verstärkt verlassen.</p>	Noted. Please refer to the Impact Assessment of the Final Report.
190	Verbraucherzentrale Bundesverband e.V.	Question 4	-	Noted.
191	Allianz SE	Question 5	Do you agree with the proposed high-level principle in order to assess whether activities of an insurance intermediary should be considered as manufacturing?	Noted. EIOPA would like to point out that the responsibilities of co-manufacturers

			<input type="checkbox"/> Yes, in particular we agree with the principle of an overall analysis (sec. 11, p. 29), i.e. a holistic perspective. <input type="checkbox"/> If the high level principle is designed to introduce further consumer protection in the process of more tailor made product development, the allocation of liabilities should not be left to the co-manufacturer's free contractual choice. Such contract would not be transparent to the client but might indirectly impact his protection. It would be therefore useful requiring that co-manufacturers and their respective liabilities in the manufacturing process are indicated in information documents given to prospective clients in good time before conclusion of the contract (e.g. KID or similar document).	resulting from the IDD may not identical with regard to the responsibilities towards the customers (following the application of national contract law).
192	ANASF	Question 5	Yes, we do. Specifically, we agree with par. 3: the activities relating to the personalisation and adaptation of existing insurance products in the course of insurance distribution activities to the individual customer shall not be considered as activities of manufacturing.	Noted.
193	Association of International Life Offices	Question 5	Intermediaries may wish to distribute a "white labelled" version of an IBIP offering access to a restricted number of a providers MOP assets. Assurance would be welcome that this is within the intended scope of personalisation of existing products considered not to be manufacturing.	Noted.
194	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 5	<p>Mit dem vorgeschlagenen Grundsatzprinzip zur Beurteilung, wann bzw. bei welchen Tätigkeiten ein Versicherungsvermittler als Hersteller gilt, sind wir nicht einverstanden. Laut Vorschlag gilt ein Versicherungsvermittler als Hersteller, wenn er eine entscheidende Rolle bei der Gestaltung und Entwicklung eines Versicherungsprodukts für den Markt spielt, wobei von einer entscheidenden Rolle insbesondere dann auszugehen sei, wenn der Versicherungsvermittler maßgeblich an einer Tätigkeit beteiligt ist oder einen wesentlichen Beitrag leistet, bspw. bei der Definition der wesentlichen Komponenten eines neuen Versicherungsprodukts, unter anderem wie beispielsweise Versicherungsschutz/Deckungsumfang und Zielmarkt.</p> <p>Hier könnte, je nach Auslegung, auch die dem</p>	Noted. The policy proposals have been revised to narrow down the conditions under which a manufacturer should be considered as manufacturer. Please also refer to EIOPA's feedback statement in the Final Report.

			<p>Verbraucherinteresse dienende Mitwirkung von Versicherungsmaklern in Maklerbeiräten oder ähnliches erfasst werden.</p> <p>Als Sachwalter des Kunden und vor dem Hintergrund ihrer umfassenden Haftung vermitteln Versicherungsmakler bedarfsgerechte Produkte unter Berücksichtigung überdurchschnittlicher Leistungen und Prämienhöhe. Um am Maklermarkt erfolgreich zu sein, müssen Versicherungsunternehmen ihre Produkte kontinuierlich verbessern. Bei vielen maklerorientierten Versicherern ist es üblich, Versicherungsmakler und deren Wissen um den Kundenbedarf in die Produktentwicklung für neue Deckungsmodule oder Verbesserung alter Deckungsbausteine, bspw. durch Arbeitskreise mit Maklerbeiräten, einzubinden.</p> <p>Wenn Versicherungsmakler ihr Wissen um den Kundenbedarf einem Versicherer zur Verfügung stellen, womit letztlich Verbraucherschutz praktiziert wird, dann sollten Versicherungsmakler durch diese Tätigkeit nicht als Hersteller eines Versicherungsproduktes gelten mit den entsprechenden regulatorischen Folgen für Hersteller.</p> <p>Nach unserem Verständnis von Artikel 25 IDD soll die beschriebene Mitwirkung von Versicherungsmaklern in Maklerbeiräten einen Versicherungsmakler nicht zum Hersteller eines Versicherungsproduktes machen. Nach dem vorgeschlagenen Grundsatzprinzip der EIOPA droht diese Tätigkeit aber als Herstellertätigkeit ausgelegt zu werden. Hier regen wir eine Klarstellung an, dass die dem Verbraucherinteresse dienende Mitwirkung von Versicherungsmaklern bspw. in Maklerbeiräten diese nicht zu Herstellern von Versicherungsprodukten machen.</p>	
195	BIPAR	Question 5	<p>Specific comments on EIOPA draft technical advice regarding "acting as manufacturer"</p> <p>Points 1 and 2 will lead to too much legal uncertainty. They are too broad and general.</p>	<p>Noted. EIOPA agrees that intermediaries should not unintentionally be captured as</p>

		<p>BIPAR also believes that it is crucial that EIOPA policy proposals are clear enough to avoid situations where an intermediary would unwillingly or unknowingly be considered as a manufacturer.</p> <p>Points 1 and 2 should be deleted and building on proposed point 4, points 1, 2 and 4 could be redrafted as follows:</p> <p>In principle the insurance undertaking is the manufacturer of insurance products.</p> <p>In situations where the insurance intermediary is de facto involved in the design and development of an insurance product, the insurance intermediary and the insurance undertaking issuing the insurance product, shall, through a necessary and proportionate collaboration, define their respective roles in a written agreement. The insurance undertaking remains fully responsible to the customer for the coverage provided.</p> <p>Point 3</p> <ul style="list-style-type: none"> - BIPAR believes that the use of the wording "to individual customer" would seem to specifically and rightly rule out bespoke negotiated contracts but this could be more clearly stated for legal clarity sake. - BIPAR believes that it would be worth adding to point 3, as an example of not manufacturing, examples such as intermediaries bringing together a number of existing products into a package to meet a customer's needs. <p>Point 3 should be redrafted as follows:</p> <ul style="list-style-type: none"> -Activities which relate to the personalisation and adaptation of existing insurance products in the course of insurance distribution activities to the individual customer (bespoke 	<p>manufacturer. For that purpose and in order to avoid insurance intermediaries being captured by too broad an understanding of manufacturing, EIOPA has replaced "key role" with "decision-making role" to emphasise that an insurance intermediary acts as manufacturer, only, if he takes the decision on key elements of an insurance product.</p>
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			negotiated contracts) shall not be considered as activities of manufacturing, in particular cases such as bringing together a number of existing products into a package to meet a customer's needs, the mere opportunity to choose between different lines of products, contractual causes and options, individual premium discounts, recommendation of asset, with regard to a product already designed by the insurance undertaking.	
196	BNP Paribas	Question 5	<p>We note that where the insurance intermediary would be considered as manufacturing in any event the insurer and that intermediary would be considered co-manufacturers and the ultimate responsibility will rest with the insurer only; in such case the responsibility of the insurer should be limited to the terms of cover, but not in terms of the design of the product nor whose interests it serves (and for whom it is not designed)</p> <p>Also, please see our response to question 6 below.</p>	Noted. In cases where insurer and intermediary are both considered as manufacturer, both are responsible for fulfilling with the POG arrangement.
197	British Bankers Association (BBA)	Question 5	We strongly agree that not all kinds of involvement or influence of an insurance intermediary in the design and manufacturing of an insurance product, should be considered as manufacturing.	Noted.
198	Bund der Versicherten (BdV – German Association of	Question 5	Yes, we agree.	Noted.
199	BVK Germany	Question 5	We agree with the technical draft Nr 3. This gives the idea of the work done by a tied intermediary.	Noted.
200	CNCIF - Chambre Nationale des Conseillers en	Question 5	<p>Yes.</p> <p>We agree with the proposed high-level principle in order to assess whether activities of an insurance intermediary should be considered as manufacturing.</p> <p>We generally consider that the involvement of an intermediary</p>	Noted.

			<p>in the design of an insurance product he distributes thereafter has the potential to generate positive benefits for customers by creating a product closer to their needs, if an appropriate regulation to ensure that intermediaries comply the duty of acting in their customers' best interest is enacted.</p>	
201	<p>CSCA French broker Association, 91, rue Saint Laza</p>	<p>Question 5</p>	<p>No. The insurance intermediary is not authorized to bear the responsibility for the design of a product. It can work with an insurance company, it can suggest the creation of insurance products based on its own expertise, but it is imperative that the insurance company, which has official authorization, bears full responsibility for product governance.</p> <p>As a reminder, European regulations clearly distinguish two types of providers which European legislature considers in extremely different ways:</p> <p>(1) The risk bearer: an insurance company that has specific approval from the supervisory authorities, operating under permanent supervision for risk management operations and the prudential environment related to risk management;</p> <p>(2) The distributor: an insurance intermediary operating without official authorization and only allowed to market and manage on behalf of Companies when expressly empowered, subject to mandatory registration and carrying on business under specific control by the authorities.</p> <p>The insurance intermediary or product distributor can contribute or suggest creation of an insurance product, but necessarily in consultation and under the full responsibility of the insurance company.</p> <p>The technical standards concerned must reflect this fundamental difference.</p> <p>There can be no question of burdening the distributor with responsibility for the design of insurance products, even if its expertise has enabled contribution or collaboration with a risk</p>	<p>Noted. In order to avoid insurance intermediaries being captured by too broad an understanding of manufacturing, EIOPA has replaced "key role" with "decision-making role" to emphasise that an insurance intermediary acts as manufacturer, only, if he takes the decision on key elements of an insurance product.</p>

		<p>carrier.</p> <p>Given that Article 25 (1) of the Directive provides that:</p> <p>“Insurance undertakings, as well as intermediaries which manufacture any insurance product for sale to customers, shall maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers”.</p> <p>It therefore applies exclusively and solely to the intermediary creating (directly and independently) an insurance product.</p> <p>This situation has no legal character in French law.</p> <p>Nor does it correspond to economic market reality.</p> <p>It is the insurers that reference intermediaries (distributors) and not the contrary.</p> <p>It is therefore for the insurance providers to make the choice of intermediary insurance agencies and to point out their obligations in respect of the target market and related to product governance as defined by the manufacturer (insurance agency) in the agreements delegating subscriptions and management to insurance intermediaries.</p> <p>Article 9(1) of the draft Directive varies considerably from this task :</p> <p>“Member States shall require investment firms to comply with this Article when manufacturing financial instruments, which encompasses the creation, development, issuance and/or design of financial instruments”.</p> <p>Such a position is questionable: It enlarges the field of application of this obligation to intermediaries insofar as it applies to actors who have not only created a product, but</p>	
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		<p>played a role in its fabrication, which is far from the same thing.</p> <p>This extension is unacceptable:</p> <ul style="list-style-type: none"> -It constitutes a substantial modification to the text of the directive ; -It is substantially ill-conceived because it displaces the responsibility of the designer or producer to an actor that does not have the appropriate characteristics. - It violates public policy rules concerning administrative approvals <p>The principle itself of defining an insurance intermediary as "a designer" is very debatable. It introduces confusion between the actor authorized to supply and produce an insurance product who must therefore assume the entire responsibility, and the intermediary, who does not have this role (absence of authorization to do so).</p> <p>The idea of placing responsibility on the intermediary simply because he is involved in the design of a product is a misinterpretation (see § 2, p. 27 "IDD acknowledge that, in certain circumstances, insurance intermediaries can be involved in the manufacturing of insurance products"). The concept of "Key role" is very ill-defined.</p> <p>For the insurance intermediary to play a key role in the design is certainly possible from the point of view of intellectual property in the idea for a type of product, and from the general point of view of creativity; but it is not comprehensible as regards the respective functions of the actors and the responsibility that falls on the "designer" in the</p>	
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			legal meaning of the term.	
202	Czech Insurance Association CAP	Question 5	We agree with the possibility of considering an intermediary as a manufacturer of insurance products. Nevertheless, in such case the same POG requirements shall apply to those intermediaries.	Noted. EIOPA agrees with the proposed consequence that the same POG requirement should apply.
203	Eurofinas	Question 5	<p>We share the EIOPA’s view that product oversight and governance arrangements must be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity. We therefore strongly agree with the EIOPA that not all kinds of involvement or influence of an insurance intermediary in the design and manufacturing of an insurance product, should be considered as manufacturing.</p> <p>Eurofinas believes that the scope of the activities as identified by the EIOPA as an exercise of substantial involvement in the manufacturing process of insurance products, is too wide. Larger insurance intermediaries are by definition involved in defining the features of the product, since they are the ones that are in contact with the customers. However, this should not per se qualify them as the product manufacturer any more than any other third party that helps the insurance company to identify customer requirements.</p> <p>For example, the mere act of an insurance intermediary to enquire about the possibility to provide coverage that does not yet exist in that market - in response to a customer’s request for it - cannot be seen as “incisive”.</p> <p>As noted by the EIOPA, it should be assumed that an intermediary can be considered a manufacturer only when it plays a key role in the design and development of insurance products.</p> <p>This, however, is rarely the case. In general, the manufacturer always has the final authority to decide on product details, timing of market launches and definitions of</p>	Noted. In order to avoid insurance intermediaries being captured by too broad an understanding of manufacturing, EIOPA has replaced “key role” with “decision-making role” to emphasise that an insurance intermediary acts as manufacturer, only, if he takes the decision on key elements of an insurance product. For further details, please refer to the feedback statement in the Final Report.

			<p>target markets. The manufacturer also carries full responsibility for these decisions – towards customers as well as supervisory authorities.</p> <p>Furthermore, the insurance undertaking is subject to a comprehensive supervision which involves disclosure of internal product approvals processes as well as risk management processes.</p> <p>Another important point in distinguishing the status of a manufacturer in comparison to that of the distributor is the fact that the distributor is subject to the directives of the manufacturer. That means the manufacturer has the right to instruct the distributor on what products should be sold to which target market and under which conditions. A further extension of the distributors’ responsibilities and obligations would be redundant, costly and would not lead to any tangible benefit for the customers.</p> <p>Against this backdrop, we draw EIOPA’s attention to the need for consistency between the draft technical advice and its explanatory note, particularly paragraphs 8 – 15. For the sake of legal certainty, we would like to ask the EIOPA to incorporate paragraph 11 of the explanatory note into the draft technical advice.</p>	
204	European Federation of Financial Advisers and Fina	Question 5	<p>Do you agree with the proposed highlevel principle in order to assess whether activities of an insurance intermediary should be considered as manufacturing?</p> <p>If the insurance intermediary plays a key role in designing and developing an insurance product for the market we agree with the proposed high-level principle.</p>	Noted.
205	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 5	-	Noted.
206	Fachverband der Versicherungsmak	Question 5	We agree with EIOPA (page 28/29), that given the diversity present in the distribution activities throughout the EU, the	Noted. The policy proposals have been slightly

	ler und Berater in		<p>qualification of the insurance intermediary as a manufacturer should only be made based on a case by case basis for each product designed. We particularly agree that a relevant criterion is "whether the product is sold under the brand name of the insurance intermediary". We regret that this is not clearly reflected in the EIOPA draft Technical advice on the issue.</p> <p>Specific comments on EIOPA draft technical advice regarding "acting as manufacturer"</p> <p>Points 1 and 2 will lead to too much legal uncertainty. They are too broad and general.</p> <p>We also believe that it is crucial that EIOPA policy proposals are clear enough to avoid situations where an intermediary would unwillingly or unknowingly be considered as a manufacturer.</p> <p>Points 1 and 2 should be deleted and building on proposed point 4, points 1, 2 and 4 could be redrafted as follows:</p> <p>In principle the insurance undertaking is the manufacturer of insurance products.</p> <p>In situations where the insurance intermediary is de facto involved in the design and development of an insurance product, the insurance intermediary and the insurance undertaking issuing the insurance product, shall, through a necessary and proportionate collaboration, define their respective roles in a written agreement. The insurance undertaking remains fully responsible to the customer for the coverage provided.</p> <p>Point 3</p> <ul style="list-style-type: none"> - We believe that the use of the wording "to individual customer" would seem to specifically and rightly rule out bespoke negotiated contracts but this could be more clearly stated for legal clarity sake. - We believe that it would be worth adding to point 3, as an 	<p>revised. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>
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			<p>example of not manufacturing, examples such as intermediaries bringing together a number of existing products into a package to meet a customer's needs.</p> <p>Point 3 should be redrafted as follows:</p> <p>-Activities which relate to the personalisation and adaptation of existing insurance products in the course of insurance distribution activities to the individual customer (bespoke negotiated contracts) shall not be considered as activities of manufacturing, in particular cases such as bringing together a number of existing products into a package to meet a customer's needs, the mere opportunity to choose between different lines of products, contractual causes and options, individual premium discounts, recommendation of asset, with regard to a product already designed by the insurance undertaking.</p>	
207	Fédération Française de l'Assurance (FFA) 26 bo	Question 5	<p>Article 25 IDD provides that POG procedures should be put in place "when insurance undertakings, as well as intermediaries manufacture any insurance product for sale to customers ».</p> <p>1. Bespoken contracts:</p> <p>In some cases, intermediaries design the coverage, the target market, the terms and conditions etc. of an insurance product with/on the behalf of a specific customer (i.e. brokers may be asked by its client i.e. regional or local authorities, hospitals., in order to cover specific risks). In the cases above, we are not in the conditions set up in article 25 where the product is manufactured for sale to customers.</p> <p>2. Intermediaries as manufacturers:</p> <p>In other cases, intermediaries can be regarded as manufacturers where they play a key role in product design and development. In these cases, it seems reasonable and logical that only the intermediary is subject to the product oversight and governance requirements as manufacturer of insurance products, while insurance undertaking covering the risk remains fully responsible to the customer for the</p>	Noted. The policy proposals have been revised to provide further clarity. See also EIOPA's feedback statement in the Final Report.

			<p>contractual obligations (clauses in the contract etc.) resulting from the insurance product.</p> <p>Under any circumstances, insurance undertakings should not be seen as a "co-manufacturer" and assume administrative responsibility for non-compliance of POG procedures (thus paragraphs 13 and 14 on page 29 should be deleted). Moreover co-manufacturing will lead to legal uncertainty and misinterpretation.</p> <p>On that account, we once more stress taking into account difference between administrative responsibility for POG procedures and contractual obligations and liability to the customer as to the insurance cover.</p>	
208	FG2A (Fédération des Garanties et Assurances Affin	Question 5 : Do you agree with the proposed high	<p>Article 25 IDD provides that POG procedures should be put in place "when insurance undertakings, as well as intermediaries manufacture any insurance product for sale to customers ».</p> <p>The first step is to clarify the true meaning of "manufacturing". This can be done by reminding that a typical product development process entails the following two phases :</p> <p>Step 1- Development instigation : identification of a new customers need(s) ; business case proposal; preliminary market testing</p> <p>Step 2- Design and Build (deciding the key contract components : target market, coverage, premium etc.; distribution strategy; marketing)</p> <p>FG2A France believes that step 1 has nothing to do with true "manufacturing". At step 1, many development instigations projects can indeed be abandoned for various reasons. Then it</p>	Noted.

		<p>would not make sense to consider an insurance intermediary as "manufacturing" if its role is only limited in participating to this first step. Bringing new products ideas or formalizing an expression of customer needs, even through a tender, is very different than building an insurance contract.</p> <p>Only step 2 (design and build) can be considered in our view as true manufacturing. Actually we haven't seen any case in our sector where such role is carried out solely by an intermediary.</p> <p>In our view this is consistent with our reading of article 25 IDD which states that "insurance undertaking, as well as intermediaries", which seems to exclude the situation where the manufacturing role could be carried out only by an intermediary. We would like the Delegated Acts to confirm this point.</p> <p>However, in very few cases, an insurance intermediary may play a key role in step 2 and then be considered as a "manufacturer", alongside the insurance undertaking. In such situation, which are again very limited, we think that a collaboration will have to be organized between the insurance undertaking and the intermediary to state clearly their respective roles and responsibilities, in order to avoid any legal uncertainty.</p> <p>This collaboration should be organized and detailed in a written agreement highlighting that :</p> <ul style="list-style-type: none"> - The insurance undertaking remains contractually responsible of the content of the policy sold to the client; - It is the responsibility of the distributor to ensure that the product it offers matches the customer's needs. The producer can set guidelines (pension product will not sell to retirees, 	
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			unemployment insurance not to sell to officials, exclusions that make such a product is not suitable for military, etc ..); but ultimately the distributor's responsibility is to determine what is appropriate for a given client.	
209	FRENCH BANKING FEDERATION	Question 5	<p>No.</p> <p>These recommendations should be clarified. Indeed, all the POG requirements should not be applied by the sole insurance intermediary where he only takes part in the product manufacturing and the needs definition.</p> <p>It is our understanding that EIOPA is misunderstanding the usual participation of the distributor to the manufacturing of a product by providing the manufacturer with detailed information on the demands and needs of clients of which he has a better knowledge, in order for the manufacturer to design an insurance product for a said target market. This involvement which may be substantial as mentioned in recommendation 2, does not mean that a distributor is then acting as a manufacturer nor as a co-manufacturer with the insurer. The criteria laid down in recommendation 2 are not relevant enough or too vague to define the manufacturing work. Worse, they may lead to a co-manufacturer concept which may give rise to additional difficulties of defining the role and liabilities of each co-manufacturers. In addition, art 25 IDD does not provide for such co-manufacturing concept.</p>	Noted. Assuming an insurance intermediary is acting as a manufacturer, EIOPA would like to point out that the insurance undertaking and insurance intermediary are responsible to fulfil the product oversight and governance requirements for manufacturers.
210	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 5	No comment	Noted.
211	German Association of Private Health Insurers (PKV	Question 5	The proposed basic principle to assess whether the activities of insurance intermediary shall be considered as manufacturing is too broad.	Noted. In order to avoid insurance intermediaries being captured by too broad

			<p>The insurance intermediary shall be considered as a manufacturer if he is significantly involved in the product development and product design. However, it is not rare that insurance intermediaries ask the insurance company for a selected target market for new products for distribution in the field of private health insurance.</p> <p>Due to the sales experience of intermediaries their proposals are heard. They act in an advisory capacity in product design and product development. Even though this is an essential contribution to the conception of a new insurance product, the insurance intermediary shall in the case of product recommendation not be considered as manufacturer since the design and development of the tariff (conditions and contributions) are solely with the insurance companies. Against this background, paragraph 4.2.1 item 3 should be amended to the extent that in case of product recommendations by insurance intermediaries they are not considered as manufacturers.</p>	<p>an understanding of manufacturing, EIOPA has replaced “key role” with “decision-making role” to emphasise that an insurance intermediary acts as manufacturer, only, if he takes the decision on key elements of an insurance product.</p>
212	German Banking Industry Committee (GBIC)	Question 5	We agree that distributors can be considered as a manufacturer if, and only if, the distributor exceptionally plays a key role in designing and developing an insurance product for the market.	Noted.
213	German Insurance Association (GDV)	Question 5	We agree with the proposed principles. Assuming that intermediaries can be regarded as manufacturers where they are playing a key role in product design and development is the right approach.	Noted.
214	Institute and Faculty of Actuaries	Question 5	The definition is too narrow and would result in intermediaries being considered manufacturers in too many cases, e.g. by requesting that a product is designed to cover a key target market and then lending support to the development process. This would increase governance costs and could potentially	Noted. In order to avoid insurance intermediaries being captured by too broad

			<p>have unintended consequences, such as a reduction in current collaboration efforts undertaken between insurers and distributors.</p> <p>Instead of attempting to define instances where the distributor is classified as a manufacturer, it may be better to define the roles in the product contract / agreement between the insurer and distributor, i.e. let the parties decide on the roles in the contract rather than in terms of what might happen in the product development process. It may be the case that the distributor is just being helpful in providing information rather than involved as a full blown manufacturer.</p>	<p>an understanding of manufacturing, EIOPA has replaced “key role” with “decision-making role” to emphasise that an insurance intermediary acts as manufacturer, only, if he takes the decision on key elements of an insurance product.</p>
215	Insurance Europe	Question 5	<p>It is positive that EIOPA’s proposed high-level principles recognise that intermediaries who are involved in product design and development can be regarded as manufacturers. It is also positive that this holds where intermediaries design the coverage, the target market, the terms and conditions etc, of an insurance product for a customer or a specific group of customers.</p> <p>However, when an intermediary defines or changes the main elements of an insurance product, including the coverage, the target market, the terms etc, and asks the insurance undertaking to offer this product, the intermediary must be subject to the same product oversight and governance requirements as insurance undertakings are when manufacturing insurance products. In this situation, the intermediary goes further than specifying the demands and needs of the individual customer or group of customers and getting quotes/proposals from insurance undertakings.</p> <p>If the POG obligations do not apply in cases where the intermediary is the manufacturer of the product, there would be an implicit obligation on insurance undertakings to supervise intermediaries who are involved in the design and manufacture of a product.</p> <p>The insurance undertaking covering the risk remains fully responsible to the customer for the contractual obligations</p>	<p>Noted. Assuming an insurance intermediary is acting as a manufacturer, EIOPA would like to point out that the insurance undertaking and insurance intermediary are responsible to fulfil the product oversight and governance requirements for manufacturers. However, this does not influence their respective responsibilities under civil law, in particular with regard to the contractual obligations stemming from the insurance contract between the insurance undertaking and the</p>

			<p>resulting from the insurance product but should not assume administrative responsibility vis-à-vis the supervisor for non-compliance with the POG procedures.</p> <p>Recommendation: Paragraphs 13 and 14 of page 29 of the analysis should therefore be deleted. Additionally, EIOPA should ensure that in its policy proposals the product manufacturer is responsible for complying with the POG requirements, regardless of whether it is the insurance undertaking or intermediary.</p>	insurance intermediary.
216	Intesa Sanpaolo S.p.A.	Question 5	<p>We think that it should be further detailed what "key role in designing and developing an insurance product for the market" entails for distributors. In particular, it would be important to clarify that it shall be considered as "key role" whenever the distributor is acting on technical and actuarial features of the product – i.e. extension/limit of coverage, the insurance excesses, insurance premium, etc. Whereas, other forms of cooperation between distributor and manufacturer which are aimed at better defining the target market or the concept underneath a product, are not to be considered as "acting as a manufacturer".</p>	Noted.
217	IRSG	Question 5	<p>Considering the diversity present in the distribution activity throughout the EU, the IRSG is of the opinion that the qualification of the insurance intermediary as a manufacturer should only be made based on a analysis and on a case by case basis.</p> <p>Such qualification should be based on an written agreement between the insurance undertaking and the intermediary that is to be also considered as a manufacturer before in the initiation phase of the product development.</p> <p>Instead of trying to describe or define what a manufacturer is, the IRSG proposes that on every insurance contract it is mentioned who the manufacturer is. The manufacturer is then responsible to meet the requirements which are imposed upon a manufacturer.</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

218	Italian Banking Association	Question 5	<p>From a certain point of view it seems difficult to consider insurance intermediaries as co-manufacturer together with Insurance undertakings that produce insurance products (manufacturer) for the following reasons:</p> <ul style="list-style-type: none"> - first of all, the Article 25 of the IDD refers to "Intermediaries which manufacture insurance product": in Italy such activity is reserved only to Insurance undertakings, which are subject to the Italian Authority supervision and have the exclusivity to manufacture insurance products; thus, the role of the intermediary which manufactures insurance product is not possible; - furthermore, the practices mentioned in the consultation paper are not sufficient in order to outline the role of the intermediary as co-manufacturer, but it should be made "an overall analysis of the specific activity of the intermediary which should be carried out by the intermediary on a case-by-case basis for each product designed ", which may be difficult to apply; - in addition the IDD, Article 25, specifies that "the insurance undertaking shall understand and regularly review the insurance products it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate" without mentioning insurance intermediaries, being the effective manufacturer the only one that knows the features of the product and is able to assess whether the product is in line with the characteristics of the target market; - the existence of the co-manufacturer could, also, lead to an incorrect division of tasks and, consequently, responsibilities between intermediaries and Insurance undertakings, likely resulting in a waiver of liability on the insurance intermediary; 	<p>Noted. EIOPA has revised its policy proposals and amended where necessary. In order to avoid insurance intermediaries being captured by too broad an understanding of manufacturing, EIOPA has replaced "key role" with "decision-making role" to emphasise that an insurance intermediary acts as manufacturer, only, if he takes the decision on key elements of an insurance product.</p> <p>A typical example can be assumed in cases where the insurance intermediary designs a sophisticated insurance product due to his experience and expertise in a specific area or market. Here, the insurance undertaking relies the on the expertise and know-how of the insurance intermediary to design and</p>
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			<p>- finally, other European authorities (EBA and ESMA) which have published guidelines on product governance related respectively to banking products and to structured retail products have never provided for the possibility of the co-manufacturer.</p>	<p>manufacture an insurance product. Furthermore, it has been clarified that activities in the context of tailor-made contracts and the pure exchange of information or providing feedback should not be understood as manufacturing.</p> <p>Assuming an insurance intermediary is acting as a manufacturer, EIOPA would like to point out that the insurance undertaking and insurance intermediary are responsible to fulfil the product oversight and governance requirements for manufacturers. However, this does not influence their respective responsibilities under civil law, in particular with regard to the contractual obligations stemming from the</p>
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				insurance contract between the insurance undertaking and the insurance intermediary.
219	Liechtenstein Insurance Association (LVV)	Question 5	We agree with the proposed principles.	Noted.
220	MALTA INSURANCE ASSOCIATION These comments have b	Question 5	<p>1. We agree that there are situations when intermediaries may be regarded as manufacturers. In fact, it is considered as normal practice in Malta that independent brokers (when acting on behalf of sophisticated clients) may actually design or specify the requirements of a product themselves. In this regard, further clarity is needed from EIOPA whether such Independent Brokers are to be regarded as manufacturers and whether it will be in their responsibility to ensure that their relevant personnel (involved in the design of such products) possess the necessary skills, knowledge and expertise.</p> <p>Paragraph 9(1)(b) under section 4.2.1 of the consultation document provides that an insurance intermediary describing a certain kind of coverage not already existing in the market for a particular type of customer and requesting the insurer to provide the cover, is considered to be a manufacturer. We believe that in such case, the intermediary would simply be updating the insurer with the needs of a particular class of customers but the product would ultimately be designed and placed on the market by the insurer. Therefore the intermediary should not be considered to be a manufacturer.</p> <p>Paragraph 11 then provides that the occurrence of any of the circumstances outlined in paragraph 9 does not automatically render the intermediary a manufacturer and that an overall analysis of the specific activity of the intermediary should be carried out on a case-by-case basis for each product designed for the purpose of determining whether the intermediary is a</p>	Noted.

			<p>manufacturer or otherwise. In particular reference is made to whether the product will be sold under the brand name of the intermediary and whether the intermediary owns intellectual property rights in the brand name of the product. Without prejudice to our observations as detailed in the above paragraph, we believe that, unless the product is specifically designed and branded for sale by a particular intermediary, the mere request by that intermediary for the issue of a particular product should not render the intermediary a manufacturer and therefore a situation of co-manufacturing should not arise.</p>	
221	Mediterranean Insurance Brokers (Malta) Ltd.	Question 5	<p>Do you agree with the proposed high-level principle in order to assess whether activities of an insurance intermediary should be considered as manufacturing?</p> <p>Given the diversity present in the distribution activities throughout the EU, the qualification of the insurance intermediary as a manufacturer should only be made based on a case by case basis for each product designed. We agree that a relevant criterion is "whether the product is sold under the brand name of the insurance intermediary". This is not clearly reflected in the EIOPA draft Technical advice on the issue. More guidance is required where the intermediary is involved in the design and development of a product. It has to be clear that the undertaking remains fully responsible to the customer for the coverage provided.</p>	<p>Noted. Assuming an insurance intermediary is acting as a manufacturer, EIOPA would like to point out that the insurance undertaking and insurance intermediary are responsible to fulfil the product oversight and governance requirements for manufacturers.</p>
222	Slovenian Insurance Association	Question 5	<p>In some cases in Slovenia distributors are also manufacturers of insurance products. We believe that detailed criteria about distributors' classification as co-manufactures should be determined by national law.</p>	<p>Noted.</p>
223	The Danish Insurance Association	Question 5	<p>The DIA agrees with the high-level principle proposed by EIOPA in order to assess whether activities of an insurance intermediary should be considered as manufacturing. However, we suggest that the explanatory text in paragraph 11 on page 28-29 is reflected in the policy proposal itself –</p>	<p>Noted. Assuming an insurance intermediary is acting as a manufacturer, EIOPA would like to point out</p>

			<p>i.e. the qualification of the insurance intermediary as a manufacturer should be based upon an overall analysis of the specific activity carried out by of the intermediary on a case-by case basis for each product designed.</p> <p>Where insurance undertakings and intermediaries are involved in the design and development of a product, this should be understood as manufacturing. Hence, in some cases intermediaries design the coverage, the target market, the terms and conditions etc. of an insurance product for a customer or a specific group of customers. However, to the extent that the intermediary defines or changes the main elements of an insurance product (including the coverage, the target market, the terms etc.), and asks the insurance undertaking to offer the described product, it seems reasonable and logical that the intermediary is subject to the same product oversight and governance requirements as manufacturers of insurance products (insurance undertakings), the only difference being that the insurance undertaking actually insures the risks and remains responsible to the costumer for the contractual obligations. In such cases the insurance undertaking should not assume administrative responsibility vis-à-vis the supervisor for non compliance with the POG-procedures.</p>	<p>that the insurance undertaking and insurance intermediary are responsible to fulfil the product oversight and governance requirements for manufacturers.</p>
224	Unipol Gruppo Finanziario S.p.A.	Question 5	<p>We believe that point 2 has to be further expounded in order to better explain the concept of "substantiality" stated in point 9 of the Analysis. Moreover, what is stated in point 11 should be specified, even if concisely: "It should be highlighted that the presence of one of these activities cannot be considered as an unquestionable evidence of the qualification of the insurance intermediary as a manufacturer, but this conclusion should be based upon an overall analysis of the specific activity of the intermediary which should be carried out by the intermediary on a case-by-case basis for each product designed".</p>	<p>Noted. EIOPA has revised its policy proposals and amended where necessary. In order to avoid insurance intermediaries being captured by too broad an understanding of manufacturing, EIOPA has replaced "key role" with "decision-making role" to emphasise that</p>

				an insurance intermediary acts as manufacturer, only, if he takes the decision on key elements of an insurance product.
225	Verband der Automobilindustrie e.V. Arbeitskreis	Question 5	<p>The scope of activities identified by EIOPA as substantial involvement in the manufacturing process of insurance products is too wide.</p> <p>We would like to point out that it is important to make a clear distinction between manufacturers and distributors. Even if insurance intermediaries make contributions to the process of designing a product, they should not be viewed as manufacturers nor should they be required to take responsibility.</p> <p>For example, the mere act of an insurance intermediary to enquire about the possibility to provide coverage that does not yet exist in that market - in response to a customer's request for it - cannot be seen as "incisive".</p> <p>An intermediary rarely plays a key role in the design and development of insurance products. In general, the manufacturer always has the final authority to decide on product details, timing of market launches and definitions of target markets. The manufacturer also carries full responsibility for these decisions – towards customers as well as supervisory authorities.</p> <p>Furthermore, the insurance undertaking is subject to a comprehensive supervision which involves disclosure of internal product approvals processes as well as risk management processes.</p>	<p>Noted. EIOPA has revised its policy proposals and amended where necessary. In order to avoid insurance intermediaries being captured by too broad an understanding of manufacturing, EIOPA has replaced "key role" with "decision-making role" to emphasise that an insurance intermediary acts as manufacturer, only, if he takes the decision on key elements of an insurance product.</p>

			<p>Another important point in distinguishing the status of a manufacturer in comparison to that of the distributor is the fact that the distributor is subject to the directives of the manufacturer. That means the manufacturer has the right to instruct the distributor on what products should be sold to which target market and under which conditions. A further extension of the distributors' responsibilities and obligations would be redundant, costly and would not lead to any tangible benefit for the customers.</p>	
226	<p>Verband Deutscher Versicherungsmakler e. V. (VDVM)</p>	<p>Question 5</p>	<p>5: Sind Sie mit dem vorgeschlagenen Grundsatzprinzip zur Beurteilung, ob die Tätigkeiten eines Versicherungsvermittlers als Konzeption anzusehen sind, einverstanden?</p> <p>Wir begrüßen, dass nicht jede Zusammenarbeit zwischen Versicher und Vermittler dazu führt, den Vermittler zum Hersteller zu machen. Der Ansatz, dass der Vermittler dann Hersteller sein kann, wenn er eine Schlüsselrolle bei der Produktgestaltung/-entwicklung einnimmt, ist aber verbesserungswürdig.</p> <p>So reicht unserer Auffassung nach nicht aus, dass der Vermittler „eine“ Schlüsselrolle spielt, vielmehr muß der Vermittler „die alleinige“ Schlüsselrolle spielen. Insbesondere die Änderung von bestehenden Produkten auf Betreiben des Maklers („changing such elements of an existing product“ legt die Schwelle zu niedrig. Besser wäre es, diese Formulierung ganz zu streichen.</p> <p>Notwendig wäre aus unser Sicht auch eine eindeutige Klarstellung, dass der Versicherer als Risikoträger immer bei seinen Versicherungsprodukten der Hersteller ist, der Vermittler also allenfalls Co-Hersteller sein könnte. Weiter</p>	<p>Noted. EIOPA has revised its policy proposals and amended where necessary. In order to avoid insurance intermediaries being captured by too broad an understanding of manufacturing, EIOPA has replaced “key role” with “decision-making role” to emphasise that an insurance intermediary acts as manufacturer, only, if he takes the decision on key elements of an insurance product.</p>

			<p>sollte man sich auch Gedanken machen, was mit der Herstellereigenschaft eines Vermittlers passieren würde, wenn z.B. der Kunde bzw. die Kunden den Vertrag mit dem Versicherungsmakler kündigen. Hat der Versicherungsmakler keinen Zugriff mehr auf das Produkt, die Kunden und/oder die Daten, so muß die Herstellereigenschaft erlöschen. Übernimmt ein Makler von einem anderen Makler das Mandat kann nach unserer Auffassung der neue Makler nicht automatisch in die Rolle des alten Maklers als Hersteller hineinrutschen. Was ist im übrigen mit der Herstellereigenschaft des Versicherungsmaklers, wenn es zum Renewal des/der Produkte/s kommt. Bieter der Versicherer dem Versicherungsmakler die Verlängerung derartiger Produkte aufgrund eines neuen Vertrages an, dürfte die Hersteller-eigenschaft des Vermittlers erlöschen, weil er ja nicht die Schlüsselrolle bei dem Abschluß des neuen Vertrages gespielt hat.</p> <p>Die vorliegenden Fallvarianten belegen auch deutlich, dass es sinnvoll ist, den Versicherer immer als Hersteller des Produktes zu behandeln, sodass es nicht zu einer Phase kommt, in dem kein Hersteller vorhanden ist.</p>	
227	Verbraucherzentrale Bundesverband e.V.	Question 5	Yes, we agree.	Noted.
228	Zurich Insurance Company, CH 8045 Zurich	Question 5	<p>Acting as a Manufacturer</p> <p>We agree that the technical advice should include additional detail with respect to the practical definition of "manufacturing" for the purpose of determining when an intermediary is acting as both a manufacturer and a distributor. While the proposed Technical Advice provides some assistance in doing so, we are concerned that it:</p>	Noted. EIOPA has revised its policy proposals and amended where necessary. In order to avoid insurance intermediaries being captured by too broad

		<ul style="list-style-type: none"> <input type="checkbox"/> Does not adequately differentiate between the design of insurance products “for the market” and the development of an insurance product for a particular customer; <input type="checkbox"/> Discourages constructive interactions between the distributor and insurer as otherwise promoted in Paragraph 36 of the draft technical advice; and <input type="checkbox"/> Creates a level of contractual formality and supposed regulatory interjection that appears impractical and ill-suited. <p>Confusing the Market and Individual Customer Perspectives</p> <p>The draft technical advice provides that an intermediary acts as a manufacturer when it “plays a key role in designing and developing an insurance product for the market.” The draft then explains that manufacturing does not include personalization or adaption of existing products to an individual customer (particularly where the intermediary is involved in the selection of options or variables defined by the insurer).</p> <p>While we agree with the principles set out in paragraph 3 of the draft technical advice, we believe the text as worded could cause confusion without a clear explanation that an intermediary is not a manufacturer where it is engaged in negotiating, proposing or even supplying contractual terms or other main elements of the product for an individual customer or limited number of customers. That is, the intermediary can only be considered a manufacturer if its activities in product development or design are “for the market” – not for individual customers, or even for a limited number of customers that together could not be considered “the market.”</p> <p>It is clear that the IDD itself and EIOPA in its draft technical advice intend the POG provisions relating to manufacturers to take a market perspective, rather than the perspective of an individual or small number of customers. For example, it would seem absurd to develop a “target market” description</p>	<p>an understanding of manufacturing, EIOPA has replaced “key role” with “decision-making role” to emphasise that an insurance intermediary acts as manufacturer, only, if he takes the decision on key elements of an insurance product.</p>
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		<p>for a product that was tailor-made for a specific customer; in such a case, the target market could only be described by the name of the customer itself! As a practical matter, many such manuscript or custom policy configurations would be excluded from the POG requirements as "large risks", although not all would be.</p> <p>Accordingly, we feel it essential that the technical advice explain at the same level of detail as the explanation in paragraph 3 that an intermediary is not engaged in manufacturing where it is involved in personalization or adaptation of a new or existing insurance product intended to be provided to a single or to a limited number of customers. To do so, paragraphs 2 and 3 could be reformed to provide:</p> <p>2. A key role shall be assumed, in particular, if the insurance intermediary is substantially involved in one of the following activities and provides substantial input into the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Defining for a market the main elements of a new insurance product, such as the coverage, premium, costs, risks, target market or compensation and guarantee rights of the insurance product, or <input type="checkbox"/> Changing for a market such elements of an existing product. <p>3. Activities which relate to the personalization and adaptation of existing insurance products in the course of insurance distribution activities to the individual customer shall not be considered as activities of manufacturing, in particular cases such as:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The mere opportunity to choose between different lines of products, contractual clauses and options, individual premium discounts, recommendation of asset, with regard to a product already designed by the insurance undertaking. <input type="checkbox"/> The design or development of a unique or tailored insurance product for an individual customer or a limited number of customers. 	
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			<p>Further, we do see paragraph 9 of Section 4.2.1 of the consultation to be at odds with the proposed technical advice itself. While the elements set out in (i) and (ii) of that paragraph may be considered “design” elements, the descriptions themselves erroneously imply that such activities fall within manufacturing where the design activity is undertaken for a specific customer or a limited number of customers (i.e., for a customer or collection of customers that is less than “the market”). This inconsistency could be remedied by making the following changes:</p> <p>9. On the other hand, EIOPA is of the view that an incisive role of the insurance intermediary can be exercised through one of the following practices:</p> <p>(i) Design of a new product: the following situations can be included in the notion of “design” if the insurance intermediary plays a key role:</p> <p>a) The insurance intermediary takes the initiative to design and define the main elements of a specific insurance product for the market in view of or not a customer request;</p> <p>b) The insurance intermediary describes a certain kind of coverage not already existing in the market for a particular type of customer and asks the undertaking to provide it; or</p> <p>c) The undertaking provides the coverage and establishes the premium for the market under the mandate of the insurance intermediary.</p> <p>(ii) A change of significant elements of an existing product: this condition occurs when the coverage, premium, costs, risks, target market or benefits of a type of contract are modified for the market. In all these cases, as the undertaking still provides the coverage, any change should be made under the mandate/authorization of the undertaking and subject to</p>	
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			its approval.	
229	Allianz SE	Question 6	<p>Do you consider that there is sufficient clarity regarding the collaboration between insurance undertakings and insurance intermediaries which are involved in the manufacturing of insurance products? If not, please provide details of how the collaboration should be established.</p> <p><input type="checkbox"/> Generally, the rules should permit an adequate allocation of responsibility</p> <p><input type="checkbox"/> The base principles should be outlined more clearly: the manufacturer, i.e. policy grantor is liable with view to contractual terms of risk coverage and claims management. The intermediary / co-manufacturer should be liable for the the target market definition (i.e. his client constitutes the target market) and needs assessment, which leads to the product design. Similarly the ongoing monitoring should remain the duty of the co-manufacturer; i.e. the co-manufacturer's knowledge about the clients needs make him be best placed to ensure that the product offering is in line with the clients needs. Finally: compensation schemes and conflict of interest management may deserve explicit transparency to the clients to ensure that customer detriment is prevented. – in other words: there should be material criteria defined which make an intermediary qualify as co-manufacturer with the consequence, that this entity should then be subject to the POG rules, while the insurance manufacturer is producer on demand.</p> <p><input type="checkbox"/> When in the extreme the distributor is de facto the sole manufacturer of the product, only this party should be subject to the product oversight and governance requirements of the product, while the insurance undertaking (risk carrier) is responsible to the customer for all the contractual obligations</p> <p><input type="checkbox"/> In any case, the manufacturer should not be assigned responsibility for compliance functions which extend beyond</p>	<p>Noted. EIOPA would like to point out that both, the insurance undertaking and the insurance intermediary (in cases where they are considered as co-manufacturers) are responsible to fulfil the product oversight and governance requirements for manufacturers. However, this does not influence their respective responsibilities under civil law, in particular with regard to the contractual obligations stemming from the insurance contract between the insurance undertaking and the insurance intermediary.</p>

			its legal or practical sphere of influence, especially with respect to intermediaries and (co-)manufacturing (see e.g. DTA 25, p. 24).	
230	AMICE	Question 6	<p>In relation to the regular review of product distribution arrangements and the product monitoring, we agree that review and monitoring mechanisms should be in place for responding to any signals received from the market that the product may no longer meet the interests, objectives and characteristics of the identified target market. Nevertheless, we have concerns with regard to the requirement for on-going and proactive monitoring of compliance with POG arrangements.</p> <p>In case of independent intermediaries, manufacturers have less control over how or to whom their products are sold. In such cases, it is not possible for an insurance undertaking to monitor actively if the distributor respects the POG arrangements and if the product is sold correctly to the relevant target market. It needs to be acknowledged that the manufacturer is in practice not able to organise a full monitoring and can only monitor on the basis of complaints.</p> <p>Therefore, we believe that the actual proactive monitoring of compliance with the POG arrangements by distributors should be carried out by the national competent authorities. Only the national authorities have the necessary tools at their disposal to actively monitor and enforce compliance with POG arrangements.</p> <p>Manufacturers should not be obliged to disclose their whole distribution strategy to distributors, but only the relevant information on the product and identified target market.</p>	Noted.
231	Association of International Life Offices	Question 6	See Qu 5	Noted.
232	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 6	Siehe Antwort zu Frage 5.	Noted.

233	BIPAR	Question 6	<p>(See question 3)</p> <p>BIPAR believes that it is EIOPA intention not to cover bespoke negotiated open market subscription risk - that fell outside the definition of large risk. If it had to follow the very linear process set out in EIOPA policy proposal, BIPAR believes that this will be unworkable.</p> <p>BIPAR welcomes the clarification that the insurance undertaking providing the coverage remains fully responsible to the customer for the contractual obligations resulting from the insurance product.</p> <p>BIPAR would like to remind EIOPA that in practice, whenever an insurance intermediary has a proposal for a product which it puts to an insurance undertaking for consideration, the design work will (subject to any amendments agreed between the parties) have already been completed, so any written (contractual) agreement will logically cover the activities post product design.</p>	Noted. EIOPA would like to point out that only insurance contracts for large risks are explicitly exempted from the IDD scope.
234	BNP Paribas	Question 6	<p>The Directive provides the possibility for the manufacturer to be the insurer and sometimes the distributor. The notion of co-manufacturer developed by EIOPA has no basis in the Directive IDD. If the distributor is the manufacturer, the responsibilities in terms of POG (definition of the target market, of the distribution and monitoring strategy...) must be only this. Of course, the insurer would remain responsible for its contractual obligations vis-à-vis the insured parties.</p> <p>An additional general observation is that there should be a better definition of the ultimate responsibility of both parties.</p>	Noted. EIOPA is of the view that co-manufacturers are both responsible for the POG arrangement. Please see feedback statement in the Final Report.
235	British Bankers Association (BBA)	Question 6	<p>We don not consider that there is sufficient clarity regarding the collaboration between insurance undertakings and insurance intermediaries which are involved in the manufacturing of insurance products.</p> <p>With regard to section 4.2.1 - Acting as a Manufacturer:</p> <p>8.1 - We would agree that a call for tender to cover a specific</p>	Noted. Please also refer to the Feedback Statement in EIOPA's Final Report.

		<p>risk would not qualify an intermediary as a manufacturer.</p> <p>We would ask EIOPA to clarify what type of activities would constitute a 'further role in the design of the product'. Are the activities outlined under subsequent item (9) comprehensive, or could other activities constitute a 'further role'.</p> <p>Manufacture of insurance requires specific skill sets that a bank or building society's staff wouldn't usually have, e.g. actuarial calculations that work out what sort of risks an insurer is prepared to cover on a policy is not a type of activity in which a distributor would be involved. The UK already has a system for categorising entities that require an authorisation to manufacture insurance, as opposed to selling it. Typically a distributor receives delegated authority from the insurer to put the customer on risk – but the insurance contract itself is one of utmost good faith between the insurer and the insured, and it is the insurer that covers the risk and that has to be capitalised to be able to follow through on that promise, rather than the distributor. It seems to us that these are the sorts of key characteristics which should be used to judge whether or not an entity 'manufactures' insurance.</p> <p>In our view, therefore, working with the insurer to personalise the product after tendering for the risk should not be considered manufacturing.</p> <p>9 (i) (b) – We would ask EIOPA to clarify what they determine to be the 'main elements' of a specific insurance product.</p> <p>In addition, we would suggest that if the insurer asks the intermediary to input into the design of the main elements, this would not automatically qualify the intermediary as a manufacturer, because their involvement has resulted from a specific and limited request by the manufacturer, and not at the intermediary's initiative.</p> <p>We would welcome confirmation that EIOPA agrees with our interpretation.</p> <p>9 (i) (c) – It would be our view that establishing the premium of a product should not be included in the notion of 'design'. We think this is more akin to personalisation and adaption of</p>	
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			<p>insurance products (under 8.4) rather than involvement in the fundamental design of the product.</p> <p>The current guidance states that the presence of one of these activities does not automatically qualify an intermediary as a manufacturer; instead a case-by-case analysis of the intermediary's activity will need to be undertaken. Although we found this guidance helpful we would ask EIOPA to make it clear that pricing, and in particular the setting of premiums, is not a decisive factor given that, in our view, setting premiums is not a fundamental element of 'design'.</p>	
236	Bund der Versicherten (BdV – German Association of	Question 6	No, we do not consider that there is sufficient clarity regarding the collaboration between insurance undertakings and insurance intermediaries which are involved in the manufacturing of insurance products. The draft Technical Advice should include a much more detailed list of the tasks to be regulated in the written document: not only the identification of the target market, but as well the role of the management, the regular review of POG arrangements, the level of skills, knowledge and expertise of personnel involved in designing products, the product testing and product monitoring and of course the remedial action. These criteria should constitute the minimum list.	Noted.
237	CNCIF - Chambre Nationale des Conseillers en	Question 6	Yes.	Noted.
238	CSCA French broker Association, 91, rue Saint Laza	Question 6	See above	Noted.
239	Eurofinas	Question 6	Eurofinas agrees with the EIOPA that it is very important that sufficient clarity is given regarding the collaboration between insurance undertakings and insurance intermediaries which are involved in the manufacturing of insurance products. For us, it is currently not clear whether the envisaged collaboration agreements between the two co-manufacturers	Noted. EIOPA is of the view that liabilities resulting from POG requirements cannot be delegated. In cases where insurance

			<p>can include a delegation of liability. It is important to avoid shifts of responsibility as a result of unbalanced economic powers during negotiations of the collaboration agreement.</p> <p>In addition, firms are sometimes both manufacturer and distributor of (the same) retail insurance products. We ask the EIOPA to provide further explanations how POG rules are to be applied in those cases. When an intermediary is considered a manufacturing intermediary, does this mean that the POG distribution requirements are no longer applicable?</p> <p>Eurofinas would also be grateful if the EIOPA could clarify whether it envisages the assessment of "manufacturing activities" to be conducted per product and if this is the case, how this should work then for firms that are involved – to different extents – in the distribution or manufacturing of multiple insurance products.</p>	<p>undertakings and insurance intermediaries are acting as co-manufacturers both firms are responsible with regard to POG.</p>
240	European Federation of Financial Advisers and Fina	Question 6	<p>We consider that EIOPA's advice provides sufficient clarity in that respect.</p>	Noted.
241	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 6	-	Noted.
242	Fachverband der Versicherungsmakler und Berater in	Question 6	<p>For our members, it is still unclear how a bespoke negotiated open market subscription risk that fell outside the definition of large risk would be treated. If it would had to follow the very linear process set out in EIOPA policy proposal, we believe that this will be unworkable.</p> <p>We welcome the clarification that the insurance undertaking providing the coverage remains fully responsible to the customer for the contractual obligations resulting from the insurance product.</p> <p>We would like to remind EIOPA that in practice, whenever an</p>	<p>Noted. EIOPA would like to point out that the IDD only exempts insurance contracts for large risks.</p>

			insurance intermediary has a proposal for a product which it puts to an insurance undertaking for consideration, the design work will (subject to any amendments agreed between the parties) have already been completed, so any written (contractual) agreement will logically cover the activities post product design.	
243	Fédération Française de l'Assurance (FFA) 26 bo	Question 6	See our reply in Q5. It should be upon the intermediary (who is manufacturer) to assume administrative responsibility for POG procedures. No co-manufacturer is welcomed.	Noted.
244	Federation of Finnish Financial Services	Question 6	Yes, there is sufficient clarity regarding the main elements of cooperation between insurance undertakings and intermediaries.	Noted.
245	FG2A (Fédération des Garanties et Assurances Affin	Question 6 : Do you consider that there is suffici	Please refer to question 5.	Noted.
246	FRENCH BANKING FEDERATION	Question 6	No. The principle of co-manufacturing of a product is very hard to apply and could create conflicts between manufacturers and distributors. The simple collaboration between the manufacturer and the distributor should not be treated as co-manufacturing as it is a very usual practice.	Noted.
247	Genossenschaftsv erband Bayern e.V. (GVB – Bavarian	Question 6	No comment	Noted.
248	German Association of Private Health Insurers (PKV	Question 6	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.

249	German Insurance Association (GDV)	Question 6	This issue has been sufficiently clarified by EIOPA.	Noted.
250	Institute and Faculty of Actuaries	Question 6	The collaboration agreement should include a performance contract that defines successful completion of activities associated with the manufacturing process.	Noted.
251	Insurance Europe	Question 6	<p>In the case of independent intermediaries, it is not possible for an insurer to actively monitor if (i) the distributor respects the POG arrangements and (ii) the product is sold correctly to the target market.</p> <p>Recommendation: The proactive monitoring of compliance with the POG arrangements by distributors should be carried out by the national supervisory authority and not the manufacturer (insurer) involved. EIOPA's final advice should clarify that a manufacturer is not required to share its entire product approval process with a distributor, but only the relevant information on the product and identified target market. This is in line with paragraph 5 of Article 25(1) of the IDD Level 1 text.</p>	Noted. Please refer to the Feedback Statement in the Final Report.
252	IRSG	Question 6	The IRSG believes that consumers have to be aware that the product can be jointly developed by an insurance undertaking (manufacturer) and an intermediary (manufacturer), that the insurer always carries the risk and that there can only be one responsible manufacturer, so that they get the full picture. Maybe this should be included in the iPID / KID Regulation.	Noted.
253	Liechtenstein Insurance Association (LVV)	Question 6	This issue has been sufficiently clarified by EIOPA.	Noted.
254	MALTA INSURANCE ASSOCIATION These comments	Question 6	1 EIOPA's final advice should clarify that a manufacturer is not required to share its entire product approval process with a distributor, as this could include a manufacturer's decision with regard to the use or non-use of competing	Noted. Please see the Feedback Statement in EIOPA's Final Report.

	have b		<p>distributors, but only the relevant information on the product and identified target market.</p> <p>2 The monitoring requirements imposed on an insurer, where the product is sold by brokers (independent intermediaries representing the customer) require review. Indeed in the case of brokers, insurers have less or no control over how or to whom their products are sold and so cannot monitor whether the broker is compliant. Such proposal will therefore create a problem in the insurance market as it is generally not possible for manufacturers to interfere in the business of independent intermediaries. To make such monitoring requirements plausible, we suggest that EIOPA distinguishes between tied intermediaries and independent intermediaries (excluding where there is an underwriting agreement in place).</p> <p>3 Although the collaboration between an intermediary and the insurance undertaking should be clearly defined by means of a written agreement, exceptional circumstances for ad-hoc arrangements between the two should be excluded from such agreements especially where an independent intermediary (broker) is involved (with designing a specific product based on the needs of the customer). This agreement should not, though, be considered as a separate agreement to any other terms agreed to between the two parties (e.g. binding cover). Incompatibility arises in the main with brokers, but not with tied intermediaries. Having such agreements for such one-off, exceptional circumstances becomes an administrative burden for both entities.</p> <p>Furthermore, insurance undertakings may be dealing with an extensive intermediary network. The proposed, high-level principle can be burdensome for such insurance undertakings as they need to involve and monitor all the intermediaries used to distribute their insurance products. In this regard, we suggest that EIOPA allows insurance undertakings to score the intermediaries and have agreements with the primary distributors having a substantial market share.</p>	
255	Mediterranean	Question 6	Do you consider that there is sufficient clarity regarding the	Noted. Whether EIOPA

	Insurance Brokers (Malta) Ltd.		<p>collaboration between insurance undertakings and insurance intermediaries which are involved in the manufacturing of insurance products? If not, please provide details of how the collaboration should be established.</p> <p>The Maltese queries whether a distributor is considered as a manufacturer when it is requesting a change to the standard wording of a policy manufactured by an Insurer (Eg : a quotation slip designed by a broker of a particular customer)</p> <p>The Maltese market also requested clarification as to whether there will be guidelines as to what is the process for a change/variation to the original product.</p> <p>Will the distributor be involved in the product oversight and governance arrangements ? will EIOPA suggest agreements to be entered into between the manufacturer and the distributor.</p>	will issue guidelines to provide further guidance on Level 3 will be decided at a later stage and will depend on the experience resulting from the application of the IDD and its implementing measures.
256	Slovenian Insurance Association	Question 6	In some cases in Slovenia distributors are also manufacturers of insurance products. We believe that detailed criteria about distributors' classification as co-manufacturers should be determined by national law.	Noted. As IDD introduces minimum harmonisation further criteria on a national level (within the limits of European law) are generally possible.
257	The Danish Insurance Association	Question 6	As to the proposal to lay down in a written agreement the respective roles and responsibilities of the undertaking and intermediary, the DIA finds that the allocation of responsibilities between the entities and the question of whether it should be established in a written contract must be based on an individual assessment in each case.	Noted. EIOPA would like to point out that the allocation of responsibilities resulting from POG requirements cannot be modified through contractual agreements.
258	Verband der Automobilindustrie e.V. Arbeitskreis	Question 6	Not applicable.	Noted.

259	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 6	<p>6: Gibt es Ihrer Meinung nach ausreichend Klarheit bezüglich der Zusammenarbeit zwischen Versicherungsunternehmen und Versicherungsvermittlern, die an der Konzeption von Versicherungsprodukten beteiligt sind? Falls nicht, erläutern Sie bitte, wie die Zusammenarbeit aussehen sollte.</p> <p>Wir würden es bevorzugen, so wenig Vereinbarungen von Versicherern und Versicherungsmaklern wie möglich zu haben. Dies hängt damit zusammen, dass der Versicherungsmakler als treuhänderischer Sachwalter im Lager des Kunden steht. Wenn der Versicherungsmakler maximal die Rolle des Co-Herstellers ausfüllen kann und der Versicherer als Hersteller immer in der Verpflichtung bleibt, benötigt man keine umfangreichen vertraglichen Vereinbarungen hierüber. Jeder übernimmt die Verantwortung für sein Handeln. Bei dieser Gelegenheit sei noch einmal angemerkt, dass der Versicherungsmakler nicht unter der Kontrolle des Versicherers steht und wir deshalb Tendenzen, den Versicherungsmakler unter die Kontrolle des Versicherers zu stellen, sehr kritisch sehen.</p>	Noted.
260	Verbraucherzentrale Bundesverband e.V.	Question 6	<p>We believe, that it is necessary to disclose risk carrier collaborating with intermediaries.</p> <p>On one side under the Solvency II - regime the answer to the question, is the risk carrier able to fulfil its obligation over the whole contractual period, is an important information for consumers. On the other side this disclosure will raise pressure to the insurer to market equivalent products to „normal“ customers as well.</p>	Noted.
261	Zurich Insurance Company, CH 8045 Zurich	Question 6	<p>Impeding the Constructive Flow of Information</p> <p>The technical advice provides that an intermediary is considered a manufacturer if it plays a “key role” in designing and developing an insurance product. The draft technical advice further defines the parameters of a “key role” as “substantial involvement.” However, the concept of “substantial involvement” is left open potentially threatening other aspects of EIOPA’s draft technical advice.</p> <p>In paragraph 36 of the technical advice, EIOPA recommends</p>	Noted. EIOPA has revised its policy proposals. In order to avoid insurance intermediaries being captured by too broad an understanding of manufacturing, EIOPA

		<p>that the distributor be required to inform the manufacturer if the distributor “becomes aware that the product is not aligned with the interests, objectives or characteristics of the target market, or if he becomes aware of other product related circumstances increasing the risk of customer detriment.” In other words, EIOPA sees value in an open line of communication between the distributor and the manufacturer about the design and performance of the product. When engaging in such a communication, one could reasonably expect the distributor to be cautious that he or she does not trip into becoming a co-manufacturer by being too helpful, suggestive or constructive.</p> <p>Accordingly, on the one hand EIOPA’s technical advice requires the intermediary to advise the manufacturer of potential shortcomings of the product, but on the other hand discourages the intermediary from becoming “substantially involved” in the design or development of the product. It would be counterproductive if an intermediary became reluctant to share its observations about the performance of the product or make recommendations for mitigation of perceived shortcomings out of concern that the intermediary may inadvertently play a “key role” in any design change to the product (or its target market), based on the information it provides or a recommendation it has made to improve product performance.</p> <p>The IDD should seek to open the lines of communication and exchange between the intermediary and insurer as they both seek to best serve their mutual customers. Indeed, the IDD structures deliberate interactions between the manufacturer and distributor and, ideally, should encourage an ongoing informal dialogue about customer needs, opportunities and product performance. However, there appears a real danger that an overly open, helpful or thoughtful intermediary could be seen to have provided a critical suggestion or observation that drives a product change, thereby earning itself a “key role” through “substantial involvement.”</p> <p>The technical advice could remedy this inadvertent chilling of communications by replacing the term “substantial</p>	<p>has replaced “key role” with “decision-making role” to emphasise that an insurance intermediary acts as manufacturer, only, if he takes the decision on key elements of an insurance product.</p>
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		<p>involvement” with the term “decision-making role.” Decision making is a far more identifiable and tangible event than “substantial involvement”, thereby allowing the insurer and intermediary a level of clarity in the conduct of their interactions.</p> <p>As an illustration, the manufacturer designs a product with a declared target market. A major distributor of the product observes that with the removal of a minor exclusion from the product a larger market would benefit from the product. The distributor suggests to the manufacturer that the exclusion be removed and that the target market be broadened. After consideration, the manufacturer makes this change.</p> <p>Did the distributor play a “key role” in the development or design of this modified product? As a policy matter, one would certainly not expect that the distributor has morphed into a co-manufacturer by providing practical, meaningful feedback about the product. However, under a “substantial involvement” test one could not be so sure. It could be said that since that proposal for the product change and the new target market came from the distributor, the distributor has been substantially involved. A better approach would be to ask whether the distributor decided the product and target market changes, which here the distributor clearly did not.</p> <p>Written Agreement</p> <p>The draft technical advice provides that when the intermediary acts as a manufacturer, the insurer and intermediary must enter into a written agreement defining “their collaboration and their respective roles.” EIOPA explains that such a written agreement is necessary “so that competent authorities are in a position to control collaboration arrangements.”</p> <p>We suggest the purpose and degree of formality sought are misplaced. In the case of co-manufacturers, obligations to the customer under the contract remain wholly with the insurer. In other words, the customer continues to look to the insurer for fulfillment of the terms of the contract. No “side agreement” allocating POG responsibilities can or should</p>	<p>The policy proposals with regard to the written agreement have been revised. Please see for further details the Final Report.</p>
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		<p>change that basic concept of contract law.</p> <p>Accordingly, the only proposed reason for a formal allocation of POG responsibilities is supervisory. Specifically, EIOPA bases its requirement of a written agreement allocating the manufacturer’s POG responsibilities on the supervisory authority’s purported interest to “control the collaboration” between the intermediary and insurer. It is not at all clear how a supervisory authority would seek to intervene into interactions between co-manufacturers or how the formality of a written agreement on the allocation of joint regulatory responsibilities facilitates the supervisory authority’s control over the collaboration between the two.</p> <p>This challenge is particularly acute should the technical advice maintain the proposed low threshold of “substantial involvement” in determining whether an intermediary has crossed the line into “co-manufacturing.” To the extent the insurer delegates its underwriting authority, System of Governance Guideline 61 already requires a written agreement which would appear sufficient for the purposes of POG. Alternatively, a requirement relating to a written agreement with the co-manufacturer should be linked to draft technical advice #25 which encompasses the circumstances where the insurer “designates a third party to design products on its behalf.” Without such a limitation, according to the draft technical advice, a written agreement would be required when “the intermediary describes a certain kind of coverage not already existing in the market . . . and asks the [insurer] to provide it.” To reduce such a request to a written allocation of responsibilities seems to exceed reasonableness and proportionality.</p> <p>Absent a clear objective grounded in practical illustrations, we suggest that the formality of a written agreement should be stricken. EIOPA may do so as follows:</p> <p>4. Where an insurance intermediary is considered as a manufacturer, the insurance intermediary and insurance undertaking issuing the insurance product shall define their</p>	
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			<p>the terms of their collaboration and their respective roles in a written agreement (e.g. the task to identify the target market). The insurance undertaking remains fully responsible to the customer for the coverage provided.</p> <p>or</p> <p>4. Where an insurance intermediary is considered as a manufacturer, the insurance intermediary and insurance undertaking issuing the insurance product shall define their collaboration and their respective roles in a written agreement (e.g. the task to identify the target market). The insurance undertaking remains fully responsible to the customer for the coverage provided.</p>	
262	Allianz SE	Question 7	<p>Do you agree with the proposed high-level principle for the granularity of the target market? If not, please provide details on the level of detail you would prefer.</p> <p><input type="checkbox"/> No. The definition is problematic, in particular with respect to restrictive rules on sales outside target market (sec. 52/53, p. 20/21). Rules too restrictive on potential sales outside target market should also be carefully evaluated taking into account the autonomy and independence granted to some type of distributors (also by the DTA at sec. 52/53) in (i) defining their own service model and (ii) assessing the specific needs of their clients.</p> <p><input type="checkbox"/> This restrictive treatment requires a very broad definition of the target market which may result in possible liability exposure due to sales to persons within the target market but for which the product is nevertheless not suitable. If those market segments would be excluded, those customers which need the product in these segments would be in effect cut off from obtaining beneficial coverages.</p> <p><input type="checkbox"/> The problem results from the unavoidable dilemma, that the target market definition by design has to be abstract and must not be excessively granular (since it also must be included in the PRIIP KID, for example)</p>	<p>Noted. Taking into consideration one of the legal objectives of the target market, namely ensuring that insurance products are only distributed to customers, for whom such insurance products are compatible, it seems, from EIOPA's perspective, appropriate that distribution outside the target market occurs only exceptionally. Therefore, the analysis now specifies that the insurance distributor may distribute, on an exceptional basis,</p>

		<p><input type="checkbox"/> We therefore propose the following understanding (which should be clarified in the ultimate Technical Advice):</p> <ul style="list-style-type: none"> o Adequately broad definition of target market, which adequately addresses the trade-offs of <ul style="list-style-type: none"> <input type="checkbox"/> an overly restrictive definition of the target market, which could in effect cut some customers off from valuable insurance coverages <input type="checkbox"/> an overly broad definition of the target market which would limit the usefulness of the target market concept by leaving too many customers inside the market for whom the product is not suitable <input type="checkbox"/> an overly granular definition of the target market which cannot be practically defined or managed o The rules should leave the ultimate responsibility of matching the product to individual customer’s demands and needs to the distributor at the point of sale, since in many cases only taking into account the individual circumstances permit a proper assessment. o For IBIP products the granularity of the target market description should not be required to exceed the two dimensions explicitly required in Art. 8 (3) PRIIP Regulation, i.e. ability to bear losses and investment horizon. o For most non-life products the target market definition will be aligned very closely with the risk coverage of the product. An obligation to provide a very detailed definition of a negative target market (i.e. identifying non-target customers) might put a disproportionate burden on the manufacturer in many cases. <p><input type="checkbox"/> In order to achieve consistency across regulations dealing with the same topics, for insurance PRIIPs (or IBIPs) the criteria for the POG target market definition under IDD should be aligned with the “type of retail investor to whom the PRIIP is intended to be marketed” (in Art. 8 (3)(c)(iii) PRIIPs</p>	<p>insurance products to a customer, who does not belong to the identified target market, provided that the insurance distributor can prove that the respective insurance product meets the demands and needs of the individual customer, and, in the case of insurance-based investment products, is appropriate or suitable for the customer.</p>
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			Regulation). In particular, the list of compulsory criteria for the target market definition of these products should not be extended beyond PRIIPs Draft RTS Art. 2 III.	
263	AMICE	Question 7	<p>We believe that the obligation for the manufacturer to identify the interests, objectives and characteristics of the target market might create many difficulties in practice and notably restrict the access of customers to insurance products within the internal market with a risk of discrimination.</p> <p>We agree with EIOPA that the principle of proportionality should be taken into account when considering the granularity of the target market and that this granularity should depend on the characteristics, risk profile and complexity of the product. As the majority of simple products (for instance home and motor insurance) are developed for the purpose of covering a particular risk and serve a large market, we consider that all persons affected by the risk form the natural target group of those products covering a particular risk. A too narrow definition of the target market could lead to the exclusion of customers from suitable insurance coverage if, for different reasons, they do not form part of the target group despite the fact that the product still meets their individual needs.</p> <p>For life insurance products, not only the product itself should be taken into account but also the portfolio of the customer. A narrowly defined target market would be hard to reconcile with a portfolio approach, where both defensive and more risky investment products can be sold to the same investor in order to achieve a balanced investment portfolio.</p> <p>Furthermore, the abovementioned arguments are also valid for insurance products required by law or based on agreements between social partners. In these cases, the target market is defined by law. For example, in some Member States firms are required to take out health insurance for all their employees and minimal guarantees are set by law.</p> <p>We believe that the target market should be defined in a broad sense and sales outside the target market should be allowed. Furthermore, the final policy proposals should be</p>	<p>Noted. EIOPA would like to point out that the policy proposals on the granularity of the target market entail abstract terminology enabling manufacturers to take account of product specificities and providing a wide discretion to identify the target market. Please also refer to EIOPA's Feedback Statement in the Final Report.</p>

		<p>adjusted if necessary to online distribution channels. The development of online sales should not be hampered by the POG requirements.</p> <p>The rigid determination of the target market could also hinder product innovation and customer choice and create high organisational costs for manufacturers and distributors.</p> <p>The requirement for a negative target market definition raises a number of questions. The identification of the groups of customers for whom the product is considered likely not to be aligned with their interests, objectives and characteristics is very subjective and would be difficult to implement in practice.</p> <p>With regards to products sold via the internet, it is unclear how the insurance undertakings can prevent consumers from buying insurance products considered unlikely to meet their interests, objectives and characteristics.</p> <p>Although sales outside the target market would be rare in case of a broader and more abstractly defined target group, EIOPA should clearly state in the technical advice that sales outside the target market are allowed, provided that they are justified in that particular situation</p> <p>ESMA's technical advice on MiFID 2, as well as EBA's POG guidelines foresee that an instrument or service might be sold to clients outside the intended target market or where the target market has not been adequately identified provided that distributors justify such decisions in a durable medium attesting the advice given. We believe that EIOPA should follow the same approach in its final technical advice.</p> <p>In order to provide unlimited access to insurance products for the benefit of customers and competition, distribution channels should not be limited to certain products or target groups as long as these channels are properly trained and able to sell one or several categories of products.</p> <p>Finally, we wonder if it is necessary to take into account the level of information available to the target market, as existing national and European information requirements (for example</p>	
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			PID / KID) already regulate in detail which information a customer should have at his disposal.	
264	AMUNDI	Question 7	For the reason explained in our response to Q2 we consider that the more high level possible will be the best.	Noted.
265	ANASF	Question 7	Yes, we do.	Noted.
266	Association of International Life Offices	Question 7	Yes, MOPS target markets may be generally wide, but normally a manufacturer could specify those groups of potential clients that the product would not be suitable for. So rather than specify the target market other than in general terms – specify particularly for who it is not suitable (for example a minimum and maximum normal age, minimum holding period or premium paying duration) – thus establishing guideline parameters.	Noted.
267	Assuralia	Question 7	<p>We agree with EIOPA that the principle of proportionality has to be taken into account when considering the granularity of the target market and that this granularity should depend on the characteristics, risk profile and complexity of the product. As the majority of simple products (for instance home insurance) are developed for the purpose of covering a particular risk, Assuralia considers that all persons affected by the risk form the natural target group of those products covering a particular risk. A too narrow delineation of the target market could lead to the exclusion of customers from suitable insurance coverage if, for different reasons, they do not form part of the target group despite the fact that the product still meets their individual needs.</p> <p>For life insurance products, not only the product itself should be taken into account but also the portfolio of the customer. A narrowly defined target market would be hard to reconcile with a portfolio approach, where both defensive and more risky investment products can be sold to the same investor in order to achieve a balanced investment portfolio.</p> <p>In general, we believe that the target market should be defined in a broad way by the manufacturer. We agree with EIOPA that (i) the target market describes a group of customers at a broader and more abstract level and (ii) differs</p>	<p>Noted.</p> <p>Please refer to the Feedback Statement in EIOPA’s Final Report. Regarding the identification of a negative target market: Where relevant from a customer protection point of view and for the sake of a level playing field with the product oversight and governance arrangements which apply for the investment sector, EIOPA considers it important that manufacturers identify the negative target market as well. This</p>

		<p>from the individual assessment of the adequacy of an insurance product for a specific customer. In Assuralia’s opinion, the identification of a broad target market by the manufacturer should enable the distributor to understand to whom the product is meant to be sold and serves as a first filter (at product level) to highlight that the product may not have value for customers outside the identified target market. However, it is the distributor involved who, based on the analysis of the customer’s demands & needs, is best placed to determine if that particular product is aligned with that specific customer’s needs (customer level). This approach acknowledges the important role of the distributor involved, who should remain in charge of analysing the customer’s interests, objectives and characteristics. This division of responsibilities and tasks between the manufacturer and distributor is in line with the IDD and would ensure that products are only sold to customers for whom they are fit.</p> <p>Although sales outside the target market would be rare in case of a broader and more abstractly defined target group, Assuralia calls on EIOPA to clearly state in the technical advice that sales outside the target market are allowed, provided that they are justified in that particular situation (for instance when the distributor involved decides on the basis of the demands and needs analysis that the product fits that specific customer’s needs). This would ensure that customers aren’t deprived from suitable insurance cover if, for any reason, they fall outside the identified target market. This would be in line with the approach taken by the European Banking Authority (EBA) in its guidelines on POG (EBA/GL/2015/18 page 8). Furthermore, the distributor is required to provide the manufacturer with information on the amount of sales outside the target market (cf. §54 on page 21). If this information indicates that there is a problem with the identification of the target market, the manufacturer will evaluate if adjustments to the identified target group are required.</p> <p>Finally, we like to bring to EIOPA’s attention that existing national and European information requirements (for example PID / KID) already regulate in detail which information a</p>	<p>should apply for insurance-based investment products (which can serve similar investment objectives as other investment products and are often made available to customers as potential alternatives or substitutes to MiFID financial instruments), but may also apply for non-life insurance products, as the supervisory experience has proven (e.g. mis-selling of payment protection insurance (PPI)).</p>
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			customer should have at his disposal. In this regard, we wonder if it is relevant to take into account the level of information available to the target market (§9 page 22 CP).	
268	BFV - Bundesarbeitsge meinschaft zur Förderun	Question 7	-	Noted.
269	BIPAR	Question 7	<p>BIPAR welcomes the principle of proportionality that is introduced in EIOPA policy proposal based on previous EIOPA preparatory work that states that POG distribution arrangements shall "be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity". However, BIPAR believes that EIOPA should have gone further and differentiate between insurance classes within its policy proposals.</p> <p>Because of the significant differences that exist between life with investment element products (IBIPs) and non-life/ pure life products, it is pertinent in EIOPA technical advice to differentiate the activities of IBIPs manufacturers from the ones of non-life/life manufacturers. Strict product oversight and governance provisions for non-life insurance products will be burdensome with no added value for consumer protection. Most product governance rules should be limited to products which target the private consumer IBIPs market (excluding all kind of business clients).</p> <p>Regarding third bullet of point 9 on page 32 on examples for IBIPs, BIPAR believes that the level of risk tolerance will be personal to an individual, it is not homogenous to a group of people with similar characteristics (such as age, occupation or socio economic group).</p> <p>BIPAR would also suggest that point 4 of the draft technical guidance on granularity negates the need for the text in point 3 from: 'avoiding groups of customers/consumers...". Additionally, using the term 'avoiding' would add confusion to the intent of the requirement.</p>	Noted. EIOPA does not share the view to differentiate between insurance classes taking into account that the policy proposals offer sufficient flexibility and discretion to take account of product specificities. It should also be remembers that the POG requirements introduced by the IDD do not make a distinction, but apply to all insurance products.

270	BNP Paribas	Question 7	<p>See response to question 2</p> <p>Granularity should be driven by the type of insurance product:</p> <ul style="list-style-type: none"> - Mandatory or not: for mandatory products the target market, interest, pricing etc would be impacted by the relevant law (e.g. RTA, Bonus Malus regulation in case of motor insurance in France, Loi Hamon...) - Contractual obligation: for insurance products covering contractual obligations, the terms of the contract will dictate target, interest, etc - Financial impact on the client: guidelines should be proportionate to the (variability of) the pay-out to the client (compensation of loss in indemnity type of insurance or capital insured in sums assurance) 	<p>Noted.</p> <p>EIOPA shares the view that those aspects may influence the identification of the target market.</p>
271	Bund der Versicherten (BdV – German Association of	Question 7	<p>Generally spoken we agree with the proposed high-level principle for the granularity of the target market, but it must be much more detailed. Of course there is a difference between the individual level and the group level. On the individual level the distributor has to make an assessment of concrete figures (possible contributions, insured sum, contract duration, additional covers etc.).</p> <p>That is why it is absolutely necessary on the group level to fix - as part of the forthcoming Technical Advice - a minimum list of criteria that have to be assessed.</p> <p>These criteria are related to the assessment of demands and needs (insurance specificities) as well as to the assessment of suitability and appropriateness (additionally for IBIPs). The latter include the knowledge and experience as well as the financial situation and objectives of the type of customers.</p> <p>We propose the following criteria (cf. our comment on Q 17):</p> <ul style="list-style-type: none"> <input type="checkbox"/> age <input type="checkbox"/> gender <input type="checkbox"/> family status <input type="checkbox"/> professional status 	<p>Noted. From EIOPA's view a minimum list of criteria may not be appropriate for all insurance products, in particular non-life products, in view of the variety of insurance products, whereas EIOPA agrees that these criteria may generally be considered by manufacturers.</p>

			<input type="checkbox"/> health status <input type="checkbox"/> income <input type="checkbox"/> liquid reserves <input type="checkbox"/> assets <input type="checkbox"/> property <input type="checkbox"/> credit commitments <input type="checkbox"/> prior conclusion of any other IBIPs (private life / annuity insurances) <input type="checkbox"/> prior conclusion of any other personal, state-subsidized or occupational pensions plans (retirement provision) <input type="checkbox"/> investment objectives (asset allocation, retirement provision etc.) <input type="checkbox"/> expected time frame <input type="checkbox"/> nature, volume, frequency and period of transactions already having been carried out <input type="checkbox"/> person's risk tolerance ("Risikobereitschaft") <input type="checkbox"/> person's ability to bear losses (highest possible lost in absolute figures) Only by using this minimum list of criteria there will be attained a sufficiently granular level of assessment in order to identify groups of customers / consumers whose needs, characteristics, objectives and demands are generally compatible with a certain product. But in order to reduce mis-selling practices it is particularly important to identify those groups of customers / consumers who shall be avoided for a product.	
272	BVK Germany	Question 7	The proportionality is as mentioned already in the general comment a very important principle	Noted.
273	CNCIF - Chambre Nationale des Conseillers en	Question 7	We share the view that insurance products are heterogeneous and therefore "can differ depending on the complexity and nature of the product and the risk of consumer detriment".	Noted. EIOPA has revised its policy proposal on the

			<p>However, we believe that the requirements proposed for the pre-defined "negative target market" ("If an insurance product is not compatible with the needs, characteristics, objectives and demands of a specific group of customers, the manufacturer shall also identify the target market to which the insurance product should not be distributed") should be avoided or clarified if it to be maintained, for the following reasons :</p> <ul style="list-style-type: none"> - The requirements under IDD (e.g article 25 IDD) do not provide for a definition of the "negative" target market. - Furthermore, this concept is unclear. For example, we doesn't know if customers not covered by the "positive" target market should be automatically covered by the "negative" target market. <p>Finally, we also believe that a clarification is needed considering the concept of "risk of consumer detriment".</p>	<p>negative target market. Please see the final report.</p>
274	CSCA French broker Association, 91, rue Saint Laza	Question 7	<p>See answer 2 above</p> <p>It should be specified that intermediaries are not "producers" and that such collaboration, while possible, does not oblige them as regards finalisation and responsibility for the document as regards information about the product.</p> <p>Care must be taken not to displace responsibility for information about the product to the intermediary, thus defining the latter's collaboration simply as a practice, excluding all obligation of result as regards the product.</p> <p>However, it is important that the distribution agreement linking the insurer with the distributor shall precisely detail the distributor's obligations as regards information about the product and the target market.</p>	Noted.
275	Czech Insurance Association CAP	Question 7	<p>We do not agree with the proposed principles. In the Czech Republic the granularity of target market is highly difficult. Insurance companies operate on the whole Czech market quite often with just one product for concrete insurance (e.g. life insurance, motor insurance, liability insurance). This product is universal for all groups of clients (e.g. individuals</p>	<p>Noted. The policy proposal on the negative target market has been revised. Please see EIOPA's</p>

			<p>and companies) but also so variable that it may be adjusted ad hoc according to particular needs of the client.</p> <p>Different situation is only within the professional liability insurance (e.g. doctors, architects). This product has to be framed in such a way to duly cover the insurance need of target group.</p> <p>Therefore, there should be possibility to offer products outside of the target market. In accordance with the proposal, the target market has to be set while structuring the product. Nevertheless, it is likely that distributor later in the process finds the product suitable for a client even though he is not subsumed under the target market. Thus, we consider it discriminatory towards clients who fall outside of the target market.</p> <p>The preferred variant is to provide just general provisions on the method and basic policy. Any detailed policy may interfere with the know-how of manufacturing products by individual manufacturers.</p>	Final Report.
276	EFAMA - The European Fund and Asset Manageme	Question 7	We currently do not have any further comments on the granularity of the target market, as we are awaiting ESMA's MiFID II Level-3 guidelines on target market. We would, of course, value further alignment between the target market concepts once ESMA's guidelines have been finalised.	Noted.
277	Eurofinas	Question 7	We share the EIOPA's view that the target market for insurance products must continue to be appropriately defined by manufacturers. However, we do not think that all proposed criteria to determine the target market are in fact relevant factors. It is important not to confuse the definition of target market with a potential miss-sell practice. For example, at the level of target market, it is not yet relevant – or feasible - to specify the required knowledge and financial capability of individual customers. The new standards should not compromise execution-only/non-advice sales which are very common in the retail financial services sector.	Noted. EIOPA shares the view that the identification of the target market should not be confused with services provided at the point of sale. Whereas the identification of the target market is undertaken on an abstract level, the specificities of the

				individual customer are taken account of at the point of sale.
278	European Federation of Financial Advisers and Fina	Question 7	We agree with the proposed high level principle.	Noted.
279	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 7	-	Noted.
280	Eurosif Aisbl	Question 7	Eurosif fully supports the application of the principle of granularity in the definition of the target market primarily for two reasons: ensuring investments products available to retail investors have an appropriate risk/reward profile consistent with the specific target market; and allowing retail investors to choose products that reflect their values and objectives also of a non-financial nature. These two considerations are in line with the legislative package dedicated to rebuilding consumer trust in financial markets which particularly affects retail and insurance based investment products. As the European Commission has already recognised, retail investors are increasingly pursuing, along with the financial returns, also additional purposes such as social or environmental goals of their investments. Specific inclusion of Environmental, Social and Governance criteria, in the identification of the target market, would constitute an important set of criteria with relevant implications for the investor. The retail Sustainable and Responsible Investment (SRI) industry is experiencing growth on a sustained level, but so far the market has been mainly led by institutional investors. Although we are seeing interest from retail investors become more prominent, their demand is still hampered by available products and accessible information. Much can be done by regulators to reverse this trend.	Noted.
281	Fachverband der	Question 7	We welcome the principle of proportionality that is introduced	Noted.

	Versicherungsmakler und Berater in		<p>in EIOPA policy proposal based on previous EIOPA preparatory work that states that POG distribution arrangements shall “be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity”.</p> <p>However we believe that EIOPA should have gone further and differentiate between insurance business classes within its policy proposals. It is hard to see what high lever EIOPA proposed principle can add beyond a few very obvious statements.</p> <p>Because of the significant differences that exist between life with investment element products (IBIPs) and non-life/ pure life products, it is pertinent in EIOPA technical advice to differentiate the activities of IBIPs manufacturers from the ones of non-life/life manufacturers. Strict product oversight and governance provisions for non-life insurance products will be burdensome with no added value for consumer protection. Most product governance rules should be limited to products which target the private consumer IBIPs market (excluding all kind of business clients).</p> <p>Regarding third bullet of point 9 on page 32 on examples for IBIPS, we believe that the level of risk tolerance will be personal to an individual, it is not homogenous to a group of people with similar characteristics (such as age, occupation or socio economic group).</p> <p>We would also suggest that point 4 of the draft technical guidance on granularity negates the need for the text in point 3 from: ‘avoiding groups of customers/consumers...’.</p> <p>Additionally, using the term ‘avoiding’ would add confusion to the intent of the requirement.</p>	EIOPA does not share the view to differentiate between insurance classes taking into account that the policy proposals offer sufficient flexibility and discretion to take account of product specificities. It should also be remembers that the POG requirements introduced by the IDD do not make a distinction, but apply to all insurance products.
282	Fédération Française de l'Assurance (FFA) 26 bo	Question 7	<p>As a general comment, where personal recommendation is mandatory like in France there is no need for granular identification of the target market whatever the complexity of the insurance product is.</p> <p>Further as to granularity, we have serious concerns for the</p>	Noted. EIOPA does not share the concern that the need to identify the target market could lead to an end of the

		<p>French model and recall these starting prerequisites:</p> <ul style="list-style-type: none"> o Accepting specificities of national markets' existing systems <p>Too much granularity will cause the upheaval of the French market where advice is mandatory. It could be the end of the "open architecture" product design and restricting the customers' choice. Customer will be trapped in a target market product which may not exactly fit its individual situation, needs and demands. On the top of that too narrow a definition of the target market entails the risk of excluding some customers, lead to discrimination or even more to a sale refusal.</p> <p>For this reason, EIOPA's examples of criteria which could be considered to determine the target market" (age of the customer, financial situation and objectives... i.e. page 32 point 9) cannot be relevant at conception/category level but only at individual level.</p> <p>That's why the flexible product-specific approach to the determination of the target market is to be welcomed.</p> <ul style="list-style-type: none"> o 'Negative' target market should be deleted as it goes beyond IDD <p>EIOPA is changing legislators' decision on level 1 where no such definition was required. Negative target market would further restrict the offer to the customer and increase risks of a discriminatory classification of clients.</p> <ul style="list-style-type: none"> o The sale outside of the target market should be explicitly recognized <p>The possibility of a sale outside of the target market is not clearly (explicitly) indicated in the EIOPA's technical advice, just as a comment in EIOPA's explanations, page 21.</p> <p>As a principle, EIOPA prohibits (a) distribution outside the market and then, exceptionally, permits it (b):</p> <ul style="list-style-type: none"> - "In particular, this means that the distribution strategy generally does not allow insurance products to be distributed 	<p>"open architecture" as the target market aims to specify the group of customers for whom the insurance product is appropriate, but not to limit the choice of manufacturers.</p> <p>With regard to the comments on the negative target market and the distribution to customers outside of the target market, please see EIOPA's Feedback Statement to the Public Consultation to be found in the Final Report.</p>
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283	Federation of Finnish Financial Services	Question 7	<p>Concerning the target market specificities, defining target market decisively in advance for all possible products and cases and all possible client groups in not possible in practice. The product variety is huge in both life and non-life products, and so does vary the clients themselves. We fear that too tight and prescriptive criteria for target market definition would interfere with product innovation as well.</p> <p>With these reasons we feel it is necessary to allow for appropriate flexibility in the criteria defining the target market and leave the definition to the product manufacturer itself. We welcome EIOPA ´s approach in point 14. regarding the granularity of the target market.</p> <p>Client ´s possibility to choose from wide range of products</p>	<p>Noted. EIOPA is of the view that the policy proposals offer sufficient flexibility to manufacturers to take account of the specificities of the different insurance products. With regard to the comments on the negative target market</p>

			<p>should not be restricted either. Principles of anti-discrimination will set the limits to product provider's possibilities to restrict the marketing and offering of products to clients.</p> <p>We stress that selling products outside the pre-defined target market should be allowed. Selling insurance products will however be regulated by strict selling rules in IDD, which include defining the demands and needs of the client and in case of insurance related investment products, conducting the suitability or appropriateness test. Allowing the selling of products outside the target market should not be considered possible only in exceptional cases. We would also refer to the EBA Guidelines on product governance, which explicitly states that selling outside the target market is allowed if this can be justified.</p> <p>We do not think it is possible or necessary to define groups of customers for whom the product is typically not compatible and thus it should not be assumed that customers not covered by the pre-defined target market of a specific product are automatically part of a negative target market.</p>	<p>and the distribution to customers outside of the target market, please see EIOPA's Feedback Statement to the Public Consultation to be found in the Final Report.</p>
284	FG2A (Fédération des Garanties et Assurances Affin	<p>Question 7</p> <p>Do you agree with the proposed high(lev</p>	<p>In the case of affinity and add-on insurance and warranties, the target market is determined by the underlying product or service bought that a client wishes to insure. The product has therefore few chances of being sold outside its target market. The FG2A would rather insists that selling outside the target market should remain possible if the sale is justified by the demands and needs of the customer.</p>	<p>Noted.</p> <p>With regard to the comments on the distribution to customers outside of the target market, please see EIOPA's Feedback Statement to the Public Consultation to be found in the Final Report.</p>
285	Financial Services Consumer Panel	<p>Question 7</p>	<p>The draft Technical Advice on target market refers to the need to check compatibility of the product with certain types of customers and introduces a level of granularity in identifying a specific target market that we welcome. We agree it is essential that manufacturers are compelled to identify a target</p>	<p>Noted.</p>

			<p>market in the development stage and to only add features that meet the needs of the target market. Too often, miss-selling of financial products is driven by the need to sell high volumes – irrespective of whether the product meets the individual clients’ needs.</p> <p>However, there is also an argument that some basic products can be appropriate for a large and diverse target market. The Panel has previously argued that more work needs to be done in establishing a test for whether a product can be deemed simple or not, as part of identifying the target market. Manufacturers and distributors should in particular consider the design and marketing of simple products that can be readily understood by all consumers.</p> <p>We would like to reiterate the findings of the 2013 UK’s Sergeant Review of Simple Financial Products (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191721/sergeant_review_simple_products_final_report.pdf), which found that many consumers need simple financial products because of “the challenge of making good choices in what seems to many to be an overwhelmingly complicated marketplace with a very wide range of products which are complex and difficult to understand”.</p> <p>The review also established a set of principles, which form the basis of an objective test to establish whether a product is simple or not. These include for example the use of standardised language, a transparent fee structure and straightforward and clear purchasing process.</p> <p>We would encourage EIOPA, in cooperation with the other ESAs, to conduct a similar exercise at EU-level to establish such operating principles for manufacturers. To ensure adequate consumer understanding of the types of products they are offered, it is also critical that a designation of a product as ‘simple’ is subject to oversight by a regulator or another independent body.</p>	
286	FNMF, 255 rue de	Question 7	No.	Noted. EIOPA would

	Vaugirard, 75015 PARIS		<p>In France, for insurance products where personal recommendation and advice are compulsory, there is no need to identify if the target market is identified at a sufficiently granular level.</p> <p>As mentioned above, the notion of granularity of the target market is not appropriated in France for historical operators specialized in overregulated insurance products (Health for exemple to the extent that health insurance is already over regulated in terms of guarantee, price and advice).</p>	like to remember that the requirement to identify the target market stems from the IDD which does not exempt any products (except for large risks).
287	Forum per la Finanza Sostenibile (FFS)	Question 7	<p>FFS agrees with the proposed high level principles for the granularity of the target market and suggests to highlight the importance of taking into account also non-financial (ESG) aspects in the identification of the target market, while also stressing their financial materiality in terms of risk analysis and management.</p> <p>In addition to the materiality aspect, integrating ESG considerations has an ethical dimension which is becoming increasingly important for investors, both institutional and individual.</p> <p>Indeed, a research carried out in Italy by the Italian Sustainable Investment Forum "Forum per la Finanza Sostenibile" and Doxametrics (2013) has shown that 47% of the individual investors involved in the survey stated to be willing to change their investment decisions according to sustainability criteria.</p> <p>This trend is also confirmed by the SRI market figures: the European SRI Study 2016 evidence a relevant growth of responsible investments in the retail market.</p>	Noted.
288	FRENCH BANKING FEDERATION	Question 7	<p>These recommendations only consider the Member States where the advice is not mandatory. They cannot apply in Member States (such as France) where there is a duty to advise the customer for any insurance product. Such an option to provide for a duty to advise is permitted by IDD and EIOPA must take it into consideration.</p>	Noted. EIOPA would like to point out that the concept of the identification of the target market has been introduced by the IDD.

			<p>Thus, by making references to suitability criteria and demands and needs test made at consumer level in these recommendations, EIOPA introduces a confusion between the definition of the target market (which is based on high level principles at product level) and the personalised recommendation given to the investor where advice is provided which is at clients level (see for example the consideration of the "financial situation of a customer"). Furthermore, the criteria should also be appropriate to non-life products.</p> <p>It is our understanding that the definition of the target market should be as broad as possible at product level in order not to undermine the possibilities for customers to be offered/ advised relevant/ suitable products. Moreover, if the target market is defined in a too narrow manner it may generate frequent review which we don't believe it is the intention of the European legislator when mentioning the principle of proportionality.</p>	<p>EIOPA agrees that the identification of the target market (on an abstract level) has to be distinguished from the individual assessment at the point of sale. For further comments please see EIOPA's Feedback Statement to the Public Consultation in the Final Report.</p>
289	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 7	No comment	Noted.
290	German Association of Private Health Insurers (PKV	Question 7	<p>First we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.</p> <p>In addition we would like to stress that for substitutive private health insurance, the definition of the target market is only possible at contract conclusion, since the contract period is for life.</p>	Noted.
291	German Banking Industry Committee (GBIC)	Question 7	We share EIOPA's view that it is difficult to develop a common standard of a target market in view of the multitude of different products. We agree that needs, characteristics and demands of customers need to be taken into account when developing a target market. In this context, it is necessary to	<p>Noted.</p> <p>The language of the policy proposals has been revised to address concerns about</p>

			<p>define the criterion of “objectives” that is mentioned additionally in the Draft TA (p. 33 No. 3).</p> <p>Here, too, we stress the need that the distribution of products outside the target market needs to remain possible without punitive measures since there may be good reasons to distribute products outside the foreseen target market on an individual basis (as mentioned correctly under Draft TA p. 21 No. 53). There should be no negative list as laid out in the Draft TA p. 34, No. 4, since this is not foreseen in the IDD.</p> <p>Related to the unclear definition of demands and needs according Art. 20 IDD (see comment to question 18) and also to the Suitability-Assessment the synchronization between demands and needs of the customer and the definition of the relevant Target Market increases the unclarity regarding the Target Market definitions at all (e.g. Art. 9 (9) of the draft Commission Delegated Directive under MiFID II defining only the “needs” and not the “wishes”). It is unclear whether the definition of “needs” shall only be used for the definition of the Target Market in Art. 9 (9) of the draft Commission Delegated Directive under MiFID II and how this should be taken into account to define the needs according to Art. 20 (1) IDD.</p> <p>A standardized “Target Market Definition”, that is consistent with the Level III measures under MiFID II that are currently drafted by ESMA, would be appreciated.</p>	<p>undefined terminology such as “interests” and “objectives”.</p> <p>For further comments please see EIOPA’s Feedback Statement to the Public Consultation in the Final Report.</p>
292	German Insurance Association (GDV)	Question 7	<p>The “target market” is of key importance for POG processes. We share the view that, given the variety of products on the insurance market, no single standard for the granularity of the target market definition can be set (cf. analysis p.31 no. 2, p. 32 no. 7, p. 33 no. 14, in principle also DTA p. 33 no. 3). The difficulty lies in capturing essential elements while avoiding that the definition becomes overly complex and therefore useless for day-to-day business. Against this background, we recommend further modifying the provisions.</p> <p><input type="checkbox"/> We agree that the definition should take potential “demands and needs” of customers into consideration (DTA p.</p>	<p>Noted.</p> <p>The language of the policy proposals has been revised to address concerns about undefined terminology such as “interests” and “objectives”.</p> <p>With regard the issues “selling outside the target market” and</p>

		<p>33 no. 2). Further criteria should only be considered if they are relevant. It is not clear what meaning the term „objectives“ (p. 33 no. 3) shall have in this context: The term is partly used as a possible addition to “demands and needs”, partly given the same relevance (cf. analysis p. 32 no. 3, 8, DTA p. 33 no. 1, 3). Equally unclear are the criteria “interests”, “risks” and “coverage”, which are mentioned in the analysis (p.32 no. 3, p. 33 no. 11). “Knowledge and experience” (DTA p. 33 No. 2, analysis p. 32 no. 8) is usually not a defining element of a target group for insurance products, but a characteristic that must be considered in product design and in the context of the distribution strategy. It would be helpful if this could be clarified in the draft or taken into account when consolidating the different proposals on the definition of target markets (e.g. DTA p. 22 no. 9 on the “degree of financial capability and literacy”).</p> <p><input type="checkbox"/> We also recommend explicitly clarifying directly in the DTA that selling outside of the target market remains possible, but requires a justification (cf. p. 21 no. 53). It should also be ensured that the intermediary is not required to obtain information it would normally not need to obtain in case of sales where no advice is given (the option to sell without advice provided for under IDD and the option of selling insurance-based investment products without assessing their appropriateness, explicitly approved under IDD Art. 30 (2) should be observed). We therefore suggest explicitly stating in the DTA that the justification for selling outside the target market only needs to cover aspects that the distributor is (or has to be) aware of.</p> <p><input type="checkbox"/> The German Insurance Association recommends deleting the provisions on the negative target market (identifying groups of customers for whom the product is typically not compatible, DTA p. 34 no. 4). The IDD itself does not provide for the definition of a negative target market. In case of many products, clearly defining the negative target group or even allocating all groups of potential customers might prove hardly possible. Thus, the example on p. 33 no. 13 (life insurance policy running for 30 years for a 97-year-old</p>	<p>“negative target market” please see EIOPA’s Feedback Statement to the Public Consultation in the Final Report.</p>
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			<p>woman) does not include a clear definition, either. If the criterion of “negative target markets” is to be maintained, it should be clarified that individual, striking examples are sufficient. It should not be assumed that customers not covered by the pre-defined target market of a specific product are automatically part of a negative target market. In any case, additional examples clarifying expectations would be highly welcome.</p> <p><input type="checkbox"/> From our point of view, the draft proposals under DTA p. 33 no. 1 and DTA p. 34 no. 4 are not necessary. The clarification “where relevant” could also be included under DTA p. 33 no. 3.</p> <p>As described under question 2, there is also room for improvements regarding the proposals based on the EIOPA Guidelines.</p>	
293	Institute and Faculty of Actuaries	Question 7	Yes.	Noted.
294	Insurance Europe	Question 7	<p>Target market definition</p> <p>The target market should be defined in a broad way by the manufacturer. We agree with EIOPA that (i) the target market describes a group of customers at a broader and more abstract level and (ii) differs from the individual assessment of the adequacy of an insurance product for a specific customer.</p> <p>The requirement to use detailed personal factors such as knowledge and experience, the financial situation and objectives of the customers that EIOPA refers to in paragraph 2 on page 33 are in contrast with the broad and abstract group of customers.</p> <p>The identification of a broad target market by the manufacturer should enable the distributor to understand to whom the product is meant to be sold. This serves as a first filter (at product level) to highlight that the product may not</p>	<p>Noted.</p> <p>With regard the issues “selling outside the target market” and “negative target market” please see EIOPA’s Feedback Statement to the Public Consultation in the Final Report.</p>

		<p>be designed for customers outside of the identified target market. However, it is the distributor involved who, based on the analysis of the customer's demands and needs, is best placed to determine if that particular product is aligned with that specific customer's needs (customer level).</p> <p>Recommendation: The target market should be able to be defined as broadly as possible. A too narrow definition of the target market entails the risk of excluding some consumers, even though the product would their needs. This could lead to unjustified discrimination or a refusal to sell.</p> <p>Sales outside the target market</p> <p>As EIOPA acknowledges, all products differ and therefore the granularity of the target market can differ depending on the complexity and nature of the product. A rigid delineation of a target market at the level of product design would lead to the exclusion of numerous customers from suitable insurance coverage. If customers do not form part of the target group, for any one of a number of reasons, they could be refused coverage even though the product still meets their individual need for protection. The distributor has to be able to deviate from the pre-set target group if this is justifiable in a particular case.</p> <p>The approach taken by the EBA in its guidelines on POG is to allow distributors to sell products outside of the target market defined by the manufacturer provided they are able to justify doing so. In order to ensure a consistent and coherent approach, the same principle should apply here. This would leave sufficient flexibility to the distributor where the product is suitable/appropriate for the customer.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> <input type="checkbox"/> EIOPA should introduce paragraphs 52 and 53 of the analysis on pages 20 -21 into the final technical advice as well, stating that it generally remains possible to sell products outside of the intended target market, provided that it is justified in that particular situation (for instance when the distributor involved decides on the basis of the demands and 	
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			<p>needs analysis that the product fits that specific customer's needs).</p> <p><input type="checkbox"/> The final technical advice should not impose any duties on manufacturers to supervise or be held responsible for the actions of third party distributors who sell outside of the target market. Third party distributors would therefore remain responsible for meeting the required standards for distribution and determining whether sales remain suitable/ appropriate.</p> <p>Negative target market</p> <p>It is not necessary to include provisions on a 'negative' target market (ie identifying groups of customers for whom the product is typically not compatible). For many products, trying to clearly define the negative target group or specifying it in an exhaustive way might prove extremely difficult. More importantly, such a provision is not contained in the Level 1 text of the IDD.</p>	
295	Intesa Sanpaolo S.p.A.	Question 7	We agree with the proposed high level principle for the granularity of the target market.	Noted.
296	IRSG	Question 7	<p>As the IRSG previously mentioned in the Consultation Paper on the proposal for Guidelines on product oversight & governance arrangements by insurance undertakings, there must be common standards on criteria / steps to be taken for target group definition. Also, these common standards should not be discriminatory and comply with other existing legislation.</p> <p>On the other hand the IRSG considers that the main objective of this particular piece of legislation is the protection of the end consumer. The IRSG is therefore of the opinion that care has to be taken in order not to make the process of identifying the target market too complex, lengthy and costly but instead efficient and meaningful.</p> <p>Sales outside the target market:</p>	Noted. Please see EIOPA's Feedback Statement in the Final Report.

			<p>As EIOPA acknowledges, all products differ and therefore the granularity of the target market can differ depending on the complexity and nature of the product. Although sales outside the target market would be rare in case of a broader and more abstractly defined target group, EIOPA should explicitly state in the technical advice and not only in the analysis (pages 20-21, pars. 52 and 53) that it remains possible generally to sell products outside of the intended target market, provided that they are justified in that particular situation (for instance when the distributor involved decides on the basis of the demands and needs analysis that the product fits that specific customer's needs).</p> <p>A rigid determination of a target market at the level of product design would lead to the exclusion of numerous customers from suitable insurance coverage, if – for different reasons – they do not form part of the target group, despite the fact that the product still meets their individual need for protection. The distributor has to be able to deviate from the pre-set target group if this is reasonable in a particular case.</p> <p>The approach taken by the EBA in its guidelines on POG is to allow distributors to sell products outside of the target market defined by the manufacturer provided they are able to justify doing so. In order to ensure a consistent and coherent approach, the same principle should apply here. This would leave flexibility to the distributor where the product is suitable/appropriate for the customer.</p> <p>Furthermore, in EIOPA's final Report on Public Consultation on Preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors (EIOPA-BoS-16-071), EIOPA states as follows:</p> <p>"The Guidelines themselves are silent on the question under which circumstances products may be sold to consumers outside of the target market.</p>	
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			Generally, EIOPA believes that the identification of a target market does not generally prevent distributors from selling products to consumers outside of the target market in exceptional cases, but distributors would then need to justify why they offered products to consumers who do not belong to the identified target market.”	
297	Liechtenstein Insurance Association (LVV)	Question 7	<p>The “target market” is of key importance for POG processes. We share the view that, given the variety of products on the insurance market, no single standard for the granularity of the target market definition can be set (cf. analysis p.31 no. 2, p. 32 no. 7, p. 33 no. 14, in principle also DTA p. 33 no. 3). The difficulty lies in capturing essential elements while avoiding that the definition becomes overly complex and therefore useless for day-to-day business. Against this background, we recommend further modifying the provisions.</p> <p>We agree that the definition should take potential “demands and needs” of customers into consideration (DTA p. 33 no. 2). Further criteria should only be considered if they are relevant.</p> <p>It is not clear what meaning the terms «objectives» (p. 33 no. 3) and «knowledge mmb experience» (p. 33 no.2) shall be.</p> <p>We also recommend explicitly clarifying directly in the DTA that selling outside of the target market remains possible, but requires a justification (cf. p. 21 no. 53). It should also be ensured that the intermediary is not required to obtain information it would normally not need to obtain in case of sales where no advice is given (the option to sell without advice provided for under IDD and the option of selling insurance-based investment products without assessing their appropriateness, explicitly approved under IDD Art. 30 (2) should be observed). We therefore suggest explicitly stating in the DTA that the justification for selling outside the target market only needs to cover aspects that the distributor is (or has to be) aware of.</p> <p>The Liechtenstein Insurance Association recommends deleting</p>	Noted.

			<p>the provisions on the negative target market (identifying groups of customers for whom the product is typically not compatible, DTA p. 34 no. 4). The IDD itself does not provide for the definition of a negative target market. In case of many products, clearly defining the negative target group or even allocating all groups of potential customers might prove hardly possible. Thus, the example on p. 33 no. 13 (life insurance policy running for 30 years for a 97-year-old woman) does not include a clear definition, either. If the criterion of “negative target markets” is to be maintained, it should be clarified that individual, striking examples are sufficient. It should not be assumed that customers not covered by the pre-defined target market of a specific product are automatically part of a negative target market. In any case, additional examples clarifying expectations would be highly welcome.</p>	
298	<p>MALTA INSURANCE ASSOCIATION</p> <p>These comments have b</p>	Question 7	<p>We fear that the rigid definition of the target market would lead in practice to the exclusion of many customers despite the fact that the product would still meet their needs for insurance protection. Therefore the distributor should be able to deviate from the pre set target group if this is reasonable in the particular case.</p> <p>There is no need to define a negative target market, because customers not covered by the predefined target market of a product are automatically part of a negative target market.</p>	Noted.
299	<p>Mediterranean Insurance Brokers (Malta) Ltd.</p>	Question 7	<p>Do you agree with the proposed high-level principle for the granularity of the target market? If not, please provide details on the level of detail you would prefer.</p> <p>We welcome the principle of proportionality that is introduced in EIOPA policy proposal based on previous EIOPA preparatory work that states that POG distribution arrangements shall “be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity”.</p> <p>However we believe that EIOPA should have gone further and differentiate between insurance business classes within its</p>	Noted.

			<p>policy proposals. It is hard to see what high level EIOPA proposed principle can add beyond a few very obvious statements. We have experienced lack of clarity when it comes to implementing the principle of proportionality under Solvency II.</p> <p>Because of the significant differences that exist between life with investment element products (IBIPs) and non-life/ pure life products, it is pertinent in EIOPA technical advice to differentiate the activities of IBIPs manufacturers from the ones of non-life/life manufacturers. Strict product oversight and governance provisions for non-life insurance products will be burdensome with no added value for consumer protection. Most product governance rules should be limited to products which target the private consumer IBIPs market (excluding all kind of business clients).</p> <p>Regarding third bullet of point 9 on page 32 on examples for IBIPS, we believe that the level of risk tolerance will be personal to an individual, it is not homogenous to a group of people with similar characteristics (such as age, occupation or socio economic group).</p>	
300	Slovenian Insurance Association	Question 7	<p>We don't agree with the proposed principles for the granularity of the target market. Such rules are contained in provisions for the assessment of suitability and appropriateness.</p> <p>Granularity of the target market depends on the nature of the product. For example, for products such as unit linked insurance products, it may be appropriate that target market should be defined by taking into account specific personal circumstances of the customers such as age, knowledge and experience, financial situation, objectives of the customers. But on the other hand, some other insurance products (for example household insurance, property insurance, personal accident insurance) are structured in a way that prevents mis-</p>	Noted. The Technical Advice stresses that the identification of the target market has to be distinguished from the individual assessment whether an insurance product is consistent with the demands and needs, and where applicable, whether the insurance product is

			selling.	suitable and appropriate for the individual customer at the point of sale. Therefore, the responsibility for these assessments remains with the insurance distributor.
301	The Danish Insurance Association	Question 7	<p>In general the DIA finds that the differences between the various products need to be respected when applying POG guidelines. Hence, the DIA agrees that there should be different levels of granularity with regard to the target market enabling the manufacturer to define the target market in a broad way. In this respect product risk is minor for simple insurance policies sold on a mass-market basis. As to products required by law or based on agreements between social partners they should be subject to no or less stringent requirements. This also applies to insurances that are tailor made in order to cover the special needs of costumers' via terms and conditions, risk exclusions or inclusions etc.</p> <p>In light of the above the DIA supports the fact that the principle of proportionality has been incorporated into the policy proposal on the target market.</p> <p>However, according to paragraph 2 on page 33, when defining the target market EIOPA suggests taking into account factors such as knowledge and experience, financial situation and objectives of the customer. These are detailed personal factors and do not seem to correspond with a broad, abstract group of customers.</p> <p>The DIA welcomes the fact that EIOPA in its analysis on page 20-21 (paragraph 52 and 53) acknowledges that under certain circumstances it remains possible to sell products outside of the intended target market. However, explicit recognition of this principle should be introduced in the actual policy proposal and not only in the analysis.</p>	<p>Noted. It should be noted that some of the factors "knowledge and experience, financial situation and objectives" have been replaced for the sake of alignment with the language of the suitability assessment; however EIOPA is of the view that these factors should be understood in an abstract way focusing on the typical customer belonging to the target market.</p> <p>With regard to the comments on "selling outside the target market" and "negative target market" please refer to EIOPA's Feedback Statement in the Final Report.</p>

			<p>A rigid determination of a target market at the level of product design would lead to the exclusion of numerous customers from suitable insurance coverage, if - for different reasons - they do not form part of the target group, despite the fact that the product still meets their individual need for protection. The distributor has to be able to deviate from the preset target group if this is reasonable in a particular case.</p> <p>In light of the above, there should be no obligation to define a negative target market. Moreover it is a concept that is difficult to understand and that could be one which could prove too exhaustive or even impossible to fulfil in practice.</p> <p>Finally, as regards the distribution of products to the identified target market, the guidelines should not impose any duty on manufacturers to supervise or be held responsible for the actions of distributors who sell outside of the target market (paragraph 22 and 23 on page 23). Distributors would therefore remain responsible for meeting the required standards for distribution and determining whether such sales remain suitable/appropriate.</p>	
302	Unipol Gruppo Finanziario S.p.A.	Question 7	Yes, we agree.	Noted.
303	Verband der Automobilindustrie e.V. Arbeitskreis	Question 7	<p>It should be the responsibility of the manufacturer to define the target market for insurance products.</p> <p>However, we do not think that all proposed criteria to determine the target market are in fact relevant factors. It is important not to confuse the definition of target market with a potential miss-sell practice. For example, at the level of target market, it is not yet relevant - or feasible - to specify the required knowledge and financial capability of individual customers. The new standards should not compromise execution-only/non-advice sales which are very common in the retail financial services sector.</p>	Noted. The Technical Advice stresses that the identification of the target market has to be distinguished from the individual assessment whether an insurance product is consistent with the demands and needs, and where applicable, whether the insurance product is

				<p>suitable and appropriate for the individual customer at the point of sale. Therefore, the responsibility for these assessments remains with the insurance distributor.</p>
304	<p>Verband Deutscher Versicherungsmakler e. V. (VDVM)</p>	<p>Question 7</p>	<p>7: Sind Sie mit dem vorgeschlagenen Grundsatzprinzip hinsichtlich der Detailtiefe des Zielmarkts einverstanden? Falls nicht, erläutern Sie bitte im Detail, welchen Detaillierungsgrad Sie bevorzugen würden.</p> <p>Der Zielmarkt ist ein zentraler Begriff der POG-Prozesse. Der VDVM teilt die Einschätzung, dass angesichts der Vielzahl von Produkten auf dem Versicherungsmarkt kein einheitlicher Standard für die Detailliertheit der Zielmarktdefinition festgelegt werden kann [vgl. Erläuterungen S. 31 Nr. 2, S. 32 Nr. 7, S. 33 Nr. 14, grundsätzlich so auch Draft Technical Advice (DTA) S. 33 Nr. 3]. Die Schwierigkeit liegt darin, wesentliche Aspekte zu erfassen, ohne dass der Begriff zu sperrig und damit unpraktikabel wird. Wir regen vor diesem Hintergrund an, die Vorgaben noch weiter anzupassen.</p> <p>Der VDVM stimmt zu, dass bei der Definition potenzielle Wünsche und Bedürfnisse („demands and needs“) der Kunden in den Blick zu nehmen sind (vgl. DTA S. 33 Nr. 2) und weitergehende Kriterien nur soweit relevant sind. Nicht klar ist, welche genaue Bedeutung hier dem Kriterium „objective“ zukommen soll, das zum Teil als mögliche Ergänzung zu dem Begriff „demands and needs“ (u. a. DTA S. 33 Nr. 3), zum Teil gleichrangig aufgeführt (vgl. Erläuterungen S. 32 Nrn. 3, 8, DTA S. 33 Nrn. 1, 3) wird. Entsprechend unklar sind unserer Auffassung nach auch die Kriterien „interests“, „risks“ und „coverage“ (Erläuterungen S. 32 Nr. 3, S. 33 Nr. 11). „Knowledge and experience“ (DTA S. 33 Nr. 2, Erläuterungen S. 32 Nr. 8) dürfte bei Versicherungsprodukten ganz überwiegend kein konstitutives Merkmal einer Zielgruppe</p>	<p>Noted. With regard to the issue „selling outside the target market“ and the issue „identification of a negative target market“ please refer to EIOPA’s feedback statement in the Final Report.</p>

		<p>sein, sondern gegebenenfalls eine Eigenschaft, die beim Produktdesign und im Rahmen der Vertriebsstrategie zu berücksichtigen ist. Der VDVM fände es hilfreich, wenn dies in den Entwürfen selbst klargestellt bzw. bei einer Zusammenführung mit den weiteren Vorschlägen zum Zielmarkt (z. B. DTA S. 22 Nr. 8 und 9 zu „degree of financial capability and literacy“) berücksichtigt würde.</p> <p>Wichtig wäre zudem, dass in den Entwürfen selbst ausdrücklich klargestellt wird, dass ein Verkauf außerhalb des Zielmarkts zulässig bleibt, aber zu begründen ist (vgl. Erläuterungen S.21 Nr. 53). Sichergestellt werden sollte zudem, dass der Vertreiber nicht verpflichtet wird, Informationen einzuholen, die er bei einem beratungsfreien Kauf gerade nicht einholen muss (Achtung bzw. Berücksichtigung der in der IDD vorgesehenen Möglichkeit der Beratungsfreiheit oder der in Art. 30 Abs. 2 IDD explizit vorgesehenen Möglichkeit, Versicherungsanlageprodukte bei entsprechender Warnung auch ohne Beurteilung der Angemessenheit zu verkaufen). Der VDVM regt daher an, in den Entwürfen ausdrücklich klarzustellen, dass es bei der Begründungspflicht nur darum geht, was für den Vertreiber erkennbar ist oder sein muss.</p> <p>Der VDVM empfiehlt, die Vorgaben zum negativen Zielmarkt („identifying groups of customers for whom the product is typically not compatible“ DTA S. 34 Nr. 4) zu streichen. In der IDD selbst ist die Bestimmung eines negativen Zielmarkts nicht vorgesehen. Es dürfte bei vielen Produkten schwierig sein, eine klare Negativabgrenzung vorzunehmen oder gar alle Gruppen zuzuordnen. Entsprechend wird auch in dem vorliegend gebildeten Fall (Erläuterungen S. 33 Nr. 13, Lebensversicherung mit einer Laufzeit von 30 Jahren für eine 97-jährige Frau) keine klare Abgrenzung vorgenommen. Falls an dem Kriterium „negativer Zielmarkt“ festgehalten werden sollte, wäre sinnvoll klarzustellen, dass einzelne plakative Beispiele ausreichen. Es kann nicht davon ausgegangen werden, dass Kunden, die vom vordefinierten Zielmarkt eines Produkts nicht erfasst werden, automatisch zu einem negativen Zielmarkt gehören. In jedem Fall wären weitere</p>	
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			<p>Beispiele, die die hier bestehende Erwartung deutlich machen, hilfreich.</p> <p>Die Entwürfe unter DTA S. 33 Nr. 1 und DTA S. 34 Nr. 4 sind nach unserer Auffassung nicht erforderlich. Die Klarstellung „where relevant“ könnte auch in DTA S. 33 Nr. 3 aufgenommen werden.</p> <p>Wie unter 2. dargelegt sieht der VDVM auch noch Verbesserungspotenzial mit Blick auf die Vorschläge, die auf den Leitlinien basieren.</p>	
305	Verbraucherzentrale Bundesverband e.V.	Question 7	<p>Yes, we agree.</p> <p>Regarding the examples of criteria to define target markets for all insurance products we would like to emphasise that the level of risk tolerance and the financial situation of the customers is a common issue for all insurance products. The main question is, which level of risk can a consumer bear himself and what are the priorities in case of financial limitation following the “maximum credible accident principle” by covering the worst potential financial damage first.</p> <p>For health insurance the age of customers is also relevant. In Germany limits exist to switch into the statutory health insurance (SHI), when a consumer is older than 55 years. It is only possible to join in SHI for pensioners, when an applicant had been a member of SHI for at least 9/10th of the second half of their professional life.</p>	Noted.
306	Zurich Insurance Company, CH 8045 Zurich	Question 7	<p>Granularity of the Target Market</p> <p>While EIOPA correctly assumes that there would be value in providing greater guidance around the granularity of an appropriate target market description, its proposed technical advice is unhelpful in that regard.</p> <p>Fundamentally, the draft technical advice is internally inconsistent. The draft technical advice comes in two broad allotments. The first allotment is a restatement of EIOPA’s final guidelines. In that section, the draft technical advice states that a product should be “aligned” with the “interests, objectives and characteristics” of the target market.</p>	Noted. Please refer to the revised policy proposals as well as EIOPA’s Feedback Statement in the Final Report.

			<p>The second allotment of draft technical advice is “new.” Within that second allotment, the advice states that the product should be “compatible with” the “needs, characteristics, objectives and demands” of the target market.</p> <p>In sum, the internal inconsistencies arise between:</p> <ol style="list-style-type: none"> 2. “alignment” vs. “compatibility” 3. “interests” vs. “needs” and “demands” <p>With respect to the first internal inconsistency, it appears that EIOPA has moved from the formulation in its guidelines (“alignment”) in order to achieve consistency with the draft MiFID delegated act (“compatibility”). It is not clear there is a material distinction between the terms. In order to achieve consistency with MiFID, “compatibility” is probably the preferred term. However, EIOPA must then conform its technical advice to use the term consistently within its own document.</p> <p>With respect to the second internal inconsistency, the challenge is more complex. The draft MiFID delegated act uses the phrase “needs, characteristics and objectives” whereas the EIOPA guidelines used the phrase “interests, objectives and characteristics.” In the allotment of new draft technical advice, EIOPA would adopt the MiFID approach (swapping “needs” for “interests” and switching the order of objectives and characteristics). EIOPA would then, without explanation, add the word “demands.” In short, EIOPA makes an effort to conform with MiFID, but then deviates afresh with the addition (all the while creating an internal inconsistency with the initial allotment of technical advice based on its own guidelines).</p> <p>After having added “demands and needs” into the consideration of the target market, the draft technical advice then (correctly) explains how a demands and needs analysis is not part of the target market consideration but an individual customer consideration. Specifically, the draft technical advice observes:</p>	
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		<p>As the target market describes a group of consumers at a broader and more abstract level, it differs from the individual assessment as to whether an insurance product corresponds with the demands and needs of a specific customer, and where applicable, whether the insurance product is suitable or appropriate for a specific customer.</p> <p>This is a very helpful statement and should be retained in the technical advice. More importantly, the statement should be observed and adhered to within the technical advice.</p> <p>The confusion appears to arise from an inappropriate amalgamation of Article 20 and Article 25 of the Directive. Article 20 relates to an individual transaction during which the “insurance distributor shall specify, on the basis of information provided by the customer, the demands and needs of that customer.” Article 25 provides that before a product is marketed or distributed to customers, the manufacturer must “specify an identified target market” for that product. In other words:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The target market is set before a product is launched and based on the presumed objectives and characteristics of a broad range of potential customers. <input type="checkbox"/> Demands and needs are assessed at the point of sale with respect to a single customer. <p>The draft technical advice blends the two concepts to confounding result as illustrated by EIOPA’s explanations. For example, in paragraph 12 of its explanation, EIOPA suggests that the target market description could be appropriately set based on the term of an individual customer’s employment contract or the specific age of a customer.</p> <p>It is clear that the target market should speak broadly in terms of group characteristics while the demands and needs should be assessed based on individual characteristics. For example, to use the comprehensive motor insurance illustration partially explored in paragraph 4 of EIOPA’s explanation:</p>	
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			<p style="text-align: center;">Comprehensive Motor Vehicle Insurance</p> <p>Target Market Statement: The target market consists of individual motor vehicle owners who would find it difficult, disruptive or inconvenient to fund the repair or replacement of the insured vehicle through assets or income other than the proceeds of insurance.</p> <p>Demands and Needs: Sally states that she would find it difficult to afford a one-time expense of €12,000 to replace the insured motor vehicle.</p> <p>Such an example illustrates there is a clear difference between the broad statement of target market and the specific statement of a customer's demands and needs.</p> <p>Accordingly, we submit that it is confusing to include a reference to "demands" and "needs" within a discussion of target markets. While related, the target market and demands and needs analyses are based on different considerations, are performed by different actors in the insurance value chain, and occur at different times in the product life cycle. Therefore, the terms "demands" and "needs" must be stricken from the technical advice.</p> <p>The technical advice should instead focus on the target market's "objectives and characteristics." We would suggest that the technical advice drop the reference to "interests" which is confusing (i.e., does it mean hobbies? legal interests?) and likely does not differ as a practical matter from the term "objectives".</p> <p>Paragraph 4 of the this section of the draft technical advice appears duplicative of the second clause of paragraph 3. Accordingly, the second clause of paragraph 3 should be deleted as unnecessary:</p> <p>3. The target market shall be identified at a sufficiently granular level depending on the characteristics, risk profile and complexity of the product, avoiding groups of customers/consumers for whose needs, characteristics,</p>	
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			<p>objectives and demands the product is generally not compatible.</p> <p>Note that both paragraphs 3 and 4 are generally duplicative of the draft technical advice based on the guidance found at paragraph 10 of the first installment of technical advice. It is also worth observing that the first allotment of technical advice speaks of non-target market in terms of "likely", while the second allotment of technical advice uses the term "typically." Typically seems the more practical word choice and should be used consistently in the technical advice.</p>	
307	Allianz SE	Question 8	<p>Do you agree with the proposed review obligations for manufacturers and distributors of insurance products? Would you consider it important to introduce a minimum frequency of reviews which should be undertaken by the product manufacturer e.g. every 3 years?</p> <p><input type="checkbox"/> Generally agree with review obligations.</p> <p><input type="checkbox"/> A minimum frequency of reviews is not necessary.</p>	Noted.
308	AMICE	Question 8	<p>We agree with EIOPA that manufacturers and distributors should take appropriate action when they become aware of an event that could materially affect the potential guarantees of the target market.</p> <p>The technical advice should clearly state that the senior management is ultimately responsible for the POG arrangements and not the compliance function. This is in line with paragraph 5 (page 22) which specifies that the manufacturer's administrative, management or supervisory body is responsible for the POG arrangements.</p> <p>Paragraph 2 (page 38) provides that the manufacturer and the distributor must have appropriate written agreements in place in order to coordinate their reviews. EIOPA should clarify whether these written agreements only have to be made between an insurance undertaking and an intermediary which manufactures insurance products for sale to customers.</p> <p>It is unclear how independent intermediaries, such as brokers, are supposed to coordinate the review of their product</p>	Noted. The requirement to set up written agreements between manufacturers and intermediaries in order to coordinate the reviews has been removed for proportionality reasons.

			<p>distribution arrangements with the review of the manufacturer (paragraph 6 of the draft technical advice, page 38).</p> <p>We do not believe that EIOPA should prescribe any defined interval for the review process. We consider this as a good example of applied proportionality: reviews should be carried out depending on the market dynamics, complexity of products or other factors and they should not be prescribed when there has been no change. Even the minimum frequency of 3 years would not be desirable since for some insurance products it might take much longer time to evaluate their compatibility to customers' needs.</p>	
309	ANASF	Question 8	<p>Yes, we do. Conversely, it would be very difficult to find a "one-size-fits-all" solution for the minimum frequency of reviews: for instance, for their innate variability in terms of risks, costs and returns, IBIPs may be said to require more frequent reviews than life insurance policies with no exposition to market fluctuations.</p>	<p>Noted. The policy proposals now require that the manufacturer determines the frequency of review taking into account the size, scale, contractual duration as well as complexity of the respective insurance product.</p>
310	Association of International Life Offices	Question 8	<p>Yes, It is right that products are reviewed periodically – which should include a review of who have purchased them and whether those clients are a fair representation of the target market. If there are surprising trends, then the product may not be being sold as intended – and these need to be understood. The product may need adjusting, if relevant the distributor retrained, or the target market may need adjusting to fit to those to whom the product appeals. The deviations need to be understood.</p> <p>What is the intention in respect of closed books of business?</p>	<p>Noted.</p>
311	Assuralia	Question 8	<p>Firstly, Assuralia would like to raise the following concerns with regard to the proposed review obligations:</p> <ul style="list-style-type: none"> - we agree with EIOPA "that manufacturers and distributors 	<p>Noted. EIOPA understand that the ultimate liability for the POG arrangements lies</p>

		<p>should take appropriate action when they become aware of an event that could materially affect the potential guarantees of the target market” and we invite EIOPA to take on board the underlined clarification in the final advice (cf. §6 page 37);</p> <ul style="list-style-type: none"> - the advice itself should clarify that senior management is ultimately responsible for the POG arrangements and not the compliance function. This is more in line with §5 p.22 which states that the manufacturer’s administrative, management or supervisory body is responsible for the POG arrangements; -the manufacturer and distributor must have appropriate written agreements in place in order to coordinate their reviews (§2 draft advice, p.38). As the written agreements concern the review of the product, Assuralia understands that such agreements only have to be made between an insurer and an intermediary which manufactures insurance products for sale to customers. For the sake of clarity, this should be specified in the advice; - it is unclear how independent intermediaries, such as brokers, are supposed to coordinate the review of their product distribution arrangements with the review of the manufacturer (§6 draft advice, page 38). <p>Secondly, Assuralia considers that an on-going review of insurance products would put a heavy burden on the insurance sector. The following concrete proposals may help to keep this review process as effective and efficient as possible and to ensure that the principle of proportionality is taken into account:</p> <ul style="list-style-type: none"> - there should be a link between the stability of the product and the need to conduct a review. The more stable the product, the less need to conduct a review; - for non-life insurance products a review should only take place when significant changes occur with regard to the product, the applicable legislation or the market conditions. These could be, for instance, modifications to the terms and conditions of the insurance product or changes to the legally defined compensation limits; 	<p>with the Senior Management following from general principles of company law which does not need to be reiterated in the Technical Advice. The requirement of written agreements between manufacturers and intermediaries in the context of reviews has been removed for the sake of proportionality. Please also refer to EIOPA’s Feedback Statement in the Final Report.</p>
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312	BEUC	Question 8	BEUC agrees with the EIOPA advice but is also in favour of further guidance on this points, regarding specific criteria or parameters which should be monitored, such as consumer complaints and early contract terminations.	Noted.
313	BFV - Bundesarbeitsge- meinschaft zur Förderun	Question 8	<p>Punkt 5 der Technical Advice-Vorschläge sieht vor, dass dann, wenn der Vertreiber über keine Compliance-Abteilung verfügt, die Compliance-Abteilung bzw. Geschäftsleitung des Herstellers die Entwicklung und Überprüfung der Produktüberwachungsregelungen zu beaufsichtigen hat. Soweit es sich bei dem Vertreiber um einen Versicherungsmakler handelt, sind wir mit der vorgeschlagenen Überprüfungspflicht nicht einverstanden.</p> <p>Sowohl der Bundesgerichtshof (Sachwalterurteil vom 22.05.1985, Az.: IVa ZR 190/83) als auch der Gesetzgeber (§ 59 Abs. 3 VVG) unterscheiden deutlich zwischen einem Versicherungsvertreter und einem Versicherungsmakler. Der BGH erkennt den Versicherungsmakler als Sachwalter des Kunden, der Gesetzgeber stellt klar (BT-Drucksache 16/1935, Seite 22), dass der Versicherungsmakler „nicht von einem Versicherer, sondern von einem Kunden mit einem</p>	Noted. EIOPA has clarified, in the analysis, that the monitoring obligation is limited to the assessment whether the distribution channels carry out their distribution activities in accordance with the product oversight and governance arrangements established by the manufacturer, in

			<p>Vermittlungsgeschäft betraut wird. Während der Versicherungsvertreter das Interesse des Versicherers wahrzunehmen hat, steht der Versicherungsmakler im Verhältnis zum Versicherer auf der Seite des Kunden als dessen Interessenwahrer und Sachwalter.“</p> <p>Eine Überprüfung eines Versicherungsmaklers durch einen Versicherer wäre ein unzulässiger Eingriff in dessen eingerichteten und ausgeübten Gewerbebetrieb. Der Vorschlag nach Punkt 5 ist daher abzulehnen.</p> <p>Zusammenfassend zum Versicherungsmakler nach deutschem Recht und Rechtsprechung weisen wir darauf hin:</p> <p>Der Versicherungsmarkt mit vielen Anbietern, vielen Produkten und komplexen Bedingungsgefügen ist für Verbraucher ohne Unterstützung kaum durchschaubar. Hier helfen Versicherungsmakler. Diese haben auf Basis von Experten-Vergleichssoftware und entsprechend ihrer gesetzlichen Aufgabenbestimmung und Rechtsprechung einen aktuellen Überblick über Angebote, Leistungen, Bedingungen und Preise am Markt. Mit ihrem Fachwissen und ihrer Expertise sind sie damit in der Lage, Verbrauchern ++ einen transparenten und verständlichen Überblick über den Markt zu verschaffen ++ profunde Empfehlungen auszusprechen und ++ zu einer angemessenen, aktuellen und preiswerten Risikoabsicherung zu verhelfen. Der Versicherungsmakler ist unabhängig, an keine Gesellschaft gebunden und ausschließlich Interessenvertreter seiner Kunden. Diese können ihn für seine Beratung und Vermittlung in Haftung nehmen.</p>	<p>particular whether insurance products are distributed to the identified target market. The monitoring obligation does not extend to the general requirements which distributors have to fulfil when carrying out the distribution activities, in particular the conduct of business rules as laid down in IDD.</p>
314	BIPAR	Question 8	<p>It is important to recall that IDD Article 25 rightly places product governance and oversight requirements on “insurance undertakings, as well as intermediaries which manufacture any insurance product” -and not on intermediaries that do not manufacture products. Non-manufacturing intermediaries are very clearly and very specifically required to obtain information that is made available by manufacturers to them and to understand that information - nothing more.</p>	<p>Noted.</p>

		<p>BIPAR therefore believes that the review obligations for distributors who are not manufacturing are beyond the mandate. This being said, it is common sense that a distributor can assist an insurer or manufacturer in doing the activities as described in point 8 and 9 (p39). All other points – for distributors who are not manufacturing the product are useless and pure administrative burden as it is the task and responsibility of the manufacturer and/ or insurer to do that work and take sole responsibility for it. These requirements do not meet the proportionality requirement and are not in line with the Commission mandate given to EIOPA. We propose to delete most of the chapter on review obligations for distributors</p> <p>Regarding point 7 on page 37, and in particular the bullet 7 re “contacting the distributor to discuss a modification of the distribution process”, BIPAR believes that the drafting used seems to give a manufacturer an implicit right to tell a distributor how to distribute the products. The language used is critical to its interpretation.</p> <p>Specific comments on EIOPA draft technical advice regarding review obligations for insurance undertakings and insurance intermediaries which manufacture insurance products for sale to consumers</p> <ul style="list-style-type: none"> - Regarding point 2, BIPAR suggests that the text is amended so that coordinating of reviews only applies where the insurer and intermediary are deemed co-manufacturers. - regarding points 6, 7, 10, 11 and 12, BIPAR believe that the proposed requirements are too far-reaching and need to be deleted. - Regarding point 9, BIPAR believes the way it is worded does not align with what EIOPA is saying in point 53 on page 21, that is to say that on exceptional basis, an intermediary is permitted to distribute the products to customer outside the target market. 	<p>EIOPA does not share these concerns as the review obligations of intermediaries are very limited.</p> <p>The requirement of written agreements has been removed.</p> <p>Please see EIOPA’s Feedback Statement in the Final Report.</p>
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315	BNP Paribas	Question 8	<p>Here again we would stress the need for proportional measures. Fixing minimum review frequency rules is not sensible as flexibility is needed given that changes in products are made due to evolutions in regulatory, tax, and competitive conditions. This also depends on the relationship between the manufacturer and the distributor, on the size of its business, the nature of the product, etc... What is important is to be able to adopt corrective measures IF an external event justifies them.</p>	Noted.
316	Bund der Versicherten (BdV – German Association of	Question 8	<p>Yes, we agree with the proposed review obligations, but we consider it crucial to introduce a minimum frequency of these reviews as follows: We recommend the same frequency of Solvency II (annually) adding the following differentiation: Products and tariffs which are currently sold, shall be reviewed annually. Products and tariffs, which are not sold anymore, but which are still part of the portfolio, shall be reviewed, if a significant change related to any kind of parameters is observed (i.e. increase of premiums of “closed” health insurance tariffs).</p>	Noted. Taking into account the diversity of insurance products EIOPA is of the view that the frequency of review should be defined by the manufacturer (taking into consideration that the manufacturer knows its products best).
317	BVK Germany	Question 8	<p>The timing proposal of a minimum frequency of reviews of every 3 years is not understandable. What is the need and the purpose of a review every 3 years ? It could also be another time. Besides this we like to emphasize that the tied intermediary has only a contract with the insurer. Even if the tied intermediary would fall under the definition of a</p>	Noted. After a thorough assessment, EIOPA came to the conclusion that it would be disproportionate to

			<p>manufacture- which we can not see at the moment- it would be a legal obligation by §§ 84 pp HGB for the insurer to give the appropriate information on the product. This information has to be given by the intermediary to the client according §3 60,61 VVG.</p>	<p>introduce a minimum frequency of periodic review in view of the variety of insurance products and different product characteristics. Therefore, EIOPA is of the view that the manufacturer should determine the frequency of the regular reviews whereas criteria such as the contractual duration and the complexity of the respective insurance product are relevant factors which should be taken into consideration to determine the appropriate frequency of review.</p>
318	CNCIF - Chambre Nationale des Conseillers en	Question 8	<p>Yes.</p> <p>We agree with the proposed principles. However, we estimate that the proposals are too far-reaching in some aspects while other aspects require further specification:</p> <p>First of all, it would be necessary to indicate if existing contracts need to be amended to comply with new requirements.</p> <p>Furthermore, we should also stress that it would be difficult or even impossible to have "appropriate written agreements in place in order to coordinate" the review between manufacturers/distributors. Indeed, according to the</p>	<p>Noted. The requirement to have "written agreements" has been removed. The policy proposals do not introduce a minimum frequency.</p>

			<p>principles of better regulation, requiring distributors to make arrangements with a lot of manufacturers in order to coordinate the review of the products (with various review timetables...) appears to be a very excessive administrative burden.</p> <p>Finally, we consider that a minimum interval for reviewing the product is not necessary.</p>	
319	CSCA French broker Association, 91, rue Saint Laza	Question 8	<p>We do not support the deliberate mention of a periodic frequency of re-examination proposed for distributors, which has no meaning in itself. Certain ranges of contracts must evolve far more rapidly than others, and an imposed rhythm could lead to inappropriate administrative over-bidding.</p> <p>We consider that the requirements laid at the door of the distributor must themselves be reviewed, because they take no account of the status of the distributor.</p>	Noted.
320	Czech Insurance Association CAP	Question 8	<p>Nowadays, the insurance companies monitor whether their products correspond to the needs of client and have to react to any circumstances having an impact on the type of product, cover, etc. Otherwise, they will lose competitive advantage on the market. Thus, the insurance company itself should be able to decide on frequency of reviews. If the obligatory frequency to review the product is introduced, it should not be less than every three years. If necessary, the insurance company will on its own decide on more often reviews depending on the particular insurance product.</p>	Noted. The policy proposals do not introduce a minimum frequency.
321	EFAMA - The European Fund and Asset Manageme	Question 8	<p>We do not consider that a minimum review frequency should be introduced. As EIOPA has stated in their draft Technical Advice, it should be left up to the manufacturer and distributor to determine how frequent the reviews should be made. This allows for a risk-based approach to the frequency of the review.</p> <p>With regards to the requirement to "review obligations for insurance undertakings and insurance intermediaries which manufacture insurance products for sale to customers", we</p>	<p>Noted.</p> <p>The policy proposals do not introduce a minimum frequency. The requirement to have written agreements between manufacturer and intermediaries for the coordination of the review has been</p>

		<p>would like to provide the following comments:</p> <p>In para. 2 of the draft Technical Advice, the reference to “size, scale”, in connection with the product review frequency, should be changed to “nature” in order to better reflect the language used in MiFID II and to not unnecessarily limit insurance undertakings and insurance intermediaries in their assessment. We would propose the following:</p> <p>“The manufacturer should determine the frequency for the regular review of its products taking into account the size, scale nature and complexity of the different products it manufactures.”</p> <p>Furthermore, the requirement that the manufacturer and the distributor should have written agreements in place in order to coordinate their product reviews should be removed. For example when a bank acts as a distributor of both investment-based insurance products and financial instruments, it may want or need to take a holistic approach in regards to its periodic product governance review process. Requiring the distributor in this case to contractually align product reviews with the insurance manufacturer puts a disproportionate burden on the distributor as it could not aim to align review processes with manufacturers of e.g. financial instruments under MiFID II. It would hinder efficiency and could create additional costs. The enhanced information sharing obligations between manufacturers and distributors should be sufficient as a proper foundation for the regular reviews, especially considering the requirement for the distributor to provide, where appropriate, the manufacturer with information on the regular reviews.</p> <p>Para. 3 of the draft Technical Advice should be amended to create a better alignment with MiFID II. The amended p. 3 should read:</p> <p>When reviewing existing products, the manufacturer shall consider if the product remains consistent with the needs, characteristics and objectives of the target market and consider if the product is being distributed to the target market, or is reaching customers outside of the target market</p>	<p>removed for the sake of proportionality. See also EIOPA’s Feedback Statement to the Public Consultation in the Final Report.</p>
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			<p>for whose needs, characteristics and objectives the products is not compatible.”</p> <p>We would suggest to remove the wording “on a continuous basis” from para. 4 of the draft Technical Advice, as paras. 1 and 2 already require manufacturers to perform regular reviews. This should imply that the regular review should include an obligation to revisit the already pre-defined crucial events that could affect the risk for the customers. Furthermore, the wording “on a continuous basis” could lead to confusion as to how the requirement in para. 4 relates to the wording “regular” in paras. 1 and 2.</p> <p>Furthermore, EIOPA could also consider to include examples of actions similar to MiFID II’s draft Implementing Directive Article 9(15) to provide further clarity and create more alignment with MiFID II.</p> <p>Para. 5 of the draft Technical Advice should be adapted to require the compliance function to “function to monitor the development and review of the product governance arrangements” rather than to “oversee” the development and review of the product governance arrangements. In the light of the increased focus on the role of the compliance function, and its responsibilities, it is important to avoid using terminology that could indicate a first line responsibility being put on the compliance function.</p> <p>With regards to the requirement to “review obligations for insurance distributors which advise on or propose insurance products which they do not manufacture”, our comments are the same as to the preceding section.</p>	
322	Eurofinas	Question 8	<p>We agree with the EIOPA that manufacturers and distributors must take appropriate action when they become aware of an event that could materially affect the potential guarantees to the identified target market. We stress that the focus here must be on the target market – any micro-management on customer level would be inappropriate (and unfeasible).</p> <p>In accordance with the outcome of the EIOPA’s impact assessment, we believe that it must be left to manufacturers</p>	<p>Noted.</p> <p>Noted.</p>

			<p>to determine the frequency of review, allowing him to take into consideration the product specificities. This will motivate insurance manufacturers to develop resilient products that are not easily impacted by external events. It would also allow each manufacturer to adapt the correct frequency of the process in line with the timing of the internal design product, also taking into account the size, scale and complexity of the insurance undertaking and of the different products it manufactures.</p> <p>Against this background, we also draw the EIOPA's attention to the fact that product and distribution reviews are commonly conducted as part of business operational reviews, often on ongoing basis. Flexibility should therefore be provided to business operators in the course of their engagement with national supervisors. Rather than defining a specific frequency of review, this should be determined on a case-by-case basis, taking consideration of the products and business models involved</p>	<p>Noted. It should be noted that the policy proposals do not introduce a minimum frequency.</p>
323	European Federation of Financial Advisers and Fina	Question 8	<p>Do you agree with the proposed review obligations for manufacturers and distributors of insurance products? Would you consider it important to introduce a minimum frequency of reviews which should be undertaken by the product manufacturer e.g. every 3 years?</p> <p>We agree in principle with the proposal that the distributor's management shall oversee the development and the review of product governance arrangements only of those products which are currently distributed. We understand this as an ongoing process and therefore do not see any need for a minimum frequency of reviews.</p>	<p>Noted.</p> <p>It should be noted that the policy proposals do not introduce a minimum frequency.</p>
324	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 8	<p>EFPA agrees with the proposed review obligations for manufacturers and distributors of insurance products. More concretely, EFPA considers that this issue is worth to be included in the minimum professional training hours per year stated in article 10 of IDD. In EFPA's opinion, the review should include that the required knowledge, expertise and competence that both manufacturers and distributors must have is updated from time to time. Professional standards are</p>	<p>Noted. In view of the diversity of insurance products EIOPA has preferred not to introduce a minimum frequency applicable for all insurance products, but to leave</p>

			<p>the most effective way of ensuring the compliance of this requirement, as it can include the staff obligation of attendance to updating courses.</p> <p>EFPA also considers that to establish a minimum frequency of reviews is an adequate criteria to ensure the review. Every 3 years seems a reasonable frequency in EFPA's opinion.</p>	<p>it to the discretion of the manufacturer to define the appropriate frequency of review.</p>
325	Fachverband der Versicherungsmakler und Berater in	Question 8	<p>It is important to recall that IDD Article 25 rightly places product governance and oversight requirements on "insurance undertakings, as well as intermediaries which manufacture any insurance product" -and not on intermediaries that do not manufacture products. Non-manufacturing intermediaries are very clearly and very specifically required to obtain information and to understand that information - nothing more.</p> <p>We therefore believe that the review obligations for distributors who are not manufacturing are beyond the mandate. This being said, it is common sense that a distributor can assist an insurer or manufacturer in doing the activities as described in point 8 and 9 (p39). All other points – for distributors who are not manufacturing the product are useless and pure administrative burden as it is the task and responsibility of the manufacturer and/ or insurer to do that work and take sole responsibility for it. These requirements do not meet the proportionality requirement and are not in line with the Commission mandate given to EIOPA. We propose to delete most of the chapter on review obligations for distributors.</p> <p>Regarding point 7 on page 37, and in particular the bullet 7 re "contacting the distributor to discuss a modification of the distribution process", we believe that the drafting used seems to give a manufacturer an implicit right to tell a distributor how to distribute the products. The language used is critical to its interpretation.</p> <p>At least, some specific comments on EIOPA draft technical advice regarding review obligations for insurance undertakings and insurance intermediaries which manufacture insurance products for sale to consumers (page 38 and 39) :</p>	<p>Noted.</p> <p>In view of the limited review obligations applicable to intermediaries EIOPA does not share these concerns.</p> <p>See also EIOPA's Feedback Statement to the Public Consultation in the Final Report.</p>

			<p><input type="checkbox"/> Regarding point 2, we suggest that the text is amended so that coordinating of reviews only applies where the insurer and intermediary are deemed co-manufacturers.</p> <p><input type="checkbox"/> Regarding points 6, 7, 10, 11 and 12, we believe that the proposed requirements are too far-reaching and need to be deleted.</p> <p><input type="checkbox"/> Regarding point 9, we believe the way it is worded does not align with what EIOPA is saying in point 53 on page 21, that is to say that on exceptional basis, an intermediary is permitted to distribute the products to customer outside the target market.</p>	
326	Fédération Française de l'Assurance (FFA) 26 bo	Question 8	<p><input type="checkbox"/> Flexible review</p> <p>We support that it is upon insurance undertakings to determine how regularly to review their products. Insurance undertakings should be able to determine their proper criteria based on their activities and the legal and tax environment of products. A "case by case" examination will be thus appropriate.</p> <p>We do not believe that EIOPA should prescribe any defined intervals for the review process nor for reviewing products. To keep this review process as effective and efficient as possible, and to ensure that the principle of proportionality is taken into account, there should be a link between the stability of the product and the need to conduct a review. The more stable the product is, the less is the need to conduct a review.</p> <p>Moreover, we do not consider that any minimum interval should be determined. In this sense, it would be more easy to change procedures in the case of crucial events (not to wait 3 years but do it promptly and, on the other hand, if nothing happens, there is no need for revision). A review should be left to manufacturer and should only be carried out on a case-by-case basis.</p> <p><input type="checkbox"/> Arrangements, documentation, review by distributors</p>	<p>Noted.</p> <p>Please note that the policy proposals do not introduce a minimum frequency of reviews.</p> <p>The requirement of written agreement to coordinate reviews between manufacturer and intermediary has been removed for the sake of proportionality.</p>

		<p>Provisions for distributors regarding organizational arrangements, documentation, including regular review of products distribution arrangements and reporting requirements are not required from the level 1 nor by the European Commission. This would cause overly burdening obligations with impracticable and excessive bureaucratic obligations (more bureaucracy, less time for customers!).</p> <ul style="list-style-type: none"> o Collaboration between manufacturer and intermediary <p>With regard to the “relevant information details (...) on product structure, features and product risks, costs (...implicite)” between manufacturer and intermediary (p. 40-41), manufacturers and intermediaries should inform each other about relevant results of their reviews. However, additional obligations to coordinate, or how to coordinate, such reviews are neither required nor practicable.</p> <p>Intermediaries should lay down written agreements with insurance undertakings identifying the information the insurance undertaking should provide them according to article 25 (a) (6). The intermediaries should be responsible to require these written agreements from insurance undertakings and to deliver the information provided by the insurance undertaking to their own employees and, where appropriate, to intermediaries they work with. The insurance undertaking (manufacturer) should be responsible to make available to intermediaries the relevant and updated information.</p> <p>We do not agree with the reference to “information to assess whether the product offers added value or give “implicit costs”. This requirement goes beyond IDD. Moreover it remains unclear which information is to be specified here. As for “fair value” it is a subjective notion. The industry supports the development of good products that bring value to customers. If the reference is made about price, we do not think that EIOPA can interfere in internal pricing mechanism, as to do so would be contrary to the Article 21 Solvency II, which do not allow to Member States nor supervisors to intervene to the pricing mechanism (nor prior approval nor</p>	
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			notification) and will inevitably hamper competition.	
327	Federation of Finnish Financial Services	Question 8	<p>We are in favor of creating certain general responsibilities for intermediaries to inform the manufacturer about cases where the product is not aligned with the target market or there are other risks to customer detriment. This responsibility goes in hand with the product manufacturers' responsibility to follow the life cycle of the product. However, proportionality principle should be taken into account in this responsibility for smaller intermediaries. The same proportionality principle should be stressed in the processes to coordinate the reviews of product distribution arrangements by product manufacturers and intermediaries.</p> <p>Regarding the last question in Q.8, we feel the frequency of reviews should be set flexibly: review should be taken « when necessary » .</p>	Noted. EIOPA is of the view that the policy proposals appropriately take account of the principle of proportionality.
328	FG2A (Fédération des Garanties et Assurances Affin	Question 8 Do you agree with the proposed review o	The frequency and nature of the reviews conducted by the manufacturer should be decided between the involved parties on a case by case basis and layed down in a written agreement. For example, both parties could agree on a list of triggering events (ex: sudden and unexplained increase in customer complaints) or, if wanted and in the case of certain risky products, a minimum frequency. This would enable the manufacturer to organise the reviews under a risk-based approach and prioritize reviews for products where a higher risk of exposure to a detrimental impact exists.	Noted.
329	Financial Services Consumer Panel	Question 8	<p>Whilst the Panel agrees with the proposed review obligations for both manufacturers and distributors we do believe that there should be a minimum frequency of reviews imposed by EIOPA. The Panel would like to propose that complex products such as insurance-based investment products have a review period of only one year and less complex non-life or pure life products, three years.</p> <p>We were disappointed by the recommendation that if an event materially affecting the potential guarantees to the identified target market occurs, action will be decided upon on a case-by-case basis. We would have preferred EIOPA to stipulate</p>	Noted. EIOPA is of the view that in both instances (the frequency of reviews and the appropriate action) discretion should be confessed to the manufacturer in view of the variety of insurance products and possible appropriate

			<p>the regulatory action/actions that could be taken in the case of an event occurring.</p> <p>That said, we welcome the non-exhaustive list provided of possible actions that could be taken which manufacturers (and distributors if relevant) should find helpful.</p> <p>We also welcome the proposal that the senior management body and/or the compliance function of the manufacturer or distributor should have responsibility for the oversight of the product governance process as this clearly states where the responsibility for good governance lies.</p>	actions to be taken.
330	FNMF, 255 rue de Vaugirard, 75015 PARIS	Question 8	<p>The proposed review obligations for manufacturers and distributors have to be implemented in the respect of the proportionality and complexity principles. The frequency of reviews has to be adapted to the insurance product and to the life cycle of the product (annual products versus long term products for exemple ...). A case by case examination is more appropriate.</p>	Noted. EIOPA agrees with these comments.
331	FRENCH BANKING FEDERATION	Question 8	<p><input type="checkbox"/> Yes in general.</p> <p>However, regarding point 8 p-39, the term « promptly » should be replaced by « without undue delay », used in point 36 p-26.</p> <p>Finally, regarding point 4.2.4 p-40 of the consultation, some information should not be given by the manufacturer, in particular the added value of the product to the customer, or the distribution strategy. Such information can only be disclosed by the distributor.</p> <p>Moreover, IDD does not require the manufacturer to conclude a written agreement with the distributor on the information on the product.</p> <p><input type="checkbox"/> Once more, EIOPA goes far beyond the mandate given to the Commission by the IDD, while determining a minimum frequency to review the products marketed. Article 25.1 IDD only provides for a regular review.</p> <p>Therefore, in accordance with the principle of proportionality, the frequency of the product review should be determined by</p>	Noted. Having thoroughly considered the responses of market participants EIOPA came to the conclusion that it would not be appropriate to introduce a minimum frequency for review.

			the manufacturer or the distributor. No specific frequency should be fixed by EIOPA.	
332	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 8	No comment	Noted.
333	German Association of Private Health Insurers (PKV	Question 8	<p>It needs to be clarified that the directive applies only to products which are open for new business. A basic principle of the IDD underlines that it exclusively applies to products which are currently distributed, offered or marketed. Health insurance tariffs should last for generations in the best case to form sufficiently large collectives in which risk pooling leads to steady premiums. Thus, it should be avoided that the each product has to be checked in terms of POG rules.</p> <p>For private health insurance a minimum required number of testing is not relevant, since the contributions of the products are reviewed annually anyway. A review of the suitability of the target market is also relevant in the private health insurance. However, larger time periods should be considered as the target market is not subject to rapid changes and contracts run life-long. If ever a minimum number of product reviews should be specified, then a maximum of once every five years.</p> <p>Once premiums no longer match the originally calculated claim expenses, for example due to medical advances or price increases in health care, a premium adjustment (increase or decrease in the premiums) is necessary. To this end, the companies offering substitutive private health insurance are required by law. In addition, benefit cuts and a unilateral termination are excluded by the insurer.</p> <p>It is important that products of private health insurance and their benefits are reviewed regularly. If modifications are needed, however, existing contractual relationships may not be affected. The service contents can be almost changed only in the context of new products. Only § 203 of the Insurance</p>	Noted. EIOPA would like to point out that the scope of application is a question governed by the application and interpretation of the Level 1 provisions of IDD.

			Contract Act enables companies to change existing tariffs under strict conditions. Thus the insurer is entitled to change the general conditions as well as the tariff conditions when significant modifications within the healthcare system have occurred. Any changes of conditions are subject to an approval of an independent trustee. In addition, high court decisions or legislative changes justify an adjustment of the conditions. So standards for those interventions are very high.	
334	German Banking Industry Committee (GBIC)	Question 8	<p>I. Product Governance obligations</p> <p>GBIC agrees that it is necessary to review products on a regular basis. It is, however, not necessary to do this on a fixed date predetermined by policy makers. The manufacturer that is responsible for the production and any change in the product's design is best suited to take on that task. Hence, GBIC agrees with EIOPA's view that a certain degree of flexibility is needed for manufacturers and distributors to decide what steps they need to take based on the circumstances of the case due to the wide range of products. (p. 37 No. 6).</p> <p>EIOPA mentions in the Draft TA on page 38 (No. 2, Sentence 4) that manufacturers and distributors shall have appropriate written agreements in place in order to coordinate their reviews. A duty to coordinate beyond this statement is in our view neither necessary nor practicable. GBIC therefore suggests to delete any additional duties that are mentioned or, as a consequence, a distributor would need not only to have multiple agreements with manufacturers in place, but also to be prepared to provide feedback at different points of time throughout the year. This would result in an unsurmountable effort for small and medium sized distributors.</p> <p>II. Obtaining appropriate information of the product</p> <p>Regarding EIOPA's Draft TA on page 41, GBIC would like to highlight possible difficulties deriving from the provision of "information to assess whether the product offers added value". It remains unclear what EIOPA means or intends since there is no clear definition about what information needs to be</p>	<p>Noted. EIOPA would like to point out that the policy proposals to not introduce a minimum frequency of review. Furthermore it should be noted that the requirement of written agreements to coordinate reviews has been removed.</p> <p>For further comments please see EIOPA's feedback statement in the Final Report.</p>

			<p>provided. The same is true regarding the provision of information about the "structure" of the products.</p> <p>In GBIC's view the need to provide the relevant information in a written agreement is not necessary. Such a written agreement would produce additional costs and the success of any criteria connected to Product Oversight and Governance is related to its efficiency and the lack of unnecessary bureaucracy.</p>	
335	German Insurance Association (GDV)	Question 8	<p>I. Review obligations (p. 36, 37, 38)</p> <p>The regular review of a product is important. The legal definition of a minimum interval for reviewing the product is not required. We agree that the minimum interval should be determined by the manufacturer itself (DTA p. 38 no. 2 sentence 2, p. 39 no. 10 and analysis p. 37, no. 3, 4).</p> <p>We agree in principle with the proposed review obligations. However, some aspects still require modifications.</p> <p>It is to be welcomed that manufacturers are granted leeway and flexibility regarding the appropriate action that might prove necessary due to the review obligations (cf. p. 37 no. 6 sentence 1).</p> <p>As mentioned above under question 2, we believe that it would be helpful to clarify directly in the draft that POG creates no obligation of the manufacturer to resolve or amend existing contracts or to give any information to individual customers about new products, but that in this field, national contract law applies. The distribution of investment risks agreed upon by the parties needs to be respected. Obviously, guarantees given need to be met (see p. 37 no. 6). Where no guarantee has been given, the risk of a negative development of the investment is borne by the customer (remarks on "return expectations" in DTA p. 38 no. 4 are therefore misleading).</p> <p>It is not clear to us in in how far EIOPA identifies a difference between product monitoring (DTA p. 23 no. 15, analysis p. 18, 19 no. 36-38) and product review (p. 35-37). We propose consolidating these concepts and instead differentiating</p>	<p>Noted.</p> <p>The language of the policy proposals has been revised to better specify the differences between monitoring and review.</p> <p>For further comments, please see EIOPA's feedback statement in the final report.</p>

			<p>between reviews triggered by specific events and regular reviews.</p> <p>Manufacturers and intermediaries should inform each other about relevant results of their reviews. However, additional obligations to coordinate such reviews (DTA p. 38 no. 2 sentence 4 and no. 6 sentence 2, analysis p. 37 no. 4) and to make according written agreements are in our opinion neither required nor practicable. We therefore recommend deleting them. They would require brokers to make arrangements with a multitude of manufacturers, adapting to very heterogeneous review timetables. We believe that an obligation to coordinate reviews is only appropriate if intermediary and insurance company are also manufacturers.</p> <p>II. Additional remarks on the exchange of information (p. 40-42)</p> <p>We would also like to comment on the analysis of the exchange of information between manufacturer and intermediary (p. 40-42), given that no specific question refers to this issue. The "information to assess whether the product offers added value" (DTA p. 41 no. 1) should be deleted. It remains unclear which information is to be specified here. There is no such information required under the IDD or the Solvency II Directive. Moreover, it is also unclear what is meant by information on "structure". It is equally unclear what "product risks" are in case of non-life insurance products (DTA p. 41 no. 1). For these reasons, we advise against defining such information as a minimum information (p. 40 no. 9), i.e. information to be provided for every single product.</p> <p>From our view, it is neither necessary nor feasible to specify the relevant information in a written agreement. Unnecessary bureaucracy should be avoided.</p>	
336	Institute and Faculty of Actuaries	Question 8	As mentioned in the response to Question 4 above, monitoring distribution channel activities, and examining appropriateness for the relevant target market, presents a	Noted.

			<p>significant challenge with potentially significant costs.</p> <p>This is because it would require new arrangements for sharing information, particularly in the case of independent distributors, which would require an investment in an automated solution to be workable.</p> <p>A minimum review frequency would be counterproductive as the appropriate frequency is highly dependent on product features and other market specific circumstances.</p> <p>For many non-life insurance products which typically provide a single year of protection against specific events, and are distributed without advice, the requirements outlined seem particularly onerous. An explicit statement in this context of applying the requirements in a proportional manner would be helpful to ensure that the costs of implementation, which will ultimately be passed on to consumers, are commensurate and balanced with the protection that these measures ultimately afford such consumers.</p>	
337	Insurance Europe	Question 8	<p>Review and monitoring mechanisms</p> <p>Review and monitoring mechanisms should be in place for responding to any signals received from the market that the product may no longer meet the interests, objectives and characteristics of the identified target market. The manufacturer should have in place a strategy for appropriately responding to feedback from the target market, which will also include information received from distributors.</p> <p>Furthermore, any changes to a product that are made on the basis of a review should only affect the further distribution of the product. The framework for making any amendments to existing contracts is provided through national contract law.</p> <p>Recommendation: EIOPA should not prescribe any defined intervals for the review process. To keep this review process as effective and efficient as possible, and to ensure that the principle of proportionality is taken into account, there should be a link between the stability of the product and the need to conduct a review. The more stable the product, the less need there is to conduct a review. Moreover, any minimum interval</p>	<p>Noted.</p> <p>Agreed.</p> <p>Noted.</p> <p>It should be noted that the policy proposal do not prescribe any defined interval, but leave it up to the manufacturer to decide</p>

		<p>should be determined by the manufacturer. A review should only be carried out on an individual basis.</p> <p>Exchange of information between manufacturers and intermediaries</p> <p>Manufacturers and intermediaries should inform each other about relevant results of their reviews. However, additional obligations to coordinate these reviews and to make written agreements are neither feasible nor required under the IDD Level 1 text. They would require brokers to make arrangements with a multitude of manufacturers, adapting to very heterogeneous review timetables. An obligation to coordinate reviews is only appropriate if the intermediary and insurance company are also manufacturers.</p> <p>Neither IDD nor Solvency II require the manufacturer to provide the intermediary with information for assessing whether the product offers added value for the customer, as proposed by EIOPA in pages 40-41 of the consultation paper. In any case, it is not clear what information would fall under the scope of this requirement.</p> <p>Moreover, the “bare minimum” information to be obtained by the distributor should not include the fair value of insurance products or lead to any requirement to provide information to distributors about the internal pricing mechanisms of companies. This would effectively lead to price control, as mentioned in the response to Q.2.</p> <p>Recommendation: For the POG provisions to be beneficial, it is vital that they are efficient and avoid unnecessary bureaucracy and costs. It is neither necessary nor feasible to specify the relevant information in a written agreement. For example, paragraph 6 on page 38 of EIOPA’s draft technical advice states that the manufacturer and distributor shall have appropriate written agreements in place in order to coordinate their reviews. This will increase the workload for both manufacturers and distributors. Any decision on the timing and frequency of such reviews should be left to the companies themselves.</p>	<p>on it. The requirement to have written agreements to coordinate reviews has been removed for the sake of proportionality.</p>
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			In addition, as the approach is based on the principle of proportionality in paragraph 10 of the analysis on page 40, an explicit recognition of this principle should be introduced in the actual policy proposal itself and not only in the analysis.	
338	Intesa Sanpaolo S.p.A.	Question 8	<p>We agree with the proposed review obligations.</p> <p>As per the proposal to introduce a minimum frequency of reviews, we think this should be avoided. Indeed, the frequency of reviews should be tailored to the different agreements and we think that a one-size-fits all approach should be avoided to ensure efficient reviews that fit the needs of the different types of products.</p>	Noted. It should be noted that the policy proposal do not prescribe any defined interval for the product review.
339	IRSG	Question 8	<p>As previously mentioned, it is stated that the manufacturer shall regularly review the product oversight and governance arrangements to ensure that they are still valid and up to date and the manufacturer shall amend them, where appropriate. In the spirit of these Delegated Acts, we are of the opinion that these arrangements have be revisited at certain minimal intervals depending on the complexity of the products (i.e. – at least 3 years for Non-life products; - 1 year for IBIPs etc.).</p> <p>The IRSG welcomes the principle of proportionality that is introduced in EIOPA policy proposal based on previous EIOPA preparatory work that states that POG distribution arrangements shall “be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity”.</p> <p>The IRSG is of the opinion that the issue of granularity of target market illustrates again the importance of making a distinction between product governance in IBIP’s and product governance in Non Life/ Pure life insurances. Because of the significant differences that exist in development procedure and characteristics between life with investment element products (IBIPs) and non-life/ pure life products, it is pertinent in EIOPA technical advice to differentiate the activities of IBIPs manufacturers from the ones of non-life/life</p>	Noted. Please refer to EIOPA’s Feedback Statement in the Final Report.

			manufacturers.	
340	Liechtenstein Insurance Association (LVV)	Question 8	The Liechtenstein Insurance Association believes that it would be helpful to clarify directly in the draft that POG creates no obligation of the manufacturer to resolve or amend existing contracts or to give any information to individual customers about new products, but that in this field, national contract law applies. The distribution of investment risks agreed upon by the parties needs to be respected. Obviously, guarantees given need to be met (see p. 37 no. 6). Where no guarantee has been given, the risk of a negative development of the investment is borne by the customer (re-remarks on "return expectations" in DTA p. 38 no. 4 are therefore misleading).	Noted. Please refer to EIOPA's Feedback Statement in the Final Report.
341	MALTA INSURANCE ASSOCIATION These comments have b	Question 8	EIOPA should not prescribe any defined intervals for the review process. The more stable the product, the less need to conduct a review. There are clear differences between simple, non-life and life insurance products on the one hand, and insurance-based investment products on the other hand. These differences need to be respected in order to avoid introducing requirements for all insurance products that are more suited to the investment world. Product risk is minor for simple insurance policies sold on a mass-market basis. Many of these products have proven their added-value in the market for years, without giving rise to any added monitoring and control. Paragraph 54 under section 4.1 of the consultation document provides for exchange of information between manufacturer and distributor for the purpose of facilitating market monitoring by the manufacturer. In particular, it is provided that the distributor should exchange with the manufacturer, relevant information, such as the amount of sales outside the target market, summary information on the customers or a summary of the complaints received with regard to a specific product. The document does not however indicate the expected frequency for the exchange of such information. Manufacturers and intermediaries should inform each other	Noted. Please refer to EIOPA's Feedback Statement in the Final Report.

			<p>about relevant results of their reviews. However, additional obligations to coordinate such reviews and to make written agreements are neither required nor practicable. Otherwise brokers would be required to make arrangements with a multitude of manufacturers, adapting to very heterogeneous review-timetables. An obligation to coordinate reviews is only appropriate if the intermediary and insurance company are also manufacturers.</p> <p>With regard to the exchange of information between manufacturer and intermediaries, it is unclear which information is required by the reference to "information to assess whether the product offers added value".</p> <p>Moreover it should be clarified that a manufacturer is not required to share its entire product approval process with a distributor, as this could include a manufacturer's decision with regard to the use or non-use of competing distributors, but only the relevant information on the product and identified target market.</p>	
342	Mediterranean Insurance Brokers (Malta) Ltd.	Question 8	<p>Do you agree with the proposed review obligations for manufacturers and distributors of insurance products? Would you consider it important to introduce a minimum frequency of reviews which should be undertaken by the product manufacturer e.g. every 3 years?</p> <p>How does this cater for the commercial realities of business? What if the relative size of the undertakings is such that one is not in a position to question the actions of another? The review obligations for distributors who are not manufacturing are beyond the mandate, useless and pure administrative burden as it is the task and responsibility of the insurer to do that work and take sole responsibility for it. This goes beyond the proportionality requirement by the commission and we propose to delete most of the chapter relating to review obligations for distributors.</p> <p>Regarding point 7 on page 37, and in particular the bullet 7 re "contacting the distributor to discuss a modification of the distribution process", we believe that the drafting used seems to give a manufacturer an implicit right to tell a distributor</p>	Noted. Please refer to EIOPA's Feedback Statement in the Final Report.

			how to distribute the products. The language used is critical to its interpretation.	
343	Slovenian Insurance Association	Question 8	<p>Yes, we agree with the proposed periodical review and monitoring. Product oversight and supervision of insurance products distribution are part of core business of insurance companies. Introduction of the documentation of POG requirements and their periodical review and monitoring will increase normativism and administrative burdens and we believe that this will not contribute to better risk management and satisfaction of the customers. Those provisions might facilitate work of the national supervisory authorities, but not necessarily improve insight into activities of insurance companies.</p> <p>Defining minimum frequency of review process is not needed.</p>	Noted.
344	The Danish Insurance Association	Question 8	<p>The DIA supports the approach taken by EIOPA as to the flexibility of the frequency of the reviews of the POG arrangements, products and distribution arrangements and actions to be taken in cases where manufacturers or distributors become aware of an event that could materially affect the potential guarantees of the product etc.</p> <p>The DIA can, however, not support the proposal to have in place written arrangements between manufacturers and distributors in order to coordinate the reviews. While manufacturers and intermediaries should inform each other about relevant results of their reviews, additional obligations to coordinate such reviews and to make written agreements are neither required under the level 1 text nor practicable. Moreover the objects of the reviews are not the same. In this respect it is unclear how the increased administrative burdens for both manufacturers and distributors will benefit the customer.</p> <p>Moreover, the DIA considers that the obligation for the compliance function/senior management to oversee the development of the POG arrangements and reviews should be deleted as it is already dealt with under Solvency II.</p> <p>Furthermore we would like to stress that any changes to a</p>	Noted. The requirement of written agreements has been removed for the sake of proportionality.

			<p>product which are effected on the basis of a review should only affect the further distribution of the product. The framework for making any amendments to existing contracts is provided by national contract law.</p> <p>As to the information which the distributor should obtain from the manufacturer the DIA supports the introduction of a high-level principle combined with specific information details, which should be understood as the bare minimum. However, the DIA cannot accept that the minimum requirement should concern the fair value of insurance products or lead to any interference in, or requirement to provide information to the distributors about the internal pricing mechanisms of companies or fair value of the product (i.e. price control), as to do so would inevitably hamper competition. In fact, the aim of the product approval process is to ensure that insurance products meet the needs of the target market (recital 55).</p> <p>EIOPA proposes that the manufacturer shall conclude a written agreement with the distributor to specify the relevant information. However, since the main obligation required of distributors under Article 25, IDD, is to have in place adequate arrangements to obtain all the relevant information on the product and the product approval process from the manufacturer, the DIA cannot support that manufacturers should be held responsible for concluding agreements in this respect. Along these lines distributors should assume responsibility for any failure on their part to obtain all necessary information on the product etc.</p>	
345	Unipol Gruppo Finanziario S.p.A.	Question 8	The optimum frequency of reviewing the products should be consistent with the definition of the principle of proportionality. We propose to require at least 3 years for the more complex products (i.e. insurance-based investment products) and up to 5 years at the most for the other products.	Noted.
346	Verband der Automobilindustrie e.V. Arbeitskreis	Question 8	Automatic reviews are not necessary. Insurance companies will always react to changes in the market and its risk management departments will initiate revaluations. The market itself will signalize an insurance company if an	Noted.

			insurance product does not cover the policyholder's needs any more. The reason for revaluations - if a legal obligation is deemed necessary - should not be a fixed period of time but rather changed requirements, taking consideration of the products and business models involved.	
347	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 8	<p>8: Sind Sie mit den vorgeschlagenen Überprüfungspflichten für Hersteller und Vertreiber von Versicherungsprodukten einverstanden? Halten Sie es für wichtig, eine Mindestanzahl von durch den Produkthersteller durchzuführenden Überprüfungen festzulegen, z. B. alle 3 Jahre?</p> <p>I. Überprüfungspflichten (S. 36 ff.)</p> <p>Die regelmäßige Überprüfung eines Produkts ist wichtig. Die gesetzliche Festlegung eines Mindestintervalls zur Überprüfung des Produkts ist nicht erforderlich. Der VDVM teilt die Auffassung, dass das Mindestintervall durch den Hersteller selbst bestimmt werden sollte [Draft Technical Advice (DTA) S. 38 Nr. 2 Satz 2, S. 39 Nr. 10 und Erläuterungen S. 37 Nrn. 3, 4].</p> <p>Den vorgeschlagenen Überprüfungspflichten stimmt der VDVM grundsätzlich zu, sieht aber noch punktuellen Änderungsbedarf.</p> <p>Es ist richtig, dass dem Hersteller Entscheidungsspielraum und Flexibilität hinsichtlich der infolge der Überprüfung gegebenenfalls erforderlichen Maßnahmen eingeräumt wird (vgl. Erläuterungen S. 37 Nr. 6 Satz 1).</p> <p>Wie bereits oben (Frage 2) dargelegt, wäre es unseres Erachtens jedoch sinnvoll, in den Entwürfen selbst eindeutig klarzustellen, dass POG grundsätzlich keine Verpflichtung des Herstellers schafft, Bestandsverträge aufzulösen oder zu ändern oder eine laufende Information über neue Tarife vorzunehmen. Hier gilt das nationale Vertragsrecht. Die einmal getroffene Risikoverteilung ist danach grundsätzlich zu achten. Die Erfüllung von übernommenen Garantien ist selbstverständlich sicherzustellen (vgl. Erläuterungen S. 37 Nr. 6). Soweit keine Garantie übernommen wurde, trägt das Risiko der negativen Entwicklung der Anlage der Kunde</p>	Noted. EIOPA would like to clarify that it is in the discretion of the manufacturer to decide about the appropriate actions, which may also include the revision / adaption of existing insurance contracts depending of the specificities of each single case. For that purpose EIOPA has intentionally taken the decision not to publish a list of appropriate actions which could be, in any case, only exemplary and non-exhaustive.

		<p>(missverständlich insofern Ausführungen zu „return expectations“ DTA S. 38 Nr. 4).</p> <p>Für uns ist offen, inwieweit EIOPA einen Unterschied zwischen product monitoring (DTA S. 23 Nr. 15, Erläuterungen S. 18 Nr. 36 ff.) und product review (S. 35 ff.) sieht. Wir schlagen vor, diese Punkte zusammenzufassen und begrifflich zwischen anlass-bezogener Überprüfung und regelmäßiger Überprüfung zu differenzieren.</p> <p>Hersteller und Vermittler sollten einander über relevante Ergebnisse ihrer Überprüfungen informieren. Eine darüber hinausgehende Pflicht zur Koordinierung dieser Überprüfungen (DTA S. 38 Nr. 2 Satz 4 und Nr. 6 Satz 2, Erläuterungen S. 37 Nr. 4) und zum Treffen entsprechender schriftlicher Vereinbarungen ist nach unserer Auffassung nicht erforderlich und nicht praktikabel. Der VDVM empfiehlt, diese zu streichen. Ein Makler müsste hier mit einer Vielzahl von Herstellern Vereinbarungen treffen und sich auf ganz unterschiedliche Überprüfungszeitpunkte einstellen. Eine Pflicht zur Koordinierung ist unseres Erachtens – wenn überhaupt – nur dann sinnvoll, wenn der Vermittler und das Versicherungsunternehmen Hersteller sind.</p> <p>II. Zusätzliche Ausführungen zum Informationsaustausch (S. 40 ff.)</p> <p>Der VDVM würde zudem gern zu den zusätzlichen Erläuterungen zum Informations-austausch zwischen Hersteller und Vermittler (S. 40 ff.) Stellung nehmen, für die keine spezielle Frage vorgesehen ist. Der VDVM empfiehlt, die in den Entwürfen genannte Information zur Überprüfung eines Mehrwerts des Produkts (DTA S. 41 Nr. 1, „information to assess whether the product offers added value“) zu streichen. Es wäre nicht klar, was hier angegeben werden soll. Der Begriff findet keine Entsprechung in der IDD oder der Solvency-Richtlinie. Offen ist auch, was mit einer Information</p>	
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			<p>zur „structure“ gemeint ist und was eine Information zu „Produkttrisiken“ bei Nichtlebensversicherungsprodukten beinhalten soll (DTA S. 41 Nr. 1). Der VDVM rät daher davon ab, diese als Minimalanforderungen zu verankern (Erläuterungen S. 40 Nr. 9), also Informationen, die bei jedem Produkt erteilt werden sollen.</p> <p>Es ist aus unserer Sicht nicht erforderlich und auch nicht praktikabel, die jeweils relevanten Informationen in einer schriftlichen Vereinbarung zu spezifizieren. Unnötige Bürokratie sollte vermieden werden (siehe oben).</p>	
348	Verbraucherzentrale Bundesverband e.V.	Question 8	<p>We consider that it is important to introduce a minimum frequency of reviews of a product’s oversight and governance arrangements by the product manufacturer. We estimate a period of 3 years as too long. Future changes in legislation may have to be implemented in a far shorter period. E.g. the basis tariff in German private health insurance was introduced by an act published on March 26th, 2007, which entered into force on January 1st, 2008. Therefore we suggest a minimum frequency of 1 year.</p> <p>A change of a product oversight and governance arrangements should need to be communicated to customers, when it has direct or indirect impact on their contracts including an explanation for the change and for the consequences and option for action for consumers.</p>	Noted. In view of the diversity of insurance products EIOPA has abstained from prescribing a defined interval for reviewing products, assuming that the manufacturer can assess best, which interval is the most appropriate taking into consideration the specificities of the respective insurance products.
349	Zurich Insurance Company, CH 8045 Zurich	Question 8	<p>Review of the POG Arrangements and Products</p> <p>The reviews described in the “new” draft technical advice seem largely duplicative of those set out in the first allotment of draft technical advice based on the guidelines. Specifically, the draft technical advice based on the guidelines already would require the manufacturer to conduct:</p> <p><input type="checkbox"/> A regular review of its POG arrangements (para. 6)</p>	Noted. The language of the policy proposals have been revised to better clarify and distinguish between the duty to test, monitor and review. The written agreement

		<p> <input type="checkbox"/> Ongoing monitoring of the product (para. 15) <input type="checkbox"/> Monitoring of distribution (para. 22 and 23) </p> <p>By reference to paragraph number as set out in the second allotment of draft technical advice for manufacturers, the following can be observed:</p> <p> <input type="checkbox"/> Paragraph 1 of the second allotment duplicates paragraph 6 of the first allotment of technical advice. <input type="checkbox"/> Paragraph 3 of the second allotment combines paragraphs 15 and 23 of the first allotment of technical advice. </p> <p>Paragraphs 2 and 4 at first appear to introduce some kind of a new review. On considered contemplation of this “new” review, it is not at all clear how this review is (a) practically different from what is set out in paragraph 3; or (b) whether paragraph 2 and paragraph 4 involve a different review or state the same review twice.</p> <p>Specifically, paragraph 2 states that the review of a product should “take into account any event that could materially affect the risk coverage and guarantees offered to the identified target market.” Paragraph 4 then states that the product review should consider “crucial events that would affect the main features and coverages of the product.” The review in paragraph 2 is conducted on a frequency established by the insurer (considering various factors) while the review in para 4 is “continuous.” Moreover, it is not at all clear how these purportedly separate but overlapping reviews align with the product review described in paragraph 3 which inquires whether the product remains consistent with the characteristics and objectives of the target market. EIOPA’s explanatory text offers little to untangle this knot of intersecting reviews.</p> <p>We suggest that the technical advice should look to the comparatively clear approach of Article 25, which links the product review into the continued appropriateness of the product for the target market. The technical advice’s newly</p>	<p>to coordinate reviews has been removed for the sake of proportionality.</p>
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		<p>formulated “event-based” reviews purport to ask a different question than whether the product continues to be appropriate for the target market but, in fact, do not. That is, if certain events would render the product inappropriate for the target market this fact would be picked up in the paragraph 3 review thereby rendering the paragraph 2 and paragraph 4 reviews (if they are meant to be separate) superfluous and confusing.</p> <p>As evidence of this pervasive confusion of reviews, the draft technical guidance (para. 2) would require the insurer and distributor to “have appropriate written agreements in order to coordinate their reviews.” This requirement is associated with a paragraph discussing the manufacturer’s product reviews (which distributors do not undertake). Moreover, a similar provision requiring a written agreement coordinating reviews imposed on distributors (para. 6) references the distributor’s review of its own product distribution arrangements (i.e., its own internal policies and procedures) which appear to have no relation to the insurer. In other words, these crisscrossing reviews of products, events and arrangements across the manufacturer and distributor have left coordination and alignment in disarray.</p> <p>In short, the draft technical advice relating to “new” review obligations seems to confuse and undermine what had been an understandable set of reviews originally and plainly described in EIOPA’s guidelines. Accordingly, we strongly suggest that this provision be eliminated as confusing and duplicative of the reviews set out in the guidelines. If these provisions are to be retained in some form, then an exercise should be undertaken to specifically identify what additional elements should be added to the manufacturer’s three reviews set out in the original guidelines. We suggest that such an exercise would reveal that no “new” reviews need be introduced.</p> <p>Written Agreements</p> <p>The draft technical advice requires the manufacturer and distributor to enter into a written agreement in three</p>	
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		<p>instances:</p> <ol style="list-style-type: none"> 1. To define the collaboration between the insurer and a distributor that is considered a co-manufacturer 2. To coordinate their respective policy and/or product reviews 3. To specify product-related information the manufacturer will make available to the distributor <p>In none of these instances does EIOPA explain the rationale for this level of formality – other than to suggest that supervisory authorities may wish to control the collaboration between manufacturer and distributor. Even if supervisory authorities desire to intervene in those interactions (a suspect proposition), it is never explained how formal written agreements enable the supervisory authority to do so in a manner not currently available to the supervisory authority.</p> <p>The insurer and its distributors have already decided enter into a commercial relationship with each other. As licensed and regulated organizations and professionals, they should be expected to make commercially reasonable arrangements that are memorialized in a commercially reasonable manner. It seems paternalistic that Level 2 text from the European Union would seek to dictate the manner through which two professional parties specify and document a commercial relationship. Rather, the parties should be accountable to (a) understand the expectations relating to product oversight and governance; and (b) make appropriate arrangements themselves to fulfill those expectations including interacting with each other in a commercially reasonable manner.</p> <p>As a practical matter, insurers and their distributors already have agreements in place between them that address the terms of their relationships. Those agreements typically contain provisions relating to regulatory compliance, information flows and the like. As new requirements emerge, insurers and distributors rely on those agreements and their course of dealing to determine how best to manage the change. EIOPA has offered no suggestion this system would</p>	
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			<p>be ineffective in the case of product oversight and governance.</p> <p>By intervening into these commercial relations with such formality, the draft technical advice promises to launch an extensive paper-pushing exercise as insurers and distributors renegotiate perfectly functional agreements supplemented by custom and course of dealing (not to mention independent professional and regulatory obligations) in order to comply with the proposed Level 2 mandate from the European Union.</p> <p>Absent a compelling reason to intervene in the commercial dealings between two regulated, licensed and professional actors with existing agreements subject to extensive custom and practice (such a compelling reason having not yet been made evident), the technical advice would do no service for customers, distributors, insurers or supervisors by requiring a paper exercise to specially memorialize back-office interactions over product oversight and governance.</p>	
350	Allianz SE	Question 9	<p>Are there any other elements which you would consider appropriate in order to specify the regulatory requirements on conflicts of interest as laid down on Article 27 and Article 28 IDD? If possible, please specify in detail.</p> <p><input type="checkbox"/> No.</p> <p><input type="checkbox"/> In addition, the proposed categories for conflicts of interest (COIs) have not sufficiently been tailored to typical COIs for insurance distribution. Instead, the categories listed (DTA 2, p. 45) have mainly been derived from the MiFID equivalents which address typical COIs in trading capital market instruments.</p> <p><input type="checkbox"/> In particular,</p> <ul style="list-style-type: none"> o it is not clear which scenarios are targeted by the assumed horizontal conflicts of interests between customers (see examples in sec. 6, p. 44 and DTA 2b, p. 45) o In addition, the vague wording of "financial gain" for an insurance undertaking (DTA 2a, p. 45) or "monetary or non-monetary benefit" (DTA 2c, p. 45) could potentially be 	<p>Noted. EIOPA is of the view that the categories of conflict of interest may be relevant for insurance undertakings and insurance intermediaries as well. The notion of horizontal conflict of interest has been introduced by the European Legislators.</p>

			<p>used to challenge any margin or commission. This would clearly exceed the regulatory intent of IDD Level 1, where restrictions on commissions and limits on margins have explicitly been considered and dismissed. Therefore, L2 should not try to open a back door on these issues.</p> <p>o Certain non-monetary benefits, such as product training etc. would possibly be covered by the definition of inducements but should not per se be classified as COI since they explicitly enhance the quality of the service to the customer.</p> <p><input type="checkbox"/> In addition, it should be clarified in the DTA that assessment, avoidance and mitigation of conflicts of interest should be subject to the criterion of materiality as well as the principle of proportionality. As a case in point, in DTA 2d, p. 25 only people with a "substantial" (instead of "any") involvement in both the distribution and the product development should lead to the assumption of a potentially relevant conflict of interest which needs to be mitigated.</p> <p><input type="checkbox"/> In any case, it should be clarified in the DTA that COI rules are not intended to impose de facto commission bans through the back door or excessive restrictions on commission-based distribution models, which had explicitly been discussed and dismissed in the legislative process leading to IDD Level 1.</p>	
351	AMICE	Question 9	<p>We do not consider that any additional elements are necessary or appropriate in order to specify the regulatory requirements on conflicts of interest.</p> <p>EIOPA rightly states in paragraph 2 (page 45) that conflicts of interest shall only be assumed in the listed cases. This does not mean that the listed practices result per definition in a conflict of interest. This important clarification is currently missing in paragraph 6 (page 44).</p> <p>There are different types of potential conflicts of interest and not all of them can be dealt with in the same way. Not all conflicts of interest have the potential of causing detriment to consumers and EIOPA should clearly specify only those that</p>	<p>Noted. EIOPA would like to stress the importance to distinguish between possible conflicts of interest and possible ways to address a conflict of interest. EIOPA is of the strong view that payments to distributors can cause conflict of interest.</p>

			<p>are demonstrated as being detrimental to consumers.</p> <p>We believe that EIOPA should not prescribe in detail the steps to be taken in order to address and manage conflicts of interest as this needs to be adapted to the characteristics, structure and activity of the entity involved.</p> <p>With regard to paragraph 1, page 45, when identifying conflicts of interest, insurers are required to take into account conflicts of interest arising in relation to “any person directly or indirectly linked to them by control”. EIOPA should clarify to which persons/situations this requirement refers.</p> <p>Additionally, with regard to the broad formulation of paragraph 2(c) (page 45), it should be noted that the payment of commissions from insurers to distributors does not necessarily give rise to conflicts of interest.</p> <p>It is also very difficult to understand to what type of situations EIOPA refers to in paragraphs 5(a), 5(c) and 6 in the conflicts of interests policy (page 46) and how such situations should be handled. These requirements should be further clarified.</p> <p>With regard to paragraph 9(b) (page 47), the organisational provisions on the documentation of conflicts of interest require insurance intermediaries and insurance undertakings to keep and regularly update a record of situations in which a conflict of interest entailing a risk of damage to the interests of the one or more customers has arisen or may arise. We believe that it is appropriate to record existing conflicts of interest running contrary to the interests of the customer. But requiring insurers and distributors to draw up a list of conflicts of interest that might arise in the future seems disproportionate. Therefore, we suggest amending the wording as follows: “keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of the one or more customers has arisen or, in the case of an ongoing service or activity, may arise.”</p>	
352	AMUNDI	Question 9	<p>We support the remark expressed by EFAMA :</p> <p>“Para. 4(c) of the draft Technical Advice could be better</p>	Noted.

			<p>aligned with the relevant provision in the MiFID II Level-2 rules which only refers to removing direct links between the remuneration of relevant persons principally engaged in one activity and the remuneration of different relevant persons principally engaged in another activity. Including "payments" in the requirement could be interpreted to include inducements, which in fact are allowed provided that any conflicts of interests are properly managed:</p> <p>"the removal of any direct link between payments, including remuneration, to relevant persons principally engaged in one activity and payments, including remuneration to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities"</p> <p>EIOPA slightly redrafted the equivalent requirements of the MiFID II Level-2 in paras. 7, 8 and 9 of the draft Technical Advice, even though the requirements are exactly the same. In line with the Commission's mandate to achieve as much consistency as possible between IDD and MiFID II, and to make comparison of the requirements easier for market participants, we would suggest that the same language is used."</p>	
353	ANASF	Question 9	<p>Yes, there are. The Draft Technical Advice, with regard to conflicts of interest policy, relates to "relevant persons" without providing any definition for their identification. Conversely, MiFID II provisions are clear: pursuant to Article 2, Draft Commission Delegated Regulation supplementing Directive 2014/65/EU, the definition of relevant persons encompasses directors, partners, managers, employees, tied agents etc. A similar definition should be carved out also in the delegated acts concerning IDD.</p> <p>For the rest, the Draft Technical Advice achieves an effective level playing field with MiFID II.</p>	Noted. Some amendments have been introduced.
354	Association of International Life Offices	Question 9	<p>We have concern that the draft Technical advice uses undefined expressions. Firstly in 1, "potential to influence the outcome of the services to the detriment of the customer. Use of "potential" suggests this could enable future retrospective</p>	Noted. Some amendments have been introduced, e.g. "at the expense of the

			<p>interpretation and use of hindsight 20/20 vision. We also believe that the wording should align with Article 29.2 (a) IDD and refer to "quality" rather than "outcome" of the service.</p> <p>Secondly, 2. a. uses "at the expense of the customer" which we consider to be too vague and subject to almost any form of interpretation to achieve any desired result. For example, payment of a standard amount of commission remuneration should be considered a "financial gain" though it is unclear what could be considered to be "at the expense of the customer" who could not take a policy without either paying a fee to an intermediary or receipt of (disclosed) commission.</p> <p>The said 2.a. together with 2.c appear to conflict with Article 19 of IDD2 which recognises the intermediary's right to payment for their services, provided this is disclosed by the intermediary. However, the emphasis in the draft Technical Advice is that such disclosure of a basic fee or commission would be merely a method of last resort and procedures must be adopted in order to manage and prevent such a conflict of interest.</p> <p>This interpretation is perhaps an unfortunate result of EIOPA merely adopting into paragraphs 2a and 2c. the same wording as Article 33 of the Draft Delegated Regulation of 25.4.2016 (MiFID II).</p>	customer" has been replaced with "to the detriment".
355	Assuralia	Question 9	<p>Assuralia agrees that the practices listed in §2 on page 45 do not by definition result in a conflict of interests and that the list should not be interpreted as such. It is important to avoid any ambiguity with regard to the wording of this principle, however. We therefore suggest in particular to rephrase the term "assumed" and to clarify paragraph 6 on page 44. Furthermore, the broad formulation of §2(c) on page 45 makes it even more important to clearly state in the technical advice that the listed practices are to be considered as potential conflicts of interest only (e.g. not by definition).</p>	Noted. EIOPA would like to stress that the identification should be distinguished from the question on how to deal with a coi.
356	BEUC	Question 9	<p>Regarding the identification of conflicts of interest, we highlight the situation described in 2.c (p45), where a firm receives or will receive from a person other than the consumer a monetary or non-monetary benefit in relation to</p>	Noted.

			<p>the services provided. BEUC urges EIOPA to keep this situation in its draft, as this is a major potential source of consumer detriment.</p> <p>Furthermore, we welcome EIOPAs stance that conflicts of interest should be in the first place prevented or mitigated and that the mere disclosure of conflicts of interest should only be a measure of last resort</p>	
357	BFV - Bundesarbeitsge meinschaft zur Förderun	Question 9	<p>Die Frage 9, ob es noch weitere Aspekte gibt, um die regulatorischen Anforderungen in Bezug auf Interessenkonflikte, wie in Artikel 27 und 28 IDD festgelegt, zu spezifizieren, unterstellt, dass alle von der EIOPA vorgegebenen Empfehlungen, bspw. in welchen Situationen ein Interessenkonflikt anzunehmen ist, zutreffen. Dem ist zu widersprechen.</p> <p>Die Technical Advice-Empfehlungen der EIOPA gehen zudem weit über das hinaus, was nach unserem Verständnis Artikel 27 und 28 IDD festlegen.</p> <p>Die von der EIOPA vorgeschlagenen Grundsätze für Verfahren und Maßnahmen zur Vermeidung von Interessenkonflikten sehen wir insbesondere bei kleineren und mittleren Vermittlerbetrieben als unangemessen umfangreich und nicht mit dem Proportionalitätsprinzip in Einklang stehend an.</p> <p>Konkretes Beispiel: Mit Punkt 2c unterstellt die EIOPA, dass bei der Beratung zu und Vermittlung von Versicherungsanlageprodukten ein Interessenkonflikt anzunehmen sei, wenn der Versicherungsvermittler aktuell oder zukünftig im Zusammenhang mit den für den Kunden erbrachten Versicherungsvermittlungstätigkeiten von einer nicht mit dem Kunden identischen Person eine monetäre bzw. nicht monetäre Zuwendung erhält. Versicherungsmakler beraten bzgl. Versicherungsprodukten und vermitteln im Bedarfsfall individuell passende Versicherungsprodukte. Dies aber nicht im Auftrag des Versicherers/Herstellers, sondern im Auftrag des Kunden. Um Wiederholungen zu vermeiden, verweisen wir auf unsere Ausführungen zur höchstrichterlichen Rechtsprechung des Bundesgerichtshofs (Sachwalterurteil) und zur Rechtsstellung entsprechend der</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

			<p>gesetzgeberischen Regelung § 59 Abs. 3 VVG in Antwort 8. Ergänzend weisen wir auf die gesetzlichen Vorgaben nach § 60 VVG zu den Beratungsgrundlagen des Versicherungsmaklers hin. Versicherungsmakler, die nicht im Interesse des Kunden beraten und vermitteln, verstoßen bereits heute gegen gesetzliche und die mit dem Mandanten üblicherweise in einem Maklervertrag vereinbarten vertraglichen Regelungen und setzen sich Haftungsansprüchen aus.</p>	
358	BIPAR	Question 9	<p>General comments</p> <ul style="list-style-type: none"> - We believe that EIOPA draft advice already goes in too much detail as it stands. - It should be clearly mentioned that the Delegated Acts based on IDD articles 27, 28, 29 and 30 (chapter VI) only apply to IBIPs. <p>Specific comments on EIOPA draft technical advice re the identification of conflicts of interests</p> <ul style="list-style-type: none"> - BIPAR strongly questions the wording of paragraph 2 (page 45) that states that "conflicts of interest shall at least be assumed" in four specific situations. The four situations are presented as a priori conflicts of interest, without the necessity for their existence to be proven. This goes beyond the mandate given to EIOPA by the European Commission. <p>BIPAR believes that this first sentence of paragraph 1 should be deleted and that the following wording for paragraph 1 and 2 would be more appropriate (inspired by MiFID II Commission delegated regulation): "For the purposes of identifying the types of conflict of interest potentially detrimental to a client, insurance intermediaries and insurance undertakings shall take into account whether they are in any of the following situations:"</p> <ul style="list-style-type: none"> - Under point 2a), it is stated that a conflict of interest shall at least be assumed in situations where "the intermediary (...) is likely to make a financial gain, or avoid a financial loss at the 	<p>Noted. The scope of application is defined by Level 1; therefore, a further clarification is not required. The legal assumption has been replaced by a list of minimum criteria. The Term financial gain has been replaced by "to the detriment of the customer" for the sake of alignment. EIOPA does not question the legitimacy of being remunerated.</p>

		<p>expense of the customer”.</p> <p>BIPAR believes that point 2a is too broad a description: even charging the customer a fee – which the customer may/will have agreed in advance – could come under such a broad description.</p> <p>BIPAR believes that it would be wrong to characterize an intermediary’s remuneration as being a financial gain, as the term “gain” can suggest that the intermediary is taking advantage of the customer when in fact he is simply remunerated for the services rendered.</p> <p>In a market economy, any insurance intermediary, like any other economic operator, needs to be remunerated for the services provided to a client for her/his businesses to be viable. Obviously, it is in the interest of the intermediary to be remunerated for services rendered. The use of the words “financial gain” is “pejorative” as it can be interpreted as the intermediary always benefiting at the expense of a client when earning a commission or a fee from a third party.</p> <p>In the investment world this means that you may not bet against your customer. We want to stress that this does not have anything to do with the remuneration of the intermediary. The MiFID intent was to prohibit advice that (by buying or selling a stock) would gain the firm – in addition to the remuneration- an extended advantage or disadvantage in its own shares value.</p> <p>BIPAR would therefore ask to either delete point 2a), or to rephrase it, making clear that this is intended for situations where insurance-based investment products are meant in a way that there is a likelihood of the intermediary being able to “bet” against his customer.</p> <p>- Under point 2.c, the draft technical advice states that conflicts of interest shall at least be assumed in situations including the following “the insurance intermediary, insurance undertaking or linked person receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities</p>	
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		<p>provided to the customer;”</p> <p>BIPAR strongly questions the wording of paragraph 2.c) and requests it to be deleted.</p> <p>It is fundamentally inconsistent with economic theory to assume that any insurance intermediary, insurance undertaking or linked person who receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer has always a conflict of interest. From a legal point of view, assuming that a conflict of interest exists in a given situation reverses the burden of proof and this is not in line with IDD level 1 that has been adopted by the European legislators.</p> <ul style="list-style-type: none"> - Under point 2d), the draft advice also assumes the involvement in the management or development of the IBIPs to be a conflict of interest. In its technical advice on IMD 1.5 , EIOPA explained that entities involved in the development or management of IBIPs should assess if their involvement gives rise to COI with customers, and if so, how to address it. We believe this should be reflected in the IDD technical advice <p>Specific comments on EIOPA draft technical advice re conflicts of interests policy</p> <ul style="list-style-type: none"> - Point 4(b): It must be noted that in the practice, procedures documents are normally separate from the policy, with the policy being more high level. - As was the case for IMD 1.5, we still believe that the list of procedures under point 5 is not necessarily suitable for IBIPs (e.g. point 5.a) - Point 9a): Regarding the yearly review of the conflicts of interest policy, we want to stress that this should definitely not be more than once per year since small and medium firms would struggle to do more. - Point 9b): In general, we fear that the prescribed separations of functions and responsibilities and recording duties will lead to practical issues when translated to the 	
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			mainly SME size of intermediaries that we represent. We fail to understand how in the case of ongoing service or activity, records of situations in which a conflict of interest may arise can be provided.	
359	BNP Paribas	Question 9	<p>According to the principle of proportionality, we consider that intermediaries should be able to decide on the frequency of the policy review therefore "at least annually". should be replaced by "regularly".</p> <p>No other elements are necessary in our view</p>	Noted.
360	Bund der Versicherten (BdV – German Association of	Question 9	<p>Related to DTA on conflicts of interest, point 7 (CP, p.46) we estimate that there cannot be any over reliance on disclosure. Therefore we cannot agree that disclosure of conflicts of interest should only be a step of last resort. There is a strong asymmetry of information between customers (often with poor knowledge on financial products) and distributors (who have at least high sales qualifications). That is the reason why customers ought to be informed - in advance and in an intelligible way - on any possible conflicts of interest by full disclosure.</p> <p>Essentially conflicts of interest have to be considered as part of Business Conduct Risks. These are risks related to the way in which a firm and its staff conduct themselves, and includes matters such as how consumers are treated, how products are designed and brought to market, remuneration of staff, and how firms deal with conflicts of interest or resolve similarly adverse incentives. With respect to the conduct of business, there is a link between conduct risk and governance.</p> <p>That is why we again underline the crucial importance of the "Fit and Proper Requirements" outlined in the Delegated Act on Solvency II (2015/35/EU, Chapter IX: System of Governance). Additionally we stress that corporate governance, risk management and internal audit function have to be separated clearly.</p>	Noted. EIOPA would like to stress that insurance undertakings and insurance intermediaries should not rely on disclosure to avoid the establishment of appropriate organisational measures and procedures to avoid and mitigate Col first hand.

361	Bundesverband Deutscher Vermögensberater e. V. 603	Question 9	<p>Von unserem Verband sind hier keine weiteren Aspekte hinsichtlich der im Entwurf genannten Vorgaben zu den Interessenskonflikten hinzuzufügen. Ganz im Gegenteil, fordern wir hier eine andere Bewertung durch EIOPA schon bei der Feststellung, wann von einem Interessenskonflikt auszugehen ist. Wenn man hierzu im Entwurf (auf Seite 45) die Ausführungen zum Thema „Feststellung von Interessenskonflikten“ liest, muss man insbesondere bei Nummer 2.a) bis d) entgegenhalten, dass eine Provisionsvergütung in der maßgeblichen IDD ausdrücklich als zulässig erachtet wird. Es kann daher nicht sein, dass hier Provisionszahlungen durch Versicherungsunternehmen per se als ein Interessenskonflikt eingeschätzt werden.</p> <p>Auf Level 1 sieht die IDD eine explizite Gleichstellung von provisions- und honorarbasierter Beratung vor. Beide Vergütungsformen sollen im Wettbewerb zueinander stehen und es soll am Ende dem Kunden obliegen, sich für die von ihm präferierte Vergütungsform zu entscheiden. Eine andere grundsätzliche Bewertung ist laut IDD alleine den Mitgliedsstaaten vorbehalten und kann durch Level-2-Akte nicht konterkariert werden.</p> <p>Zu diesem ganz entscheidenden Thema möchten wir aus unserer über 40-jährigen Verbandserfahrung bezüglich der Beratung und Vermittlung von Finanzdienstleistungsprodukten von über sechs Millionen Kunden wie folgt ausführen:</p> <p>1. Es liegt in der Natur der Sache, dass Menschen im Vertrieb für die Vermittlung bzw. den Verkauf von Dienstleistungen und Produkten vergütet werden. Schließlich ist dies ihr Beruf, mit dem sie – wie andere Erwerbstätige auch – ihren Lebensunterhalt bestreiten und gegebenenfalls auch ihre Familie ernähren.</p> <p>In der Praxis erfolgt diese Vergütung bei Firmenangestellten insbesondere über ein Festgehalt und gegebenenfalls Boni bzw. Prämien für besondere Vertriebsleistungen. Bei Selbständigen wird die Vermittlungsleistung in der Regel über Provisionen des Produktgebers oder auch über Honorarvereinbarungen mit dem Kunden vergütet.</p>	<p>Noted. EIOPA would like to stress that it is not intended to introduce any kind of discrimination of payment/remuneration . This has been clarified in the Final Report. However, insurance undertakings and insurance intermediaries are supposed to address any kind of Col which is related to the specific business model.</p>
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362	BVK Germany	Question 9	We like to stress the comments of BIPAR in this respect	Noted.
363	CNCIF - Chambre Nationale des Conseillers en	Question 9	<p>No.</p> <p>There no additional elements which we would consider appropriate in order to specify the regulatory requirements on conflicts of interest.</p> <p>However, we consider that it would be more relevant to (i) take into account the specific structure/size of the distributor, to (ii) follow the route of a "light" simplified regime for small intermediaries managing with conflicts of interest and to (iii) introduce a number of exemptions and exclusions.</p>	Noted. In EIOPA's view any kind of exemption and exclusions causes the risk of regulatory loopholes and circumvention.
364	CSCA French broker Association, 91, rue Saint Laza	Question 9	<p>It should be clearly recalled that delegated acts regarding conflicts of interest exclusively concern distribution of IBIP's (Chapter VI of Directive Articles 28, 38 and 39).</p> <p>Furthermore there is already too much detail and we do not consider it useful to add extra elements to define the regulatory requirements in terms of conflicts of interest.</p>	Noted. The scope is already defined by Level 1, so no need to repeat this clarification.

		<p>We note with some surprise the mention of the fact that payment of the distributor after omission can in itself be considered to create a conflict of interest, and we observe an editorial bias (e.g. page 52 footnote) or even developments and formulations that need to be reviewed (in particular 2a on the notion of financial gain with reference to remuneration for provision of service, p 45, p50 point 7).</p> <p>We may add that these formulations are contradictory to the fact that the directive mentions that member States have the possibility of preventing payment in the form of commissions which means that there is therefore no ban in principle.</p> <p>Furthermore the general requirement of an obligatory duty to advise on the part of the distributor on behalf of the client's best interests, which exists in France, cannot be interpreted as confirmation that remuneration in the form of commission is a source of conflicts of interest. Affirming the contrary would have significant effects on the overall architecture of distribution in France.</p> <p>This is to say that general principles cannot be drawn up independently from the requirements of local legislation, nor can postulates be established for a list of situations that are imagined to generate conflicts of interest. It would certainly be more effective to leave member States to specify to clients the links between producers and distributors.</p> <p>Additionally, we should remember that Article 27 of the directive, indicating that IBIP distributors must establish administrative structures with a view to taking all reasonable measures to prevent conflicts of interest that could harm the client's interests, also indicates that these systems must be proportional to the activities concerned, the insurance products sold and the type of distributor.</p> <p>We can only emphasize that the standardization requirements envisaged by EIOPA appear disproportionated in relation to reality. This is illustrated by the degree of detail in 9b p. 47, to cite one among others, which seems emblematic of an inappropriate level of administration without visible</p>	
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			operational benefit for the client.	
365	Czech Insurance Association CAP	Question 9	<p>We do not consider necessary to add any other elements.</p> <p>We would like to amend those in the proposal:</p> <p>Ad 2 a. "the insurance intermediary, insurance undertaking or linked person is likely to make a financial gain, or avoid a financial loss, at the expense of the customer";</p> <p>This is too broad, even premium may fall under the provision. We propose that the payment of premiums should be explicitly left out. Further, such provision may lead to de facto ban on commissions. We assume that not every payment of the commission by the insurance company automatically creates conflict of interests. It always depends on other factors. As the intention is not to provide for a ban on commissions (as clarified at the EIOPA public hearing on 23 September) we propose for amendment of conflict of interest and inducement rules in the technical advice. As it is up to national arrangements to decide who shall reward intermediaries (client v. insurance company), distributors shall be entitled to be paid for their services.</p> <p>Ad 2 b. "the insurance intermediary, insurance undertaking or linked person has a financial or other incentive to favour the interest of another customer or group of customers over the interests of the customer";</p> <p>It is too broad. We do not know how to deal with following situations:</p> <ul style="list-style-type: none"> • Sales on premiums (in case client has more insurance contracts at one insurance company, in case of some promotions - e.g. open day events, yearly frequency of payments, etc.) • Provision of advantaged conditions of insurance to particular group of customer (higher business sale, less exclusions) • Zero or lower commission transaction where the saved 	<p>Noted. EIOPA disagree. The statement that conflicts of interest arise in the context of commissions does not introduce a ban. EIOPA is of the view that the payment of commissions generally causes conflict of interest.</p>

			<p>amount is credited on the insurance contract of the particular client (e.g. insurance contracts of employees of the insurance company).</p> <p>Insurance company is a profit oriented business – the above mentioned situations are part of its standard business model. If all of these are deemed as conflict of interest the insurance company will be obliged to act according to Art. 28 IDD. As a consequence the insurance company will have to inform the client according to Art. 28 IDD (as other elimination of conflict of interest might not be feasible). This will be abnormally difficult to inform client on all promotions under which other customers got better conditions (i.e. “were favored compared to the other customer”), as there are lot of such promotions and quite often limited for a short period of time. As a result, the client will be overwhelmed and lost with extensive information on all (even lapsed) promotions which brings no added value for him. In addition, the client may hence overlook documents which are of actual value for him.</p> <p>Ad 2 c. “the insurance intermediary, insurance undertaking or linked person receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer”;</p> <p>The definition is too broad. In general, the commission to the intermediary is in majority paid by the insurance company and not the customer. Thus, any and all activity of intermediaries may be deemed as conflict of interest. In case those commissions are in accordance with conditions under Art. 29(2) IDD, they should not be deemed as conflict of interest.</p>	
366	EFAMA - The European Fund and Asset Manageme	Question 9	Para. 4(c) of the draft Technical Advice could be better aligned with the relevant provision in the MiFID II Level-2 rules which only refers to removing direct links between the remuneration of relevant persons principally engaged in one activity and the remuneration of different relevant persons principally engaged in another activity. Including “payments” in the requirement could be interpreted to include	Noted. The policy proposals have been further aligned with MiFID for the sake of consistency.

			<p>inducements, which in fact are allowed provided that any conflicts of interests are properly managed:</p> <p>“the removal of any direct link between payments, including remuneration, to relevant persons principally engaged in one activity and payments, including remuneration to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities”</p> <p>EIOPA slightly redrafted the equivalent requirements of the MiFID II Level-2 in paras. 7, 8 and 9 of the draft Technical Advice, even though the requirements are exactly the same. In line with the Commission’s mandate to achieve as much consistency as possible between IDD and MiFID II, and to make comparison of the requirements easier for market participants, we would suggest that the same language is used.</p>	
367	European Federation of Financial Advisers and Fina	Question 9	<p>Are there any other elements which you would consider appropriate in order to specify the regulatory requirements on conflicts of interest as laid down on Article 27 and Article 28 IDD? If possible, please specify in detail.</p> <p>In a commercial distribution business any kind of remuneration can lead to a conflict of interest, whether it is a fee paid by the client or a commission paid by the insurer to the intermediary. We question the explicit statement in paragraph 2 c. that it is automatically a conflict of interest if an intermediary receives third party commissions. We point out that also fee-based advisers face the same risk of conflicts of interest. For example it could be in the interests of a fee-based adviser to unfairly quote his services or to bill his clients for more working hours than necessary. In the case that EIOPA wishes intermediaries to create a document for their clients in which they inform about possible conflicts of interest we ask for a level playing field in that respect. This means that regardless of the type of remuneration all intermediaries uniformly have to follow the same regulations. Paragraph 2 c. therefore should be written « the insurance</p>	Noted. EIOPA agrees that any kind of remuneration can lead to a conflict of interest, whether it is paid by the client or a commission paid by the insurer to the intermediary.

			intermediary, insurance undertaking or linked person receives or will receive a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer ».	
368	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 9	EFPA strongly advises to introduce the term "inducement" instead of the terms "gains" or "benefit" already in this part of the Draft Technical Advice. The underlying reason is to be in line with MiFID II as the Draft Technical Advice is dealing with investment-based insurance products. And inducements shall be subject to a conflict of interest policy.	Noted. EIOPA has clarified in the Technical Advice on how the general rules on conflict of interest apply with regard to inducements.
369	Fachverband der Versicherungsmakler und Berater in	Question 9	<p>It should be very clear and mentioned explicitly for all delegated acts that are part of chapter VI on IBIPs that the delegated acts are indeed only applicable to IBIPs.</p> <p>We believe that the draft advice already goes in too much detail as it stands.</p> <p>Some specific comments on EIOPA draft technical advice re the identification of conflicts of interests (page 45):</p> <p><input type="checkbox"/> We strongly question the wording of paragraph 2 (page 45) that states that "conflicts of interest shall at least be assumed" in four specific situations. The four situations are presented as a priori conflicts of interest, without the necessity for their existence to be proven. This goes beyond the mandate given to EIOPA by the European Commission.</p> <p><input type="checkbox"/> We believe that this first sentence of paragraph 1 should be deleted and that the following wording for paragraph 1 and 2 would be more appropriate (based on MiFID II Commission delegated regulation): "For the purposes of identifying the types of conflict of interest potentially detrimental to a client, insurance intermediaries and insurance undertakings shall take into account, by way of minimum criteria, whether, they are in any of the following situations:"</p> <p><input type="checkbox"/> Under point 2a), it is stated that a conflict of interest shall at least be assumed in situations where "the</p>	Noted. The scope is already defined by Level 1, so no need for repetition. The legal assumption has been replaced with a minimum list of criteria. Paragraph 2 has been amended as proposed. To avoid a pejorative connotation "at the expense " has been replaced with "to the detriment".

		<p>intermediary (...) is likely to make a financial gain, or avoid a financial loss at the expense of the customer”.</p> <p>We believe that point 2a is too broad a description: even charging the customer a fee – which the customer may/will have agreed in advance – could come under such a broad description.</p> <p>We believe that it would be wrong to characterize an intermediary’s remuneration as being a financial gain, as the term “gain” can suggest that the intermediary is taking advantage of the customer when in fact he is simply remunerated for the services rendered. In a market economy, any insurance intermediary, like any other economic operator, needs to be remunerated for the services provided to a client for her/his businesses to be viable. Obviously, it is in the interest of the intermediary to be remunerated for services rendered. The use of the words “financial gain” is “pejorative” as it can be interpreted as the intermediary always benefiting at the expense of a client when earning a commission or a fee from a third party.</p> <p>The point is taken from MiFID. In the investment world this means that you may not bet against your customer. We want to stress that this does not have anything to do with the remuneration of the intermediary. The MiFID intent was to prohibit advice that (by buying or selling a stock) would gain the firm – in addition to the remuneration- an extended advantage or disadvantage in its own shares value. We would therefore ask to either delete this point, rephrase it or at least make clear that this is intended for situations where insurance-based investment products are meant in a way that there is a likelihood of the intermediary being able to “bet” against his customer.</p> <p><input type="checkbox"/> We note that on p 6 of the consultation paper, EIOPA states that “inducements have the potential to cause a conflict of interest between the interests of distributors and their customers”. This is repeated in slightly different wording on p 50, point 7 where the payment of inducements has been identified as a situation where a conflict of interest is likely to</p>	
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		<p>arise which can lead to detrimental impact if it is not managed in accordance with a stringent conflict of interest policy.</p> <p>In point 2.c, the draft technical advice states that conflicts of interest shall at least be assumed in situations including the following “c. the insurance intermediary, insurance undertaking or linked person receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer;”</p> <p><input type="checkbox"/> We strongly question the wording of paragraph 2.c) and request it to be deleted.</p> <p>It is fundamentally inconsistent with economic theory to assume that any insurance intermediary, insurance undertaking or linked person who receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer has always a conflict of interest. Conflict of interest situations only occur potentially in cases where a customer is guided, steered or advised to buy a particular product by the insurance intermediary, insurance undertaking or linked person.</p> <p>From a legal point of view, assuming that a conflict of interest exists in a given situation reverses the burden of proof and this is not in line with IDD level 1 that has been adopted by the European legislators.</p> <p><input type="checkbox"/> Under point 2d), the draft advice also assumes the involvement in the management or development of the IBIPs to be a conflict of interest. In its technical advice on IMD 1.5 , EIOPA explained that entities involved in the development or management of IBIPs should assess if their involvement gives rise to COI with customers, and if so, how to address it. We believe this should be reflected in the IDD technical advice.</p> <p>At least, some specific comments on EIOPA draft technical advice re conflicts of interests policy:</p> <p><input type="checkbox"/> Point 4(b): It must be noted that in the practice, procedures documents are normally separate from the policy,</p>	
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			<p>with the policy being more high level.</p> <p><input type="checkbox"/> As was the case for IMD 1.5, we still believe that the list of procedures under point 5 is not necessarily suitable for IBIPs (e.g. point 5.a)</p> <p><input type="checkbox"/> We also note that in point 5. c. the words "payments, including" has been added, compared to the IMD 1.5 advice. For IMD 1.5 the advice stated there should not be a direct link between "remuneration" of relevant persons and the current IDD advice, states "payments, including remuneration". This would imply that so-called "inducements" would also fall under this rule.</p> <p><input type="checkbox"/> 9a) : Regarding the yearly review of the policy, we want to stress that this should definitely not be more than once per year since small and medium firms would struggle to do more.</p> <p><input type="checkbox"/> 9b): In general, we fear that the prescribed separations of functions and responsibilities and recording duties will lead to practical issues when translated to the mainly SME size of intermediaries that we represent. We fail to understand how in the case of ongoing service or activity, records of situations in which a conflict of interest may arise can be provided.</p>	
370	Fédération Française de l'Assurance (FFA) 26 bo	Question 9	<p>As to EIOPA's question, we do not consider that any additional elements are necessary nor appropriate in order to specify the regulatory requirements on conflicts of interest. However, we have serious doubts with the propositions and we plead their amendment, and where relevant, their withdrawal (see our arguments below).</p> <p>Notably, commission-based remuneration should not be interpreted as a conflict of interests per se as IDD provides that organizational arrangements should be put in place in order to avoid it.</p> <p>1. Consistency with level 1 requirements (IDD wordings)</p>	<p>Noted.</p> <p>The proposed legal assumption has been replaced by a list of minimum criteria.</p> <p>The Technical Advice revers several times to the principle of proportionality to emphasise its importance.</p> <p>A de facto ban of commissions is neither proposed nor</p>

			<p>As to conflicts of interest, EIOPA firstly must recognize that the presumption (at least be assumed) that any remuneration by commission is a source of conflicts of interest or at the expense of the customer is beyond level 1:</p> <ul style="list-style-type: none"> o According to Article 27 IDD, intermediaries shall take steps preventing conflicts of interest from adversely affecting the interests of customers. This is to be welcomed. Even more, it should be noted that Article 27 IDD also requires such arrangements to be proportionate to the activities performed, the products sold and the type of the distributor. o IDD expressly leaves the issue of a (possible) ban on commissions as an option for Member States which is undermined with EIOPA's assumption. o European Commission in its demand asks for "measures in respect of the conflict of interests rules" , "steps that (industry) might reasonably be expected to take" and "criteria for determining the types of conflicts of interests whose existence may damage the interests of customers" (Article 28 d) IDD). o Recital 57 of the IDD provides that in order to ensure that any inducement does not have a detrimental impact, the insurance distributor should develop arrangements and procedures relating to conflict of interest. In other words, under the IDD, where these procedures properly identify, prevent and manage conflicts of interest including those resulting from inducements, the latter should be presumed as not having a detrimental impact on the quality of the service. 	<p>envisaged.</p>
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		<p>2. Consistency with national system</p> <p>Where advice (personal recommendation) is made mandatory for the distributor and for the client, like in France, commission based remuneration should not be “assumed” as data source of conflict of interests. Indeed, commission system allows a “mutualisation” of advice costs to the benefit of all clients.</p> <p>As a recent study by EFAMA has showed, in the UK where no retribution is allowed to be paid to the independent advisor (IA) by the promoter as a result of the Retail Distribution Review (RDR), a new business model has emerged, whereby the IA charges the client.</p> <p>“The experience of the first years of this new regulation show that only clients with a larger asset basis will receive adequate advice as they will pay a sufficient fee to the IA. Conversely, clients with less than 100 000 £ suffer a lack of advice and are pushed towards trading through electronic execution platforms. One can extrapolate that this rising of electronic platform will coincide with a shift towards less risky investments from these categories of investors that cannot afford to pay for the advice. Indeed, as they will have less tailored recommendations, they are likely to become more risk-advert and therefore concentrate their investments in low return investments such as saving products. This will have a detrimental effect on their prospect of future income for when they retire but this will also have an significant impact on the amount of funding for the real economy that these investors could have generated, provided that a proper advice adjusting the level of risk of the products they could invest in had been given to them”.</p> <p>That’s why we believe that regulation should be business</p>	
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			<p>model neutral and would therefore call on the EIOPA to refrain from trying to adopt a one-size-fits-all approach and rather allow for different business models based on different investment cultures to develop in the EU.</p> <p>3. Type and extent of a possible damage</p> <p>There are a range of different types of potential conflicts of interest and not all of them can be dealt with in the same way. Not all conflicts of interest have the potential of causing detriment directly to consumers, and where there are some, which may be detrimental, EIOPA should focus on the extent of potential damage (low damage could be managed by proper procedures).</p> <p>As for us, detrimental impact should not be assessed on the basis of "one fit all" criteria. A case by case examination is necessary.</p> <ul style="list-style-type: none"> o For example, higher remuneration for unit linked contract can be explained by more time and work passed on explanation, information and suitable advice. o Equally, it is not understandable that for EIOPA, involving the persons responsible for the distribution in development of IBIPs should be considered conflicting (point 2 d) on page 45). On the contrary, these persons are best placed to appreciate the needs of the target market and to collect information about the necessity to adapt or even review the target market. <p>4. Proportionality</p> <p>The proportionality principle is to be recalled: Article 27 IDD</p>	
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		<p>“Those arrangements shall be proportionate to the activities performed, the insurance products sold and the type of the distributor”.</p> <p>o Conflicts of interest do not arise to the same extent between these different distribution channels (e.g. the exclusive agent is representative of the insurance company while the broker is of principle, the representative of his client). As the European Commission said formally, different products as well as different distribution channels might present different risk of conflicts of interest. Indeed, issues are different according to whether the client addresses an exclusive agent or the company directly or chooses to be in touch with independent broker. The expectations of the client are not the same in either cases.</p> <p>EIOPA must thus take into account the type of distributor when proposing solutions for conflicts of interests.</p> <p>o Even more distributors have a right to be properly remunerated for their services. Commission-based remuneration should not be interpreted as a source of conflict of interests per se where advice is mandatory. In these cases, if costs will no longer be shared via commission based system, the customer will directly pay for mandatory advice at the higher price, as the distributor cannot work for free.</p> <p>For these reasons, we do not agree with a list of situations that always generate conflicts of interest nor with EIOPA’s systematic presumption of conflict of interests for any kind of remuneration or advantage “receives or will receive from a person other than the customer”.</p> <p>5. Organisational “policy”</p> <p>The organisational provisions on the documentation of conflicts of interest under paragraph 9(b) on page 47 require distributors to record an exaggerated amount of detail,</p>	
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			<p>resulting in disproportionate efforts.</p> <p>Distributors are not able to predict all potential conflicts of interest that might arise following the multitude of – often unpredictable – customer decisions, taking into account every conceivable element of their personal situation. Moreover, it is unclear who would benefit from such a list. Customers would not have any advantage from receiving a list of potential conflicts of interest that might possibly arise in the future, but which have no basis so far. On the contrary, where a new problem appears, it could not be a part of list.</p>	
371	Federation of Finnish Financial Services	Question 9	We do not consider that other elements are necessary to specify the requirements on conflict of interest.	Noted.
372	Financial Services Consumer Panel	Question 9	<p>The Panel strongly believes that the emphasis should be on the avoidance and elimination of conflicts, rather than their 'management' and therefore welcome EIOPA's recommendation that manufacturers and distributors put in place a robust conflict of interest policy which is regularly reviewed. We agree that disclosure of conflict of interests, whilst essential if such a conflict should occur, should be a step of last resort and that overreliance on disclosure should be considered a deficiency in the conflicts of interest policy.</p> <p>Conflicts of interest are a crucial factor in many instances of miss-selling, and manufacturers and distributors should be called on to eliminate them wherever possible.</p> <p>We also welcome the inclusion of examples of situations where conflicts of interest shall be assumed until otherwise eliminated.</p>	Noted. EIOPA agrees that the insurance undertakings and insurance intermediaries should primarily try to avoid conflict of interest.
373	FNMF, 255 rue de Vaugirard, 75015	Question 9	No further elements are necessary to specify the regulatory requirements on conflict of interest. Our main observations	Noted. From EIOPA's perspective there is no

	PARIS		<p>are the followings :</p> <p>The technical advice has to be consistent with national regulation, particularly in France where insurance customer advice is compulsory and the commission based remuneration is not source of conflict of interests</p> <p>To this extent, there are many ranges of insurance product and many kinds of conflict of interest situations, it would be better to focus on the situations which present high sources of potential damage for the consumer.</p> <p>The requirements in terms of conflict of interest (documentation, procedures, control and so on) shall be proportionate to the insurance product sold. Otherwise, for medium and small operators, it could be a source of cost burden.</p>	inconsistency in assuming a conflict of interest when it comes to national legislations which require mandatory advice.
374	FRENCH BANKING FEDERATION	Question 9	<p>No.</p> <p>Regarding point 9, the precision « at least annually » should be deleted. The professional should be free to determine the frequency of the review. EIOPA should only provide that such a review should be done « regularly » in accordance with the principle of proportionality.</p>	Noted.
375	Genossenschaftsv erband Bayern e.V. (GVB – Bavarian	Question 9	No comment	Noted.
376	German Association of Private Health	Question 9	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.

	Insurers (PKV)			
377	German Banking Industry Committee (GBIC)	Question 9	<p>GBIC agrees with the notion of Art. 27 IDD that conflicts of interest should not harm the interest of the consumer. What constitutes a conflict of interest, however, is still subject to interpretation. The payment of inducements of a manufacturer to the distributor is not per se a conflict of interest. This fact can also be drawn from the Level I text of the IDD (see Art. 18 a) and v), Art. 19 (1) e) IDD). The European co-legislator agreed that inducements in relation to the provision of insurance advice are admitted. The distribution of products is based on trust between the customer and the distributor. The payment of inducements allows for everyone to have access to insurance advice, services and products without paying a lump sum in advance. Especially customers from a lower income group can thus profit from high quality advice regarding their personal needs without any obligation to purchase a product or having to pay a fee for the consultation. A recent study (March 2016) by the Financial Advice Market Review (UK) focused on the provision of financial services showed that a prohibition of the payment of inducements would lead to a gap of advice in this segment.</p>	Noted. EIOPA has a different opinion and considers the payment of inducement as potential source of Col, independent from the fact that there are generally admitted under Level 1.
378	German Insurance Association (GDV)	Question 9	<p>The EIOPA proposal [Draft Technical Advice (DTA) p. 45 no. 2 c.] narrows down the focus on the commission system. However, this is not intended under IDD Articles 27 and 28. Conflicts of interests, as described under DTA p. 45 no. 1, are possible in each scenario and need to be identified, prevented, managed or disclosed.</p> <p>In insurance distribution, the interests of the contracting parties can differ from each other. However, this does not necessarily result in a detriment to the customer. Moreover, it is irrelevant in this regard whether two or three parties are involved (e.g. customer/intermediary/insurer, as in the commission-based model). The German Insurance Association expressly welcomes Article 27 IDD, according to which conflicts of interest may not adversely affect the interests of</p>	Noted. EIOPA agrees that Col may also arise in other payment models. Please see also the section titled “feedback statement to the public consultation on the draft Technical Advice on possible delegated acts under IDD”.

			<p>customers. This can be ensured through certain arrangements in distribution. It should be noted that Article 27 IDD expressly limits the required steps to proportionate arrangements. The EU Commission's mandate explicitly takes up this provision. We believe that the current EIOPA draft should take this into account.</p> <p>The conflicts of interest faced by investment product distributors are not identical to the ones faced by insurance distributors. The German Insurance Association believes that it would be appropriate for EIOPA to put a stronger focus on the differences between the investment industry and the insurance industry. The products offered by investment product distributors are directly linked to the markets and therefore potentially influenced by the behaviour of other groups of customers. By contrast, insurance distributors offer long-term products for old-age provision. The included guarantees are an advantage for their customers.</p> <p>The product features and purchase conditions of insurance-based investment products do not depend on the behaviour of other customers. Their purchase behaviour is particularly irrelevant. Hence, it is unclear why EIOPA assumes that there are horizontal conflicts of interest between different customers, as is the case with transaction deals in direct capital markets. High demand for an insurance-based investment product (as in the example of a conflict of interest cited by EIOPA on p. 44 no. 6 of its analysis) neither affects the price nor the type of products offered. The customer obtains the identical product without suffering any disadvantages due to the high demand.</p> <p>Identification of conflicts of interests (DTA p. 45 no. 1 and 2)</p> <p><input type="checkbox"/> DTA p. 45 no. 2 a.</p>	
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		<p>The German Insurance Association recommends clarifying under DTA p. 45 no. 2 a. that the remuneration of distributors for services provided (e.g. advice and intermediation) does not generally qualify as “financial gain at the expense of the customer”. This wording suggests that the distributor puts its own advantage ahead of the wishes and needs of the customer.</p> <p><input type="checkbox"/> DTA p. 45 no. 2 b.</p> <p>We do not believe there are any realistic examples of a distributor favouring the interests of a specific group of customers over the interests of other groups of customers.</p> <p><input type="checkbox"/> DTA S. 45 Nr. 2 c.</p> <p>As mentioned above, the German Insurance Association would like to initiate some modifications here. As in any other sector in the industry, divergent interests meet in insurance distribution as well. However, this does neither necessarily result in a detriment to the customer nor does it depend on whether two (fee-based advice) or three parties (e.g. customer/intermediary/insurer, as in the commission-based model) are involved. The German Insurance Association recommends treating fee-based advice and commission-based advice equally under the rules on conflicts of interest. The IDD explicitly allows for commission-based distribution models [Articles 18 (a) (v), 19 (1) (e)]. Where conflicts of interests are not identified and managed, they may have a detrimental effect on customers, both in fee-based distribution paid for by the customer directly and in commission-based distribution.</p> <p>The advantages of the commission-based model should be considered: It enables broad-scale access to high-quality advice, taking a holistic view on the interests of customers. Free advice enables customers to seek a second opinion, where necessary. Different studies – such as the Financial</p>	
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		<p>Advice Market Review in UK of March 2016 – show that people with a low income lose access to advice following a ban on commissions. The commission-based model contributes to a more socially equitable distribution of costs. Considering the enormous importance of private old-age provision, this factor cannot be taken too seriously.</p> <p>In addition to that, the commission-based model supports distributors in actively approaching their customers. Without such active approach, there is a risk of consumers not assessing their insurance needs correctly, leading to a lack of protection against existential risks.</p> <p>Existing national provisions on liability, such as the German lapse liability period of five years for intermediaries, make sure that intermediaries seek to build up a long-term business relationship with their customers. This system requires intermediaries to make a pro rata reimbursement of their commission if the customer terminates the contract at an early stage. Under the fee-based system, this is not the case: The intermediary may keep the full fee even when the contract is terminated prematurely, irrespective of the cause.</p> <p>With regard to DTA p. 45 no. 2 c., the German Insurance Association would also like to point out that non-monetary benefits, such as professional training events, should not be qualified as conflicts of interest per se, either. On the contrary, they increase the quality of service provided to the customer.</p> <p>The customer protection measures under IDD Art. 20 (1) and Art. 30 (1) to (3) have to be respected by all actors pursuing insurance distribution activities, regardless of the nature of their remuneration. In order to comply with the IDD, we recommend modifying DTA no. 2 c. so that a level-playing</p>	
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		<p>field is ensured. Otherwise, it should be deleted. From a consumer protection perspective, the unilateral focus on actors receiving their remuneration from a third party is too narrow.</p> <p><input type="checkbox"/> DTA S. 45 Nr. 2 d.</p> <p>The German Insurance Association would welcome a clarification under DTA p. 45 no. 2 d., stipulating that the detailed POG rules also apply to the involvement of intermediaries. Intermediaries involved in product development can bring their knowledge about customer needs to bear in the process. This does not constitute a conflict of interests as described under IDD Art. 28.</p> <p>Conflicts of interest policy (DTA p. 45- 47 no. 3 to 10)</p> <p>The German insurance industry agrees that all appropriate steps must be taken to manage conflicts of interest [IDD Art. 28 (1)]. Such precautionary measures should match the individual business model and processes. Experience shows that the following measures are feasible:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Review of remuneration and incentive systems according to the company's guidelines on compliance, <input type="checkbox"/> Assessment of the complaints about conflicts of interest, based on an internal complaint management system, <input type="checkbox"/> Development of escalation processes for cases where customers, intermediaries or employees of an insurance company report conflicts of interest, <input type="checkbox"/> Explicitly including compliance with provisions on conflicts of interest in contracts between insurers and 	
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		<p>intermediaries,</p> <p><input type="checkbox"/> Raising company-wide awareness of conflicts of interest through training/education measures.</p> <p>The German Insurance Association welcomes the explicit call for proportionality under DTA p. 46 no. 4 (b). The required proportionality should also be respected with regards to DTA p. 46 no. 5 (a) to (e). It is vital that the procedural provisions for the different types of distributors are proportionate to their size, type of activities and the extent of potential damage to the interests of their customers.</p> <p>The processes proposed under DTA p. 46 no. 5 (a) to (e) are closely linked to the Delegated Regulation on MiFID II. There are concerns that this might lead to costly changes to management processes of small entrepreneurs distributing insurance policies. There is a risk that they will be driven out of the market, adversely affecting customers due to a reduced offer of insurance products. This makes it all the more important to focus on proportionality. In particular, DTA p. 46 no. 5 (b) (separate supervision of relevant persons) is impossible to comply with for small entrepreneurs.</p> <p>The German Insurance Association recommends taking into account that the provisions under DTA p. 46 no. 6 are not sufficiently linked to the other provisions: Where the remuneration provisions under Chapter 6 DTA (inducements, p. 48-55) are met, the alleged conflict of interests arising from benefits received from third parties as described in DTA p. 45 no. 2 c. is also to be regarded as successfully managed. The introduction and implementation of measures aiming at assessing inducements are part of the conflicts of interest policy.</p> <p>The organisational provisions on the documentation of</p>	
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			<p>conflicts of interest under DTA p. 47 no. 9 (b) entail disproportionate efforts for distributors. While it is possible to use the adopted measures to record existing conflicts of interest running contrary to the interests of the customer, it seems disproportionate to require distributors to draw up a list of conflicts of interest that might possibly arise in the future, while keeping up their on-going services. Individual customers have various options at their disposal to adapt their insurance-based investment product over the course of the years. Considering the multitude of unpredictable scenarios, no one would be able to draw up a realistic list of potential conflicts of interests. It is also hardly conceivable how customers might benefit from such a list.</p>	
379	Institute and Faculty of Actuaries	Question 9	No.	Noted.

380	Insurance Europe	Question 9	<p>Conflicts of interest requirements</p> <p>It is positive that the requirement under Article 27 of the IDD acknowledges that intermediaries shall take steps to prevent conflicts of interest from adversely affecting the interests of customers. However, Article 27 also requires these arrangements to be proportionate to the activities performed, the products sold and the type of distributor. This is also reflected in the European Commission’s request for technical advice.</p> <p>Recommendation: There is not a need for further specification of the regulatory requirements on conflicts of interest. On the contrary, the proposed level of detail required is already disproportionate and in need of modification.</p> <p>EIOPA should not prescribe the steps to be taken in order to address and manage conflicts of interest in detail. This needs to be adapted to the characteristics, structure and activity of the entity involved.</p> <p>Moreover, EIOPA should not go beyond what is necessary to comply with Article 28(4) of the IDD, calling for the definition of steps to identify and manage conflicts of interests that might be reasonably expected to be taken. The criteria established to determine the types of conflicts of interests that may damage the interests of customers must also be appropriate.</p> <p>Types of conflict of interest</p> <p>Not all types of conflicts of interest have the potential of causing detriment directly to consumers.</p> <p>For example, in some member states, if an intermediary is involved in developing a product together with an insurance undertaking it can often actually create positive outcomes for consumers. The intermediary knows the market very well and can incorporate knowledge of consumer demands and needs into the design of the product.</p> <p>Additionally, different types of distribution channels might present different risks of conflicts of interest. For instance, the</p>	<p>Noted.</p> <p>EIOPA would like to emphasise that the policy proposals entail criteria to identify Col and possible measures which might be taken. The question whether a conflict of interest causes harm to the customer’s interest has to be distinguished from the question whether a conflict of interest may arise and possible ways to address and mitigate it. Please see also the section titled “feedback statement to the public consultation on the draft Technical Advice on possible delegated acts under IDD”.</p>
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		<p>impact of an independent intermediated channel on customers is different to the potential conflict of interest that might arise for direct selling or exclusive/tied agents and any proposed requirements must recognise this fact.</p> <p>Recommendation: EIOPA’s final technical advice should focus on conflicts of interests that are demonstrated as being detrimental to consumers, taking into consideration the extent of potential damage as well. EIOPA should recognise that different types of distribution channels may also have a diverse impact on customers.</p> <p>Identification of conflicts of interests</p> <p>The four distinctive situations identified in paragraph 2 on page 45 of the draft technical advice should not always be considered to cause conflicts of interests without the possibility of rebuttal or mitigating measures. The wording “shall at least be assumed” implies that there is a conflict of interests whenever any of these situations occurs.</p> <p>It is important to bear in mind that the identification of conflicts of interest is simply an initial step in the process and that insurers will take additional steps to manage and mitigate any conflicts of interest.</p> <p>Recommendation: In its final technical advice EIOPA should clarify that conflicts of interest “may occur” instead of “shall at least be assumed” in situations included under paragraph 2 of the draft technical advice on page 45.</p> <p>Paragraph 2(a) on page 45 of the draft technical advice should also be clarified, stipulating that the remuneration of distributors does not generally qualify as “financial gain at the expense of the customer”. Distributors have a right to be properly remunerated for their services.</p> <p>Moreover, paragraph 2(b) on page 45 may conflict with the basic principles of insurance laid down in prudential regulation. They are already appropriately addressed in conduct of business regulation on page 26 of the final report on public consultation on preparatory guidelines on POG.</p>	
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			<p>More specifically, with regard to paragraph 2(c) on page 45, the payment of commissions from insurers to distributors does not necessarily give rise to a conflict of interests. It is crucial to neither favour nor hinder specific models of distribution, as the framework that exists is the result of countries' market dynamics and local consumer demands and preferences.</p> <p>Finally, we are concerned with paragraph 2(d) on page 45 of the draft technical advice. We believe it would be far too general to say that any involvement could constitute a conflict of interest. Instead it should be clarified that only a qualified, substantial involvement may lead to a conflict of interest.</p> <p>Recommendation: We therefore propose an alignment with the POG text on page 29 of the consultation paper and suggest that the paragraph should read: "the insurance intermediary, persons working in an insurance undertaking responsible for the distribution of insurance-based investment products or linked person are substantially involved in the management or development of the insurance based-investment products, in particular the main elements of an insurance product, such as the coverage, premium, costs, risks, target market or compensation and guarantee rights of the insurance product".</p> <p>The goal of these requirements should be to set suitable and proportionate provisions, taking into account distribution channel characteristics. This will guarantee a corresponding adequate level of protection for consumers and recognise that a diverse distribution framework is of value to the market and the customer.</p> <p>Looking at the distribution of investment products throughout Europe, in certain countries independent advisers are the prevailing channel, in some countries it is banks and post offices, while in others it is tied agents. Direct (including web-based) channels are also increasing in volume.</p> <p>Even if a certain channel prevails in a single country, in most countries there are more than one channel and on the whole</p>	
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			<p>Europe has a diverse framework of distribution models. This is positive for consumers, as it gives them the possibility to select and use the channel that they wish from a range of options.</p> <p>Recommendation: The following implementation measures could be performed on the basis of compliance management systems to identify and mitigate the risk of potential conflicts of interest:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Internal policy on the management of conflicts of interest <input type="checkbox"/> Internal review of remuneration and incentive systems according to the company's guidelines on compliance <input type="checkbox"/> Assessment of the complaints about conflicts of interest, based on an internal complaint management system. <p>However, it should be ensured that any such measures are adapted and appropriate to the characteristics, structure and activity of the entity involved.</p> <p>Periodical review and record keeping</p> <p>The organisational provisions for the documentation of conflicts of interest under paragraph 9(b) on page 47 require distributors to record a huge and unnecessary amount of detail. It is possible to use the adopted measures to record existing conflicts of interest running contrary to the interests of the customer. However, requiring distributors to draw up a list of conflicts of interest that might possibly arise in the future, while keeping up their on-going services, is disproportionate.</p> <p>Customers purchasing insurance-based investment products have various options at their disposal to adapt their product over the course of several decades. In this process, they can rely on the support of distributors. However, distributors are not able to predict all potential conflicts of interest that might arise following the multitude of (often unpredictable) customer decisions, taking into account every conceivable element of their personal situation.</p>	
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			<p>Moreover, it is unclear who would benefit from such a list. Customers would not have any advantage from receiving a list of potential conflicts of interest that might possibly arise in the future, but which have no basis so far. Instead, distributors would be overly burdened with excessive documentation requirements.</p> <p>The insurance arrangement is based on the relationship between customer and insurer (and potentially intermediary) – the purchasing behaviour of other customers is irrelevant for that relationship. It is therefore unclear why EIOPA assumes that there are horizontal conflicts of interest between different customers, as is the case with transaction deals in direct capital markets. High demand for an insurance-based investment product (as in the example of a conflict of interest cited by EIOPA in paragraph 6 of the analysis on page 44) affects neither the price nor the type of products offered by the distributor to the individual customer, who obtains the identical product without suffering any disadvantages due to the high demand.</p> <p>Recital 57 of the IDD states that in order to ensure that any inducement does not have a detrimental impact, the insurance distributor should develop arrangements and procedures relating to conflicts of interest. In other words, under the IDD, where these procedures properly identify, prevent and manage conflicts of interest including those resulting from inducements, the latter should be presumed as not having a detrimental impact on the quality of the service.</p>	
381	Intesa Sanpaolo S.p.A.	Question 9	The policy proposals in the Technical Advice mirror similar provisions that are in place for the provision of investment services. We believe it is very important to maintain	Noted.

			consistency with the provisions under MiFID II and with ESMA's advice in order to allow for a transparent and fair conduct of business vis-à-vis all clients and ensure a level playing field in financial markets, preventing regulatory arbitrage.	
382	IRSG	Question 9	<p>The IRSG understands that in general, conflicts of interest occur when an entity has an interest of its own which conflicts with the interest or interests of other customers or entities for whom the entity is also acting in some capacity. Both insurance undertakings and intermediaries should do their utmost in order to prevent conflict of interests, no matter the form in which they arise.</p> <p>IRSG notes that in the consultation paper, EIOPA assumes (p 45) that conflicts of interest shall at least be assumed e.g when <i>"the insurance intermediary, insurance undertaking or linked person receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer."</i></p> <p>The choice of this wording : « <i>conflicts of interest shall at least be assumed</i> » in the four specified instances is too strong as the situations are taken as fact without any proof necessary and without possibility of rebuttal.</p>	
383	Liechtenstein Insurance Association (LVV)	Question 9	<p>The EIOPA proposal [Draft Technical Advice (DTA) p. 45 no. 2 c.] narrows down the focus on the commission system. However, this is not intended under IDD Articles 27 and 28. Conflicts of interests, as described under DTA p. 45 no. 1, are possible in each scenario and need to be identified, prevented, managed or disclosed.</p> <p>In insurance distribution, the interests of the contracting parties can differ from each other. However, this does not necessarily result in a detriment to the customer. More-over, it is irrelevant in this regard whether two or three parties are involved (e.g. customer/intermediary/insurer, as in the commission-based model). The Liechtenstein Insurance</p>	Noted.

		<p>Association expressly welcomes Article 27 IDD, according to which conflicts of interest may not adversely affect the interests of customers. This can be ensured through certain arrangements in distribution. It should be noted that Article 27 IDD expressly limits the required steps to proportionate arrangements. The EU Commission's mandate explicitly takes up this provision. We believe that the current EIOPA draft should take this into account.</p> <p>The conflicts of interest faced by investment product distributors are not identical to the ones faced by insurance distributors. The Liechtenstein Insurance Association believes that it would be appropriate for EIOPA to put a stronger focus on the differences between the investment industry and the insurance industry. The products offered by investment product distributors are directly linked to the markets and therefore potentially influenced by the behaviour of other groups of customers. By contrast, insurance distributors offer long-term products for old-age provision. The included guarantees are an advantage for their customers.</p> <p>The product features and purchase conditions of insurance-based investment products do not depend on the behaviour of other customers. Their purchase behaviour is particularly irrelevant. Hence, it is unclear why EIOPA assumes that there are horizontal conflicts of interest between different customers, as is the case with transaction deals in direct capital markets. High demand for an insurance-based investment product (as in the example of a conflict of interest cited by EIOPA on p. 44 no. 6 of its analysis) neither affects the price nor the type of products offered. The customer obtains the identical product without suffering any disadvantages due to the high demand.</p> <p>Identification of conflicts of interests (DTA p. 45 no. 1 and 2) - DTA p. 45 no. 2 a.</p> <p>The Liechtenstein Insurance Association recommends</p>	
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		<p>clarifying under DTA p. 45 no. 2 a. that the remuneration of distributors for services provided (e.g. advice and intermediation) does not generally qualify as “financial gain at the ex-pense of the customer”. This wording suggests that the distributor puts its own advantage ahead of the wishes and needs of the customer.</p> <p>- DTA p. 45 no. 2 b.</p> <p>We do not believe there are any realistic examples of a distributor favouring the interests of a specific group of customers over the interests of other groups of customers.</p> <p>- DTA S. 45 Nr. 2 c.</p> <p>The Liechtenstein Insurance Association would like to initiate some modifications here. As in any other sector in the industry, divergent in-terests meet in insurance distribution as well. However, this does neither necessarily result in a detriment to the customer nor does it depend on whether two (fee-based advice) or three parties (e.g. customer/intermediary/insurer, as in the commission-based model) are involved. The Liechtenstein Insurance Association recommends treating fee-based advice and commission-based advice equally under the rules on conflicts of interest. The IDD explicitly allows for commission-based distribution models [Articles 18 (a) (v), 19 (1) (e)]. Where conflicts of interests are not identified and managed, they may have a detrimental effect on customers, both in fee-based distribution paid for by the customer directly and in commission-based distribution.</p> <p>The advantages of the commission-based model should be considered: It enables broad-scale access to high-quality advice, taking a holistic view on the interests of customers. Free advice enables customers to seek a second opinion, where necessary. Different studies – such as the Financial Advice Market Review in UK of March 2016 – show that people with a low income lose access to advice following a ban on commissions. The commission-based model contributes to a more socially equitable distribution of costs. Considering the</p>	
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		<p>enormous importance of private old-age provision, this factor cannot be taken too seriously.</p> <p>In addition to that, the commission-based model supports distributors in actively approaching their customers. Without such active approach, there is a risk of consumers not assessing their insurance needs correctly, leading to a lack of protection against existential risks.</p> <p>With regard to DTA p. 45 no. 2 c., the Liechtenstein Insurance Association would al-so like to point out that non-monetary benefits, such as professional training events, should not be qualified as conflicts of interest per se, either. On the contrary, they increase the quality of service provided to the customer.</p> <p>The customer protection measures under IDD Art. 20 (1) and Art. 30 (1) to (3) have to be respected by all actors pursuing insurance distribution activities, regardless of the nature of their remuneration. In order to comply with the IDD, we recommend modifying DTA no. 2 c. so that a level-playing field is ensured. Otherwise, it should be deleted. From a consumer protection perspective, the unilateral focus on actors receiving their remuneration from a third party is too narrow.</p> <p>- DTA S. 45 Nr. 2 d.</p> <p>The Liechtenstein Insurance Association would welcome a clarification under DTA p. 45 no. 2 d., stipulating that the detailed POG rules also apply to the in-volvement of intermediaries. Intermediaries involved in product development can bring their knowledge about customer needs to bear in the process. This does not constitute a conflict of interests as described under IDD Art. 28.</p>	
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			<p>Conflicts of interest policy (DTA p. 45- 47 no. 3 to 10)</p> <p>The Liechtenstein insurance industry agrees that all appropriate steps must be taken to manage conflicts of interest [IDD Art. 28 (1)]. Such precautionary measures should match the individual business model and processes. Experience shows that the following measures are feasible:</p> <ul style="list-style-type: none"> - Review of remuneration and incentive systems according to the company's guidelines on compliance, - Assessment of the complaints about conflicts of interest, based on an internal complaint management system, - Development of escalation processes for cases where customers, intermediaries or employees of an insurance company report conflicts of interest, - Explicitly including compliance with provisions on conflicts of interest in contracts between insurers and intermediaries, - Raising company-wide awareness of conflicts of interest through training/education measures. <p>The Liechtenstein Insurance Association welcomes the explicit call for proportionality under DTA p. 46 no. 4 (b). The required proportionality should also be respected with regards to DTA p. 46 no. 5 (a) to (e). It is vital that the procedural provisions for the different types of distributors are proportionate to their size, type of activities and the extent of potential damage to the interests of their customers.</p> <p>The processes proposed under DTA p. 46 no. 5 (a) to (e) are closely linked to the Delegated Regulation on MiFID II. There are concerns that this might lead to costly changes to management processes of small entrepreneurs distributing insurance policies. There is a risk that they will be driven out</p>	
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			<p>of the market, adversely affecting customers due to a reduced offer of insurance products. This makes it all the more important to focus on proportionality. In particular, DTA p. 46 no. 5 (b) (separate supervision of relevant persons) is impossible to comply with for small entrepreneurs.</p> <p>The Liechtenstein Insurance Association recommends taking into account that the provisions under DTA p. 46 no. 6 are not sufficiently linked to the other provisions: Where the remuneration provisions under Chapter 6 DTA (inducements, p. 48-55) are met, the alleged conflict of interests arising from benefits received from third parties as described in DTA p. 45 no. 2 c. is also to be regarded as successfully managed. The introduction and implementation of measures aiming at assessing inducements are part of the conflicts of interest policy.</p> <p>The organisational provisions on the documentation of conflicts of interest under DTA p. 47 no. 9 (b) entail disproportionate efforts for distributors. While it is possible to use the adopted measures to record existing conflicts of interest running contrary to the interests of the customer, it seems disproportionate to require distributors to draw up a list of conflicts of interest that might possibly arise in the future, while keeping up their on-going services. Individual customers have various options at their disposal to adapt their insurance-based investment product over the course of the years. Considering the multitude of unpredictable scenarios, no one would be able to draw up a realistic list of potential conflicts of interests. It is also hardly conceivable how customers might benefit from such a list.</p>	
384	MALTA INSURANCE ASSOCIATION	Question 9	The delegated acts should not prescribe the steps to be taken in order to address and manage conflicts of interest in a detailed way, as this needs to be adapted to the	Noted. EIOPA would like to emphasise that the list of

	<p>These comments have b</p>		<p>characteristics, structure and activity of the entity involved. For example, different products as well as different distribution channels might present different conflict of interest risks. Indeed, the risks of conflicts of interest and their impact on customers in the independent intermediated channel are different to the potential conflicts of interest that might arise in the direct selling or exclusive/tied agent and any proposed requirements must recognise this fact.</p> <p>Furthermore, the payment of commissions from insurers to distributors does not necessarily give rise to a conflict of interests.</p> <p>Additionally, paragraph 2(a) of the draft technical advice should be clarified, stipulating that the remuneration of distributors does not generally qualify as “financial gain at the expense of the customer”. Distributors have a right to be properly remunerated for their services.</p> <p>The organisational provisions on the documentation of conflicts of interest under paragraph 9(b) on page 47 require distributors to record an exaggerated amount of detail, resulting in disproportionate efforts. It is possible to use the adopted measures to record existing conflicts of interest running contrary to the interests of the customer. However, requiring distributors to draw up a list of conflicts of interest that might possibly arise in the future, while keeping up their on-going services, seems disproportionate.</p> <p>Distributors are not able to predict all potential conflicts of interest that might arise following the multitude of – often unpredictable – customer decisions, taking into account every conceivable element of their personal situation. Moreover, it is unclear who would benefit from such an individualised list. Customers would not have any advantage from receiving a list</p>	<p>organisational measures does not have to implemented in any case, but only if the specific coi arise which underlie the respective measures.</p> <p>EIOPA is of the view that commissions generally cause a conflict of interest.</p>
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			of potential conflicts of interest that might possibly arise in the future, but which have no basis so far. Instead, distributors are overly burdened with excessive documentation requirements.	
385	Mediterranean Insurance Brokers (Malta) Ltd.	Question 9	<p>Are there any other elements which you would consider appropriate in order to specify the regulatory requirements on conflicts of interest as laid down on Article 27 and Article 28, IDD? If possible, please specify in detail.</p> <p>It should be very clear and mentioned explicitly for all delegated acts that are part of chapter VI on IBIPs that the delegated acts are indeed only applicable to IBIPs.</p> <p>We believe that the draft advice already goes in too much detail as it stands.</p> <p>Under point 2a) it is stated that a conflict of interest shall at least be assumed in situations where the intermediary is likely to make a financial gain, or avoid a financial loss at the expense of the customer. This is too broad a definition, as even charging a fee which the customer agreed in advance could come under such a broad description. It would be wrong to characterize an intermediary's remuneration as being a financial gain, as the term gain can suggest that the intermediary is taking advantage of the customers when in fact he is simply remunerated for the services rendered.</p>	Noted. The scope is already defined by Level 1, so EIOPA sees no need to provide further clarification on this issue.
386	Slovenian Insurance Association	Question 9	Any additional elements on conflicts of interests are not necessary, key general elements are already determined. There is also a legal base that any others elements are determined by insurance companies and distributors in accordance with business models, risk profile and principle of proportionality. However, we believe that some suggested	Noted. The principle of proportionality has been taken into consideration (please refer to the feedback statement in EIOPA's

		<p>elements are disproportionate and in need of modification:</p> <ul style="list-style-type: none"> - Article 27 IDD requires such arrangements to be proportionate to the activities performed, the products sold and the type of the distributor. This is also reflected in the Commission’s request for technical advice. EIOPA should not go beyond what is necessary to comply with article 28(4) IDD, calling for the definition of steps to identify and manage conflicts of interests that might be reasonably expected to be taken carrying out distribution of insurance products. - Not all of conflicts of interests can be dealt with in the same way. The main focus should be on those that are demonstrated as being detrimental to customers, while also bearing in mind the extent of potential damage. - For example, in some Member States, the case of an intermediary being involved in developing a product together with an insurance company would often actually create positive outcomes for customers, as the intermediary knows the market, customers’ demands and needs very well. Any potential conflict of interests has to be looked at in terms of the detrimental effect on the customer. It should be stressed that the potential for a conflict of interests does not always mean that a conflict exists. - We would advise not to prescribe the steps to be taken in order to address and manage conflicts of interests in a detailed way as this needs to be adapted to the characteristics, structure and activity of the entity involved. For example, different products as well as different distribution channels might present different conflicts of interests risks. These and their impact on customers in the independent intermediated channel differ from the potential conflicts of interests that might arise in the direct selling or exclusive/tied agent. - The payment of commissions from insurers to distributors does not necessarily give rise to a conflict of interests (with regard to paragraph 2(c) on page 45 draft technical advice) 	<p>final report) EIOPA agrees that not any potential conflict of interest leads to a detriment to the customer. EIOPA is of the view that the policy proposal provide sufficient flexibility to take account of the specificities of individual business models. EIOPA thinks that commissions generally cause conflict of interest. The term “at the expense of the customer” has been replaced with “detriment to the customer”.</p>
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			<ul style="list-style-type: none"> - The payment of commissions from insurers to distributors does not necessarily give rise to a conflict of interests. It is crucial to neither favour nor hinder specific models of distribution, as these are the result of countries' specificities, market dynamics and local customer demands and preferences. The goal of these requirements should be to set suitable and proportionate provisions, taking into account distribution channel specificities, in order to guarantee an adequate level of protection for customer (diverse distribution framework is of value to the market and the customer). - "financial gain at the expense of the customer" (with regard to paragraph 2(a), page 45 of the draft technical advice) should be clarified, stipulating that the remuneration of distributors does not generally qualify as "financial gain at the expense of the customer". Distributors have a right to be properly remunerated for their services. - Excessive requirements for the documentation of conflicts of interests (with regard to paragraph 9(b) on page 47 of the draft technical advice). It is possible that documentation of existing conflicts of interests and maintaining current level of services are disproportionate to more detailed documentation of conflicts of interests that might arise in the future. Distributors are not able to predict all potential conflicts of interests that might arise following customer decisions, taking into account every conceivable element of their personal situation. Moreover, it is unclear who would benefit from such a list. 	
387	Unipol Gruppo Finanziario S.p.A.	Question 9	With reference to the specific question, we wish to point out a potential indeterminateness of responsibility between insurance intermediaries and insurance undertaking with reference to point 3 of the Conflicts of Interest Policy - Draft Technical Advice, in which this Authority appears to address a form of sharing this document between two categories of subjects, which actually proves difficult to implement due to the presence of a plurality of distributors under one undertaking and, at the same time, due to the presence of multiple companies of reference for one intermediary.	Noted.

			We also voice our perplexity regarding the real possibility for small intermediaries with small organisations to be able to show an autonomous policy for managing conflicts of interest that are adequate for the regulatory purposes.	
388	Verband der Automobilindustrie e.V. Arbeitskreis	Question 9	Not applicable.	Noted.
389	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 9	<p>9: Gibt es noch weitere Aspekte, die Sie für angemessen halten, um die regulatorischen Anforderungen in Bezug auf Interessenkonflikte, wie in Artikel 27 und 28 der Versicherungsvertriebsrichtlinie festgelegt, zu spezifizieren? Bitte machen Sie, sofern möglich, detaillierte Angaben hierzu.</p> <p>Der Vorschlag von EIOPA [Draft Technical Advice (DTA) S. 45 Nr. 2 c.] reduziert den Fokus auf das Provisionssystem. Das ist von der IDD weder in Artikel 27 noch 28 intendiert. Fehlanreize im Sinne der DTA, S. 45 Nr. 1 sind in jeder Konstellation möglich und müssen erkannt, verhindert, gemanagt oder offengelegt werden.</p> <p>Zweifellos treffen auch im Versicherungsvertrieb mit verschiedenen Vertragsparteien verschiedene Interessen aufeinander. Das impliziert aber erstens nicht per se einen Nachteil für den Verbraucher und ist zweitens unabhängig davon, ob es sich um ein 2-Personen-Verhältnis oder ein 3-Personen-Verhältnis handelt (Kunde / Vermittler / Versicherer – wie beim Provisionsmodell). Der VDVM unterstützt ausdrücklich die Forderungen aus Art. 27 IDD, dass Interessenkonflikte den Kundeninteressen nicht schaden dürfen. Dies kann durch Maßnahmen beim Vertrieb sichergestellt werden. Dabei ist zu beachten, dass Art. 27 IDD die verlangten Schritte ausdrücklich auf angemessene Maßnahmen beschränkt. Das Mandat der EU-Kommission</p>	<p>Noted.</p> <p>From EIOPA's perspective commissions are an important source of conflict of interest. EIOPA shares the view that not any kind of conflict of interest leads do a detriment to the customer, assuming the firm has taken appropriate measures to manage and mitigate the conflicts. EIOPA believes that the instances as listed may also occur in the insurance sector, respectively, it cannot be excluded that these instances occur. The wording of the letters has been partly been</p>

		<p>greift diese Vorgabe explizit auf. In dem vorgelegten Entwurf gibt es diesbezüglich noch Optimierungsbedarf.</p> <p>Die Konfliktsituationen im Vertrieb von Finanzanlageprodukten gelten nicht 1:1 für den Versicherungsvertrieb. Der VDVM möchte EIOPA empfehlen, die bestehenden Unterschiede zwischen der Wertpapier- und der Versicherungsbranche noch stärker zu berücksichtigen. Während erstere ihren Kunden Produkte anbieten, die einen direkten Marktbezug aufweisen und damit vom Anlageverhalten anderer Kundengruppen abhängig sein können, bieten die Versicherungsunternehmen langfristige Produkte für die Alterssicherung an. Garantieelemente wirken zugunsten des Kunden.</p> <p>Weder Produkteigenschaften noch Bedingungen des Erwerbs von Versicherungsanlageprodukten sind vom Verhalten anderer Kunden abhängig. Insbesondere deren Kaufverhalten ist irrelevant. Es ist nicht ersichtlich, warum EIOPA – vergleichbar den Transaktionsgeschäften am direkten Kapitalmarkt – horizontale Interessenkonflikte zwischen verschiedenen Kunden sieht. Eine hohe Nachfrage eines Versicherungsanlageproduktes (so EIOPAs Beispiel eines Interessenkonfliktes, Erläuterungen S. 44 Nr. 6) hat keine Auswirkungen auf Preis oder Produktangebot. Der Kunde erhält das identische Versicherungsanlageprodukt, ohne Nach- oder Vorteile durch die hohe Nachfrage.</p> <p>I. Identifikation von Interessenkonflikten (DTA S. 45 Nr. 1 und 2)</p> <p><input type="checkbox"/> DTA S. 45 Nr. 2 a.</p> <p>Der VDVM regt an, unter DTA S. 45 Nr. 2 a. klarzustellen, dass die Vergütung für eine erbrachte Dienstleistung (wie Beratung und Vermittlung) nicht als „financial gain at the expense of the customer“ eingeordnet wird. Die Formulierung</p>	<p>revised to address concerns of respondents to the public consultation.</p>
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		<p>bezieht sich darauf, dass der Vertrieb die Wünsche und Bedürfnisse des Kunden außer Acht lässt und sie seinem eigenen Interesse unterordnet.</p> <p><input type="checkbox"/> DTA S. 45 Nr. 2 b.</p> <p>Für uns sind keine realistischen Fallkonstellationen unter DTA S. 45 Nr. 2 b. ersichtlich, in denen ein Vermittler einzelne Kundengruppen über das Interesse anderer Kundengruppen stellt.</p> <p><input type="checkbox"/> DTA S. 45 Nr. 2 c.</p> <p>Wie bereits erwähnt, möchte der VDVM eine Korrektur anregen. Im Versicherungsvertrieb begegnen sich, nicht anders als in anderen Bereichen, unterschiedliche Interessen. Das impliziert aber erstens nicht per se einen Nachteil für den Verbraucher und ist zweitens unabhängig davon, ob es sich um ein 2-Personen-Verhältnis (Honorarberatung) oder ein 3-Personen-Verhältnis (Kunde/Vermittler/Versicherer – wie beim Provisionsmodell) handelt. Der Verband empfiehlt, eine Gleichbehandlung von Honorarberatung und provisionsbasierter Beratung sicherzustellen. Die IDD erkennt die grundsätzliche Zulässigkeit des provisionsbasierten Vertriebsmodells an, Artt. 18 a) v), 19 Abs. 1 e) IDD. Interessenkonflikte zulasten des Verbrauchers sind dann zu erwarten, wenn sie nicht erkannt bzw. nicht gemanagt werden. Das ist für Honorarberatung und provisionsbasierten Vertrieb gleichermaßen denkbar.</p> <p>Eine ausgewogene Betrachtung schließt auch die Vorteile des Provisions- Courtagesystems ein. Es ermöglicht flächendeckend hochwertige Beratung, die die Bedürfnisse des Kunden ganzheitlich im Blick hat. Die Möglichkeit der Inanspruchnahme quasi kostenloser Beratung erlaubt es dem Kunden, sich gegebenenfalls eine zweite Meinung einzuholen. Auswertungen – z. B. die Financial Advice Market Review in</p>	
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		<p>UK vom März 2016 – zeigen, dass Personen im Niedrigeinkommensbereich beim Wegfall des Provisionssystems keine Beratung mehr erhalten. Das Provisionsmodell verteilt die Kostenlast sozial gerechter. Das ist in Zeiten, in denen die private Absicherung für das Alter elementar ist, hilfreich.</p> <p>Das Provisions- bzw. Courtagemodellmodell fördert darüber hinaus die aktive Ansprache der Kunden. Ohne eine derartige Ansprache ist nicht sichergestellt, dass Verbraucher den eigenen Versicherungsbedarf zutreffend einschätzen und existenzgefährdende Risiken abwehren können.</p> <p>Nationale Rückabwicklungsregelungen – wie etwa die Stornohaftzeit von 5 Jahren in Deutschland für Vermittler – stellen schon heute sicher, dass Vermittler sich um eine langfristige Geschäftsbeziehung zum Kunden bemühen. Unter diesem Haftungssystem müssen Vermittler Provision anteilig zurückzahlen, wenn der Kunde den Vertrag frühzeitig aufgibt (kein Anreiz für hit and run Geschäfte). Im honorarbasierten Vertrieb ist das nicht der Fall. Bei vorzeitiger Beendigung des Versicherungsvertrages – gleich aus welchem Grund – bleibt der Anspruch auf das volle Honorar bestehen. Dies hat in Deutschland in den Fällen von „Atlantidlux“ zu einer großen Übervorteilung von Konsumenten geführt.</p> <p>Die deutsche Versicherungswirtschaft möchte außerdem zu DTA S. 45 Nr. 2 c. darauf hinweisen, dass sich auch nicht-monetäre Vorteile wie Weiterbildungs-veranstaltungen nicht per se zu Lasten des Kunden auswirken. Ganz im Gegenteil, sie wirken für das Kundeninteresse, fördern sie doch die Qualität der Dienstleistung an den Kunden.</p> <p>Die in der IDD verankerten Schutzmaßnahmen (Art. 20 Abs. 1 und 30 Abs. 1 bis 3 IDD) müssen – unabhängig von der Art</p>	
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		<p>der Vergütung – von allen eingehalten werden, die Versicherungen vertreiben. DTA S. 45 Nr. 2 c. wäre im Sinne der IDD so zu formulieren, dass ein „level playing field“ gewährleistet ist, anderenfalls sollte er entfallen. Der einseitige Fokus auf diejenigen, die von Dritten vergütet werden, ist im Sinne des Verbraucherschutzes eindeutig zu eng.</p> <p><input type="checkbox"/> DTA S. 45 Nr. 2 d.</p> <p>Unter DTA S. 45 Nr. 2 d. würde der Verband eine Klarstellung begrüßen. Die detaillierten POG-Regeln tangieren auch die Einbeziehung von Vermittlern. Vermittler, die sich an der Produktentwicklung beteiligen, bringen ihre Erfahrungen über Kundenbedürfnisse mit ein. Dabei handelt es sich nicht um einen Interessenkonflikt gemäß Art. 28 IDD.</p> <p>II. Policy zu Interessenkonflikten (DTA S. 45/46 Nr. 3 bis 10)</p> <p>Auch der VDVM vertritt die Auffassung, dass Interessenkonflikte durch angemessene Vorkehrungen gemanagt werden müssen (Art. 28 Abs. 1 IDD). Diese Vorkehrungen sollen zu den individuellen Geschäftsmodellen und -prozessen passen. Folgende Maßnahmen sind dabei erfahrungsgemäß praktikabel:</p> <p><input type="checkbox"/> Review der Vergütungs- und Anreizsysteme entsprechend Leitlinien, die von der Unternehmens-Compliance aufgesetzt werden,</p> <p><input type="checkbox"/> Analyse der Beschwerden zu Interessenkonflikten mittels eines internen Beschwerdemanagementsystems,</p> <p><input type="checkbox"/> Definition von Eskalationsprozessen für Fälle, in denen Kunden, Vermittler oder Angestellte eines</p>	
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		<p>Versicherungsunternehmens Interessenkonflikte melden,</p> <ul style="list-style-type: none"> <input type="checkbox"/> Explizite Aufnahme der Einhaltung von Vorgaben zu Interessenkonflikten in die Verträge zwischen Versicherungsunternehmen und Versicherungsvertretern, die im Lager des Versicherers stehen, <input type="checkbox"/> Förderung eines unternehmensweiten Bewusstseins zu Interessenkonflikten mittels Weiterbildung und Training. <p>Der VDVM befürwortet die ausdrückliche Bezugnahme auf die Verhältnismäßigkeit in DTA S. 46 Nr. 4 (b), die ihre Wirkung auch für die Punkte DTA S. 46 Nrn. 5 (a) bis (e) entfalten muss. Unternehmen sollten hinsichtlich ihrer prozessualen Vorgaben dringend ihre Größe, Art ihrer Aktivitäten und das Ausmaß drohender Kundennachteile berücksichtigen können.</p> <p>Allerdings besteht die Sorge, dass die nach DTA S. 46 Nr. 5 (a) bis (e) vorgeschlagenen Prozesse durch ihre starke Anlehnung an die delegierte Verordnung der MiFID2 eine kostenintensive Umgestaltung der Managementprozesse von Versicherungen vertreibenden Kleinunternehmern nach sich ziehen. Es besteht die Gefahr, dass diese Unternehmen aus dem Markt gedrängt werden. Das wäre für die Verbraucher von Nachteil, weil damit das Angebot von Versicherungsprodukten in der Fläche gefährdet wäre. Deshalb ist es besonders wichtig, sich hier noch mehr von der Verhältnismäßigkeit lenken zu lassen.</p> <p>Der Verband bittet darum, zu berücksichtigen, dass in den Vorgaben unter DTA S. 46 Nr. 6 eine Rückkopplung fehlt. Werden die Vorgaben unter Kapitel 6 DTA (S. 48 ff) zur Vergütung erfüllt, müsste folgerichtig auch ein Interessenkonflikt aus Zahlungen Dritter nach DTA S. 45 Nr. 2 c als erfolgreich gemanagt gelten. Die Einführung und Umsetzung von Maßnahmen zur Vergütungskontrolle ist Teil der Policy zu Interessenkonflikten.</p>	
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			<p>Die organisatorischen Vorgaben hinsichtlich der Dokumentation der Interessenkonflikte nach DTA S. 47 Nr. 9 (b) belasten die Vertreter übermäßig. Während die Aufzeichnung tatsächlich aufgetretener Interessenkonflikte, die für den Kunden von Nachteil sind, sinnvoll ist, erscheint es jedoch unverhältnismäßig, bei laufenden Serviceleistungen eine Liste der möglicherweise in der Zukunft auftretenden Interessenkonflikte zu verlangen. Kunden haben als Individuen verschiedene Handlungsoptionen, um ihr Versicherungsanlageprodukt über die Jahre anzupassen. Für die Vielzahl an – unvorhersehbaren – Konstellationen könnte niemand eine solide Prognose abgeben. Es ist auch schwer vorstellbar, dass Kunden von einer solchen Liste profitieren.</p>	
390	Verband öffentlicher Versicherer (Association of G	Question 9	<p>Regulations concerning conflicts of interest must be based on principles</p> <p>There are further elements that are appropriate and suitable for specifying the regulatory requirements as regards conflicts of interest. As a general rule, EIOPA should formulate regulations that are based on principles and not attempt to draft detailed regulations for individual cases. This would lead to over-regulation in areas that do not require additional rules. In some cases, the options the IDD deliberately grants EU Member States have been retracted for no apparent reason, other IDD regulations have been made more severe (in some cases unreasonably so), the freedom of businesses to make their own decisions has been substantially curtailed, and the negative effects on consumers of stricter regulation incorrectly assessed.</p> <p>The concept of conflict of interest is defined far too broadly and is thus inappropriate</p>	<p>Noted.</p> <p>EIOPA is of the view that the situations as laid down in the policy proposals entail specific situations where conflicts of interests typically arise. This has to be distinguished from the question whether these situations arise, which depends on the specificities of the business models of the individual undertakings. In EIOPA's view conflicts of interest may arise in cases where products of one group only are sold, independent from</p>

		<p>EIOPA assumes that conflicts of interest “typically” arise in certain situations. It is imperative to note that conflicts of interest do not typically arise in the referenced situations. This would rather be the case in exceptional situations only rather than typically. The examples of situations in which a conflict of interest could arise are far too broad and take account of certain aspects only that are not conclusive when viewed in isolation. The focus must always be on the service as a whole.</p> <ul style="list-style-type: none"> • The assertion that a conflict of interest typically arises when the distributor has an interest in selling insurance products from his/her own group (p. 44, No. 6, 1st bullet point) is incomprehensible. In particular, tied intermediaries, i.e. distributors who have only products of their employer, principal or insurance partner to sell, are subject to a conscious and sensible contractual obligation to sell precisely these products. The advantage of this for customers is that the consultants have a very thorough knowledge of the products they are selling and are thus particularly suited to meeting the customers’ needs. Further, in such situations the insurance company, too, shoulders part of the responsibility as regards training, consultation know-how, appropriate choice of products, fast administration and the customer services associated with distribution. The tied intermediary is a long standing sales channel in the insurance world and must be preserved. This sales channel also results in a finely meshed local supply network for private pension and insurance products across Germany. Even if the IDD is made more specific through the formulation of delegated acts, that must not result in certain sales channels being discriminated against. <p>Art. 19 of the IDD already states that, in the interests of transparency, the intermediary must provide precise information before the conclusion of an insurance contract, e.g. whether it has a direct or indirect holding in an insurance company, and must further inform the customer whether it is</p>	<p>the question whether this is the result of a contractual obligation or not.</p> <p>The wording of this policy proposal has been revised (“at the expense” has been replaced with “to the detriment”)</p>
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		<p>contractually obliged to transact insurance distribution for a single insurance company only. A conflict of interest is ruled out once such holdings or the intermediary's links to a particular insurance company have been revealed and the customer has been provided with unambiguous information about the intermediary. That puts the customer in a position to make an informed decision. As the IDD has formulated clear rules in this area, it is unnecessary for EIOPA to tighten these rules, nor is there any justification for doing so. It adds no recognisable value for the customer.</p> <p>According to the EIOPA consultation paper, a conflict of interest arises when a distributor receives remuneration for selling insurance products (p. 44, No. 6, 2nd bullet point; p. 45, No. 2c) or when a distributor makes a financial gain "at the expense of the customer" (p. 45, No. 2a) – although it remains unclear what the latter precisely means. This assumption does not reflect the realities of the insurance market. In fundamental terms, the distributor's financial gain constitutes remuneration for the costs incurred in providing consultation and/or customer service – also throughout the entire term of the insurance contract following its conclusion – and thus represents the distributor's economic livelihood. Apart from that, cost transparency as regards commission and remuneration has already been achieved in every insurance proposal. A financial gain does not necessarily trigger a conflict of interest. It could constitute a problem only if it were inappropriately high. By the same token, an inappropriately low level of income would be critical from the customer's point of view because it could result in the distributor not taking enough time for the customer and thus not providing thorough and proper advice. If intermediaries were no longer remunerated for their consultation services, that could have negative consequences for large swathes of consumers/customers; in a worst-case scenario, they would be excluded from receiving the consultation that is so necessary in socio-political terms. The private pension cover that is urgently required to avoid poverty in old age must not</p>	<p>Noted.</p> <p>EIOPA agrees that other forms of remuneration may also involve conflicts of interests.</p> <p>See comment above.</p> <p>EIOPA disagrees. The wording has been narrowed to limit the scope of application.</p>
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		<p>be left solely to the personal initiative of the consumer. To this extent, distribution activities are in the customers' own interests as they help them to face the consequences of demographic change and make adequate provision for it through private pension cover.</p> <p>Further, companies rely on making a profit and, under the solvency requirements currently in place in Europe, are expected to do so. In view of this fact, too, it is unprofessional to assume that every insurance product and every sale poses a conflict of interest.</p> <p>By contrast, EIOPA does not consider the potential conflicts of interest posed by other forms of consultation, e.g. fee-based consultation. We should not overlook the danger that fee-based consultation could be unnecessarily drawn out in order to obtain higher remuneration from the customer, that the customer feels compelled to conclude an insurance contract after having paid a large sum of money for consultation, that there is no provision for reimbursing the fees if the insurance contract is later cancelled by the customer, or that consumers with low incomes are unable to afford consultation in the first place and thus would not get the insurance coverage they need.</p> <p>Claiming that a financial gain "at the expense of the customer" is a conflict of interest is a misinterpretation of the nature of voluntary exchange relationships in a market economy. In theory, a customer would indeed pay less if the intermediary did not receive commission. But, in practical terms, that is not an option as the intermediary would then not supply the service at all. Both sides must benefit, and it is in the nature of the market economy that voluntary transactions come about only when both parties derive benefit from them. Like other manufacturers in a free market economy, insurance companies, too, need planning certainty</p>	<p>Noted.</p> <p>Noted.</p>
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		<p>in order to develop products. Only thus is it possible to manufacture profitable products for customers. Setting the benefit of one party against that of another ignores the nature of such exchange relationships, namely that the benefits of both parties are interconnected.</p> <ul style="list-style-type: none"> • On page 45, No. 2d, a conflict of interest is assumed if a distributor/intermediary is involved in the development of an insurance product. In reality, there is no conflict of interest in such a situation. Customers stand only to benefit if people who are particularly well-informed about their needs, wishes and interests play a part in developing suitable products for them – even if such people are not the manufacturer. <p>The phrasing chosen in the consultation paper unjustifiably casts suspicion on the entire concept of inducements and thus contradicts the intentions of the EU’s legislative bodies as expressed in the trilogue negotiations on the IDD. It would result in a reversal of the onus of proof: it should not be necessary to prove that inducements do not constitute conflicts of interest; rather, it must be demonstrated, where necessary, that it constitutes a conflict of interest in exceptional cases.</p> <p>The IDD already includes numerous rules for dealing with and disclosing conflicts of interest</p> <p>The EIOPA consultation paper contains extensive requirements concerning conflicts of interest policies and the disclosure of unavoidable conflicts of interest. However, we need to take account of the fact that the IDD already comprises numerous requirements not already included in the IMD, the purpose of which is to enhance the transparency of customer consultation and to avoid, deal with and, where applicable, disclose conflicts of interest:</p>	<p>EIOPA would like to state that the IDD follows the principle of minimum harmonisation, therefore national legislators may introduce stricter requirement than required under IDD.</p>
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			<ul style="list-style-type: none"> • Art. 3(6) demands disclosure of the identities of shareholders or members that have a holding in the intermediary that exceeds 10%, and the amounts of those holdings. • Art. 17(1): Insurance distributors must always act honestly, fairly and professionally in accordance with the best interests of their customers. • Art. 17(2): Information addressed by the insurance distributor to customers shall be fair, clear and not misleading. • Art. 17(3): Member States shall ensure that insurance distributors are not remunerated or do not remunerate or assess the performance of their employees in a way that conflicts with their duty to act in accordance with the best interests of their customers. In particular, an insurance distributor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs. • Art. 19 includes detailed requirements regarding the information to be provided to the customer prior to conclusion of an insurance contract, including whether the distributor: <ul style="list-style-type: none"> - has a holding in a certain insurance company or insurance intermediary; - is a tied or independent intermediary; - is working for a fee, a commission or some other kind of remuneration. • Art. 20(1): Prior to the conclusion of an insurance contract, the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an 	
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			<p>informed decision.</p> <ul style="list-style-type: none"> • Art. 20(4) stipulates that, prior to the conclusion of a contract, the insurance distributor shall provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of customer. <p>On a European level, we must also take account of the fact that the individual Member States already have mechanisms in place, either at industry level or enforced by national regulators that are effective in avoiding and/or managing conflicts of interest. The German insurance industry, for instance, has voluntarily undertaken to adhere to the Code of Conduct of the Insurance Industry, under which high-quality consultation is guaranteed. Applying stringent standards, independent auditors ascertain on a regular basis whether insurance companies are complying with the Code.</p> <p>The above-mentioned, very comprehensive IDD standards and the additional precautions taken at the level of the EU Member States are, in essence, geared to the avoidance and/or proper management of conflicts of interest. For this reason, we consider more far-reaching requirements for conflict-of-interest policies on the basis of Art. 27 and Art. 28 of the IDD to be necessary only in exceptional cases and within a very limited scope.</p>	
391	Verbraucherzentrale Bundesverband e.V.	Question 9	<p>We assume that a strict regulation of the distribution of IBIPs may lead to a circumvention to the distribution of well commissioned biometric risk products and substitutive private health insurance where administrative burden is lower. Therefore adequate provisions for these products are needed as well.</p>	Noted.

392	Zurich Insurance Company, CH 8045 Zurich	Question 9	<p>EIOPA's draft technical advice raises a serious issue with respect to the scope of Chapter VI of the Insurance Distribution Directive. Specifically, it appears that EIOPA plans to advise the Commission to apply the delegated acts authorized under Chapter VI to all insurance undertakings that manufacturer insurance-based investment products (IBIPs). In doing so, EIOPA would vastly expand the scope of the request from the Commission and purport to redefine the parameters of the Directive itself.</p> <p>Chapter VI (consisting of Articles 26-30) operates under two essential limitations set out in Article 26. First, this chapter only concerns itself with insurance-based investment products (IBIPs). To this fact, there seems no dispute. Second, Chapter VI only applies to an insurance undertaking if and to the extent the insurance undertaking <u>carries out the distribution</u> of such products. On this second point, EIOPA's draft radically departs from the Directive and the Commission's request for advice.</p> <p>Conflicts of Interest</p> <p>Article 27 is clear that the obligation to maintain and operate effective organizational and administrative arrangements in relation to any conflicts of interest with the customer reside with "an insurance intermediary or an insurance undertaking <u>carrying on the distribution</u> of insurance-based investment products." In other words, the insurer is responsible to establish such organizational and administrative arrangements only where the insurer acts as the distributor. Recital 57 emphasizes the point by observing "the insurance <u>distributor</u> should put in place appropriate and proportionate arrangements [relating to conflicts of interest]." Accordingly, an insurer that does not carry out the distribution has no obligation to establish such</p>	<p>Noted.</p> <p>In EIOPA's view distribution activities should be understood in the broadest sense possible, for the sake of appropriate customer protection, including related activities in preparation of the distribution and in the aftermath of it. Therefore, EIOPA does not share the view that the policy proposal go beyond Article 27 and Article 28 of IDD. As the scope of the policy proposal is already defined by Level 1 EIOPA does not see the need to introduce the amendments as proposed.</p>
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		<p>arrangements.</p> <p>As one would therefore expect, the Commission's request for technical advice asks of EIOPA to advise with respect to "the different steps that insurance intermediaries and insurance undertakings <u>distributing insurance-based investment products</u> might reasonably be expected to take" in connection with conflicts of interest. The Commission, of course, drew this charge from Article 28(4)(a) which allows the Commission to adopt delegated acts in order to "define the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take ... <u>when carrying out insurance distribution activities.</u>"</p> <p>Despite the clear scope of the request from the Commission and the explicit parameters of the Directive, EIOPA's analysis fails to recognize that the responsibility for putting in place organizational and administrative arrangements for conflicts of interest falls solely to the distributor (whether the personal acting as the distributor is an intermediary or the insurer). Most troublingly, the draft technical advice repeatedly refers to "insurance intermediaries and insurance undertakings" without the imperative qualification that any such insurance undertaking must be carrying out the distribution to fall within the ambit of Chapter VI and any delegated act adopted under Chapter VI.</p> <p>By simple reference to the Commission's request for advice and the text of its authorization to adopt a delegated act, EIOPA is compelled to make clear that the responsibilities set forth in its draft technical advice in the Conflicts of Interest section are directed to the insurance intermediary or the insurance undertaking but only if that insurance undertaking is carrying out the distribution.</p> <p>Not only does the plain wording of the Directive and the</p>	
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		<p>Commission’s request for advice compel this reformation of the draft, any such expansion of the Directive as proposed in the draft would undermine the very foundations of the IDD.</p> <p>First, the fundamental theme throughout the Insurance Distribution Directive is that there are three roles within each insurance transaction:</p> <ul style="list-style-type: none"> • The customer which is easily identified and on whom few (if any) obligations are imposed by the Directive. • The manufacturer which makes its first appearance in Article 20 in the context of the PID and then again in Article 25 relating to the POG. • The distributor which consumes the overwhelming volume of obligations created by the aptly named Insurance Distribution Directive. <p>As explained in Article 1(2), the Directive applies to persons who “take up and pursue the distribution of insurance and reinsurance products.” Consistent with that remit, the Directive recognizes that an insurer may act in both the role of manufacturer and distributor and, when it does so, the provisions applicable to the distributor attach to the insurer’s distribution activities. Indeed, Recital 11 provides that “[t]his Directive should apply only to persons whose activities consists of providing insurance or reinsurance distribution services to third parties.” More specifically, Recital 7 explains “[i]nsurance undertakings which sell insurance products directly should be brought within the scope of this Directive on a similar basis to insurance agents and brokers.”</p> <p>The draft technical advice leads one to conclude that these three roles - so carefully managed throughout the</p>	
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		<p>Directive – are to be haphazardly merged into two. Under such a distortion of the Directive, the insurance transaction is seen as a bilateral affair with the customer on one side and the undifferentiated role of manufacturer/distributor on the other. If such an abuse of the text were permitted, much of the coherency and certainty of accountability intended by the Insurance Distribution Directive would be lost not only for insurance-based investment products, but by extension to all insurance products through the destruction of the tripartite relationship upon which the entirety of the IDD has been constructed.</p> <p>Second, should the manufacturer and distributor be deemed equivalent roles as proposed by the draft technical advice, the provisions of the advice itself would lose any practical utility. For example, the draft would require “insurance undertakings [to] assess whether they ... have an interest related to the insurance distribution activities which is distinct from the customer’s interest and which has the potential to influence the outcomes of the services to the detriment of the customer.” Of course, the manufacturer has an interest that is distinct from the customer – it is a counter-party to the insurance transaction with the customer. To illustrate, a manufacturer would have a distinct financial interest that the distribution process is designed to facilitate a determination whether the life insured is terminally ill, suicidal or engaged in extraordinarily hazardous activities while the customer may have a “conflicting” interest that the distribution process be conducted in such a manner as to not facilitate such a determination. While this normal business circumstance would seem to qualify as a “conflict” under the draft technical advice (considering the presumption set out in Conflicts of Interest para.</p>	
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			<p>2a), the manufacturer is hardly to be discouraged from protecting its interest in a complete understanding of relevant characteristics of the life insured or prevailed upon to engage in some form of "mitigation" to blunt the effectiveness of legitimate underwriting procedures and controls.</p> <p>Even the draft technical advice admits that when an insurer acts as both manufacturer and distributor there are two sides of the house, one of which has a duty to avoid the conflicts of interest as described in the Directive and the other which does not. In the draft technical advice at Conflicts of Interest paragraph 2d, EIOPA flags a presumptive conflict where the insurer's distribution personnel are also responsible for manufacturing and product management. Such a conflict could only arise if the distribution personnel are subject to Chapter VI's anti-conflicts provisions while the manufacturing and product management personnel are not. Otherwise, if both the manufacturing and distribution arms of the insurer owed equal obligations to avoid or mitigate conflict under Chapter VI there could be no conflict arising from managing both elements together. As this example illustrates, Chapter VI cannot possibly apply to the insurer - other than to the extent the insurer carries out the distribution.</p> <p>In summary, there is no room for doubt that Chapter VI applies <u>only</u> to insurance undertakings carrying out the distribution of insurance-based investment products. Insurance undertakings that do not carry out distribution activities are wholly outside the scope of Chapter VI and therefore outside of the delegated act the Commission is empowered to enact. The Directive says so. The Commission says so. Logic says so.</p> <p>It is incumbent upon EIOPA to conform its technical advice so that it is within the lawful bounds of the</p>	
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			<p>delegated acts on which it has been requested to advise. The draft technical advice relating to Conflicts of Interest must be amended to leave no doubt that the reference to insurance undertakings means insurance undertakings <u>carrying on the distribution</u> of insurance-based investment products. EIOPA may do so through the following additions to its text:</p> <p>Identification of conflicts of interests</p> <ol style="list-style-type: none">1. For the purpose of identifying the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail the risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings <u>carrying out the distribution</u> shall assess whether they, including their managers, employees or any person directly or indirectly linked to them by control, have an interest related to the insurance distribution activities which is distinct from the customer's interest and which has the potential to influence the outcome of the services to the detriment of the customer. Insurance intermediaries and undertakings <u>carrying out the distribution</u> shall also identify conflicts of interest between one customer and another.2. Conflicts of interest referred to above shall at least be assumed in situations including the following:<ol style="list-style-type: none">a. the insurance intermediary, insurance undertaking <u>carrying out the distribution</u> or linked person is likely to make a financial gain, or avoid a financial loss, at the expense of the customer;	
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			<p>b. the insurance intermediary, insurance undertaking <u>carrying out the distribution</u> or linked person has a financial or other incentive to favour the interest of another customer or group of customers over the interests of the customer;</p> <p>c. the insurance intermediary, insurance undertaking <u>carrying out the distribution</u> or linked person receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer;</p> <p>d. the insurance intermediary, persons working in an insurance undertaking responsible for the distribution of insurance-based investment products or linked person are involved in the management or development of the insurance based-investment products.</p> <p>Conflicts of interest policy</p> <p>3. Insurance intermediaries and insurance undertakings <u>carrying out the distribution</u> shall establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organization and the nature, scale and complexity of their business. Where the insurance intermediary or insurance undertaking <u>carrying out the distribution</u> is a member of a group, the policy must also take into account any circumstances, of which the insurance intermediary or insurance undertaking <u>carrying out the distribution</u> is or should be aware, which may give rise to a conflict of interest arising as a</p>	
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			<p>relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may damage the interests of one or more customers;</p> <p>(b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking <u>carrying out the distribution</u>;</p> <p>€ the removal of any direct link between payments, including remuneration, to relevant persons principally engaged in one activity and payments, including remuneration to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;</p> <p>(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out insurance distribution activities;</p> <p>€ measures to prevent or control the simultaneous or sequential involvement of a relevant person in insurance distribution activities where such involvement may impair the proper management of conflicts of interest.</p> <p>6. If insurance intermediaries and insurance undertakings <u>carrying out the distribution</u> demonstrate that those measures and</p>	
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			<p>procedures are not appropriate to ensure that the distribution activities are carried out in accordance with the best interest of the customers and are not biased by conflicting interests of the insurance undertakings <u>carrying out the distribution</u>, the insurance intermediaries or another customer, insurance intermediaries and insurance undertakings <u>carrying out the distribution</u> must adopt adequate alternative measures and procedures for that purpose.</p> <p>7. Insurance intermediaries and insurance undertakings <u>carrying out the distribution</u> shall avoid over reliance on disclosure and shall ensure that disclosure, pursuant to Article 28(2) of Directive 2016/97/EC, is a step of last resort that can be used only where the effective organizational and administrative measures established by insurance intermediaries and insurance undertakings <u>carrying out the distribution</u> to prevent or manage conflicts of interests in accordance with Article 27 thereof are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the customer will be prevented.</p> <p>8. Insurance intermediaries and insurance undertakings <u>carrying out the distribution</u> shall make that disclosure to customers, pursuant to Article 28(3) of Directive 2016/97/EC, in a durable medium. The disclosure shall:</p> <p>(a) include a specific description of the conflict of interest, including the general nature and sources of the conflict of interest, as well as the risks to the customer that arise as a</p>	
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			<p>result of the conflict of interest and the steps undertaken to mitigate these risks,</p> <p>(b) clearly state that the organizational and administrative arrangements established by the insurance intermediary or insurance undertaking <u>carrying out the distribution</u> are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the customers will be prevented, in order to enable the customer to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.</p> <p>9. Insurance intermediaries and insurance undertakings <u>carrying out the distribution</u> shall:</p> <p>(a) assess and periodically review – at least annually – the conflicts of interest policy established in accordance with this article and to take all appropriate measures to address any deficiencies; and</p> <p>(b) keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of the one or more customers has arisen or, in the case of an ongoing service or activity, may arise.</p> <p>10. Where established, senior management shall receive on a frequent basis, and at least</p>	
393	Allianz SE	Question 10	Do you agree that the policy proposals do not need further specification of the principle of proportionality and allow sufficient flexibility to market participants to adapt the organisational arrangements to existing business models? If you do not agree, please explain how the principle of proportionality could be elaborated further from your point of	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated

			<p>view?</p> <p><input type="checkbox"/> Allianz agrees that the principle of proportionality (as well as the inclusion of a holistic view on arrangements to deal with COIs) is important.</p> <p><input type="checkbox"/> Even if the principle of proportionality (implicitly) underlies the rules as proposed it would nevertheless be beneficial to explicitly include the mentioning of the principle in the DTA to make this clear beyond doubt.</p> <p><input type="checkbox"/> The main reason is that it should be possible to read the rules as stand-alone text (without the explanatory remarks in the consultation). This aspect is particularly important in case of principles-based regulation (such as COI rules), since they generally offer broader room for interpretation.</p> <p><input type="checkbox"/> In addition, Allianz considers it important to take a holistic view on the arrangements to mitigate COIs. The main yardstick to measure handling of COIs should be effectiveness of the arrangements, not formal arguments. This requires acceptance for effective mitigation measures of all sorts.</p>	Acts under IDD" in the Final Report.
394	AMICE	Question 10	<p>We support the principle of proportionality mentioned in paragraph 3 of the draft technical advice (page 45). National competent authorities are better placed to take account of the different legal forms and corporate governance regimes and practices.</p> <p>We agree that sufficient flexibility should be allowed to market participants in order to adapt the organisational arrangements to existing business models.</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
395	Association of International Life Offices	Question 10	<p>Yes. The text seems adequate to allow for the nature and scale of the operations applying the requirements in a proportionate manner – provided participants can explain what they do and why, under scrutiny.</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

396	Assuralia	Question 10	Assuralia supports the principle of proportionality and agrees with EIOPA that the policy proposals allow sufficient flexibility to adapt the organisational requirements to existing business models.	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
397	BEUC	Question 10		
398	BFV - Bundesarbeitsge- meinschaft zur Förderun	Question 10	Siehe Antwort zu Frage 9.	Noted.
399	BIPAR	Question 10	<p>- The principle of proportionality should be an overall concept applicable to all measures. This is the approach chosen by most of the EU Member States in their policy on conflicts of interest for insurance intermediaries. At this stage, BIPAR is not convinced about the usefulness regarding further specification and guidance in a separate policy instrument.</p> <p>- In order to ensure the required proportionality BIPAR proposes to postpone the application date of some of the planned level 2 rules.</p> <p>BIPAR is fully supportive of the IDD objectives of consumer protection, more open markets and level playing field. We acknowledge the challenges faced by EIOPA but also by the European Commission in defining the details of the 4 Delegated Acts, notably in light of the variety of market</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

		<p>players the IDD covers. However, we are extremely concerned that, in the best case scenario, the final Delegated Acts will only be officially published in the first half of 2017, leaving only more or less half a year for distributors and intermediaries (but also regulators and supervisors) to meet the deadline. This timeline is simply unrealistic considering the structural changes it will trigger. Using the format of a Regulation rather than a Directive for level 2 (in order to shorten the implementation timetable) would not solve the problem- on the contrary it would make it worse since this would not allow for the necessary national fine-tuning to reflect national markets' specificities.</p> <p>We cannot stress enough the considerable operational challenges which need to be overcome by the sector in order to comply with the new rules which will be imposed by the 4 Delegated Acts, and in particular, considering the level of detail in the draft advice that is currently under consultation. More specifically, the changes will require the development of all necessary processes to ensure that the IT and other systems and procedures are accurate. These changes come at the same time as a whole series of other effects caused by new rules (PRIIPs KID, Solvency II, Mortgage Credit Directive, Data Protection Regulation to name but a few).</p> <p>We would also like to point to the fact that MiFID firms had 5 years to adapt gradually to a system whereas IBIP providers and distributors will have only (more or less) 6 months. It is also worrying that a number of highly complex and structural matters feature in the draft advice on the Delegated Acts but have never been subject of an impact assessment (or consultation) under level I (black list, commission as a priori conflict of interest, definition of manufacturer, ... these are issues which we believe should not be introduced by a level 2 text but should have been dealt with at level 1 or be left to the Member States).</p>	
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400	BNP Paribas	Question 10	We agree that the policy proposals do not need to further specify the principle of proportionality. They allow sufficient flexibility to suit the different business models of market participants.	Noted.
401	Bund der Versicherten (BdV – German Association of	Question 10	<p>Yes, we agree that the policy proposals do not need further specification of the principle of proportionality. The proportionality principle is a juridical principle of generalized validity. Any kind of administrative provision has to be reasonable, appropriate and necessary, in consequence the principle of proportionality is neither new nor precise enough.</p> <p>Therefore we strongly support EIOPA’s opinion that an explicit reference to the principle of proportionality in the implementing measures for the amended IDD would not appear appropriate or necessary: “An elaborate repetition or specification of this principle in the IDD implementing measures rather bears the risk that the application of that general principle becomes unclear or that the objectives of the new provision are not achieved” (quote from EIOPA Consultation Paper on Conflicts of Interest, Oct. 2014, p. 19).</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
402	BVK Germany	Question 10	dito	Noted.
403	CNCIF - Chambre Nationale des Conseillers en	Question 10	<p>Yes.</p> <p>We agree that the policy proposals don’t need further specification of the principle of proportionality. We consider that the procedural provisions for the different types of distributors should be proportionate to their types of activities, sizes and structures.</p>	Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
404	CSCA French broker	Question 10	The principle of proportionality mentioned above is an essential and structural element of the Directive and of the	Noted. Please see the section titled "feedback

	Association, 91, rue Saint Laza		<p>delegated acts entrusted by the Commission to EIOPA. It is also part and parcel of the mission entrusted by the Commission to take account of this fundamental principle in its projected requirements rather than to consider defining a specific concept when establishing a delegated act concerning conflicts of interests.</p> <p>It is the moment to stress once more that there should be no elaboration of detailed rules but rather the setting out of principles that must refer back to national characteristics to ensure greater suitability in the field.</p> <p>Furthermore the CSCA wishes to underline that the period for application of the delegated acts does not appear realistic. Effectively, it is proposed that they should be published in February 2017 which supposes that Parliament and the Council will have examined them, discussed them and pronounced on an agreed version between then and now.</p> <p>Apart from the fact that this schedule is very tight given the democratic examination expected by the bodies concerned, it would seem that the period for the players to take the results into account would be less than a year which is incompatible with the national specifics that are indispensable to meet fully the objectives sought, given the level of detail in EIOPA's requirements if they are maintained in their current state. We should remember that these modifications will take effect in a schedule that is very packed given the new rules applicable to the market (S2, PRIIPs, data protection) and other effective or announced provisions of internal law (at national level: reform of contract law, legal liability, etc.).</p>	statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
405	Czech Insurance Association CAP	Question 10	We do not consider necessary to further specify the proportionality principle. Some proposals may bring higher burden for the SMEs. Thus, we welcome any higher use of the proportionality principle throughout the delegated acts.	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the

				Final Report.
406	EFAMA - The European Fund and Asset Manageme	Question 10	We agree that there is no need for further specification of the principle of proportionality and to allow sufficient flexibility to market participants.	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
407	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 10	<p>EFPA considers that the policy proposals do not need further specification of the principle of proportionality and allow sufficient flexibility to market participants to adapt the organisational arrangements to existing business models. There is already a notion of conflicts of interest, and also professional practice established to manage those conflicts adequately, as reflected in the best professional standards that should be addressed considering the legislation on management of conflicts of interest.</p> <p>Moreover, EFPA supports the need to assess and periodically review the established conflicts of interest policy, taking into account that the internal organization should allow to manage conflicts of interest, being disclosure the last resort to manage those conflicts.</p> <p>In addition, EFPA considers that staff's required training (ex. Article 10 IDD) must include contents related to conflicts of interest management.</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
408	Fachverband der Versicherungsmakler und Berater in	Question 10	<p>The principle of proportionality is a very important principle. As mentioned before, we believe that the IDD delegated acts should be a Directive as well. This gives some flexibility to the MS to apply the rules according to their national specificities. The proportionality principle should be an overall concept applicable to all measures. This is the approach chosen by most of the EU Member States in their policy on conflicts of</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the

		<p>interest for insurance intermediaries. At this stage, the Professional Association of Insurance Brokers and Insurance Consultants in the Austrian Federal Economic Chamber is not convinced about the usefulness re further specification and guidance in a separate policy instrument.</p> <p>In order to ensure the the required proportionality we propose to postpone the application date of some of the planned level 2 rules.</p> <p>We are fully supportive of the IDD objectives of consumer protection, more open markets and level playing field. We acknowledge the challenges faced by EIOPA but also by the European Commission in defining the details of the 4 Delegated Acts, notably in light of the variety of market players the IDD covers. However, we are extremely concerned that, in the best case scenario, the final Delegated Acts will only be officially published in the first half of 2017, leaving only more or less half a year for distributors and intermediaries (but also regulators and supervisors) to meet the deadline. This timeline is simply unrealistic considering the structural changes it will trigger. Using the format of a Regulation rather than a Directive for level 2 (in order to shorten the implementation timetable) would not solve the problem- on the contrary it would make it worse since this would not allow for the necessary national fine-tuning to reflect national markets' specificities.</p> <p>We cannot stress enough the considerable operational challenges which need to be overcome by the sector in order to comply with the new rules which will be imposed by the 4 Delegated Acts. In particular, considering the level of detail in the draft advice that is currently under consultation. More specifically, the changes will require the development of all necessary processes to ensure that the IT and other systems and procedures are accurate. These changes come at the same time as a whole series of other effects caused by new rules (PRIIPs KID, Solvency II, Mortgage Credit Directive,</p>	Final Report.
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			<p>Data Protection Regulation to name but a few).</p> <p>We would also like to point to the fact that MiFID firms had 5 years to adapt gradually to a system whereas IBIP providers and distributors will have only (more or less) 6 months. It is also worrying that a number of highly complex and structural matters feature in the draft advice on the Delegated Acts but have never been subject of a democratic discussion nor impact assessment (or consultation) under level I (black list, commission as a priori conflict of interest, definition of manufacturer, ... this are issues which we believe should not be introduced by a level 2 text but should have been dealt with at level 1 or be left to the Member States).</p> <p>We take this as an opportunity to point out that the development of the level 2 delegated acts illustrates again the shortcomings of the IDD as a text. The Single Market integration as an objective of IDD is completely ignored. Instead of using level 2 or level 3 measures to clarify the triggering elements of a cross border activity which will encourage cross border activity by creating legal certainty , the regulator seems to opt to develop and work out micro-management style of technically detailed rules many of which are superfluous or even contradictory for the objectives defined. We believe that in economic difficult times European legislation should encourage export and new initiatives by smaller local entrepreneurs rather than imposing administrative burden upon local SME players who create local employment.</p>	
409	Fédération Française de l'Assurance (FFA) 26 bo	Question 10	<p>We would welcome greater recognition of the need to take into account the principle of proportionality in the draft technical advice (see above answer to question Q.9).</p> <p>We would also wish to point out that the mandate which</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated

			EIOPA has received from the European Commission is quite clear in asking from EIOPA to give particular attention to the practical implementation of the proportionality requirement under its technical advice. This should therefore be done in the technical advice and does not require EIOPA to develop separate policy instruments to elaborate the principle of proportionality in the field of conflicts of interest.	Acts under IDD" in the Final Report.
410	Federation of Finnish Financial Services	Question 10	We agree that the policy proposals do not need any additional specification of the principle of proportionality. The situations differ very much in different providers and this requires flexibility in the regulation. Specifying too detailed examples or lists of situations containing risks to conflicts of interest would seem artificial and would not catch all risks.	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
411	FNMF, 255 rue de Vaugirard, 75015 PARIS	Question 10	At the beginning of the paragraph 3, the notion of "appropriate to their size and organisation and the nature, scale and complexity of their business" is mentioned and to that extent that it will be applied by the supervisor, we do not need further explanations.	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
412	FRENCH BANKING FEDERATION	Question 10	No.	Noted.
413	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 10	No comment	Noted.
414	German Association of Private Health Insurers (PKV	Question 10	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.

415	German Banking Industry Committee (GBIC)	Question 10	<p>The payment of fees or commissions in connection with the distribution of insurance-based investment products - as well as in connection with the distribution of other insurance products - is and has been consistent with commercial custom in the Federal Republic of Germany as well as in other Member States of the European Union for a considerable period of time. The German Federal Supreme Court has even pointed out based on such commercial custom that insurance intermediaries are not obliged to disclose details regarding any fees or commissions paid to them by insurers since the public / customers are aware of this fact as part of an established commercial custom.</p> <p>Taking this into consideration as well as the decision of the European legislator not to establish a general prohibition of the payment of fees or commissions for the distribution of insurance-based investment products to insurance intermediaries by other parties than the customer we would like to emphasize that the proposed high-level principle to determine whether an inducement has a detrimental impact on the relevant service to the customer should be handled with great care and in line with the principle of proportionality.</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
416	German Insurance Association (GDV)	Question 10	<p>The German Insurance Association does not believe that EIOPA needs additional instruments to elaborate the principle of proportionality in the field of conflicts of interest.</p> <p>All stakeholders involved (customers, distributors and product providers) will soon need a final clarification on the rules to be followed in insurance distribution. Any further work on Level 3 would result in unacceptable additional burdens, making implementation even more complicated.</p> <p>Therefore, the German Insurance Association is opposed to a multi-level regulation system and would like to point out that the EU Commission's mandate (p. 6) expressly requires a</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

			particular focus on proportionality and practicability.	
417	Institute and Faculty of Actuaries	Question 10	Yes.	Noted.
418	Insurance Europe	Question 10	<p>Greater recognition is required of the need to take into account the principle of proportionality within the draft technical advice itself. Many distributors of insurance products are small and medium sized enterprises and in some cases are run by one self-employed individual. This person does not have the available resources to carry out different activities, so any measures developed should not give rise to an onerous regulatory burden for SMEs.</p> <p>National regulators are best placed to assess proportionality, as they will already be closely monitoring the risk management approach in the firms they supervise. They will also be better placed to take account of the extensive variation in legal forms and in corporate governance regimes and practices.</p> <p>In many member states, SMEs are involved in the distribution of insurance products. A lot of them are managed by one person. A two person management requirement, for example, as used in asset management to handle conflicts of interest, would put a heavy burden on the market and force SMEs to cooperate with other SMEs or just stop their business.</p> <p>Recommendation: The mandate that EIOPA has received from the European Commission requires EIOPA to pay particular attention to the practical implementation of the proportionality requirement in its technical advice. This should be included as part of the technical advice itself and does not require EIOPA to develop separate policy instruments to elaborate the principle of proportionality in the field of conflicts of interest.</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
419	Intesa Sanpaolo S.p.A.	Question 10	We agree that the policy proposals do not need further specification of the principle of proportionality.	Noted.
420	IRSG	Question 10	The IRSG is of the opinion that the principle of proportionality	Noted.

			<p>is a very important principle. It is welcomed that the Draft Technical Advice explicitly refers to this principle in stating that procedures and measures should be appropriate to the size and activities of the insurance intermediaries or insurance undertaking and to the materiality of damage to the interests of the customers.</p> <p>The proportionality principle should be an overall concept applicable to all measures. Further specification in general and in a separate policy instrument does not seem appropriate at this moment of the development of level 2 measures.</p> <p>In order to allow for proportionality and legal consistency, the IRSG believes that the Delegated Act of the Directive on Insurance Distribution, should be a Directive as well. Such a Directive can be quite detailed but would allow to take into account national specificities.</p> <p>The IRSG recognizes the operational challenges which need to be overcome by the sector in order to comply with the new rules.</p>	
421	Liechtenstein Insurance Association (LVV)	Question 10	<p>The Liechtenstein Insurance Association does not believe that EIOPA needs additional instruments to elaborate the principle of proportionality in the field of conflicts of interest.</p> <p>All stakeholders involved (customers, distributors and product providers) will soon need a final clarification on the rules to be followed in insurance distribution. Any further work on Level 3 would result in unacceptable additional burdens, making implementation even more complicated.</p> <p>Therefore, the Liechtenstein Insurance Association is opposed to a multi-level regulation system and would like to point out that the EU Commission's mandate (p. 6) expressly requires a</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

			particular focus on proportionality and practicability.	
422	MALTA INSURANCE ASSOCIATION These comments have b	Question 10	<p>It is important to take more account the principle of proportionality. Many distributors of insurance products are small and medium sized enterprises and in some cases are run by one self-employed individual, who does not have a separate person available to carry out different activities, so any measures developed should not give rise to an onerous regulatory burden for SMEs.</p> <p>Any two person management requirement, as introduced in asset management in order to manage conflicts of interest, would put a heavy burden on the market and force SMEs to cooperate with other SMEs or just stop their business.</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
423	Mediterranean Insurance Brokers (Malta) Ltd.	Question 10	<p>Do you agree that the policy proposals do not need further specification of the principle of proportionality and allow sufficient flexibility to market participants to adapt the organisational arrangements to existing business models? If you do not agree, please explain how the principle of proportionality could be elaborated further from your point of view?</p> <p>The principle of proportionality is a very important principle.</p> <p>As mentioned before, we believe that the IDD delegated acts should be a Directive as well. This gives some flexibility to the MS to apply the rules according to their national specificities. The proportionality principle should be an overall concept applicable to all measures. This is the approach chosen by most of the EU Member States in their policy on conflicts of interest for insurance intermediaries. At this stage, we are not convinced about the usefulness re further specification and guidance in a separate policy instrument.</p> <p>In order to ensure that the required proportionality we</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

		<p>propose to postpone the application date of some of the planned level 2 rules.</p> <p>We are fully supportive of the IDD objectives of consumer protection, more open markets and level playing field. We acknowledge the challenges faced by EIOPA but also by the European Commission in defining the details of the 4 Delegated Acts, notably in light of the variety of market players the IDD covers. However, we are extremely concerned that, in the best case scenario, the final Delegated Acts will only be officially published in the first half of 2017, leaving only more or less half a year for distributors and intermediaries (but also regulators and supervisors) to meet the deadline. This timeline is simply unrealistic considering the structural changes it will trigger. Using the format of a Regulation rather than a Directive for level 2 (in order to shorten the implementation timetable) would not solve the problem- on the contrary it would make it worse since this would not allow for the necessary national fine-tuning to reflect national markets' specificities.</p> <p>We cannot stress enough the considerable operational challenges which need to be overcome by the sector in order to comply with the new rules which will be imposed by the 4 Delegated Acts. In particular, considering the level of detail in the draft advice that is currently under consultation. More specifically, the changes will require the development of all necessary processes to ensure that the IT and other systems and procedures are accurate. These changes come at the same time as a whole series of other effects caused by new rules (PRIIPs KID, Solvency II, Mortgage Credit Directive, Data Protection Regulation to name but a few).</p> <p>We would also like to point to the fact that MiFID firms had 5 years to adapt gradually to a system whereas IBIP providers and distributors will have only (more or less) 6 months. It is also worrying that a number of highly complex and structural matters feature in the draft advice on the Delegated Acts but</p>	
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			<p>have never been subject of a democratic discussion nor impact assessment (or consultation) under level I (black list, commission as a priori conflict of interest, definition of manufacturer, ... this are issues which we believe should not be introduced by a level 2 text but should have been dealt with at level 1 or be left to the Member States).</p> <p>We take this as an opportunity to point out that the development of the level 2 delegated acts illustrates again the shortcomings of the IDD as a text. The Single Market integration as an objective of IDD is completely ignored. Instead of using level 2 or level 3 measures to clarify the triggering elements of a cross border activity which will encourage cross border activity by creating legal certainty , the regulator seems to opt to develop and work out micro-management style of technically detailed rules many of which are superfluous or even contradictory for the objectives defined. We believe that in economic difficult times European legislation should encourage export and new initiatives by smaller local entrepreneurs rather than imposing administrative burden upon local SME players who create local employment.</p>	
424	Slovenian Insurance Association	Question 10	<p>Yes, policy proposals do not need further specification. We would like to draw the attention on:</p> <ul style="list-style-type: none"> - Principle of proportionality - We would welcome greater recognition. Any measures developed should not give rise to an onerous regulatory burden for SMEs. National regulators are best placed to assess proportionality as they are already closely monitoring the risk management approach in the insurance companies. - Two persons management requirement is unrealistic for SMEs - In many Member States, SMEs are involved in the distribution of complex products. A lot of them are managed by one person. So a two person management requirement (as introduced in asset management in order to manage conflicts 	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

			<p>of interests) would put a heavy burden on the market and force SMEs to cooperate with other SMEs or just stop their business.</p> <p>- EIOPA is obliged to implement the proportionality requirement under its technical advice – particular attention should be given to the practical implementation of the principle of proportionality in technical advice.</p>	
425	<p>Verband der Automobilindustrie e.V. Arbeitskreis</p>	Question 10	Not applicable.	
426	<p>Verband Deutscher Versicherungsmakler e. V. (VDVM)</p>	Question 10	<p>10: Stimmen Sie zu, dass die Vorschläge keine weitere Spezifizierung des Proportionalitätsprinzips erfordern und den Marktteilnehmern genügend Freiraum geben, um die organisatorischen Vorkehrungen an bestehende Geschäftsmodelle anzupassen? Falls Sie anderer Meinung sind, erklären Sie bitte, wie das Proportionalitätsprinzip aus Ihrer Sicht spezifiziert werden könnte.</p> <p>Der VDVM sieht keine Notwendigkeit für weitere Handlungsinstrumente EIOPAs zum Prinzip der Verhältnismäßigkeit zu Interessenkonflikten. Alle Beteiligten (Verbraucher, Vertreiber und Produktanbieter) benötigen zeitnah und abschließend Klarheit darüber, welche Regeln im Versicherungsvertrieb künftig zu beachten sind. Weitere Arbeiten auf Level 3 würden die Umsetzung unzumutbar erschweren.</p> <p>Der Verband spricht sich daher gegen eine mehrstufige Regulierung aus und möchte darauf hinweisen, dass das Mandat der EU-Kommission (dort S. 6) ausdrücklich dazu auffordert, der Verhältnismäßigkeit und Praktikabilität besondere Aufmerksamkeit zu schenken.</p>	<p>Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>
427	<p>Verband öffentlicher</p>	Question 10		<p>Noted. Please see the section titled "feedback</p>

	Versicherer (Association of G		<p>We agree in general that the principle of proportionality (or reasonableness) does not need to be specified further. The principle of proportionality is one of the most important principles and should form the foundation of all rules relating to delegated acts. In particular, account should be taken of the size of the company and the nature of the insurance intermediary. This principle must not be eroded or suppressed in particular instances. This is crucial, for example, in the context of the conflicts of interest policy (see p. 45 et seq.). Small-scale distribution units or distributors with only a single employee, for example, simply cannot cope with or implement the proposed comprehensive requirements. In particular, Point 9 on page 47, which provides for special review and documentation measures, no longer complies with the principle of proportionality. Ad-hoc complaint management on the part of the insurance company and the distributor would be a more sensible and practicable solution. However, the rules in the IDD are already sufficient to deal with these points. As in other instances, EIOPA does not need to formulate rules that are more far-reaching.</p>	statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
428	Verbraucherzentrale Bundesverband e.V.	Question 10	<p>vzbv in general beliefs that every commission has a detrimental impact to sales process of insurance-based investment products (IBIPs) and financial instruments as well. Therefore vzbv postulates a ban of commission as introduced in the Netherlands and United Kingdom in 2013.</p> <p>By recognising EIOPA´s task to draft a Technical Advice we support the suggested high level principle. Especially number 6 of the Draft Technical Advice is very important. It has to maintain in the Technical Advice, because it is the key element to develop a consumer orientated conflict of interest policy.</p> <p>Number 6 lays down legal consequence, when distribution activities are not carried out in accordance with the best</p>	Noted. Please see the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

			interest of the customers and are biased by conflicting interests. Then insurance intermediaries and insurance undertakings must adopt adequate alternative measures and procedures for that purpose. In case of applied commissions insurers would then have to offer commission-free products.	
429	Allianz SE	Question 11	<p>Do you agree with the proposed high level principle to determine whether an inducement has a detrimental impact on the relevant service to the customer?</p> <p><input type="checkbox"/> No.</p> <p><input type="checkbox"/> We generally agree with the requirement to assess the potentially detrimental impact of a third party payment.</p> <p><input type="checkbox"/> Unfortunately the DTA proposal (p. 54/55) as well as the analysis (p. 50 – 53) far exceeds the mandate given by the IDD Level 1 text.</p> <p><input type="checkbox"/> In particular</p> <ul style="list-style-type: none"> <input type="checkbox"/> The wording of DTA 3, p. 54 should be changed to “Detrimental impact may occur”, since the employment of a potentially risky practice does not necessarily trigger detrimental impact but only increases the corresponding risk. <input type="checkbox"/> The (non-exhaustive) “black list” approach lists only negative examples for “high risk” of detrimental impact (see DTA 4/5, p. 34) <input type="checkbox"/> The “black list” contains many elements with are undefined and or imprecisely specified. While this is unavoidable under a principles-based regime, there is room for some valuable clarifications. Specifically: <ul style="list-style-type: none"> <input type="checkbox"/> DTA 4. a) should be clarified not be interpreted to always call for advice to buy product with lowest margin within available product range, since qualitative aspects may lead to other results <input type="checkbox"/> DTA 4. c) what constitutes excessive or disproportionate value of inducements 	<p>Noted. Please see the section titled “feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD” in the Final Report.</p> <p>EIOPA does not share the view that the policy proposal exceed the level 1 text. The use of abstract terminology is a common legal instrument for Level 2 providing discretion and the possibility to take account of national specificities.</p> <p>As individual inducements may have a detrimental impact on its own the assessment should not be limited to the inducement scheme which would also be contrary to the Level 1 text. Various</p>

		<ul style="list-style-type: none"> □ DTA 4. d) the wording should be limited to inducements which are entirely paid upfront <ul style="list-style-type: none"> o The corresponding “white list” of potentially compensating factors (see sec. 17, p. 52) by contrast is relegated to the analysis section, which is no formal part of the DTA. o In addition, the potential use of the mitigation effect of elements from the white list is limited by explicitly denying them any compensatory effect (see sec. 18, p. 53). This in effect renders the white list ineffective. □ In effect, even despite formally acknowledging non-prohibition of elements of the black list (see sec. 15, p. 51), it would be almost impossible for any distributor to employ any of the elements on the black list in practice without incurring a high risk of liability risk. □ Assessment of inducements vs. inducement schemes (see definitions in DTA 1 / 2, p. 54 and DTA 8, p.55): While it is sometimes relevant to look at single inducements to assess the riskiness of a practice, in general it is more adequate to assess the inducement scheme applied to a product or a distribution channel (i.e. the overall set of rules) than each individual inducement. The inducement scheme often gives a better holistic perspective on the remuneration and whether it is fairly balanced with view to the financial service provided. In addition, the assessment of each single payment to each distributor (as indicated in DTA 8, p.55) would not only fragment the perspective but also be disproportionately burdensome. It should therefore be clarified that the holistic assessment of the inducement scheme is the predominant concept of evaluation of inducements, being well understood as a special case of conflict of interest management unless single inducements trigger a material change to the holistic assessment. □ This in effect implements an overly restrictive regime on remuneration which is not covered by IDD Level 1 and the COM mandate, which explicitly calls for consideration of white 	<p>amendments have been introduced to better balance the wording. The assessment may also take into account factors which decrease the risk of detrimental impact.</p>
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			<p>list elements (see COM Mandate, p. 48 second to last paragraph).</p> <ul style="list-style-type: none"> <input type="checkbox"/> As alternative, Allianz proposes to <ul style="list-style-type: none"> o Change the wording in DTA 3, p.54 to "Detrimental risk may occur" o Delete the term "high" from "high risk" in the introductory paragraph of DTA 4, p. 54, replacing by "potential". o Permit a holistic perspective, including the explicit possibility of <ul style="list-style-type: none"> <input type="checkbox"/> taking into account mitigating ("white list") factors within the DTA, which should include the aspects listed in sec. 17, p. 52/52, but also (as for the "black list") not be limited to these aspects o explicitly permit the focus of the assessment on inducement schemes (as defined in DTA 2, p. 54) unless individual inducements (DTA 1, p. 54) trigger a material change to the holistic assessment. 	
430	AMICE	Question 11	<p>We welcome EIOPA's high-level principle approach towards the criteria to determine whether an inducement has a detrimental impact on the relevant service to the customer. However, we consider that a holistic approach should be taken in order to evaluate whether or not an inducement can be considered to have a detrimental impact on the quality of the service.</p> <p>We agree with EIOPA that an overall assessment is required but the draft technical advice seems to contain contradictions on this point and a more balanced approach is required.</p> <p>With regard to the concept of "third party", we believe that employees and tied agents cannot be considered as a "third party" for the purposes of inducements under IDD. This should be appropriately acknowledged in the definition of "inducement" under paragraph 1 (page 54). The present definition is not consistent with the explanations given by EIOPA (paragraph 4, page 50) and the Commission mandate</p>	<p>Noted. The wording has been revised now allowing to consider risk reducing factors and therefore holistic assessment. EIOPA is of the strong view that payments to tied agents should be considered as inducements. The wording has been revised to avoid the impression of a de facto ban.</p>

		<p>(page 48) as it refers to “any party” rather than “any third party”.</p> <p>The proposed methodology to determine whether inducements have a possible detrimental impact on the quality of the service and whether insurance distributors comply with the duty to act in the best interest of the customer seems to contain contradictions. On the one hand, EIOPA states that inducements should be judged by means of an overall assessment. According to paragraph 17 (page 52), this assessment can take into consideration risk-reducing factors. We support an overall assessment which takes into account risk-reducing factors. On the other hand, paragraph 18 (page 53) states that the risk-reducing practices cannot be used to legitimate practices which are considered to be detrimental from the outset. Paragraph 18 explicitly refers to the inducements listed in paragraph 4 of the draft technical advice ('blacklist'). In this regard, this could mean that none of the inducements listed in paragraph 4 can be countered with risk-reducing factors.</p> <p>Furthermore, the list of inducements in paragraph 4 of the draft technical advice seems to be extensive and broadly formulated. Due to its broad formulation and general nature (e.g. no distinction between different types of commissions such as a basic commission/management commission etc.) the list encompasses a wide range of inducements paid in the insurance industry. This combination of a broadly formulated list with no proper possibility to take into account risk-reducing factors seems not to be in line with the idea of an overall assessment.</p> <p>It seems that the characteristics of the insurance sector were not properly taken into account in the list in paragraph 4 of the draft technical advice. Inspired by MiFID 2, the technical advice considers inducements that are predominantly based on quantitative commercial criteria and do not take into account appropriate qualitative criteria to be detrimental (i.e. paragraph 4(b)). The distribution landscape in the banking sector however differs substantially from the insurance sector, where independent intermediaries and brokers play an</p>	<p>With regard to the individual criteria/ inducements please refer to the "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>
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		<p>important role. It is difficult for insurance companies to include qualitative criteria in their inducement agreements with independent intermediaries, as they cannot examine if these criteria are being met in practice. Such kind of 'quality monitoring' by an insurer would conflict with the independent status of the intermediary involved.</p> <p>We however agree with paragraph 4(a) of the draft technical advice: "the inducement encourages the insurance intermediary or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when from the outset a different product or service exists which would better meet the customer's needs". This principle should be the main criterion for the overall assessment of inducements.</p> <p>With regard to paragraph 4(c) ('the value of the inducement is disproportionate or excessive when considered against the value of the product and the services provided in relation to the product'), it is unclear who will determine if an inducement is disproportionate and on the basis of which criteria. And what is to be understood under 'the value of the product'? Both European and national information requirements, such as the PRIIPs KID, already ensure that the customer receives information on the characteristics of the product, premium, costs and type of remuneration, so he/she can decide for himself/herself if the product is of added value or not.</p> <p>With regard to paragraph 4(d), EIOPA should provide a definition of the term 'up-front inducements'. Otherwise there is a risk that insurers in different Member States will interpret up-front inducements differently.</p> <p>Paragraph 4(e) requires further clarification. We agree that a refund (from the intermediary who has received the commission to the insurer) has to be foreseen in case a management commission was paid upfront and the product is surrendered early. However, it seems unreasonable to foresee a refund for the basic commission, as this is a compensation for closing the contract. A refund of the basic commission is</p>	
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			<p>only justified in case, for example, the distributor involved does not fulfill its duty of care to the detriment of the customer.</p> <p>We are concerned that in its current form the draft technical advice could introduce a de facto ban on the receipt/payment of inducements due to a lack of risk-reducing factors that can be used to counterbalance the extensive blacklist in paragraph 4.</p> <p>In its current form, the draft advice could introduce a de facto prohibition on the receipt/payment of inducements due to a lack of risk-reducing factors that can be used to counterbalance the extensive blacklist and the oversimplified presentation of inducements. This is not in line with the intention of the European legislators not to introduce a ban on inducements in the IDD.</p> <p>We believe that the principle of an overall assessment should be introduced explicitly in the final technical advice. EIOPA has to ensure that the risk-reducing factors can be taken into account properly in the overall assessment; and make the blacklist more nuanced and more precise.</p> <p>It is crucial that the risk-reducing factors are applicable in practice and appropriate for the insurance sector. The criteria proposed by EIOPA (p. 52-53) are not always easily applicable in the insurance sector, taking into account the role independent intermediaries play. However, the fourth bullet on page 53 (adequate training) is a good example of a risk-reducing factor that is applicable in practice.</p>	
431	AMUNDI	Question 11	<p>Yes we do agree with the proposed high level principle in the field of inducement. We consider that an alignment with MiFID 2 would not be beneficial. The experience of the UK with the impact of RDR on funds distribution should be avoided.</p> <p>In term of disclosure, we have the experience that retail investors are not interested at all by the question of inducement which they usually do not understand, and we consider that disclosure is nor useful nor desirable. In addition</p>	Noted.

			such disclosure may result detrimental for investors. In fact, once inducements become public there is a risk that when discovering better conditions granted to others, distributors ask for higher retrocessions. This produces a general inflation and hinders any reduction or decreasing of management fees.	
432	ANASF	Question 11	Yes, we do. With regard to inducements, on the one hand we acknowledge the difference in the wording of the provisions in the IDD and corresponding provisions in MiFID II; on the other hand, we believe that this problem of regulatory inconsistency needs to be resolved (please refer to our answer to Question 12) to ensure investor protection and guarantee a level playing field across the different financial sectors (i.e., under IDD and MiFID II).	Noted.
433	Association of International Life Offices	Question 11	<p>As has been stated to EIOPA previously, AILO is of the view that there is a distinction between “remuneration” and inducements” and that should be made clear in the Technical Advice in so far as standard commission remuneration is concerned. For that reason, we cannot agree with EIOPA’s conclusion in point 5 of the Analysis. The absurd conclusion if the logic of point 5 is accepted is that all distribution should be carried out on a pro bono basis unless by an employee of an insurance distributor! Though we question why when IDD is intended to provide a level playing field it is concluded that these provisions should not apply across the board? Perhaps this is an over restrictive interpretation of the relationship between Article 17.3 and 29.2? The distributor would receive commission under the latter and the former requires the distributor not to use incentives i.e. “inducements” to remunerate employees.</p> <p><input type="checkbox"/> As such we believe that Point 1 of the draft Technical Advice needs to be amended. Despite these points we would make the following observations:</p> <p><input type="checkbox"/> Para 4.a – We believe this needs amendment to refer to other products or services available to the particular</p>	<p>Noted.</p> <p>Re Paragraph 4 letter a: EIOPA agrees that the assessment should comprise insurance products which are at the disposal of the insurance intermediary, only. For the sake of clarification, EIOPA has replaced the term “exist” with “available”. With regard to the other letters please see the feedback statement in the final report.</p>

		<p>distributor</p> <p><input type="checkbox"/> Para 4b. The payment of a basic standard commission by an insurer to an insurance intermediary is based upon a standard percentage usually linked to the premium paid by the client. The commission level is not varied by, for example any assessment of whether the intermediary has acted fairly in relation to that particular recommendation, whether it is compliant with regulation or provided an exceptional level of service in respect of the mediation. Over the long term, insurers will not engage intermediaries who are not able to demonstrate such qualitative criteria. The criteria should not be seen as implying that basic standard commission is high risk.</p> <p><input type="checkbox"/> Para 4c. The level of commissions are set by open market competition between insurers on the basis of the lowest insurance product fees that are charged to clients, as compared to the level of service and other benefits (fund range, daily trading, annual product reviews) that are offered to them. Based upon this level, the insurer is able to remunerate the insurance intermediary for the service provided. This criteria perversely assumes that the insurance intermediary is the client of the insurer and insurers compete for intermediary business on the basis of price.</p> <p>In some territories notably France and before RDR the UK, it is common for consumers to negotiate the level of the intermediary's commission. Any reduction is reinvested in the policy. In particular it is normal for intermediaries to sacrifice some of their commission on high value policies</p> <p><input type="checkbox"/> Para 4d. AILO agrees with EIOPA and the Swedish regulator that inducements carry a high risk of detriment to the consumer if they encourage 'churning' of products or investments. This will not necessarily be the case with every upfront commission however as many insurers will not pay any additional commission for a replacement insurance product sold to a customer within a defined period. In addition, most insurers do not pay intermediary's commissions based on a switch of investments linked to the</p>	
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			<p>policy.</p> <p><input type="checkbox"/> Para 4e. This criteria is inconsistent with the commercial reality of the way in which products are structured as recognised by other legislative instruments such as article 8(3)(g)(iv) of the PRIIPS Regulation which requires disclosure of the 'consequences of cashing in before end of term or recommended holding period etc.' Insurers pay commissions to intermediaries which, on early exit from a product are either clawed back, or are funded by exit charges paid by the policyholder. The general good of most jurisdictions will require full disclosure of such exit charges and minimum recommended holding terms. Such a criteria does not reflect the nature of a life insurance product as a long-term investment. It cannot be compared with a financial instrument such as a fund or bond which may be intended to be a liquid investment option with fungibility.</p>	
434	Assuralia	Question 11	<p>Assuralia does not agree with the proposed methodology to determine whether an inducement has a detrimental impact on the quality of the service, for the reasons stated below. Assuralia agrees however with EIOPA that an overall assessment is required, but the draft advice seems to contain contradictions on this point and a more balanced approach is required.</p> <p>Contradicting methodology</p> <p>The proposed methodology to determine whether inducements have a possible detrimental impact on the quality of the service and whether insurance distributors comply with the duty to act in the best interest of the customer seems to contain contradictions: on the one hand, EIOPA states that inducements should be judged by means of an overall assessment. According to §17 page 52, this assessment could take into consideration risk-reducing factors. We support an overall assessment which takes into account risk-reducing factors. On the other hand §18 on page</p>	<p>Noted.</p> <p>The wording has been revised to avoid any inconsistency or contradiction. With regard to the different criteria which increase the risk, please refer to the feedback statement in the final report.</p>

		<p>53 states that risk-reducing practices cannot be used to legitimate practices which are considered to be detrimental from the outset. As §18 than refers to the inducements listed in §4 of the draft technical advice ('blacklist'), Assuralia understands this could mean that none of the inducements listed in §4 can be countered with risk-reducing factors. Furthermore, the blacklist in §4 seems to be extensive and broadly formulated. Due to its broad formulation and general nature (e.g. no distinction between different types of commissions such as a basic commission / management commission...) the blacklist encompasses a wide range of inducements paid in the insurance industry. This combination of a vast blacklist with no proper possibility to take into account risk-reducing factors seems to stand in direct opposition to the idea of an overall assessment.</p> <p>Finally, we feel that the draft advice does not sufficiently take into account the whole legal framework. It should be acknowledged that distributors are obliged to analyse the customer's demands and needs and to test the suitability / appropriateness of IBIPs. Consequently, the offering of unsuitable products is not solely tackled by the rules on inducements. A correct application of the basic rule to act honestly, fairly and professionally in the best interest of the customer and the conflict of interest rules would make an extensive blacklist superfluous.</p> <p>Blacklist (§4 draft advice)</p> <p>As it seems that the inducements listed in §4 of the draft technical advice can never be legitimated by risk-reducing factors (cf. §18 page 53), the list is a de facto blacklist. Furthermore, we find that blacklist to be overly broad and simplified as it speaks of inducements in general, whilst in practice different types of inducements are being paid in different stages of the distribution process. Some examples:</p>	<p>It has been clarified that risk reducing factors can be taken into consideration. The policy proposals do not entail a black list, but criteria to apply.</p> <p>EIOPA would like to emphasise that nuances can be taken into account in the course of assessing the respective inducements.</p>
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			<p>- a basic commission is paid shortly after the insurance contract is closed, as a compensation for the conclusion of the contract and referral of the customer;</p> <p>- a management commission on the other hand compensates the distributor involved for managing the contract (claims management, duty of care,..) and is therefore paid throughout the term of the contract.</p> <p>These nuances are not reflected in the draft advice, resulting in an overly simplified categorization of inducements. This can be illustrated by the following: in Belgium the national supervisor (FSMA) considers reasonable basic commissions and management commissions that conform to the market norm to be generally acceptable (circular FSMA_2015_14 from 01/09/2015, page 49). The reason behind this approach is that such remunerations would not incentive a distributor to put his own interests ahead of the customer. Take the following situation as an example:</p> <p>an insurance distributor has analysed the demands and needs of a customer who is seeking fire insurance. Two products, one from company X and one from company Y, fit the customer's demands and needs. When both companies are offering the distributor reasonable basic commissions that conform to the market norm, this commissions won't encourage him to pick one contract over the other. The blacklist however considers upfront commissions (so including basic commissions) as such to be very risky (technical advice §4 (d)). Due to this lack of nuance, the list will in practice unfairly label a large amount of inducements as a high risk.</p> <p>Furthermore, we would like some clarification on the reasons why EIOPA considers the types of inducements listed in the blacklist and on top of p. 52 to have a detrimental impact on</p>	<p>The criteria have been developed in close cooperation with national authorities with relevant expertise in this area.</p> <p>EIOPA believes that quantitative criteria can also be applied in the context of independent intermediaries.</p> <p>Noted.</p>
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		<p>the quality of the service. According to the advice the blacklist is based on supervisory work of the national supervisors. However, the examples raised in the footnote seem to refer to rather exceptional cases (a commission of 86% is certainly not common in the EU) that do not justify the qualification of all commissions in the blacklist as 'high risk'. Furthermore, MiFID 2 does not seem to contain such an extensive blacklist.</p> <p>It seems that the characteristics of the insurance sector were not properly taken into account in the blacklist. Upon request of the European Commission, EIOPA took into consideration ESMA's advice for MiFID 2. Inspired by this banking regulation, the technical advice considers inducements that are predominantly based on quantitative commercial criteria and do not take into account appropriate qualitative criteria to be detrimental (technical advice §4 (b)). The distribution landscape in the banking sector however differs substantially from the insurance sector, where independent intermediaries and brokers play an important role. It is difficult for insurance companies to include qualitative criteria in their inducement agreements with independent intermediaries, as they cannot examine if these criteria are being met in practice. Such kind of 'quality monitoring' by an insurer would conflict with the independent status of the intermediary involved (cf. our comments on POG). Furthermore, quantitative commercial criteria can be used in inducement schemes, if applied with care (see our answer to Q12).</p> <p>We however agree with §4 (a) of the technical advice: "the inducement encourages the insurance intermediary or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when from the outset a different product or service exists which would better meet the customer's needs". This principle should actually be the main criterion for the overall assessment of inducements. For this reason, Assuralia calls on EIOPA to acknowledge that reasonable basic commissions and</p>	<p>Please refer to the feedback statement in the final report.</p> <p>Please refer to the feedback statement in the final report.</p> <p>EIOPA does not intend to introduce a de facto ban. The methodology to assess inducements has been revised to make this clear.</p> <p>The revised policy proposals explicitly refer to risk reducing factors which may be</p>
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		<p>management commissions that conform to the market norm are generally acceptable (see above).</p> <p>With regard to §4 (c) ('the value of the inducement is disproportionate or excessive when considered against the value of the product and the services provided in relation to the product'), it is unclear who will determine if an inducement is disproportionate and on the basis of which criteria. And what is to be understood under 'the value of the product'? Both European and national information requirements, such as the PRIIPs KID, already ensure that the customer receives information on the characteristics of the product, premium, costs and type of remuneration, so he can decide for himself if the product is of added value or not.</p> <p>Paragraph 4 (e) needs clarification and nuance. We agree that a refund (from the intermediary who has received the commission to the insurer) has to be foreseen in case a management commission was paid upfront and the product is surrendered early. It would however not be logic to also foresee a refund for the basic commission, as this is a compensation for closing the contract. A refund of the basic commission is only justified in case, for example, the distributor involved does not fulfill its duty of care to the detriment of the customer. It is also unclear what is meant exactly with 'if the product lapses' (different from 'surrendered').</p> <p>De facto ban</p> <p>In its current form, the draft advice could introduce a de facto prohibition on the receipt/payment of inducements due to a lack of risk-reducing factors that can be used to counterbalance the extensive blacklist and the oversimplified presentation of inducements. This is not in line with the IDD,</p>	<p>taken into consideration in the assessment.</p>
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		<p>where the European legislators deliberately choose not to introduce a ban on inducements and the introduction of further restrictions or prohibitions is a member state option (IDD art.29, 3).</p> <p>A ban on inducements would not benefit customers. In markets where such a ban was introduced, the negative effects of the alternative fee-based system are starting to emerge. In the UK an 'advice gap' is forming, since not all customers can afford to pay high fees to intermediaries. A fee-based system could also encourage distributors to focus their efforts on high-end customers only.</p> <p>Need for an overall assessment</p> <p>If the advice is not supposed to result in a de facto prohibition, as stated by EIOPA, inducements should be considered in a proper overall assessment which looks at both the risks and the risk-reducing factors involved. In order to achieve such a balanced approach, EIOPA has to (i) ensure that risk-reducing factors can be taken into account properly in the overall assessment; and (ii) make the blacklist more nuanced and more precise.</p> <p>To ensure that risk-reducing factors can be taken into account properly, Assuralia suggests to rephrase §18 as follows: "This list is non-exhaustive and is not intended to create a legal "safe harbour" and should be understood as criteria to be applied in an overall analysis, only. They are deemed to promote more customer-centric behaviour by distributors. It should be noted that insurance undertakings and insurance intermediaries are in any case not relieved from a thorough assessment whether an inducement has a detrimental impact. and that these practices cannot be used to legitimate practices which are detrimental from the outset (e.g.</p>	
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			<p>combination with inducements listed in paragraph 4 of the draft Technical Advice below)". This rephrasing would allow for a proper overall assessment of inducements, which takes into account both the risks and the risk-reducing factors. Risk-reducing factors thus should be able to legitimate inducements that, according to EIOPA, may entail a high risk of leading to a detrimental impact (e.g. overall assessment of all factors involved) but not in all circumstances (it won't be able to justify, for example, very excessive inducements). This principle of an overall assessment should be introduced explicitly into the final technical advice.</p> <p>It is key that the risk-reducing factors to be taken into account are applicable in practice and appropriate for the insurance sector. The criteria proposed by EIOPA (p. 52-53) are not always easily applicable in the insurance sector, taking into account the role independent intermediaries play. However, the fourth bullet on p.53 (adequate training) is a good example of a risk-reducing factor that is applicable in practice. Assuralia does not see any risk of detrimental impact on the quality of the service when a distributor is offered a training class or a reduction in training fees. Another example of a risk-reducing factor could be the use of reasonable sales targets.</p> <p>Assuralia also supports the approach taken by the Belgian supervisor (FSMA) in this matter. FSMA considers reasonable basic and management commissions to be generally acceptable, provided they conform to the market norm (circular FSMA_2015_14 dated 1 September 2015, p.49). The reasoning behind this approach is that these commissions do not encourage distributors to put their own interests ahead of the customer (cf. §3 of EIOPA's draft advice and example above). Furthermore, national supervisors can ensure that those remunerations remain at an acceptable level and meet both requirements in art. 29, 2 IDD.</p>	
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			With regard to the need to nuance the blacklist, we refer to our comments and examples made under the section 'blacklist'.	
435	BEUC	Question 11	<p>BEUC strongly backs EIOPAs draft on inducements.</p> <p>Today, EU consumers are not getting the advice they really need when looking to better invest their savings. Especially in the retail investment area, where the distribution of insurance-based investment products is very common, the low quality of advice has been documented widely, both by our members and by public authorities. Third-party commissions or in-house sales incentives can steer consumers towards overly complex and expensive products, often not suitable for their risk profile.</p> <p>This said, the EIOPA draft does not introduce an overall ban of inducements, but gives more guidance on how to cope with the clear level 1 provision that they don't have a detrimental impact on the quality of the relevant service to the consumer.</p> <p>In that perspective the draft warns explicitly for specific types of inducement schemes and BEUC fully supports all types of commission identified in this regard.</p> <p>Please find here more detailed comments on some examples provided in the draft advice, p54.</p> <p>a) The inducement encourages the insurance intermediary or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when from the outset a different product or service exists which would better meet the customer's needs</p> <p><input type="checkbox"/> This example is very clear; if there is a product which would be better for the consumer but which is not offered because it pays less commission, that would fall foul of the detriment rules. In general, it should be avoided that poor</p>	Noted. EIOPA welcomes the explicit support, in particular with regard to the proposed list of criteria for the assessment.

			<p>value products are sold purely because of advantageous commission deals.</p> <p>b) The inducement is solely or predominantly based on quantitative commercial criteria and does not take into account appropriate qualitative criteria, reflecting compliance with the applicable regulations, fair treatment of customers and the quality of services provided to customers</p> <p><input type="checkbox"/> BEUC supports this principle, which should avoid that inducement schemes are purely based on sales volumes, but instead reflect also proper treatment of consumers.</p> <p>c) The value of the inducement is disproportionate or excessive when considered against the value of the product and the services provided in relation to the product</p> <p><input type="checkbox"/> BEUC strongly supports this principle. Excessive commissions fees are very likely to cause mis-selling of financial products and can never be aligned with the obligation to act in the best interest of consumers. Just as one example, our Austrian member organisation AK documented a commission fee of about 8 % of the total premium amount of the life insurance, running to more than 20.000 EUR for an individual consumer, which was brought to court.</p> <p>In this perspective, there is currently still a lack of understanding of how exactly these inducement schemes between manufacturers and distributors are designed. Unfortunately, the IDD has missed an opportunity here, not obliging firms to disclose the amount of commission to consumers (instead the IDD only obliges to disclose the 'nature' of the commissions).</p> <p>d) The inducement scheme entails any form of variable or</p>	
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			<p>contingent threshold or any other kind of value accelerator which is unlocked by attaining a sales target based on volume or value of sales</p> <p><input type="checkbox"/> BEUC strongly supports this principle dealing with contingent commissions. Any inducements scheme whereby e.g. the distributor receives substantial additional benefits upon reaching certain sales targets is impossible to align with the obligation to act in the best interest of consumers and would have detrimental impact on the quality of the relevant service to the customer.</p> <p>BEUC would like to insist that both national authorities and EIOPA should play an active role in enforcing the criteria set out above, in order to tackle both the wide mis-selling and lack of trust in the distribution of insurance-based investment products.</p>	
436	BFV - Bundesarbeitsge- meinschaft zur Förderun	Question 11	<p>Dem vorgeschlagenen hochrangigen Grundsatzprinzip zur Bestimmung, ob ein Anreiz sich nachteilig auf Leistungen für den Kunden auswirkt, ist nicht zuzustimmen. Versicherungsmakler erhalten für die Beratung zu und Vermittlung von Versicherungsprodukten beim Abschluss eine Vergütung (Courtage). Diese Vergütung erhält der Versicherungsmakler vom Versicherer. Nach Punkt 1 des EIOPA-Vorschlages wäre dies als Anreiz zu bezeichnen, dem dann entsprechend den Nachfolgepunkten 3 und 4 automatisch nachteilige Auswirkungen zugeschrieben werden. Nach unserem Verständnis unterstellt die EIOPA grundsätzlich, dass Vergütungen durch den Produktgeber zu Handlungen führen, die nicht im besten Interesse des Kunden sind. Dem muss in dieser Grundsätzlichkeit widersprochen werden. Versicherungsmakler, die sich von der Höhe der Courtage bei der Vermittlung von Versicherungsprodukten leiten lassen, verstoßen gegen gesetzliche Regelungen und Rechtsprechung und setzen sich Haftungsansprüchen aus. Um</p>	<p>Noted. EIOPA contradicts the conclusion that the list assumes a detrimental impact in the case of specific commissions. The wording has been revised to make clear that the list entails criteria only to be considered and that risk reducing factors can be taken into account when assessing the detrimental impact of commissions.</p>

			<p>Wiederholungen zu vermeiden, verweisen wir auf die in Antwort 9 diesbezüglich dargelegten Ausführungen.</p> <p>Die von EIOPA vorgeschlagenen und damit offenbar engen Auslegungen zu Vergütungen nach Punkt 4a-f dürfen die Vorgaben der IDD nicht konterkarieren. So regelt die IDD kein Provisionsverbot, sondern die Regelung in Artikel 22 überlässt es ausdrücklich den Mitgliedstaaten, die Annahme oder den Erhalt von Provisionen im Zusammenhang mit der Vermittlung von Versicherungsprodukten zu beschränken oder zu untersagen. Dem entgegenstehende Technical Advices vorzugeben, würde nach unserer Auffassung bedeuten, dass die EIOPA sich unzulässiger Weise als Entscheidungsorgan der EU-Rechtssetzung betätigt und eine den Mitgliedstaaten überlassene Regelung diesen aus der Hand nimmt.</p>	
437	BIPAR	Question 11	<p>- It should be clearly mentioned that the Delegated Acts based on IDD articles 27, 28, 29 and 30 (chapter VI) only apply to IBIPs.</p> <p>- BIPAR is in principle not in agreement that in a highly competitive market, remuneration is supervised and regulated at such a level of detail. Under the IDD, insurance distributors have the duty to act honestly, fairly and professionally in accordance with the best interests of their customers (art 17) and the intermediary will take this into account before accepting any benefit. The fact that an intermediary receives fees, commissions, benefits from third parties may mean that an intermediary is able to charge less for the service that they provide to that customer. This is of significant benefit in that it makes insurance markets accessible to as wide a cross section of the public as possible.</p> <p>BIPAR is of the opinion that every intermediary has the right to be fairly remunerated for his or her services. This is also to the benefit of the consumer. A pure fee-based market, for example, would exclude many people from access to any level</p>	<p>Noted. The scope is already defined by Level 1, therefore no need to repeat this.</p> <p>EIOPA agrees.</p>

		<p>of advice or assistance in their search for an appropriate insurance product, as has been the practical experience in Member States that have prohibited commission payment approaches. The prohibition of payment and remuneration by insurers would be an obstacle to free market principles of fair remuneration for services rendered. Indeed, it would become impossible for intermediaries to require insurers to pay intermediaries for the work they do on their behalf (and which is work that is done also in the interest of the customer).</p> <p>It is interesting to note that in the UK, since the introduction of the RDR which included a commission ban, there is a clear fall in the numbers of advisers. This means less access to advice and advice gap.</p> <p>http://www.apfa.net/documents/publications/financial-adviser-market/apfa-the-financial-adviser-market-in-numbers-v4.0.pdf</p> <p>(Page 4, Fig 4, based on FCA figures, shows numbers of advisers in UK :26000 in 2011 to 22000 in 2013).</p> <p>The remuneration of intermediaries being in principle commission-based with the possibility to agree fees has been and continues to be a major contributing factor in the successful development of insurance markets all over the world. Any other situation would ignore the fact that the insurance intermediary typically renders services to both sides of the contract, the customer and the insurance company: as with any commercial relationship both kinds of services have to be remunerated by the beneficiary. It would also deprive consumers of the choice between business models.</p> <p>It is always in the best interest of consumers to be provided with adequate information so that they can make an informed decision. This is the "raison d'être" of insurance intermediaries. This goes to the very heart of the intermediaries' role. The market for insurance products, like</p>	<p>In contrast to the RDR, the policy proposals of EIOPA do not introduce a ban for specific services and products.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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		<p>many other markets, is characterised by imperfect information by each party to the transaction, significant search costs to find the “best” deal, and asymmetric bargaining power. Insurance intermediaries play a key role in the marketplace by contributing to identify the risk faced by clients, reduce insurance distribution costs, search costs, uncertainty and asymmetric bargaining power.</p> <p>Insurance intermediaries are mostly SME-style operations, employing many thousands of people locally. It is important to ensure that any future European policy on conflict of interests for intermediaries mediating IBIPs does not have any unintended side effects, does not result in less choice for consumers and does not jeopardize intermediaries’ activities and business models.</p> <p>In the IDD, the EU legislators made the unambiguous democratic choice to leave freedom of models for remuneration and not to introduce any bans on any forms of remuneration. The concept of independent advice and a linked ban on commission for IBIPs was rejected. Member States have been given the possibility to go beyond in art 29.3: “3. Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may additionally prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice (...)”. This illustrates that the decision to judge on these remuneration matters lies with the Member States and level 2 rules should not directly or indirectly circumvent this democratic decision.</p> <p>Also, one has to look at the overall services that intermediaries offer. Indeed, the quality of an intermediary’s services is intrinsically linked with the quality of a specific service provided to a particular customer. In fact, without a high overall level of quality, it is not possible to provide a high quality individual service.</p>	<p>EIOPA does not question the decision taken by the European Legislators but responds to the Commission’s request for Technical Advice within the boundaries of the IDD.</p> <p>EIOPA considers important to introduce a common understanding of payments which should be understood as inducements for the sake of a level playing</p>
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		<p>A comprehensive, proportional approach has to be taken by EIOPA in its advice. The total effects of the compensation provided should be assessed in a comprehensive manner.</p> <p>EIOPA explains on page 51 (point 15) that the list is not meant to introduce a presumption of detrimental impact or de facto ban on the payment. However, BIPAR wonders whether the NCAs will make that presumption as a result of it being on the list.</p> <p>Specific comments on EIOPA draft technical advice re inducement, inducement scheme and detrimental impact</p> <p>Inducement and inducement scheme</p> <ul style="list-style-type: none"> - Regarding the definition of "inducement and inducement scheme", BIPAR does not believe it is up to level 2 of a Directive to provide such definitions. Moreover, contrary to the definition of "inducement", the definition of "inducement scheme" fails to indicate that it is limited to IBIPs. As mentioned above, it should not be forgotten that for many intermediaries, commissions are THE remuneration that they receive for their professional activities. Defining the remuneration that they receive for their professional activities, with the (pejorative) terminology of "inducements" and connecting strict rules to the reception of these, is a far-going interference in their professional activity. <p>Detrimental impact"</p> <ul style="list-style-type: none"> - BIPAR welcomes the high level principle introduced in point 3. However it proposes to slightly redraft point 3 as follows in order to avoid introducing factual statements or a non-necessary assumption: <p>3. Detrimental impact occurs may occur when an inducement</p>	<p>field.</p> <p>It has been clarified that risk reducing factors may be considered as well.</p> <p>With regard to the</p>
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		<p>or structure of an inducement schemes (...)".</p> <p>New (digital or not) distribution systems with specific -until today- unknown business models may appear. Therefore, and in order to guarantee a level playing field, high level principles are more suitable than a detailed list. Circumstances always need to be considered.</p> <p>As indicated by EIOPA in point 16, p 52, BIPAR wishes to stress the importance of an « overall assessment ». We believe the assessment of detrimental impact always has to be made on a case by case basis. There is need for proportionality and we believe one has to look at the specific situation.</p> <p>- Regarding the examples under point 4 of the draft technical advice, BIPAR has the following remarks:</p> <p>1/We would also like to point out that apart from looking at whether benefits / remuneration are having a detrimental impact, one should keep in mind that benefits / remuneration should not be so low as to drive intermediaries out of the market, to the detriment of consumers. These issues also should not only be looked at from a supervisory perspective but also from a liability perspective. How will a court in future read and interpret such lists?</p> <p>2/ BIPAR suggests to slightly amend the first sentence of paragraph 4 as follows:</p> <p>"The following types of inducements are considered to have a high risk of leading to a detrimental impact on the quality of the relevant service to the customer":</p>	<p>comments on the list of examples please see the explanations of the "feedback statement" in the final report.</p>
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		<p>3/ Type of "inducement" under a) It will have to be made very clear that the judgment of whether a "different product or service exists which would better meet the customer's needs" has to be made at the moment of the provision of the service by the intermediary (or distributor) and that this is not judged a posteriori.</p> <p>Also the question has to be raised what if the consumer demands a specific other product?</p> <p>4/ Type of "inducement" under b) BIPAR believe that if this may be a point of attention, the remuneration of personnel of direct writers should then be looked at (which EIOPA has however excluded from its advice). And what about Internet or social media players where different remuneration systems exist?</p> <p>5/ Type of "inducement" under c) The description of the type of "inducement" under c) is too vague and subjective. BIPAR suggests to delete c).</p> <p>6/ Type of "inducement" under d) In its current wording, this would cover too many cases where there is no detrimental impact at all and it would lead to a de facto ban on commissions. This would be against IDD level 1 that has been adopted by the EU legislators.</p> <p>The problem arises for example in the case of life insurance-multi-annual contracts where 100% of the premium is paid upfront as commission. The wording should be changed so it is clear that multi-annual contracts are intended.</p> <p>7/ Type of "inducement" under e) - BIPAR believes that e) has to be redrafted as the unclear wording could lead to legal</p>	
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			<p>uncertainty.</p> <p>Organisational requirements</p> <p>(p 55), point 7 does not fit the situation of general agents as they exist in France. The draft wording jeopardises the independence of agents and, by referring to “approval”, EIOPA seems to imply a hierarchical link between an insurance company and an agent.</p> <p>There should also be no white list or practices that “may be considered to reduce the risk that inducements have a detrimental impact on the quality of the service to the customer” as mentioned in point 17, since there is no legal basis for such a form of “white list” in the level 1 Directive.</p> <p>In this respect, we also do not support point 9 of the “organisational requirements” on p 55, which stipulates “intermediaries and insurance undertakings should set up a gifts and benefits policy that stipulates what benefits are acceptable and what should happen where limits are breached”.</p>	
438	BNP Paribas	Question 11	<p>We do not agree with the proposed principles. In our view the envisaged measures would lead to disallowing inducements altogether. But this would go beyond EIOPA’s mission, as such a measure remains the purview of Member States which are the only ones with the authority to limit or disallow inducements.</p> <p>Moreover, it cannot be affirmed that an inducement is by construction to the client’s detriment.</p> <p>The French model, which combines duty of advice with the remuneration to the distributor by the insurer, presents two strong facets:</p> <ul style="list-style-type: none"> • The duty of advice for which the distributor is held accountable, is the best firewall to prevent abuses 	Noted. EIOPA does not share the conclusion that the policy proposals lead to a de facto ban.

			<ul style="list-style-type: none"> • The distributor remuneration model (through commissions, not fees) enables the mutualization of the costs of advice and thus allows all clients access to advice regardless of their means <p>More specifically regarding payment of inducements, the modalities are usually consistent with the types of products and services they relate to, therefore these modalities cannot be considered per se as detrimental to the service to the customer.</p> <p>An additional observation: The notion of “ancillary service” (point 1 in the draft technical advice) does not exist in the IDD.</p>	
439	Bund der Versicherten (BdV – German Association of	Question 11	<p>Yes, we agree with the proposed high level principle to determine whether an inducement has a detrimental impact on the relevant service to the customer and with the outlined types of inducements being considered to have a high risk of detrimental impact (cf. CP, page 54, points 3 and 4 of DTA on Detrimental Impact). We will enumerate more precise examples how inducements have a detrimental impact for customers in our comment on Q 12.</p> <p>We underline EIOPA’s assessment that it should clearly be noted that insurance undertakings and insurance intermediaries are in any case not relieved from a thorough assessment whether an inducement has a detrimental impact and that these practices cannot be used to legitimate practices which are detrimental from the outset. In our comment on Q14 we will outline why and how the aforementioned high level principle should be completed aiming at more legal certainty for consumers as well as for insurers.</p>	Noted.
440	BVK Germany	Question 11	dito	Noted.
441	CNCIF - Chambre Nationale des	Question 11		Noted.

	Conseillers en		<p>Yes, we agree with the proposed high level principle to determine whether</p> <p>an inducement has a detrimental impact on the relevant service to the customer.</p>	
442	CSCA French broker Association, 91, rue Saint Laza	Question 11	<p>It should be borne in mind that the delegated acts relating to costs and charges, including any payment made by third parties, relate exclusively to the area of IIP distribution (Chapter VI of the Directive, articles 29, 38 and 39).</p> <p>To ensure an equivalent level of cover between the various distribution methods, we need to clarify what is meant by the notion of third parties in terms of the various distribution channels. This is a key point for the consistency of the distribution system and to avoid any discrepancy that could also have a knock-on effect on freedom of choice in distribution to customers.</p> <p>Moreover, the CSCA reiterates that insurance distribution is a highly competitive industry, and where brokers have been appointed by their customers they must act in an honest, loyal and professional manner in the customer's best interests. Third party payment of all or part of the service contributes to the open architecture in France that results from the combination of the generally adopted advisory obligation and commission payments, which facilitates access to insurance in the customer's own interests.</p> <p>In countries that have banned commission payments, the insurance market has contracted and become less competitive, and prices have risen, boosting non-advisory selling, which goes against the grain of the Directive, which seeks to provide consumers with better protection.</p> <p>The CSCA must therefore inevitably object persistently to any</p>	<p>Noted. EIOPA has clarified in the Final Report that it does not intend to discriminate any kind of distribution model. Moreover, it should be noted that the revised policy proposal only entail criteria for the assessment whether inducements have a detrimental impact, but do not introduce a legal assumption of detriment to the customer.</p>

			<p>presentation that associates commission-based remuneration for the service provided with the hypothetical notion of a detrimental impact.</p> <p>Note also that article 29.2 of the Directive implies that any fee, commission or monetary inducement relating to a sale by an IIP could have a negative impact on the quality of the service provided, which appears unacceptable, as here again it is remuneration paid for an advisory service that is worth paying for, and that the procedures put in place in terms of conflicts of interest by the distributors should moreover, as a matter of principle, rule out the premise of inherently harmful remuneration.</p> <p>Lastly, we think that it is not EIOPA's role to advertise remuneration tables, in the form of blacklists, that do not in any case factor in national specifics, and in particular the fact that the commission system constitutes the means of remuneration of the distributor's activity.</p> <p>It considers that only the core principles can be set out.</p>	
443	Czech Insurance Association CAP	Question 11	<p>We would like to clarify that the retroactivity does not apply in case of inducements. The assessment whether the inducement has a detrimental impact shall not be done for already concluded contracts.</p> <p>It is highly unlikely to set a general list of inducements with detrimental impact for the whole EU. The markets differ. It should be mainly left up to NSAs as they know better the respective insurance market.</p> <p>In general, the increase of inducements does not correspond to the quality of contractual relations. Inducements affect the sale of products only marginally. The prevailing factor is the</p>	Noted. The policy proposals have been amended to clarify that EIOPA does not intend to introduce a de facto ban.

			<p>quality of product. The proposed provisions are too strict and rigid in a way what the insurance distributor must create, provide and report not to bear a risk of having detrimental impact on clients. Same as under conflict of interest we are of the opinion that the proposal creates a de facto ban on commissions.</p>	
444	EFAMA - The European Fund and Asset Manageme	Question 11	<p>Para. 4(a) of the draft Technical Advice should be further explained, as just referring to the situation where “a different product or service exists which would better meet the customer’s needs” creates significant legal uncertainty for the distributor. We are certain that it is not EIOPA’s intention to require detailed consideration of individual products across all types or classes of products for each individual customer. Such an approach would not be possible for firms to practically and effectively comply with and would therefore amount to a disproportionate requirement. Rather, the requirement should focus on whether products from within the firm’s own product range would better meet the customer’s needs. It is requested that EIOPA clarifies this in the Technical Advice.</p> <p>Para. 4(b) of the draft Technical Advice explains that inducements should not predominantly be based on quantitative commercial criteria and that they should include qualitative criteria reflecting compliance with applicable regulations, fair treatment of customers and the quality of the services to customers. Can we assume that this wording was inserted to create a linkage between IDD and relevant MiFID II provisions? This could mean that the MiFID II quality enhancements criteria may be used by firms to demonstrate such qualitative criteria, as required by IDD, in order to prevent that inducements lead to a detrimental impact for customers investing in insurance-based investment products. EIOPA is requested to further clarify this point in the Technical Advice.</p> <p>When trying to create alignment between IDD and MiFID II one element missing in the draft Technical Advice relates to</p>	<p>Noted. Regarding letter a the assessment should comprise insurance products which are at the disposal of the insurance intermediary, only. EIOPA has not intended to create a linkage to the quality enhancement criteria. EIOPA would like to point out that quantitative criteria are not considered as detrimental <i>per se</i>. The more quantitative criteria a remuneration scheme is based upon, the more organisational measures the insurance undertaking is required to take to ensure that the interests of the customers are not adversely affected.</p>

			<p>MiFID II's requirement that ongoing inducement shall only be accepted as long as there is an ongoing service towards the client. As letter (c) of para. 4 deals with disproportionate or excessive inducements, we would argue that the following addition would create further clarity in this regard:</p> <p>(c) the value of the inducement is disproportionate or excessive when considered against the value of the product and the services provided in relation to the product, such as the insurance intermediary or insurance undertaking receiving an on-going inducement for the provision of a one-off advice;</p> <p>Furthermore, it is our expectation that payments or benefits which enable or are necessary for the provision of services, and which by their nature cannot give rise to conflicts of interests with the obligation to act in the best interests of the customers, would not be subject to the inducements requirements.</p>	
445	European Federation of Financial Advisers and Fina	Question 11	<p>Do you agree with the proposed high level principle to determine whether an inducement has a detrimental impact on the relevant service to the customer?</p> <p>We question the inconsistency of EIOPA 's technical advice with the general position regarding remuneration in the IDD. Firstly, the Directive explicitly allows customers to freely choose the method of remuneration of their distributors. Article 19 par. 1 sets out a detailed regime of mandatory status disclosure which includes the nature of the remuneration received in relation to the insurance contract (Art. 19 par. 1 lit. d) and whether in relation of the insurance contract (lit. e) it works:</p> <p>(i) on the basis of a fee, that is the remuneration paid directly by the customer;</p> <p>(ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium;</p>	<p>Noted. EIOPA does not intend to limit the customers' choice of remuneration/payment models. Independent from this, EIOPA considers that remuneration models may entail specific risks for customers. In the Technical Advice EIOPA points out specific practices which may cause the risk of detrimental impact.</p>

			<p>(iii) on the basis of any other type of remuneration, including an economic benefit of any kind (= inducements) offered or given in connection with the insurance contract; or</p> <p>(iv) on the basis of a combination of any type of remuneration set out at points (i), (ii) and (iii).</p> <p>Insurance intermediaries operating under the IDD are already obliged to maintain and operate appropriate organisational arrangements and procedures to avoid, mitigate or disclose conflicts of interest. We therefore do not see any sense in replicating one and the same regulation several times by introducing another policy for inducements.</p>	
446	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 11	<p>Yes, EFPA agrees with the the proposed high level principle to determine whether an inducement has a detrimental impact on the relevant service to the customer.</p> <p>Moreover, EFPA considers that the proposed non-exhaustive list of types of inducements facilitates the identification of inducements which may have a detrimental impact. However, EFPA believes that is much better to leave this issue to professional standards and ethics codes of conduct.</p>	Noted.
447	Fachverband der Versicherungsmakler und Berater in	Question 11	<p>It should be very clear and mentioned explicitly for all delegated acts that are part of chapter VI on IBIPs that the delegated acts are indeed only applicable to IBIPs.</p> <p>The Professional Association of Insurance Brokers and Insurance Consultants in the Austrian Federal Economic Chamber is in principle not in agreement that in a highly competitive market, remuneration is supervised and regulated at such a level of detail. Under the IDD, insurance distributors have the duty to act honestly, fairly and professionally in accordance with the best interests of their customers (art 17) and the intermediary will take this into account before</p>	Noted. As the scope is already defined by Level 1 text, there is no need to reiterate the scope in Level 2.

		<p>accepting any benefit. The fact that an intermediary receives fees, commissions, benefits from third parties may mean that an intermediary is able to charge less for the service that they provide to that customer. This is of significant benefit in that it makes insurance markets accessible to as wide a cross section of the public as possible.</p> <p>We are of the opinion that every intermediary has the right to be fairly remunerated for his or her services. This is also to the benefit of the consumer. A pure fee-based market, for example, would exclude many people from access to any level of advice or assistance in their search for an appropriate insurance product, as has been the practical experience in Member States that have prohibited commission payment approaches. The prohibition of payment and remuneration by insurers would be an obstacle to free market principles of fair remuneration for services rendered. Indeed, it would become impossible for intermediaries to require insurers to pay intermediaries for the work they do on their behalf (and which is work that is done also in the interest of the customer).</p> <p>It is interesting to note that the Investment Management Association (IMA)'s 11th annual Asset Management Survey which was published in August 2013 outlined a number of pitfalls since the RDR was implemented in the UK:</p> <ul style="list-style-type: none"> ▪ Less access to advice: Many consumers could be priced out of receiving advice. ▪ Multiple share classes: The creation of multiple share classes to accommodate different charging structures could emerge as an issue. Large fund distributors have tried to provide 'super clean' share price deals with fund groups, to sell funds at a discounted rate compared to competitors. ▪ 'Dumbed down' funds: RDR could lead to too many "plain vanilla" outcome orientated products, which do not generate significant levels of alpha, and further cause 	<p>EIOPA agrees and would like to point out that the remuneration model of inducements is not put into question per se.</p> <p>In contrast to the RDR, EIOPA's policy proposal do not entail a prohibition on inducements for specific services and products.</p>
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		<p>excessive conservatism, due to investors having insufficient experience in taking calculated risks.</p> <ul style="list-style-type: none"> ▪ Advice gap: The survey expressed concerns that an 'advice gap' will result due to changing charging structures, creating greater numbers of unadvised, low-to-middle net-worth retail investors. Unadvised investors might favour execution-only platforms or go direct as a consequence of the new pricing structures. The concern is not unfounded, seeing as several providers of advice have culled their financial adviser workforces, including HSBC, RBS and Barclays. ▪ Consolidation: Finally, one of the unintended consequences of RDR could be a more polarised fund management industry. <p>The report indicated that a lot of consumers will most likely exit the market for financial advice entirely, based on the discrepancy between willingness to pay and cost of advice: 91% of UK consumers will not pay more than £25 for an hour of financial advice (survey conducted by Rostrum Research in 2012).</p> <p>It cannot be stressed enough that consumers and SMEs are much less likely to shop around for the insurance or investment product which best meets their needs in a fee-only based environment as they will have to pay a fee each time they interact with an intermediary – whether or not they decide to follow the advice or buy the product.</p> <p>The remuneration of intermediaries being in principle commission-based with the possibility to agree fees has been and continues to be a major contributing factor in the successful development of insurance markets all over the world. Any other situation would ignore the fact that the insurance intermediary typically renders services to both sides of the contract, the customer and the insurance company: as</p>	<p>EIOPA is aware of and respects the decision of the European Legislators not to</p>
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			<p>with any commercial relationship both kinds of services have to be remunerated by the beneficiary. It would also deprive consumers of the choice between business models.</p> <p>It is always in the best interest of consumers to be provided with adequate information so that they can make an informed decision. This is the "raison d'être" of insurance intermediaries. This goes to the very heart of the intermediaries' role.</p> <p>Insurance intermediaries are mostly SME-style operations, employing many thousands of people locally. It is important to ensure that any future European policy on conflict of interests for intermediaries mediating IBIPs does not have any unintended side effects, does not result in less choice for consumers and does not jeopardize intermediaries' activities and business models.</p> <p>In the IDD, the EU legislators made the unambiguous democratic choice to leave freedom of models for remuneration and not to introduce any bans on any forms of remuneration. The concept of independent advice and a linked ban on commission for IBIPs was rejected.</p> <p>Member States have been given the possibility to go beyond in art 29.3: "3. Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may additionally prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice (...)"</p> <p>This illustrates that the decision to judge on these remuneration matters lies with the Member States and level 2 rules should not directly or indirectly circumvent this democratic decision.</p>	<p>introduce a ban on inducements.</p> <p>EIOPA considers it important to define inducement and inducement scheme for the sake of a common understanding and level playing field.</p> <p>It has been clarified that the assessment may consider not only</p>
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			<p>Also, one has to look at the overall services that intermediaries offer. Indeed, the quality of an intermediary's services is intrinsically linked with the quality of a specific service provided to a particular customer. In fact, without a high overall level of quality, it is not possible to provide a high quality individual service.</p> <p>A comprehensive, proportional approach has to be taken by EIOPA in its advice. The total effects of the compensation provided should be assessed in a comprehensive manner.</p> <p>Specific comments on EIOPA draft technical advice re inducement :</p> <ul style="list-style-type: none"> □ Regarding the definition of "inducement and inducement scheme", we do not believe it is up to level 2 of a Directive to provide such definitions. Moreover, contrary to the definition of "inducement", the definition of "inducement scheme" fails to indicate that it is limited to IBIPs. As mentioned above, it should not be forgotten that for many intermediaries, commissions are THE remuneration that they receive for their professional activities. Defining the remuneration that they receive for their professional activities by the (pejorative) terminology of "inducements" and connecting strict rules to the reception of these, is a far-going interference in their professional activity. □ Regarding "Detrimental impact", we welcome the high level principle introduced in point 3. However it proposes to slightly redraft point 3 as follows in order to avoid introducing factual statements or a non-necessary assumption: 3. Detrimental impact occurs may occur when an inducement or structure of an inducement schemes (...)".. 	<p>risk increasing, but also risk reducing factors.</p> <p>Regarding the examples, please refer to the feedback statement in the final report.</p>
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		<p>also the remuneration of personnel of direct writers should be looked at (which EIOPA has however excluded from its advice), and what with Internet / Social media players where different remuneration systems exist?</p> <p>c) The description of the type of « inducement » under c) is too vague and subjective and should be deleted.</p> <p>d) Type of « inducement » under d). In its current wording, this would cover too many cases where there is no detrimental impact at all and it would lead to a de facto ban on commission. This would be against IDD Level 1 that has been adopted by the EU legislators.</p> <p>The wording should be changed so it is clear that multi-annual contracts are intended.</p> <p>e) Type of « inducement » under e) – we believe that e) has to be redrafted as the unclear wording could lead to legal uncertainty.</p> <p>f) There should also be no white list or practices that “may be considered to reduce the risk that inducements have a detrimental impact on the quality of the service to the customer” as mentioned in point 17, since there is no legal basis for such a form of “white list” in the level 1 Directive.</p> <p>In this respect, we also do not support point 9 of the “organisational requirements” on p 55, which stipulates “intermediaries and insurance undertakings should set up a gifts and benefits policy that stipulates what benefits are acceptable and what should happen where limits are breached”.</p> <p>Re. the “organisational requirements” (p 55), point 7 (7. Insurance undertakings and insurance intermediaries as referred to in paragraph 6 shall ensure that any inducement scheme is approved by the insurance undertaking or</p>	
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			insurance intermediary's senior management) does not fit the situation of general agents as they exist in France. The draft wording jeopardises the independence of agents and, by referring to "approval", seems to imply a hierarchical link between an insurance company and an agent.	
448	Fédération Française de l'Assurance (FFA) 26 bo	Question 11	<p>1. Definition</p> <p>Firstly, FFA highly agrees with EIOPA's definition of an inducement ("does not comprise internal payments") but will appreciate that this definition should be contained in the final text of the delegated acts.</p> <p>o Internal payments Vs. third party payments</p> <p>FFA considers that "internal payments" should also cover commission paid to tied agents. These commissions are part of the contractual link between tied agents and insurance undertakings which they represent. Furthermore, related to the remuneration policy requirements, EBA and ESMA consider tied agents as „staff". In France 13 500 tied agents are concerned.</p> <p>We would welcome explicit clarification that employees and tied agents are not considered as third parties for the purposes of these provisions.</p> <p>2. Detrimental by nature</p> <p>o Article 29 (2) of IDD concerns any fee or commission or non-monetary benefit paid or to pay "in connection with the distribution of an insurance based investment product". This means that the detrimental effect on the client should be assessed with respect to the remuneration paid or to pay for the contract sold.</p>	<p>Noted.</p> <p>EIOPA disagrees and considers payments to tied agents as inducements which is in line with the approach taken under MiFID.</p> <p>EIOPA proposes a non-exhaustive list of criteria and inducements which entail a higher risk of detrimental impact. Whether inducements are detrimental is the</p>

			<p>This should be recalled in the final text of the technical advice.</p> <p>o We also consider there are no detrimental fee, commission or non-monetary benefit by nature, notably if a product is sold with advice providing as a result a suitable product to a customer. We also do consider that where advice (personal recommendation) is made mandatory for the distributor and the client, inducements should not be presumed as detrimental as they allow a "mutualisation" of advice costs to the benefit of all clients.</p> <p>o We would newly recall that recital 57 of the IDD provides that in order to ensure that any inducement does not have a detrimental impact, the insurance distributor should develop arrangements and procedures relating to conflict of interest. In other words, under IDD, where these procedures properly identify, prevent and manage conflicts of interest including those resulting from inducements, the latter should be presumed as not having a detrimental impact on the quality of the service.</p> <p>3. Blacklist</p> <p>Even if EIOPA says providing a list of inducements "considered to have a high risk", we do not really see this high level principle to determine whether inducement has a detrimental impact. Rather, for us, it seems that these types of "inducement or structure of inducement scheme", would be not allowed as Eiopa says that "it will be no longer possible (...) to pay or receive certain inducements which entail high risk of detrimental impact" (page 132).</p> <p>Rather than the option of a black list at European level (identify inducements that are considered to be high risk of</p>	<p>result and outcome of the assessment to be undertaken.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>EIOPA agrees and does not intend to discriminate the commission based model, but to emphasise specific risks which are related to that model.</p>
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		<p>having a detrimental impact) FFA prefers enabling national authorities to take into account the specificities of national markets and existing business models when managing inducements (page 136-137).</p> <p>A black list will indeed, as EIOPA acknowledged, "have negative consequences for existing business models, in particular those which may mainly rely on commissions (...) as well as small intermediaries, leading to a reduced competition and choice" (...) which are entirely financed by commissions ... they have to change the structure of their income, training costs for employees".</p> <p>One more time, technical advice should not stigmatize one remuneration model and recognise that intermediaries can receive commission for their work.</p> <p>As for variable /conditional remuneration only principles should be set up in order to avoid pre-settled list of situations which even more could be too far reaching and contrary to the business making principles. For example, 4 a) is not feasible because it implies that an insurance undertaking knows the amount of the commission received by a broker from other undertakings.</p> <p>We agree to introduce and promote in 4b) the use of appropriate qualitative criteria in determining the inducement in order to reduce the risk of detrimental impact on the quality of the service to the customer. However, it should be up to professionals to balance the use of qualitative and quantitative criteria.</p> <p>Equally 4 f) is too far reaching because it leads to ban any form of variable or contingent threshold or any accelerator for</p>	
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			sale target. Variable or contingent threshold together with qualitative criteria (i.e. quality of services provided to customers) should be accepted.	
449	Federation of Finnish Financial Services	Question 11	<p>We welcome the EIOPA approach to issue high level principles on inducements. The criteria for inducements containing a high risk of detrimental impact should be seen as examples and not setting definite prohibitions on certain operations.</p> <p>We would also comment EIOPA's question in point 22. whether additional specification and guidance on inducements in a separate document would be needed. We're not in favor in such additional documents and further specifications.</p>	Noted.
450	Financial Services Consumer Panel	Question 11	<p>The Panel strongly agrees with this high level principle. Unfair and excessive inducements have proved to be the reason for miss-selling and a cause of great detriment for consumers.</p> <p>We also welcome the inclusion of a non-exhaustive list of examples where an inducement may generally be regarded as having a detrimental effect on the quality of the service to the customer. Examples can aid with clarity if manufacturers or distributors are unclear.</p>	Noted.
451	FNMF, 255 rue de Vaugirard, 75015 PARIS	Question 11	<p>Concerning this question, we have to keep in mind that the objective of the list is not to introduce a "de facto" prohibition on the receipt/payment of inducements, but to provide guidance to market participants in assessing inducements and to point out specific circumstances where a detrimental impact is most likely to occur. The list has to be indicative and not exhaustive.</p> <p>Moreover, in some cases, like in France where advice is compulsory, we consider that there is no detrimental fee or commission by nature. Where products are sold with advice,</p>	Noted.

			the inducements should not systematically be presumed as detrimental.	
452	FRENCH BANKING FEDERATION	Question 11	<p>Article 29.4 IDD empowers the Commission to specify « the criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the customer ».</p> <p>The French banking industry supports the inclusion of inducements paid by third parties in the policy assessment of the service quality. However, we would like to highlight the following points :</p> <p><input type="checkbox"/> EIOPA should not consider that inducements have systematically, in themselves, a detrimental impact on the quality of the service to the customer.</p> <p>EIOPA recommendations must take into account that some Member States have introduced in their national law a duty to advise for the distribution of any insurance product, in order to make such an advise available to all customers without extra charge for this mandatory advice. In such scheme distributors are remunerated by commissions rather than by fees for a service which allows to share the cost of the advise giving any client access to it whatever its means</p> <p>Such a scheme is very costly for insurance undertakings and intermediaries to implement. Indeed it implies a specific training for all staff in contact with the customers, and a distribution process as close to the customers as possible...</p> <p>The payment of inducements contributes to finance the whole scheme as it ensures that any customer will benefit from a personalised recommendation, regardless of the distribution channel used by the customer. We are of the view that distributor should receive proper remuneration for their work and the greater quality of service to the customer to be provided in accordance with IDD and the duty of advise requirement already in force in French law.</p> <p>In addition, even if we welcome EIOPA intention to be consistent with MiFID regulations, we would like to emphasize</p>	<p>Noted.</p> <p>EIOPA is of the view that the policy proposals are not contradictory or inconsistent with national regimes which foresee compulsory advice as it ultimately depends on the commissions paid. Commissions are not per se detrimental. This has rather to be assessed individually.</p> <p>EIOPA has taken into account the differences in the Level 1 legislation. For that reason, EIOPA has not introduced the criterion of a quality</p>

		<p>that unlike MIFID, IDD objective and scope is not to rule the services of insurance products but to organize the distribution of insurance products as an activity. As such, the concept of "service" has not the same importance and relevance, especially when advice is mandatorily included in the distributors obligations. Therefore, as requested by the Commission, EIOPA should better take into consideration the insurance distribution specificities in its technical advice on inducements.</p> <p><input type="checkbox"/> EIOPA does not fully comply with the mandate given by IDD (article 29.5) which provides that : « The delegated acts referred to in paragraph 4 shall take into account: (a) the nature of the services offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions; (b) the nature of the products being offered or considered, including different types of insurance-based investment products. ». In particular, it is to clear where and how EIOPA takes into account the differences between IDD and MIFID in the terminology used in level 1 acts and the approach favored by European legislator with regards to inducements concerning insurance-based investment products (see points 9-10 of the analysis), when the technical advice leads to a de facto ban on inducement or else seriously jeopardizes inducement schemes in use in the French distribution of insurance market by banks. According to article 29 (3) IDD, Member States only are allowed to "additionally prohibit or further restrict inducements.</p> <p><input type="checkbox"/> On the specific points :</p> <p>- Point 1 : Regarding the definition of inducements, it should be clearly mentionned that only fees paid by or to third parties are targetted, as mentionned by EIOPA in point 4 of its analysis p-50. Therefore, the definition should be modified as follows : « an inducement is any fee, commission or non-monetary benefit which is paid or provided in connection with the distribution of an insurance-based investment product or an ancillary service to or by any third party except the</p>	<p>enhancement (as MiFID), but has developed a proper methodology to be applied. "Ancillary" is a terminology used in Article 29 IDD.</p> <p>Please refer to EIOPA's comments to be found in the feedback statement of the final report.</p>
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		<p>customer or a person on behalf the customer. », excluding internal payment made to employees or expenses such as administrative costs paid by customers.</p> <p>Moreover, the term « ancillary service » which we understand aims at securing consistency with MiFD II should be simply removed since the concept is not relevant for insurance products and furthermore not defined in level 1 act unlike MIFID</p> <ul style="list-style-type: none"> - Point 4: It is our understanding that the mandate given to EIOPA (p.48) is not limited to giving a non –exhaustive list of five types on inducement presenting high risk but rather to provide the distributors with “conditions” or “circumstances and situations” where an inducement could, in a positive way, not give rise to non-compliance with art 29(2) of IDD as well as a methodology to ascertain the possible detrimental impact of inducement on the quality of service. In accordance with the principle of proportionality, these “conditions” and or “circumstances and situations” should be assessed in a general context of the distribution scheme and the overall value of the service to customers. - Point 4 a) :. - Point 4 c) : the amount of the remuneration should be freely determined by the different actors. Competition rules are sufficient to regulate the prices. Such a recommendation could ruin the innovation and reduce the offer to the customer. Therefore it should be deleted. - Point 4 d) : We don’t understand why a condition of payment such as an inducement paid upfront should be per se considered as “high risk”. It remunerates an advice/service rendered at the time of the subscription of the product which is usually more important at that time than during the life time of the contract and/or is consistent with the subscription of closed end (unit linked) products, - Point 5: we are concerned by the risk implied by the non-exhaustive nature of the list of inducement in offering an incentive to Member States to adopt stricter provisions 	
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			<p>disrupting the level playing field intended to be created by IDD, in particular in view of the fact that IDD is of minimum harmonization unlike MiFID</p> <p>- Point 8 : such a documentation is not required by IDD. In our view, this documentation should rather be part of the organisational measure provided in the POG. If it should be maintained, it should thus be modified as follows : « shall document the assessment of each type of inducement. » in order to be in accordance with point 20 of the analysis which refers to the inducement scheme. Moreover, EIOPA should specify the type of document required as well as to whom such a document should be addressed to.</p>	
453	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 11	<p>Whether a business transaction has a detrimental impact on one of the parties involved, is generally always in the eye of the beholder. We hereby fundamentally support the proposal of taking a holistic view of the underlying transaction. Providing a list of more or less ambiguous conditions, however, is the wrong way in this case. We advocate leaving the judgment over this, in dialogue with the bank, to the customer himself.</p>	Noted. EIOPA disagrees and is of the view that the assessment whether inducements have a detrimental impact should but be put at the discretion of the contractual parties, but should be assessed.
454	German Association of Private Health Insurers (PKV	Question 11	<p>Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.</p>	Noted.
455	German Banking Industry Committee (GBIC)	Question 11	<p>The payment of inducements does not justify the assumption of higher risk for the customer. Please see also the answers to question 9, 10 and 13.</p> <p>Referring to “Inducements that have a detrimental impact” it is not clear why upfront payments („the inducement is entirely or mainly paid upfront when the product is sold”)</p>	<p>Noted.</p> <p>EIOPA has selected specific inducements based upon the supervisory experience</p>

			<p>should have a high risk or a detrimental impact on the quality of the relevant service to the customer. We would further recommend to delete the non-exhaustive list in the Draft TA (p. 54). Even if the list is not exhaustive it could be seen as a 'black list' that leads to a prohibition of certain inducements. This result would contradict the decision taken on Level I and therefore raise the question, whether Level II is in line with Level I.</p> <p>We further suggest to insert the word "may" between "impact" and "occur" in No. 3 of the Draft TA (P. 54) and to delete the word "high" relating to risk of leading to a detrimental impact in No. 4 of the Draft TA (p. 54).</p> <p>In Germany distributors already may only receive an inducement payment in full if the insurance contract sold is held up during a five year remuneration period. A lapsed contract will result in an obligatory repayment of the inducement in parts. This procedure helps to establish a long-term relationship between the distributor and the customer. This, however, is not the case in contractual advice where a lump sum is paid upfront. Here, the salesman can keep the payment regardless of the quality of advice or a later lapsing of a contract.</p>	<p>of its Members. In order to avoid the impression that EIOPA intends to introduce a black list the Technical Advice has been reworded.</p>
456	German Insurance Association (GDV)	Question 11	<p>The German Insurance Association welcomes EIOPA's intention to take a high-level principle-based regulation approach towards the criteria under IDD Art. 29 (4) (a) and (b). Insurance distribution needs comprehensible and practice-oriented rules respecting the compromise the European co-legislator agreed upon in the IDD. In its mandate, the EU Commission expressly asks EIOPA not to go beyond the provisions that are necessary to meet the objective of the Delegated Acts. IDD Article 29 (4) (a) and (b) require the development of suitable measures and criteria based on the principle of proportionality.</p>	<p>Noted.</p> <p>EIOPA would like to point out that the policy proposals allow to take into account risk reducing factors. However, risk reducing factors should aim to address the risk</p>

			<p>Against this background, the German Insurance Association also agrees with EIOPA’s conclusion on p. 50 no. 4 of the analysis, according to which internal payments to employees should generally not be taken into account. To further clarify this issue, EIOPA’s statement should also be included in DTA no. 1 on p. 54.</p> <p>Commission-based distribution is taking up the challenges posed by changing customer demands in times of digital evolution. This requires a great amount of flexibility, which cannot be achieved in a tight system of precise provisions for every conceivable detail of remuneration, but only through a principle-based holistic approach.</p> <p>This holistic approach needs to take into account the whole relationship to the customer (advisory process, contract conclusion, advisory and general customer services during the contract period, support by the distributor after a claims event). In order to reflect the complex reality of insurance distribution, the focus of regulation should not be on the individual moment of contract conclusion alone. As Article 29 (5) IDD rightly claims, the Delegated Act should take into account the various different types of services, the frequency of transactions and the type of product.</p> <p>Providing high-quality services is of fundamental importance to the distributor’s business. In order to ensure high-quality services systematically, it would be necessary to introduce principles for inducement systems aiming at the protection of customers. For this reason, the German Insurance Association is opposed to the proposed list of risk types (DTA p. 54 no. 4). As an alternative, we suggest introducing the following principles, which should be used by insurers and intermediaries in the development and negotiation of inducement schemes:</p>	<p>resulting from inducements, in particular organisational measures as outlined in the Technical Advice.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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			<p><input type="checkbox"/> Distributors should place the interests of their customers over remuneration interests.</p> <p>The advisory process should enable the customer to influence the course of the discussion.</p> <p>Examples: IT-supported advice and check lists</p> <p><input type="checkbox"/> When agreeing on an inducement scheme, qualitative aspects should play a crucial role.</p> <p>Examples: Portfolio consistency, in case of tied agents also customer satisfaction and use of the advisory tools of the product provider, taking into account of lapse rates, complaints or other indicators of customer satisfaction, as well as sustainability level of customer support.</p> <p><input type="checkbox"/> Remuneration and benefits should be objectively comprehensible and justifiable. This should be ensured by the mechanisms adopted by the insurance companies.</p> <p>Examples: Liability for commissions, documentation of decisions and their justification, avoiding dependencies, reliability checks following trigger events.</p> <p><input type="checkbox"/> Insurers should ensure high quality of customer advice by setting indicators for advisory quality, monitoring compliance with these standards and intervening where necessary following specific events.</p> <p>Examples: Contract redemption rates, lapse rates, share of contract conclusions where customer refrained from taking advice.</p> <p><input type="checkbox"/> All aspects of a specific customer service should be taken into account when assessing the quality of the service, not only the final recommendation given for a certain product.</p> <p>Examples: Analysis, comparison of products, advice (recommendation), documentation, support in contract conclusion, customer service during the duration of the contract, further advice due to changed circumstances,</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
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			<p>support during the period of payout.</p> <p><input type="checkbox"/> A single negative indicator should trigger a general review of the entire performance of the service provider, in order to verify whether the entire service is flawed. However, it should not be assumed automatically that the service quality is flawed. Instead, all aspects of the service should be taken into account, including positive effects of granting commissions / benefits.</p> <p>Example: Professional training measures improve service quality and the promotion of young talents in the distribution sector. The existence of training-related benefits such as catering and training material should not put these advantages at risk.</p>	
457	Institute and Faculty of Actuaries	Question 11	Yes.	Noted.
458	Insurance Europe	Question 11	<p>It is positive that EIOPA intends to take a high-level principle approach towards the criteria to determine whether an inducement has a detrimental impact on the relevant service to the customer. However, in order to evaluate whether or not an inducement can be considered to have a detrimental impact on the quality of the service, it is necessary to take a holistic approach and to look at the context of the overall situation.</p> <p>This includes consideration of the relationship between customer and distributor in all its complexity (advisory process, contract conclusion, advisory and general customer services during the contract period, support by the distributor after a claims event). The focus should not be on the individual point of sale alone: as Article 29(5) IDD rightly states, the delegated act should take into account the various different types of services, the frequency of transactions and the type of product.</p> <p>However, the proposed methodology seems to contain contradictions on this point. On the one hand, EIOPA states</p>	<p>Noted.</p> <p>EIOPA has amended the respective policy proposals of the Technical Advice, clarifying that the assessment should be based upon an overall analysis which takes into consideration all relevant factors which may increase or decrease the risk of detrimental impact, and appropriate organisational measures taken by the insurance</p>

		<p>that inducements should be judged by means of an overall assessment, which could take into consideration risk-reducing factors paragraph 17 on page 52 of the draft technical advice.</p> <p>On the other hand, paragraph 18 of the analysis on page 53 states that risk-reducing practices cannot be used to legitimate practices which are considered to be detrimental from the outset, with an explicit reference to the inducements listed in paragraph 4 of the draft technical advice.</p> <p>This means that none of the inducements listed in paragraph 4 can be countered with risk-reducing factors; therefore the list is considered to be a de facto 'blacklist'. This is further evidenced by the reference on page 132 of the consultation paper to the benefits for customers of the preferred policy option (Policy Option 3), which states that it will no longer be possible for insurance undertakings and insurance intermediaries to pay or receive certain inducements which entail a high risk of detrimental impact on the quality of the service provided to customers. EIOPA also refers to this as a distinctive list of inducements that are not acceptable.</p> <p>The combination of a broad blacklist with no proper possibility to take into account risk-reducing factors stands in direct contrast with the idea of an overall, holistic assessment.</p> <p>Benefits which are provided in connection with the distribution of an insurance-based investment product should not be perceived as being inherently negative, particularly as they often can be provided as a reward for quality of service, rather than being simply sales-driven.</p> <p>Moreover, the general offering of an inducement or benefit that conforms to the market norm should not be considered as giving rise to a detrimental impact on the quality of the service, particularly as the distributor is required to ensure that the products they offer are in line with the customer's demands and needs, as well as carrying out an assessment of suitability/appropriateness in the case of insurance-based investment products.</p> <p>Recital 57 of the IDD states that in order to ensure that any</p>	<p>undertaking or insurance intermediary to decrease the risk of detrimental impact which aim to ensure that the inducements do not provide any incentive to carry out the insurance distribution activities in a way which is not in accordance with the best interests of the customer. Furthermore, the contradictory wording (as referred to in the comment) has been revised for the sake of clarity. EIOPA is of the view that payments to tied agents should be considered as inducements which is in line with the approach taken under MiFID.</p>
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		<p>inducement does not have a detrimental impact, the insurance distributor should develop arrangements and procedures relating to conflicts of interest. In other words, under the IDD, where these procedures properly identify, prevent and manage conflicts of interest including those resulting from inducements, the latter should be presumed as not having a detrimental impact on the quality of the service.</p> <p>Definition of inducement</p> <p>Recommendation: The definition of an inducement in paragraph 1 of the draft technical advice on page 54 should be amended to better reflect the content of paragraphs 3 and 4 of the analysis on page 50. The present definition is inconsistent with the explanations given by EIOPA and the European Commission mandate as it refers to "any party" rather than "any third party". An explicit clarification is needed in the definition that employees and tied agents are not considered as third parties for the purposes of these provisions.</p> <p>Concept of "third party"</p> <p>The MiFID Implementing Directive does not consider specific persons involved in distribution, like an employee or a tied agent of the firm, as a third party in relation to the investment firm. In other words, an employee or a tied agent acts in the name and on behalf of the firm and substantially constitutes a single entity within the firm.</p> <p>In fact, MiFID employees involved in distribution are bound to the firm through the employment contract and are subject to the power and control of the firm. They act on behalf of the firm and, as a result, the firm is by statute liable for their actions. Employees form a single economic and operating entity within the firm – without the employees, the firm could not perform any activity and vice versa, employees could not act without the relationship with the firm.</p> <p>For the same reasons, employees and tied agents of the insurance undertaking cannot be considered as a "third party" for the purposes of inducements and remuneration under IDD.</p>	
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459	Insurance Sweden/ Svensk Försäkring	Question 11	<p>Eiopa mentions up-front inducements as one type of inducement that pose a high risk for detrimental impact (page 54, item 4d)). However, Eiopa does not provide a definition for up-front inducements. Such a definition should be included in the technical advice, otherwise there is a risk that insurers in different member states will define up-front inducements differently.</p>	Noted. EIOPA is of the view that “upfront” is a terminology widely used and which does not require further guidance in Level 2.
460	Intesa Sanpaolo S.p.A.	Question 11	<p>We agree with the proposed high level principle.</p>	Noted.
461	IRSG	Question 11	<p>IRSG agrees with the use of a high level principle on detrimental impact.</p> <p>With regard to the list of types of inducements considered to have a high risk of leading to a detrimental impact (p 54) , IRSG notes that in this respect Recital 57 of IDD states that in</p>	Noted.

		<p>order to ensure that any inducement does not have a detrimental impact on the quality of the relevant service to the customer, the insurance distributor should put in place appropriate and proportionate arrangements, and develop, adopt and regularly review policies and procedures relating to conflicts of interest. IRSG fully support the establishment of a clear link between inducements and the management of conflicts of interest under Articles 27 and 28 of the IDD, as well as the general principle contained in Article 17 requiring distributors to always act honestly, fairly and professionally in accordance with the best interests of their customers. In other words, where the relevant procedures to properly identify, prevent and manage conflicts of interest are in place, it should be presumed that any monetary or non-monetary benefit that is provided does not have a detrimental impact on the quality of the service.</p> <p>Member States have been given the possibility to go beyond the IDD.</p> <p>Specific comments</p> <p>Organisational requirements</p> <p>The IRSG is of the opinion that point 7 of the “organisational requirement” (p 55 - 7. Insurance undertakings and insurance intermediaries as referred to in paragraph 6 shall ensure that any inducement scheme is approved by the insurance undertaking or insurance intermediary’s senior management) does not fit the situation of intermediaries . The draft wording jeopardises the independence (not in the meaning of MIFID II) of intermediaries and, by referring to “approval”, seems to imply a hierarchical link between an insurance company and an intermediary. This could be clarified with the following wording: “Insurance undertakings and insurance intermediaries as referred to in paragraph 6 shall ensure that any inducement scheme is approved by the insurance undertaking’s senior management or by the insurance</p>	
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		<p>intermediary's senior management.</p> <p>Detrimental Impact</p> <p>The IRSG has concerns with the proposed list of examples on p 54.</p> <p>a) The inducement encourages the insurance intermediary or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when from the outset a different product or service exists which would better meet the customer's needs;</p> <p>In order to clarify that the judgment of whether a "different product or service exists which would better meet the customer's needs" has to be made at the moment of the provision of the service by the intermediary (or distributor) and that this is not judged a posteriori, the wording of the example could be changed into: "The inducement encourages the insurance intermediary or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when from the outset a different product or service exists which would have better met the customer's needs".</p> <p>b) The inducement is solely or predominantly based on quantitative commercial criteria and does not take into account appropriate qualitative criteria, reflecting compliance with the applicable regulations, fair treatment of customers and the quality of services provided to customers;</p> <p>The IRSG can agree with the principle that this may be a point of attention (but there should be room for explanation) but then also the remuneration of personnel of direct writers should be looked at (which EIOPA has however excluded from its advice), and what with Internet / Social media players where different remuneration models / systems exist?</p>	
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			<p>c) The value of the inducement is disproportionate or excessive when considered against the value of the product and the services provided in relation to the product;</p> <p>The IRSG can agree with the principle that this may be a point of attention but there should be room for explanation. IRSG is wondering who is going to judge about this ? What is the value of the services provided in relation to the product?</p> <p>d) The inducement is entirely or mainly paid upfront when the product is sold;</p> <p>Commission can be paid upfront. The wording should be clarified so it is clear that multi-annual contracts are intended.</p> <p>The context always has to be taken into account to see if there is detrimental impact.</p> <p>e) The inducement scheme does not provide for the refunding of any inducements deducted from the customer's initial investment to the customer if the product lapses or is surrendered at an early stage;</p> <p>The IRSG is of the opinion that the above is not very clear. Does early stage mean in the 29th year when it is a 30 year contract? the IRSG is of the opinion that it is the insurer's responsibility to clarify the refunding policy of all costs and not only the distribution costs.</p> <p>f) if the inducement scheme entails any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a sales target based on volume or value of sales.</p> <p>The IRSG can agree with the principle that this may be a point of attention</p>	
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462	Italian Banking Association	Question 11	<p>It is important to underline that according to IDD provisions on inducements, which are much less detailed than MiFID II level 1 provisions, the CP provides a draft Technical Advice on inducements much more detailed than MiFID II delegated acts on inducements. The result is that the draft Technical Advice provides a list of structures of inducements considered to have a detrimental impact on the quality of the service provided to clients, which include « inducements entirely or mainly paid upfront when the product is sold» under the letter d) of the section entitled « Detrimental Impact ». As these kind of inducements is not stigmatized by MIFID II, it appears necessary to avoid such a prescriptive approach and achieve more consistency between IDD and MiFID II, considering carefully whether it is the case to maintain this gap between the two pieces of legislation.</p>	Noted. In view of different L1 legislation EIOPA has chosen a legislative approach which takes into account the specificities of the insurance market and is in line with the new IDD requirement.
463	Liechtenstein Insurance Association (LVV)	Question 11	<p>The Liechtenstein Insurance Association welcomes EIOPA's intention to take a high-level principle-based regulation approach towards the criteria under IDD Art. 29 (4) (a) and (b). Insurance distribution needs comprehensible and practice-oriented rules respecting the compromise the European co-legislator agreed upon in the IDD. In its mandate, the EU Commission expressly asks EIOPA not to go beyond the provisions that are necessary to meet the objective of the Delegated Acts. IDD Article 29 (4) (a) and (b) require the development of suitable measures and criteria based on the principle of proportionality.</p> <p>Against this background, the Liechtenstein Insurance Association also agrees with EIOPA's conclusion on p. 50 no. 4 of the analysis, according to which internal payments to employees should generally not be taken into account. To further clarify this issue, EIOPA's statement should also be included in DTA no. 1 on p. 54.</p> <p>Commission-based distribution is taking up the challenges</p>	Noted.

		<p>posed by changing customer demands in times of digital evolution. This requires a great amount of flexibility, which cannot be achieved in a tight system of precise provisions for every conceivable detail of remuneration, but only through a principle-based holistic approach.</p> <p>This holistic approach needs to take into account the whole relationship to the customer (advisory process, contract conclusion, advisory and general customer services during the contract period, support by the distributor after a claims event). In order to reflect the complex reality of insurance distribution, the focus of regulation should not be on the individual moment of contract conclusion alone. As Article 29 (5) IDD rightly claims, the Delegated Act should take into account the various different types of services, the frequency of transactions and the type of product.</p> <p>Providing high-quality services is of fundamental importance to the distributor's business. In order to ensure high-quality services systematically, it would be necessary to introduce principles for inducement systems aiming at the protection of customers. For this reason, the Liechtenstein Insurance Association is opposed to the proposed list of risk types (DTA p. 54 no. 4). As an alternative, we suggest introducing the following principles, which should be used by insurers and intermediaries in the development and negotiation of inducement schemes:</p> <ul style="list-style-type: none"> - Distributors should place the interests of their customers over remuneration interests. The advisory process should enable the customer to influence the course of the discussion. Examples: IT-supported advice and check lists - When agreeing on an inducement scheme, qualitative aspects should play a crucial role. Examples: Portfolio consistency, in case of tied agents also customer satisfaction and use of the advisory tools of the product provider, taking 	
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			<p>into account of lapse rates, complaints or other indicators of customer satisfaction, as well as sustainability level of customer support.</p> <ul style="list-style-type: none"> - Remuneration and benefits should be objectively comprehensible and justifiable This should be ensured by the mechanisms adopted by the insurance companies. Examples: Liability for commissions, documentation of decisions and their justification, avoiding dependencies, reliability checks following trigger events. - Insurers should ensure high quality of customer advice by setting indicators for advisory quality, monitoring compliance with these standards and intervening where necessary following specific events. Examples: Contract redemption rates, lapse rates, share of contract conclusions where customer refrained from taking advice. - All aspects of a specific customer service should be taken into account when assessing the quality of the service, not only the final recommendation given for a certain product. Examples: Analysis, comparison of products, advice (recommendation), documentation, support in contract conclusion, customer service during the duration of the contract, further advice due to changed circumstances, support during the period of payout. - A single negative indicator should trigger a general review of the entire performance of the service provider, in order to verify whether the entire service is flawed. However, it should not be assumed automatically that the service quality is flawed. Instead, all aspects of the service should be taken into account, including positive effects of granting commissions / benefits. Example: Professional training measures improve service quality and the promotion of young talents in the distribution sector. The existence of training-related benefits such as catering and training material should not put these advantages at risk. 	
464	MALTA	Question 11	With regard to the concept of a third party, the MiFID	Noted. For the sake of

	<p>INSURANCE ASSOCIATION</p> <p>These comments have b</p>		<p>Implementing Directive does not consider specific persons involved in distribution, like an employee or a tied agent of the firm, as a third party in relation to the investment firm. In other words, an employee or a tied agent acts in the name and on behalf of the firm and substantially constitutes a single entity with the firm.</p> <p>For the same reasons, employees and tied agents of the insurance undertaking cannot be considered as a "third party" for the purposes of inducements and remuneration under IDD. In fact, this would imply, for example in case of distribution through employees of the undertaking, that the employees should be considered as "third parties" in relation to the insurance undertaking, which is legally untenable and fundamentally illogical.</p> <p>It is clear that the framework for inducements mainly refers to the relationship between intermediaries and third parties.</p> <p>In our opinion, therefore, the framework for inducements would apply to insurance companies when they distribute insurance investment products through "third parties", given the fact that not every channel or person involved in the distribution can be qualified as such.</p>	<p>a level playing field</p> <p>EIOPA considers payment to tied agents as inducements which is in line with the approach under MiFID.</p>
465	Mediterranean Insurance Brokers (Malta) Ltd.	Question 11	<p>Do you agree with the proposed high level principle to determine whether an inducement has a detrimental impact on the relevant service to the customer?</p> <p>It should be very clear and mentioned explicitly for all delegated acts that are part of chapter VI on IBIPs that the delegated acts are indeed only applicable to IBIPs.</p>	Noted.

		<p>We are in principle not in agreement that in a highly competitive market, remuneration is supervised and regulated at such a level of detail. Under the IDD, insurance distributors have the duty to act honestly, fairly and professionally in accordance with the best interests of their customers (art 17) and the intermediary will take this into account before accepting any benefit. The fact that an intermediary receives fees, commissions, benefits from third parties may mean that an intermediary is able to charge less for the service that they provide to that customer. This is of significant benefit in that it makes insurance markets accessible to as wide a cross section of the public as possible.</p> <p>We are of the opinion that every intermediary has the right to be fairly remunerated for his or her services. This is also to the benefit of the consumer. A pure fee-based market, for example, would exclude many people from access to any level of advice or assistance in their search for an appropriate insurance product, as has been the practical experience in Member States that have prohibited commission payment approaches. The prohibition of payment and remuneration by insurers would be an obstacle to free market principles of fair remuneration for services rendered. Indeed, it would become impossible for intermediaries to require insurers to pay intermediaries for the work they do on their behalf (and which is work that is done also in the interest of the customer).</p> <p>It is interesting to note that the Investment Management Association (IMA)'s 11th annual Asset Management Survey which was published in August 2013 outlined a number of pitfalls since the RDR was implemented in the UK:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Less access to advice: Many consumers could be priced out of receiving advice. <input type="checkbox"/> Multiple share classes: The creation of multiple share classes to accommodate different charging structures could 	
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			<p>emerge as an issue. Large fund distributors have tried to provide 'super clean' share price deals with fund groups, to sell funds at a discounted rate compared to competitors.</p> <ul style="list-style-type: none"> □ 'Dumbed down' funds: RDR could lead to too many "plain vanilla" outcome orientated products, which do not generate significant levels of alpha, and further cause excessive conservatism, due to investors having insufficient experience in taking calculated risks. □ Advice gap: The survey expressed concerns that an 'advice gap' will result due to changing charging structures, creating greater numbers of unadvised, low-to-middle net-worth retail investors. Unadvised investors might favour execution-only platforms or go direct as a consequence of the new pricing structures. The concern is not unfounded, seeing as several providers of advice have culled their financial adviser workforces, including HSBC, RBS and Barclays. □ Consolidation: Finally, one of the unintended consequences of RDR could be a more polarised fund management industry. <p>The report indicated that a lot of consumers will most likely exit the market for financial advice entirely, based on the discrepancy between willingness to pay and cost of advice: 91% of UK consumers will not pay more than £25 for an hour of financial advice (survey conducted by Rostrum Research in 2012).</p> <p>It cannot be stressed enough that consumers and SMEs are much less likely to shop around for the insurance or investment product which best meets their needs in a fee-only based environment as they will have to pay a fee each time they interact with an intermediary – whether or not they decide to follow the advice or buy the product.</p> <p>The remuneration of intermediaries being in principle</p>	
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		<p>commission-based with the possibility to agree fees has been and continues to be a major contributing factor in the successful development of insurance markets all over the world. Any other situation would ignore the fact that the insurance intermediary typically renders services to both sides of the contract, the customer and the insurance company: as with any commercial relationship both kinds of services have to be remunerated by the beneficiary. It would also deprive consumers of the choice between business models.</p> <p>It is always in the best interest of consumers to be provided with adequate information so that they can make an informed decision. This is the "raison d'être" of insurance intermediaries. This goes to the very heart of the intermediaries' role.</p> <p>Insurance intermediaries are mostly SME-style operations, employing many thousands of people locally. It is important to ensure that any future European policy on conflict of interests for intermediaries mediating IBIPs does not have any unintended side effects, does not result in less choice for consumers and does not jeopardize intermediaries' activities and business models.</p> <p>In the IDD, the EU legislators made the unambiguous democratic choice to leave freedom of models for remuneration and not to introduce any bans on any forms of remuneration. The concept of independent advice and a linked ban on commission for IBIPs was rejected.</p> <p>Member States have been given the possibility to go beyond in art 29.3: "3. Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may additionally prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice (...)"</p>	
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			<p>This illustrates that the decision to judge on these remuneration matters lies with the Member States and level 2 rules should not directly or indirectly circumvent this democratic decision.</p> <p>Also, one has to look at the overall services that intermediaries offer. Indeed, the quality of an intermediary's services is intrinsically linked with the quality of a specific service provided to a particular customer. In fact, without a high overall level of quality, it is not possible to provide a high quality individual service.</p> <p>A comprehensive, proportional approach has to be taken by EIOPA in its advice. The total effects of the compensation provided should be assessed in a comprehensive manner.</p>	
466	Slovenian Insurance Association	Question 11	<p>No inducement has a detrimental impact on the quality of the service to the customer as such. So we think that establishing the list of inducements which have detrimental impact on the quality of the service to the customer in advance is not acceptable. The main purpose of the inducement is a payment to the distributor for its work (giving advice to the customer). IDD in its provisions focuses on the quality of the services to the customers. In order to evaluate whether an inducement can be considered to have a detrimental impact on the quality of the service to the customer, it is necessary to take a holistic approach and look at the context of the overall situation. It should not be perceived that the quality of the services to the customers has been significantly hampered only because of the form of the inducement to the distributor. It is necessary to take into account the whole model of the inducements, which are used by one insurance company – combination of various inducements with qualitative and quantitative elements. The main purpose of such models is not only to achieve an adequate quantity but also to achieve quality of the insurance, reflecting in satisfaction and long term loyalty of the customers. Furthermore such models, as practice</p>	<p>Noted. EIOPA agrees that inducements generally do not have a detrimental impact on the quality of the service per se, but that this conclusion depends on the assessment of all risk increasing and reducing factors. However, EIOPA is of the view that specific inducements entail a higher risk of detrimental impact than others. These inducements are listed in the non-exhaustive</p>

		<p>demonstrates, prevent potentially detrimental impact on the quality of the service to the customer. In order to evaluate whether or not an inducement can be considered to have a detrimental impact on the quality of the service to the customer, it is necessary to take holistic approach and look at the context of the overall situation – case by case basis.</p> <p>It is also important to note that insurance companies in a practice for the payment of distributors use combination of various inducements with qualitative and quantitative elements. The main purpose of such models is not only to achieve adequate quantity but also to achieve quality of the insurance, reflecting in satisfaction and long term loyalty of the customers. Furthermore such models, as practice demonstrates, prevent potentially detrimental impact on the quality of the service to the customer.</p> <p>IDD primarily purpose is to ensure transparency, simplicity and accessibility of the insurance products to the customers and to ensure fair relationship to the customers. According to the IDD each insurance contract must be in accordance with the interests of the customer. We also believe that other provisions of the IDD (POG, conflicts of interests, suitability and appropriateness, organisational requirements concerning inducements) create necessary conditions to ensure appropriate quality of the service to the customer.</p> <p>We also like to point out that according to draft technical advice EIOPA is invited to provide the conditions, circumstances and situations which have to be taken into account when determining whether an inducement may have a detrimental impact on the quality of the service to the customer and not to provide types of inducements, which have detrimental impact on the quality of the service to the customer.</p>	<p>list. See also EIOPA’s feedback statement in the final report.</p>
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			<p>Examples of circumstances under which an inducement may have detrimental impact on the quality of the service to the customer:</p> <ul style="list-style-type: none"> - Upfront payment of an inducements may have detrimental impact if refunding of inducement payed is not ensured in cases of early termination of insurance in a period in which inducement is not fully deserved (claw back period). - Inducement schemes may have detrimental impact if they entail only quantitative inducements. - Inducement schemes are detrimental if they encourage distributors to recomend an insurance product or insurance cover which is not in accordance with customers needs. - Inducement schemes are detrimental if they encourage distributors to recommend customer modification of existing insurance products which is not in accordance with customers needs. <p>Minimum criteria for broadly acceptable types of inducements:</p> <ul style="list-style-type: none"> - Upfront payment of an inducements is acceptable if refunding of inducement payed is ensured in cases of early termination of insurance in a period in which inducement is not fully deserved (claw back period). - Inducement schemes are acceptable if they entail quantitative an qualitative inducements. - Inducement schemes are acceptable if they encourage distributors to recomend an insurance product or insurance cover which is in accordance with customers needs. - Inducement schemes are acceptable if they discourage distributors to recommend customer modification of existing insurance products which is not in accordance with customers needs. 	
467	Unipol Gruppo Finanziario S.p.A.	Question 11	With reference to point 4 of the section "Detrimental Impact" of the Draft Technical Advice, the types of incentives considered as having a high risk of causing a detrimental impact on the quality of service provided to the client were	Noted. Please refer to the feedback statement in EIOPA's Final Report.

			<p>examined for the specific question.</p> <p>Criterion b), which requires supplementing the quantitative commercial criteria with appropriate qualitative criteria, appears restrictive in its literal formulation in so far as the quantitative component is usually predominant in assigning goals to the sales structures owing to the very nature of the activity. We propose to correct the term "predominantly" in the text of the rule, which in any case ensures the required goal in its formulation.</p> <p>Criterion c) appears to be indeterminate and hence discretionary in its assessment. The notions of "disproportionate" and "excessive" may also change in time, depending on the conditions the competitors apply on the market at that given time and on the intermediaries' remuneration expectations. We propose to eliminate this article as we consider it incorporated in the more general rules of fairness in client relations.</p> <p>Lastly, we propose to eliminate criterion f) because it is basically already included, although in more general terms, in criterion b).</p>	
468	Verband der Automobilindustrie e.V. Arbeitskreis	Question 11	Not applicable.	Noted.
469	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 11	<p>11: Stimmen Sie dem vorgeschlagenen Grundsatzprinzip zur Bestimmung, ob ein Anreiz sich nachteilig auf eine entsprechende Dienstleistung für den Kunden auswirkt, zu?</p> <p>Der VDVM teilt EIOPAs Ansatz einer high level-Regulierung auf der Basis von Prinzipien zur Gestaltung der Kriterien nach Art. 29 Abs. 4 a) und b) IDD. Der Versicherungsvertrieb braucht verständliche und praktikable Regeln, die sich im Rahmen des in der IDD vereinbarten Kompromisses des europäischen Co-Gesetzgebers bewegen. Die EU-Kommission fordert EIOPA im Mandat ausdrücklich auf, nicht über die notwendigen</p>	Noted.

		<p>Vorgaben zur Erreichung des Ziels der delegierten Rechtsakte hinauszugehen. Laut Art. 29 Abs. 4 a) und b) IDD sollen Maßnahmen und Kriterien erarbeitet werden, die vernünftiges Ermessen berücksichtigen und die geeignet sind.</p> <p>Vor diesem Hintergrund begrüßt der VDVM die Erklärung EIOPAs unter Erläuterungen S. 50 Nr. 4, dass interne Zahlungen an Angestellte grundsätzlich nicht erfasst sein sollen. Diese Aussage sollte in Draft Technical Advice (DTA) S. 54 Nr. 1 zur eindeutigen Klarstellung aufgenommen werden.</p> <p>Der Provisionsvertrieb stellt sich den Herausforderungen der sich weiterentwickelnden Kundenansprüche in einer Zeit der digitalen Evolution. Das erfordert Flexibilität. Diese kann nicht in einem engen Korsett von konkreten Vorgaben für jedes Detail der einzelnen Vergütung erreicht werden, sondern nur durch einen prinzipienbasierten Bewertungsansatz in der Gesamtschau gelingen.</p> <p>Diese Gesamtschau setzt voraus, dass die ganze Beziehung zum Kunden betrachtet wird (Beratungsprozess, Vertragsabschluss, Betreuungs- und Beratungsleistungen während der Vertragslaufzeit, Unterstützung durch den Vermittler im Schadensfall). Eine Fokussierung der Regulierung auf den Moment des individuellen Vertragsabschlusses wird der Realität im Versicherungsvertrieb nicht gerecht. Dem trägt bereits Art. 29 Abs. 5 IDD Rechnung, der den delegierten Rechtsakt auf die Berücksichtigung der vielfältigen Faktoren der Kundenart, des Dienstleistungstyps, der Häufigkeit des Geschäfts und der Produktart verpflichtet.</p> <p>Eine qualitativ hochwertige Serviceleistung ist der Schlüssel zum erfolgreichen Vertrieb. Um sie systematisch zu gewährleisten, wären Prinzipien für die Vergütungssysteme zu</p>	
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		<p>verankern, die den Verbraucher schützen. Deshalb wendet sich der VDVM gegen die vorgelegte Risikotypenliste (DTA S. 54 Nr. 4). Als Alternative schlägt der VDVM folgende Prinzipien vor. Sie sollten von Versicherungsunternehmen und Vermittlern bei der Konzeption und Vereinbarung von Vergütungsmodelle anzuwenden sein:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Vertreiber sollen das Kundeninteresse über das Vergütungsinteresse stellen(so ausdrücklich im Code of Conduct des VDVM bereits seit Jahren geregelt). <input type="checkbox"/> Der Beratungsprozess soll so konzipiert sein, dass der Kunde Einfluss auf den Verlauf der Beratung hat. Beispiele: IT-gestützte Beratung und Checklisten <input type="checkbox"/> Bei der Vereinbarung von Vergütung sollen gerade qualitative Komponenten einbezogen werden. Beispiel: Bestandsfestigkeit, bei Vertretern auch Kundenzufriedenheit und Verwendung der vom Produktgeber bereitgestellten Beratungstools, Berücksichtigung von Stornoquoten, Beschwerden oder anderen Indizien für Kundenzufriedenheit und Nachhaltigkeit der Betreuung. <input type="checkbox"/> Vergütungen und Vorteile sollen sachlich nachvollziehbar und objektiv begründet sein. Die Versicherungsunternehmen sollen dafür Mechanismen einrichten. Beispiele: Provisionshaftung, Dokumentation von Entscheidungen und ihrer Grundlagen, Vermeidung von Abhängigkeiten, anlassbedingte Zuverlässig-keitsprüfungen <input type="checkbox"/> Versicherer sollen die hochwertige Beratungsqualität für den Kunden sicherstellen, indem sie Indikatoren für die 	
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			<p>Beratungsqualität festlegen, diese beobachten und, bei Auffälligkeit, anlassbezogen gegensteuern.</p> <p>Beispiele: Einlösungsquoten, Storno-Quoten, Anteil von Abschlüssen mit Beratungsverzicht</p> <p><input type="checkbox"/> Bei der Beurteilung der Qualität der Beratungsdienstleistung soll nicht nur die konkrete Empfehlung zugrunde gelegt werden, sondern alle Komponenten der jeweiligen Dienstleistung für den Kunden.</p> <p>Beispiele: Analyse, Vergleich von Produkten, Beratung (Empfehlung), Dokumentation, Unterstützung beim Abschluss, Betreuung während der Laufzeit, anlassbezogene Beratung bei Veränderung, Unterstützung in der Leistungsphase.</p> <p><input type="checkbox"/> Ein einzelner auffälliger Indikator soll zum Anlass genommen werden, die gesamte Performance des Dienstleisters zu prüfen, um sicherzustellen, dass nicht die gesamte Dienstleistung mangelhaft ist. Dabei ist nicht von einer automatisch beeinträchtigten Servicequalität auszugehen, sondern immer das gesamte Spektrum der Dienstleistung zu bewerten. Positive Auswirkungen der Gewährung der Provision / des Vorteils sollen berücksichtigt werden.</p> <p>Beispiel: Trainings fördern die Servicequalität und die Nachwuchsarbeit im Vertrieb. Mit Training verbundene Leistungen wie Catering und Trainingsunterlagen sollten diesen Vorteil nicht per se in Frage stellen</p>	
470	Verband öffentlicher Versicherer (Association of G	Question 11	<p>No, we don't agree. The payment of commission in itself does not justify the automatic assumption of a high risk of detriment to the corresponding customer service. For a start, the main purpose of commission is to remunerate the intermediary for costs incurred – it is not some special form of inducement. Commission is the appropriate recompense for the work done by the intermediary in providing customer</p>	<p>Noted. EIOPA is aware that a formal ban on the receipt/payment of commissions was not included in the Level 1 text of IDD and would like to reiterate and stress that the</p>

		<p>advice and ongoing customer support. As a result, the payment of commission rules out later expenses for the customer. Before concluding an insurance contract, the customer must be informed about the type of payment the intermediary is receiving. That puts the customer in a position to make a free and informed decision about whether or not to conclude the contract. In addition, it is already the case that the costs to be charged to the customer's contract are calculated in euros and disclosed to the customer prior to conclusion of the contract. No detrimental effect on the customer is discernible in the payment of commission.</p> <p>In addition to high-quality advice that is centred firmly on the needs of the customer, a wide-ranging network of consultants is in place that ensures on-the-spot consultation for all concerned (insurance infrastructure for everyone), even for those that cannot afford, or do not want to pay for, fee-based consultation. Consultation is carried out in accordance with the needs and wishes of the customer and without any financial risk for the individual, given that payment is not due until after the contract has been concluded. Customers concluding policies for modest sums receive the same comprehensive, high-quality advice as those who want to spend more money on their insurance policy. This situation can only be maintained through the commission system. Commission thus also has a socio-politically positive aspect, as it grants everyone access to adequate insurance products at a time when making provision for old age is of key importance and rightly promoted by EIOPA and the European Commission. In a variety of ways, commission-based payment is precisely in the interests of both customers and society, and does not run counter to them.</p> <p>Incidentally, the IDD has been quite deliberately and explicitly conceived as an attempt at minimal harmonisation. Art. 29(3) grants Member States the right to impose stricter requirements as regards fees, commissions or non-monetary</p>	<p>intention of proposing a list of practices that increase the risk of detrimental impact, is not to introduce a ban on commission through the backdoor. The aim of the list is to make market participants aware that the interests of their customers are put at risk and the likelihood of customer detriment exists, if these types of inducements are paid or received.</p>
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			<p>benefits. It is sensible to entrust this decision to the individual Member State rather than the European Commission. European legislators expressly wanted to grant each Member State broad freedom to decide on its own level of regulation; this freedom must not be restricted by means of delegated acts. That is why the IDD wording as regards commission departs significantly and deliberately from the MiFID rules on the same subject. In the present paper, however, EIOPA has already tightened the provisions to such an extent that they would result in a de facto prohibition of commission from the European standpoint. As the IDD expressly allows the payment of commission, EIOPA's plans contradict the IDD. EIOPA's proposals are thus not in line with the specific conditions and circumstances of the insurance markets of the individual EU Member States, each of which has its own long-established distribution landscape that is worth preserving.</p> <p>In contrast to the EIOPA paper, the IDD does not generally use the word "inducements", opting instead mainly for "fees", "third party payments" or "commissions" – that is to say, terms that are more neutral than "inducements". In our opinion, this word implies a tendentiously negative stance, which is not the case with the other terms mentioned above.</p>	
471	Verbraucherzentrale Bundesverband e.V.	Question 11	<p>We agree with the high level principle. We strongly support the approach, that an inducement is any fee, commission or non-monetary benefit which is paid or provided in connection with the distribution of an insurance-based investment product or an ancillary service to or by any party except the customer or a person on behalf of the customer, to get a level playing field between insurers working with intermediaries and direct writers.</p> <p>Regarding to number 17 of the analysis we disagree with all proposed alternatives to reduce the risk that inducements have a detrimental impact on the quality of the service to the</p>	Noted.

			customers. Only a prompt refunding of any inducements deducted from the customer's initial investment to the customer can be considered an adequate reaction in case a customer's interest got violated by inaccurate insurance distribution activities.	
472	Zurich Insurance Company, CH 8045 Zurich	Question 11	<p>Inducements</p> <p>The draft technical advice makes a similar overreach in the section relating to inducements. In its analysis at paragraph 20, EIOPA offers the view that "[i]nsurance undertakings . . . who pay inducements should have organizational measures in place to assess the design and structure of any inducement scheme which they pay to insurance distributors...."</p> <p>An inflation of the scope of Inducements section is no more appropriate than an inflation of the scope of the Conflicts section. Here, too, the draft technical advice goes far afield from the scope of the Directive by transplanting the obligations of the distributor to the manufacturer.</p> <p>Recital 57 provides that "[i]n order to ensure that any fee or commission . . . does not have a detrimental impact on the quality of the relevant service to the customer, the insurance distributor should put in place appropriate and proportionate arrangements...." Yet, the draft technical advice would require "insurance undertakings . . . [to] maintain and operate appropriate organizational arrangements and procedures in order to assess . . . inducements and the structure of inducement schemes." Plainly, the Directive commands that the distributor be charged to establish appropriate arrangements in connection with inducements while the draft technical advice takes it upon itself to expand the obligation to all manufacturers.</p> <p>Again, in its efforts to expand the scope of the Directive beyond its lawful limits, the draft technical guidance runs afoul of logic and common sense. The draft would have the manufacturer conduct this assessment of inducements by</p>	Noted. EIOPA does not share the view that its policy proposals go beyond the Level 1 requirements of IDD.

		<p>reference to obligations which are only applicable to the distributors themselves. Specifically, the draft technical standards references the criteria set out in Article 29(2). In turn, Article 29(2) is based on the obligations of an intermediary or insurance undertaking that arise under Articles 17(1), Article 27 and Article 28 – each one of which only applies to an insurance undertaking carrying out distribution activities:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Article 17(1) provides that “when carrying out insurance distribution, insurance distributors always act honestly, fairly and professionally in accordance of the best interest of their customers.” <input type="checkbox"/> Article 27 likewise applies only to “an insurance intermediary or an insurance undertaking carrying on the distribution of insurance-based investment products.” <input type="checkbox"/> Article 28 similarly applies only to the “insurance undertaking . . . in the course of carrying out insurance distribution activities.” <p>Here again, the draft technical advice would conflate the distributor and manufacturer – two roles meticulously positioned as separate in the Directive – by extending the obligations of the distributor to the insurer who undertakes no distribution activities. As it does so, the draft creates standards of assessment impossible for the manufacturer to apply. In order to correct the technical advice, EIOPA must make the following changes:</p> <p>Inducement and Inducement Scheme</p> <ol style="list-style-type: none"> 1. An inducement is any fee, commission or non-monetary benefit which is paid or provided in connection with the distribution of an insurance-based investment product or an ancillary service to or by any party except the customer or a person on behalf of the customer. 2. An inducement scheme is a set of rules that govern the payment of inducements. It generally includes the criteria under which inducements are paid. 	
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			<p>6. Insurance undertakings carrying out the distribution and insurance intermediaries shall maintain and operate appropriate organizational arrangements and procedures in order to assess at the outset and ensure that inducements and the structure of inducement schemes which they pay to or receive from a third party:</p> <p>a. do not lead to a detrimental impact on the quality of the service provided to customers; and</p> <p>b. do not prevent the insurance intermediary or insurance undertaking carrying out the distribution from complying with their obligation to act honestly, fairly and in accordance with the best interests of their customers.</p> <p>7. Insurance undertakings carrying out the distribution and insurance intermediaries as referred to in paragraph 6 shall ensure that any inducement scheme is approved by the insurance undertaking or insurance intermediary's senior management.</p> <p>8. Insurance intermediaries and insurance undertakings carrying out the distribution as referred to in paragraph 6 shall document the assessment of each inducement in a durable medium.</p> <p>9. As part of the conflicts of interest policy (as outlined under ...) insurance intermediaries and insurance undertakings carrying out the distribution should set up a gifts and benefits policy that stipulates what benefits are acceptable and what should happen where limits are breached.</p>	
473	Allianz SE	Question 12	<p>Are there any further inducements which entail the high risk of leading to a detrimental impact and should be added to the list in paragraph 4 of the draft technical advice above?</p> <p><input type="checkbox"/> No, list is already very/too restrictive (see Q11).</p>	Noted.
474	AMICE	Question 12	<p>We do not believe that further inducements which entail the high risk of leading to a detrimental impact need to be added to the list in paragraph 4 of the draft technical advice.</p>	Noted.

475	ANASF	Question 12	<p>Generally speaking, the list provided pursuant to Article 11, par. 2, Draft Commission Delegated Directive supplementing Directive 2014/65/EU (MiFID II) is preferable, in that inducements are required to enhance the quality of the service to the client. Accordingly, the approach which is needed is a practical one: it is true that the wording of MiFID II and IDD is different; nonetheless, these formal differences may and need to be overcome by means of MiFID II and IDD implementing measures. The goals of effective investor protection and of a level playing field across the different financial sectors shall prevail.</p> <p>Having said this, we would like to comment the Draft Technical Advice with regard to the list of inducements which are considered to have a high risk of leading to a detrimental impact on the quality of the relevant service to the customer:</p> <ul style="list-style-type: none"> - example a) relates to the case whereby “from the outset a different product or service exists which would better meet the customer’s needs”. This criterion is too ambiguous: is a “better” product or service to be found on the whole market or within the range offered by the insurance intermediary or insurance undertaking? None of the two solutions appears to be adequate: the first one (whole market analysis) would be too cumbersome and practically impossible to prove (probatio diabolica); the second one is incomplete, in that the cost of the product or service cannot be deduced as the only element to be considered (i.e., also the quality of the service must be assessed). Accordingly, example a) should be rewritten in light of the results of the appropriateness/suitability assessment: <p>“the inducement encourages the insurance intermediary or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when from the outset a different product or service exists which would better meet the customer’s needs” which is not consistent with the outcome of the assessment of appropriateness or suitability.</p> <ul style="list-style-type: none"> - example b) is important for the sake of investor 	<p>Noted. EIOPA does not consider it appropriate to introduce the MiFID concept by way of implementing measures in view of the clear decision of the European Legislators with regard to Level 1. With regard to the comments on the non-exhaustive list of examples, please refer to EIOPA’s feedback statement in the final report.</p>
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			<p>protection;</p> <ul style="list-style-type: none"> - example c) is too ambiguous. In which cases the value of the inducement is disproportionate or excessive when considered against the value of the product and the services? Some further guidance is needed to grasp how this case would apply; - example d) may be interpreted in the sense that on-going inducements are admitted, insofar as they correspond to an on-going benefit for the customer; cf. the requirement pursuant to Article 11(2)(c), Draft Commission Delegated Directive supplementing Directive 2014/65/EU (MiFID II): “the inducement shall be justified by the provision of an on-going benefit to the relevant client in relation to an on-going inducement”; - example f) needs to be made consistent with market contest to account for the necessity, from the firm’s point of view, to create value for its stakeholders (shareholders, employees, tied agents ...). 	
476	Association of International Life Offices	Question 12	Volume incentives to distributor employees.	Noted.
477	Assuralia	Question 12	<p>The basic criterion for the overall assessment of inducements should be the obligation to always act in the best interest of the customer. The main focus is to ensure that remunerations do not provide an incentive to recommend a particular insurance product to a customer based on self-interest (for instance a higher commission), while another product could be offered that from the outset would better fit the customer’s needs. Rewarding the sales of so-called ‘products of the month’ with higher commissions than other products is, for example, incompatible with this basic rule.</p> <p>Other appropriate criteria for the assessment of inducements are the targets used for awarding variable remunerations. If these targets are set very high, there is more chance that the interests of customers will be harmed. It is therefore</p>	Noted. EIOPA agrees that any kind of remuneration, benefit or sales targets should not provide an incentive to recommend a particular product based upon the self-interest of the insurance distributor.

			recommendable to apply reasonable sales targets; too large leaps between the different thresholds for incentives should be avoided. This means that quantitative commercial criteria can be used in inducement schemes, if applied with care.	
478	BFV - Bundesarbeitsge- meinschaft zur Förderun	Question 12	Nein.	Noted.
479	BIPAR	Question 12	See above	Noted.
480	Bund der Versicherten (BdV - German Association of	Question 12	<p>The following inducements should be added to the list in paragraph 4 of the draft technical advice:</p> <p><input type="checkbox"/> In Germany in the health insurance class the following severe distribution scandal came to public attention: several health insurers had paid commissions to the distributor MEG AG in Kassel on a large-scale in advance, even before any contract had been sold. This remuneration system worked for some years (up to 8000 Euro commission just for one sold contract), but then the distributor went bankrupt, because he sold less contracts than postulated (up to 1000 employees). The responsible manager (Mehmed Göker) flew to his home country Turkey, because some insurers tried to get back their money by court. When the insolvency proceeding started, there was an estimated amount of 50 million Euro of debts. The whole scandal was later reiterated for a cinema movie ("Der Versicherungsvertreter" in 2013):</p> <p>http://www.versicherungsvertreterderfilm.de/index.php/inhalt/inhalt</p> <p>That is why we strongly ask for banning any kind of pre-sales commission payments.</p> <p><input type="checkbox"/> In Germany there exist huge distribution organizations (multi-level or subscriber broker structures: "Strukturvertriebe"), in which sole distributors are "independent" on the juridical level, but in reality of course not. They have to sell only product lines chosen by their home organization, and sometimes they even have to pay a rent for</p>	Noted.

		<p>their bureaus and for the technical equipment to their “mother company”. Following to the German law this situation is called “Schein-Selbständigkeit” (like “erroneous independence”). In this context nothing but extreme sales pressure and therefore mis-selling practices are the inevitable consequences. The entire structures of these systems of distribution and remuneration have to be changed fundamentally (fixed incomes following trade union standards, variable remunerations and inducements only as volunteer “bonus”).</p> <p><input type="checkbox"/> In September 2014 press reports were published that the biggest of these “Strukturvertriebe” had organized a huge event in Malta: the port of La Valetta was simultaneously reached by four cruise ships only reserved for the 7000 agents of this distribution organization. This example shows how “successful” these distributors work, because this “non-monetary” incentive could only be paid by the total sum of commissions earned from the huge quantity of sole consumers. It shows again that commissions for these distributors are too high (cf. CP, p. 54, point 4c) and these non-monetary incentives should clearly be banned.</p> <p><input type="checkbox"/> Related to variable or contingent thresholds included in inducement schemes (cf. CP, p. 54, point 4e), we would like to draw EIOPA’s attention to so-called “broker pools”. It is fairly possible that independent brokers form a “pool” (common umbrella) in order to achieve more easily thresholds of sales volumes by the insurers. It should be analyzed by EIOPA that possible thresholds are not lower in relation to sole brokers.</p> <p><input type="checkbox"/> In some cases the inducement agreement between manufacturer and distributor was as follows: the commission paid for the conclusion of an annuity insurance was higher than the sum of the first annual premium and of the cancellation fee. The cancellation fee has to be paid by the distributor to the manufacturer in case of early withdrawal by the customer. In the 1990th in Germany there was a huge distribution scandal related to occupational pensions plans which “implemented” this procedure (following to the responsible distributor it was called “Schmidt-Tobler-Effekt”).</p>	
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			Inducement agreements of that kind must be banned without any exception.	
481	Bundesverband Deutscher Vermögensberate r e. V. 603	Question 12	<p>Seit Gründung unseres Verbandes sind alle Mitglieder auf unsere „Richtlinien für die Berufsausübung“ verpflichtet. Hierzu gehört auch, „... dass bei allen Beratungs- und Vermittlungsleistungen des Vermögensberaters die Kundeninteressen Vorrang haben. Das Wohl des Kunden geht über mögliche eigene Vorteile des Vermögensberaters. Die Höhe der Vergütung für eine Vermittlungsleistung darf keinen Einfluss auf die Beratung des Kunden haben.“</p> <p>Und darum geht es doch auch bei den Ausarbeitungen von EIOPA zu dem Thema Anreize. Ein Nachteil der Dienstleistungsqualität für den Kunden besteht dann, wenn das Kundeninteresse alleine dem Vergütungsinteresse des Vertreibers untergeordnet wird.</p> <p>Was die Typenliste von Nummer 4 „Draft Technical Advice“ angeht, untergräbt diese Liste das von der IDD als zulässig eingestufte Modell des provisionsbasierten Vertriebs. So betrachtet Nr. 4 d) bereits die Vorauszahlung der Provision als nachteilige Auswirkung. Dies ist keinesfalls sachgerecht. Der Zeitpunkt der Vergütung beeinträchtigt nicht bereits die Qualität der Dienstleistung des Vermittlers. Entscheidend ist doch, welche Vorgaben an den Erhalt der Vergütung geknüpft werden. Im Einzelnen:</p> <p><input type="checkbox"/> Nr. 4 d) DTA (hohes Risiko durch im Voraus entrichtete Vergütung)</p> <p>- Hierzu ist zunächst anzumerken, dass im Regelfall der Beratungsaufwand eines Vermittlers bei einem Neuabschluss besonders hoch und insoweit eine höhere Provision bei Abschluss mit Blick auf die Aufwendungen des Vermittlers sachgerecht sind. Jeder Kaufmann muss kostendeckend arbeiten. Bis zur Unterschrift des Kunden hat der Vermittler teilweise bereits monatelang ohne Entlohnung gearbeitet: Kontaktaufnahme, Angebotserstellung, Auswertung der Kundenbedürfnisse, Beratungsgespräche etc. und dies in der Regel verbunden mit mehreren Kundenkontakten mit Anfahrtswegen und -kosten. Um dies wirtschaftlich überhaupt</p>	Noted. Please refer to EIOPA's "Feedback Statement" in the final report.

		<p>bewerkstelligen zu können, halten wir die Zahlung einer Abschlussprovision bei Vertragsbeginn nicht nur für berechtigt, sondern für essentiell notwendig für diese Form des selbständigen Vertriebs.</p> <p>Auch bei der Honorarberatung fallen im Regelfall beträchtliche Erstberatungshonorare an, die bei bestimmten Produktarten wie zum Beispiel der Riester-Rente oder Autoversicherung über die marktüblichen Provisionen hinausgehen. Insoweit sehen wir bei Nummer 4 d), dass die Aufsichtsbehörde erneut eine im Vergleich zur Honorarberatung nachteilige Stigmatisierung des Provisionsvertriebs vornimmt und sehen auch hierin eine unzulässige Abweichung von der Regelung in der Richtlinie auf Level 1.</p> <ul style="list-style-type: none"> - (Abschluss-)Provisionen sind kein „Übel“, sie sind eine betriebswirtschaftlich sachgerechte Vergütungsform, die sich kundengerecht gestalten lässt. Eine solche Grundhaltung durch EIOPA im Rahmen der vorliegenden Ausführungen wäre sehr wünschenswert bzw. dringend geboten. - Auch ist zu berücksichtigen, dass in den letzten Jahren zumindest auf dem deutschen Markt die Bedeutung von Abschlussprovisionen deutlich zurückgegangen ist. So wurde beispielsweise die Abschlussprovision in der Krankenversicherung per Gesetz gedeckelt. Für staatlich geförderte Altersvorsorgeprodukte wie zum Beispiel die Riester-Rente wurden die kalkulatorischen Ansätze für Abschlusskosten limitiert. Und durch das deutsche Lebensversicherungsreformgesetz werden sich die Abschlussprovisionen in diesem Segment nochmals zu Gunsten der Versicherungsnehmer um ca. 20% bis 30% verringern. <p>Wir schlagen daher vor, Nummer 4 d) ersatzlos zu streichen.</p> <p>Oder äußerst hilfsweise in den DTA's klarzustellen, dass Abschlussprovisionen per se kein Risiko für die Leistungsqualität der Dienstleistung darstellen. Positiv zu berücksichtigen sind hierbei insbesondere Vorkehrungen, die es auf dem deutschen Versicherungsmarkt gibt, wie zum Beispiel Haftungszeiten für</p>	
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			<p>Abschlussprovisionen, die bei vorzeitiger Auflösung eines Vertrages zu einer Rückzahlung von Provisionen führen, gesetzlich geregelte höhere Rückkaufswerte in der Lebensversicherung bei Kündigung oder in den Wettbewerbsrichtlinien der deutschen Versicherungswirtschaft geregelte Umdeckungsverbote.</p> <p>Auch wird beispielsweise bei Nummer 4c) in keiner Weise klar, wie der Wert eines Produktes oder der Dienstleistung bemessen werden soll. Wie kann dann überhaupt eine Unverhältnismäßigkeit festgestellt werden?</p> <p>Sollte es nicht zur Streichung von Nummer 4d) kommen, so wäre die ganze Liste hinsichtlich der oben aufgeführten Aspekte dringend gründlich zu überarbeiten.</p>	
482	CNCIF - Chambre Nationale des Conseillers en	Question 12	<p>No further inducements need to be added to the list in paragraph 4 of the draft technical advice.</p> <p>We share the view that the objective of this list is not to introduce a de facto prohibition on the receipt/payment of inducements. Indeed, we think that the type/form/structure of remuneration is per se insufficient to demonstrate a detrimental impact on the quality of the service provided to customers.</p>	Noted.
483	Czech Insurance Association CAP	Question 12	No.	Noted.
484	EFAMA - The European Fund and Asset Manageme	Question 12	See our reply to question 11	Noted.
485	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 12	-	Noted.
486	Fachverband der	Question 12	See above	Noted.

	Versicherungsmakler und Berater in			
487	Fédération Française de l'Assurance (FFA) 26 bo	Question 12	We do not believe that further types of inducements need to be added to those listed in the draft technical advice, which, as mentioned in our response to Q.11, already runs the risk of undermining existing commission-based distribution models.	Noted.
488	Financial Services Consumer Panel	Question 12	<p>The Panel would support the inclusion of internal remuneration packages. The Panel would urge EIOPA to consider a review of internal remuneration packages as excessive bonus payments or a requirement to produce high volume sales in order to meet minimum salary payments is also a cause of miss-selling.</p> <p>The Panel would also like to point out the need for clarification on the definition of inducements as presently outlined in the consultation document. In its Draft Technical Advice EIOPA has interpreted the term "inducement" to mean "(...) any fee, commission or non-monetary benefit (...) paid to or by any party except the customer or a person on behalf of the customer". However, in the preceding analysis, it considers an inducement to be "in relation to fees or commissions as well as non-monetary benefits paid by or to third parties only" which would exclude those payments which do not originate from a third party (rather than only excluding just those originating from the customer as per the former).</p>	Noted. EIOPA would like to point out that the Commission's request and empowerment to adopt delegated Acts relate to inducements, only.
489	FNMF, 255 rue de Vaugirard, 75015 PARIS	Question 12	No further precision is needed	Noted.
490	FRENCH BANKING FEDERATION	Question 12	No.	Noted.
491	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 12	Such a list is neither necessary nor effective for the protection of the consumers. The mentioned criteria allow for a wide margin of discretion, particularly as the list is explicitly non-exhaustive. This will always lead to a subjective decision. In addition, due to the legal uncertainty and the vague legal	Noted.

			concepts like “detrimental impact” and “in the best interest of the customer”, a useful and necessary insurance contract for the customer might possibly be rejected.	
492	German Association of Private Health Insurers (PKV)	Question 12	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
493	German Banking Industry Committee (GBIC)	Question 12	As a general rule, GBIC argues that the use of a negative list only draws attention to single points and is therefore not suitable for a more complex and diverse general interpretation of the situation. In a fast changing environment such a list would need to be updated on a regular basis and would hence not be useful for the purpose of keeping the high level principle of the best interest of the customer. Therefore, instead of using a negative list, we suggest that EIOPA uses a more principle based approach to develop standards as required on Level I. GBIC considers the negative list, which is not mandated on Level I, as a potential source of a breach of competence by EIOPA without the necessary democratic legitimation. This may result in a de facto prohibition of inducements which is not intended by the legislator and may harm competition in some Member States as a consequence.	Noted. EIOPA considers the list as an important tool which complement the high-level principle proposed.
494	German Insurance Association (GDV)	Question 12	<p>No further inducements need to be added to the types of inducements listed under Draft Technical Advice (DTA) p. 54 no. 4. After all, the existing list already undermines the commission-based distribution model allowed under the IDD. Therefore, the German insurance industry recommends replacing the list by the list of principles for the process of developing and negotiating inducements schemes presented in our answer to question 11.</p> <p>The criteria of the list of risk types under DTA p. 54 no. 4 differentiate between individual inducements (pursuant to the definition under DTA p. 54 no. 1) and inducement schemes</p>	Noted. EIOPA disagrees that the existing list already undermines the commission-based distribution model allowed under the IDD. EIOPA considers these inducement as relevant cases where a risk of consumer detriment is evident. Please also refer to EIOPA’s Feedback

		<p>(pursuant to the definition under DTA p. 54 no. 2). The German Insurance Association holds the view that provisions focussing on the inducement scheme alone are better suited to ensure a systematic protection of consumers. This could serve as a basis for a feasible and proportionate regulatory approach for EIOPA's high-level principle.</p> <p>EIOPA states on p. 51 no. 15 that it does not intend to introduce a de facto prohibition on the receipt/payment of inducements. However, it also claims in the analysis on p. 53 no. 18 that there are no appropriate measures legitimizing inducements or inducement schemes which are detrimental to the customer from the outset, such as the types of inducements listed under DTA p. 54 no. 4 – thereby, EIOPA is introducing a de facto ban on inducements, since the listed types of inducements are considered illegitimate, i.e. prohibited. It should be urgently clarified that inducement schemes that include the types of inducements listed under DTA no. 4 are not prohibited, but that measures must be taken to reduce the risk of a detrimental impact for customers.</p> <p>Please see our detailed positions on DTA p. 54 no. 4:</p> <p><input type="checkbox"/> DTA p. 54 no. 4 a)</p> <p>The German Insurance Association recommends taking into account the limited product range offered by tied intermediaries in the wording of DTA p. 54 no. 4 a). It would not be appropriate to require individual tied intermediaries to recommend insurance-based investment products from a competitor's portfolio, since it would undermine Art. 19 (1) (c) IDD, according to which the distributor shall inform the customer whether or not it is under a contractual obligation to conduct insurance business exclusively with one or more insurance undertakings and whether it gives advice on the basis of a fair and personal analysis. Art. 19 (1) (c) IDD</p>	<p>Statement in the Final Report with regard to the individual cases.</p>
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		<p>implies that an intermediary's product portfolio can and may be limited.</p> <p>The German Insurance Association would like to suggest amending DTA p. 54 no. 4 a) by making reference to available – not: existing – products and the inducement scheme.</p> <p><input type="checkbox"/> DTA p. 54 no. 4 b)</p> <p>As stated explicitly in the list of principles mentioned under question 11, inducement schemes must include qualitative criteria. Hence, the German Insurance Association explicitly welcomes the intention of DTA p. 54 no. 4 b).</p> <p>However, it is of vital importance that inducement schemes systematically consider qualitative criteria. For example, individual commission payments are typically based on a percentage of the premium, determined with quantitative criteria. The level of the commission is based on qualitative provisions and is being determined in the commission contract between insurer and intermediary. The quantitative assessment of processes based on quantitative data helps optimising processes and quality assurance, which is in the bests interests of the customer. The German Insurance Association recommends clarifying under DTA p. 54 no. 4 b) that it is not the use of quantitative criteria, but rather the complete lack of qualitative criteria in the inducement scheme that entails a high level of risk.</p> <p><input type="checkbox"/> DTA p. 54 no. 4 c)</p> <p>It remains unclear how exactly the value of the product or service is to be determined. Thus, it is also unclear when to consider the remuneration to be disproportionate. The underlying objective – protecting customers from having to bear excessive distribution costs – is shared by the German</p>	
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		<p>Insurance Association.</p> <p>However, in commission-based distribution there is no direct link between the value of the individual commission and the value of the service, i.e. the efforts undertaken by the intermediary. Intermediaries working on a commission-basis perform a service to the customer that is only being remunerated if the customer actually concludes a contract. If the customer does not conclude a contract, the intermediary is not remunerated for its efforts. The cost-benefit-ratio of an insurance-based investment product does not directly depend on the specific level of remuneration received by the distributor, either.</p> <p>This is a core element of commission-based distribution and should not be included in this list of risky – and therefore de facto prohibited – inducements or inducement schemes.</p> <p>The commission-based model enables broad-scale access to high-quality advice, taking a holistic view on the interests of customers. Free advice enables customers to seek a second opinion, where necessary. Different studies – such as the Financial Advice Market Review in UK of March 2016 – show that people with a low income lose access to advice following a ban on commissions. The commission-based model contributes to a more socially equitable distribution of costs. Considering the enormous importance of private old-age provision, this factor cannot be taken too seriously.</p> <p>The commission-based model also has the advantage of rewarding distributors for actively approaching their customers. Without such active approach, it cannot be ensured that consumers adequately assess their own insurance needs in order to protect themselves against existential risks.</p>	
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			<p>If DTA p. 54 no. 4 c) in its current wording is not removed from the list, commissions will be de facto prohibited. Therefore, the German Insurance Association expressly recommends deleting DTA p. 54 no. 4 c).</p> <p><input type="checkbox"/> DTA S. 54 Nr. 4 d)</p> <p>The major part of an intermediary's service is provided before the conclusion of the contract (initial contact, information, advise, documentation, preparation of contract signing, conclusion of the contract).</p> <p>Services must be remunerated in a timely manner: After all, intermediaries are usually self-employed and must be able to rely on being paid to fund their livelihood and on-going business activities. Hence, it should be possible to remunerate intermediaries in a timely manner, based on commissions for contract acquisition, paid mainly upfront. The servicing of existing contracts is usually remunerated on a regular basis.</p> <p>Distributors are subject to the IDD's requirements regarding information and behaviour in advice, in particular Art. 20 (1) and 30 (1) IDD. The payment of an inducement does not release the distributor from compliance with any of these requirements. Thus, the interests of customers remain unaffected by the time of payment.</p> <p>Moreover, some countries (e.g. Germany) have successfully tested protection schemes requiring distributors to assume liability for a quota of their remuneration for a specific minimum period (in Germany: "lapse liability"): If the customer is not satisfied with his or her acquisition in the long run, the distributor has to make pro rata refunds on remuneration received. This is an advantage of commission-</p>	
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		<p>based models as compared to fee-based models.</p> <p>Intermediaries have a vital interest in long-term customer relations. The business relationship may involve much more direct customer contact than one might assume based on the one-time commission payment. Hence, the commission's impact on service quality cannot be determined based on the date of its payment alone. Instead, an extensive overall assessment is required. It is vital that the inducement scheme sets an incentive for long-term customer support.</p> <p>Therefore, the German Insurance Association holds the view that only inducement schemes that are exclusively based on upfront payments should be included under DTA p. 54 no. 4 d).</p> <p><input type="checkbox"/> DTA p. 54 no. 4 e)</p> <p>The German insurance industry agrees that if a product is surrendered by the customer at an early stage, there should be a pro rata refund of the inducement received. It also agrees with the intention of DTA p. 54 no. 4 e): Inducement schemes are intended to prevent intermediaries from providing non-satisfactory services. This objective can be achieved by requiring distributors to make pro rata refunds if the product is surrendered at an early stage (in Germany: liability of the intermediary for a part of the commission received, "lapse liability"). It should be ensured, however, that the payments are refunded to the same party that made them. In the commission-based model, the insurer pays the intermediary, so it is the insurer who needs to be refunded.</p> <p>Where national legislation provides for such refunding systems, it is not necessary to introduce additional arrangements for a direct refund from the intermediary to the customer.</p>	
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			<p>In Germany, the system described above has proven to be risk-mitigating and practice-oriented. Therefore, the German insurance industry recommends amending DTA p. 54 no. 4 e) by clarifying that it only applies to contractual arrangements that do not provide for a pro rata refund in case of an early surrender.</p> <p>In addition to the objections to DTA p. 54 no. 4, the German insurance industry would like to point out that the definition of inducements in DTA p. 54 no. 1 also includes benefits that have the potential of significantly increasing the quality of customer service. As long as benefits for the distributor have a positive effect on professional advice, long-term customer support and the general recognition of customer demands and needs, they should not be included in the list of risk types. In particular, this holds true for:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Benefits aiming at a holistic advisory approach addressing all customer needs, <input type="checkbox"/> Professional training and development focussing on advisory quality (including related benefits such as catering or training material), <input type="checkbox"/> Support in the fields of IT and promotion of young talents 	
495	Institute and Faculty of Actuaries	Question 12	No.	Noted.
496	Insurance Europe	Question 12	Further types of inducements do not need to be added to those listed in the draft technical advice, which as mentioned in the response to Q.9 already runs the risk of undermining existing commission-based distribution models.	Noted.

497	Intesa Sanpaolo S.p.A.	Question 12	No.	Noted.
498	IRSG	Question 12	<p>According to the IRSG this question is not within the mandate of level I.</p> <p>The IRSG is in favour of case-by-case assessments of detrimental impact. The overall impact of the benefits needs to be assessed. Adding further examples to the list will not necessarily bring more clarity or certainty of when detriment occurs.</p> <p>As mentioned above, IRSG notes that the proposal does not deal with remuneration of staff, which raises a question of level playing field.</p>	Noted.
499	Liechtenstein Insurance Association (LVV)	Question 12	No further inducements need to be added to the types of inducements listed under Draft Technical Advice (DTA) p. 54 no.4.	Noted.
500	<p>MALTA INSURANCE ASSOCIATION</p> <p>These comments have b</p>	Question 12	No further inducements need be added.	Noted.
501	Mediterranean Insurance Brokers (Malta) Ltd.	Question 12	<p>Are there any further inducements which entail the high risk of leading to a detrimental impact and should be added to the list in paragraph 4 of the draft technical advice above?</p> <p>See above</p>	Noted.
502	Slovenian Insurance Association	Question 12	No. See aforementioned answer to question 11.	Noted.

503	Verband der Automobilindustrie e.V. Arbeitskreis	Question 12	Not applicable.	Noted.
504	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 12	<p>12: Gibt es weitere Anreize, die das Risiko bergen, sich nachteilig auszuwirken, und sollten diese der Liste in Absatz 4 oben hinzugefügt werden?</p> <p>Es sind keine weiteren riskanten Anreize unter die Typenliste gemäß Draft Technical Advice (DTA) S. 54 Nr. 4 einzuordnen. Bereits die bestehende Liste stellt das von der IDD als zulässig erklärte Modell des provisionsbasierten Vertriebs infrage. Der VDVM möchte daher empfehlen, an ihrer Stelle die unter Frage 11 vorgestellte Prinzipienliste für Konzeption und Vereinbarung der Vergütungsmodelle anzuwenden.</p> <p>Die Kriterien der Risikotypenliste unter DTA S. 54 Nr. 4 differenzieren zwischen einzelner Vergütung (als Anreiz nach Definition unter DTA S. 54 Nr. 1) und Vergütungssystem (als Anreizsystem nach Definition unter DTA S. 54 Nr. 2). Der VDVM hält Vorgaben, die sich konsequent auf das Vergütungssystem beziehen, für besser geeignet, um einen systematischen Schutz des Verbrauchers sicherzustellen. Das wäre ein praktikabler und verhältnismäßiger Regulierungsansatz zur Ausgestaltung von EIOPAs high level-Prinzip.</p> <p>Obwohl EIOPA selbst erläutert (S. 51 Nr. 15), kein faktisches Provisionsverbot einführen zu wollen, wird in den Erläuterungen S. 53 Nr. 18 konstatiert, dass es keine geeigneten Maßnahmen gibt, die Anreize oder Anreizsysteme legitimieren, die von vornherein nachteilig („detrimental“) für den Kunden sind - wie zum Beispiel die Konstellationen, die unter DTA S. 54 Nr. 4 aufgelistet sind. Damit wird diese Liste faktisch doch zur Verbotsliste, denn die Konstellationen gelten als nicht legitim, also unzulässig. Es wäre dringend</p>	Noted.

			<p>klarzustellen, dass Vergütungssysteme, die die in DTA S. 54 Nr. 4 aufgelisteten Anreize aufweisen, nicht verboten sind, dass aber Maßnahmen zu ergreifen sind, die das Risiko von Nachteilen für Verbraucher reduzieren. Das gilt insbesondere dann, wenn ein Mitgliedstaat, wie z.B. die Bundesrepublik Deutschland, selbst durch gesetzliche Regelungen (vgl. § 169 VVG) wie die Stornohaftzeit für die Vergütung eine gesetzliche Wertung der Vereinbarkeit einer Abschlußprovision mit den Kundeninteressen vorgenommen hat.</p> <p>Im Einzelnen zu den Unterpunkten der DTA S. 54 Nr. 4:</p> <p><input type="checkbox"/> DTA S. 54 Nr. 4 a)</p> <p>Der VDVM regt an, hinsichtlich des Wortlauts des DTA S. 54 Nr. 4 a) die unterschiedliche Reichweite des Produktangebots der verschiedenen Vermittlerformen zu berücksichtigen. So kann z.B. der einzelne gebundene Vermittler wohl nicht dazu verpflichtet sein, dem Kunden Versicherungs-anlageprodukte aus dem Portfolio eines Wettbewerbers zu empfehlen. Dieser Gedanke widerspricht Art. 19 Abs.1 c) IDD, wonach der Vertreter dem Kunden mitteilt, ob er seinen Rat auf eine ausgewogene Untersuchung stützt und ob er vertraglich verpflichtet ist, Versicherungsvertriebsgeschäfte ausschließlich mit einem oder mehreren Versicherungsunternehmen zu tätigen. Art. 19 Abs.1 c) IDD impliziert, dass das Angebotsportfolio eines Vermittlers durchaus limitiert sein kann und darf.</p> <p>Der VDVM möchte vorschlagen, die DTA S. 54 Nr. 4 a) zu ergänzen, in dem auf die verfügbaren – nicht auf die existierenden – Produkte und auf das Vergütungssystem Bezug genommen wird.</p> <p><input type="checkbox"/> DTA S. 54 Nr. 4 b)</p>	
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		<p>Die von uns unter Frage 11 vorgestellte Prinzipienliste verweist ausdrücklich auf die Notwendigkeit, qualitative Kriterien in die Vergütungsvereinbarung einzubeziehen. Insofern teilt der VDVM die Intention ausdrücklich.</p> <p>Entscheidend ist aber auch hier die systemische Berücksichtigung qualitativer Kriterien im Vergütungssystem. Die einzelne Provisions- bzw Courtagezahlung beispielsweise ist in der Regel ein Prozentsatz der Prämie und bemisst sich quantitativ. Die Höhe der Provision/Courtage richtet sich nach qualitativen Vorgaben und wird im Provisionsvertrag bzw. der Courtagezusage bei Maklern zwischen Versicherer und Vermittler geregelt. Die sorgfältige Prozessanalyse auf Basis quantitativer Daten hilft bei der Prozessoptimierung und Qualitätssicherung, von der letztendlich auch der Kunde profitiert. Der VDVM möchte sich dafür aussprechen, dass DTA S. 54 Nr. 4 b) klarstellt, dass nicht die Verwendung der quantitativen Kriterien, sondern das vollständige Fehlen von qualitativen Kriterien im Vergütungssystem ein hohes Risiko birgt.</p> <p><input type="checkbox"/> DTA S. 54 Nr. 4 c)</p> <p>Es bleibt unklar, woran sich der Wert der Dienstleistung oder eines Produktes konkret bemessen soll. Damit ist nicht nachvollziehbar, ab wann Vergütung unverhältnismäßig ist. Es soll verhindert werden, dass Kunden exzessive Vertriebskosten zu tragen haben. Diesen Ansatz teilt der Verband.</p> <p>Allerdings besteht im provisionsbasierten Vertrieb keine direkte Beziehung zwischen dem Wert der einzelnen Vergütung und dem Wert der Dienstleistung im Sinne des Aufwandes, den der Vermittler betreibt. Provisionsbasierte Vermittler erbringen dem Kunden Leistungen, die nur vergütet werden, wenn der Kunde abschließt. Schließt der Kunde</p>	
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			<p>keinen Vertrag ab, erhält der Vermittler keine Vergütung für die erbrachte Dienstleistung. Auch das Preis-/Leistungs-Verhältnis eines Versicherungsanlageproduktes hängt nicht direkt vom der konkreten Vergütungsbetrag für den einzelnen Vertreiber ab.</p> <p>Das ist ein Kernelement des provisionsbasierten Vertriebes und gehört nicht auf diese Liste von riskanten – und damit faktisch unzulässigen – Anreizen oder Anreizsystemen.</p> <p>Das Provisionssystem ermöglicht flächendeckend hochwertige Beratung, die die Bedürfnisse des Kunden ganzheitlich im Blick hat. Die Möglichkeit der Inanspruchnahme quasi kostenloser Beratung erlaubt es dem Kunden, sich gegebenenfalls eine zweite Meinung einzuholen. Auswertungen – z. B. die Financial Advice Market Review in UK vom März 2016 – zeigen, dass Personen im Niedrigeinkommensbereich beim Wegfall des Provisionssystems keine Beratung mehr erhalten. Das Provisionsmodell verteilt die Kostenlast sozial gerechter. Das ist in Zeiten, in denen die private Absicherung für das Alter elementar ist, hilfreich.</p> <p>Das Provisionsmodell fördert darüber hinaus die aktive Ansprache der Kunden. Ohne eine derartige Ansprache ist nicht sichergestellt, dass Verbraucher den eigenen Versicherungsbedarf zutreffend einschätzen und existenzgefährdende Risiken abwehren können.</p> <p>Der VDVM empfiehlt nachdrücklich die Streichung von DTA S. 54 Nr. 4 c), denn wenn dieses Kriterium in seiner gegenwärtigen Formulierung auf der Liste bleibt, besteht die große Gefahr, dass Provisionen künftig faktisch unzulässig wären.</p>	
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			<p><input type="checkbox"/> DTA S. 54 Nr. 4 d)</p> <p>Die überwiegende Arbeitsleistung des Vertreibers liegt in der Zeit vor Vertragsabschluss (Erstkontakt, Information, Beratung, Dokumentation, Vorbereitung der Vertragsunterzeichnung, Durchführung des Abschlusses) und ist mit dem Vertragsabschluss vorerst abgeschlossen.</p> <p>Dienstleistungen sind zeitnah zu vergüten. Die in der Regel selbstständigen Vermittler müssen berechenbar über Mittel zur Finanzierung ihres Geschäfts-betriebes und Lebensunterhalts verfügen können. Damit ist eine überwiegend zeitnahe Vergütung durch Abschlussprovisionen upfront nicht zu beanstanden. Die Betreuung einer bereits bestehenden Vertragsbeziehung wird in der Regel laufend vergütet.</p> <p>Vertreiber unterliegen den Informations- und Verhaltensanforderungen der IDD, insbesondere den Art. 20 Abs. 1, 30 Abs. 1 IDD in der Beratung. Die erfolgte Zahlung einer Vergütung entbindet von keiner dieser Pflichten. Mithin sind die Interessen des Kunden nicht durch den Zeitpunkt der Vergütungszahlung gefährdet.</p> <p>Zudem können Sicherungssysteme, die sich – wie in Deutschland – bewährt haben, den Vertreiber darauf verpflichten, für Vergütungsanteile für bestimmte Zeit zu haften (in Deutschland „Stornohaftung“). Vergütung muss anteilig zurück-erstattet werden, wenn der Kunden nicht dauerhaft von seiner Kaufentscheidung überzeugt ist. Das ist ein Vorteil, der das Provisionssystem gegenüber der Honorarberatung auszeichnet. Hierauf und die damit zum Ausdruck gekommene Leitlinie des deutschen Gesetzgebers hatte der geschäftsführende Vorstand des VDVM auch auf der Anhörung am 23.09.2016 in Frankfurt ausdrücklich</p>	
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		<p>hingewiesen.</p> <p>Es sei noch einmal auf die Fälle Atlanticlux in Deutschland verwiesen, in denen der Vermittler vom Kunden direkt eine Vergütung (Versicherungsvertrag war eine Nettopolice) erhielt, die nicht an eine Stornohaftzeit geknüpft und die Vergütung nahezu doppelt so hoch wie die durchschnittliche Vergütung der „Provisionsvermittler“ war. Diese Fälle zeigen auf, dass auch bei einer Vergütung des Vermittlers durch den Kunden ein klarer und eindeutiger detrimental impact vorhanden sein kann.</p> <p>Vermittler haben ein Eigeninteresse an der langfristigen Kundenbindung und damit an der Betreuung über den gesamten Lebenszyklus des Kunden. Die Geschäftsbeziehung kann sich auf deutlich mehr erstrecken, als es die einmalige Provisionszahlung jeweils erkennen lässt. Die Bewertung ihrer Auswirkung auf die Qualität der Serviceleistung kann daher nicht isoliert am Zeitpunkt der Auszahlung festgemacht werden, sondern bedarf einer Bewertung in der Gesamtschau. Entscheidend ist, dass das Vergütungssystem einen Anreiz für langfristige Kundenbetreuung setzt.</p> <p>Der VDVM möchte deshalb vorschlagen, unter DTA S. 54 Nr. 4 d) nur diejenigen Vergütungssysteme zu erfassen, die ausschließlich upfront-Vergütung anbieten.</p> <p><input type="checkbox"/> DTA S. 54 Nr. 4 e)</p> <p>Der VDVM unterstützt die Position, dass bei frühzeitiger Aufgabe eines Produktes durch den Kunden eine anteilige Erstattung der Vergütung erfolgen muss. Wir teilen die Intention von DTA S. 54 Nr. 4 e): Vergütungssysteme sollen der Situation vorbeugen, dass Vermittler ihre Serviceleistung schlecht erbringen. Dieser Effekt kann erreicht werden, in dem Vermittler darauf verpflichtet werden, bezogene</p>	
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		<p>Vergütungen im Falle einer Vertragsaufgabe im frühen Stadium anteilig zurückzuerstatten (in Deutschland Haftung des Vermittlers für Provisionsanteile: „Stornohaftung“). Allerdings müssen Zahlungen in dem Verhältnis zurück-erstattet werden, in dem sie geflossen sind. Im Provisionsmodell vergütet das Versicherungsunternehmen den Vermittler. Entsprechend sollte die Rückerstattung erfolgen.</p> <p>Soweit nationales Recht solche Erstattungssysteme vorsieht, bedarf es keiner zusätzlichen Vereinbarung im Vergütungssystem für eine direkte Vermittler-rückzahlung an den Kunden.</p> <p>Da sich das beschriebene System in Deutschland als risikomindernd und praxistauglich erwiesen hat, schlägt der VDVM entsprechend vor, DTA S. 54 Nr. 4 e) dahingehend zu ergänzen, dass nur die Konstellationen gemeint sind, die keine anteilige Rückerstattung durch den Vermittler an Versicherungsunternehmen vorsehen, wenn das Produkt in einem frühen Stadium aufgegeben wird.</p> <p>Neben den Einwänden gegen den Entwurf der DTA S. 54 Nr. 4 soll noch darauf hingewiesen werden, dass die Definition der Anreize nach DTA S. 54 Nr. 1 auch Vorteile erfasst, die zu einer signifikanten Förderung der Dienstleistungsqualität an den Kunden beitragen können. Solange professionelle Beratung, langfristige Kundenbetreuung und umfassende Berücksichtigung der Verbraucherwünsche und -bedürfnisse durch gewährte Vorteile gefördert werden, sollten letztere nicht der Risikotypenliste unterfallen. Dazu zählen insbesondere:</p> <ul style="list-style-type: none"> - Vorteile, die auf einen gesamtheitlichen Beratungsansatz abzielen, der alle Kundenbedürfnisse adressiert, 	
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			<ul style="list-style-type: none"> - Weiterbildungs- und Trainingsangebote mit Fokus auf die Beratungsqualität (inklusive der mit dem Training verbundenen Vorteile wie Catering oder Trainingsunterlagen), - Unterstützung im Bereich IT und Nachwuchsförderung. 	
505	Verband öffentlicher Versicherer (Association of G	Question 12	<p>No, there are no such inducements. We do not consider a negative list to be the right approach, and the Technical Advice should not contain such a list. A negative list takes account of individual aspects only, which lack meaning when viewed in isolation and do not adequately reflect actual practice. It is always necessary to evaluate the situation as a whole. Lists of this kind cannot keep pace with the latest developments and are often outdated very quickly, making their practical application impossible. Point 3 on page 54, which determines that all activities must always be geared to the customer's best interests, is already perfectly adequate as a "high-level principle". As a general rule, EIOPA should formulate rules that are based on principles and not attempt to draft detailed provisions.</p> <p>In Point 15 on page 51, EIOPA states that the proposals set down in the negative list are not meant to constitute a de facto prohibition of commission. At the start of the very comprehensive negative list (p. 54, Point 4), it is stated that the inducements given in the list harbour "a high risk" of running counter to the interests of the customer. By contrast, Point 18 on page 53 states that all of the items in the negative list are "detrimental from the outset" and cannot be justified even by the measures contained in the positive list (p. 52f., no. 17). Point 18 thus clearly contradicts both Point 15 and the introduction to the negative list. Despite its contrary statement, EIOPA would introduce a de facto prohibition of commissions.</p> <p>Regardless of the fact that we reject a negative list on principle, advocating instead a principles-based regulatory approach, we feel that numerous individual points in the list</p>	<p>Noted. EIOPA considers the list as important tool which complement the high level principle.</p> <p>The wording in the Analysis has been revised in order to avoid the misleading conclusion that EIOPA intends to introduce a de facto ban.</p> <p>The wording has been revised accordingly.</p>

		<p>given in the consultation paper warrant criticism. If such a list is included in the final version despite the fact that a principles-based approach would be more appropriate, a non-exhaustive positive list would also have to be included in the Technical Advice. The Technical Advice must be balanced and must not favour one of the lists over the other.</p> <p>We wish to emphasise in particular the following detailed remarks on the negative list (see p. 54, Point 4) and suggest them to be given due consideration:</p> <ul style="list-style-type: none"> Point 4a considers a detrimental impact when a product is offered or recommended when a different product exists which would better meet the customer's needs: It must be specified here that these can only be products that are actually available to the distributor. A tied intermediary – i.e. a distributor that may sell only products that an employer, principal or insurance partner places at its disposal – is contractually obliged to distribute precisely those products. As the tied-intermediary sales channel is a long-established one in the insurance world and ought to be preserved, this aspect must be given corresponding consideration. In addition, Art. 20 of the IDD already contains precise provisions as to how the consultation process should be structured in order to be to the customer's advantage, while Art. 19 contains precise provisions as to what must be disclosed to the customer prior to conclusion of an insurance contract. Thus, customers are correspondingly informed in advance when they are dealing with a tied intermediary. Points 4b and 4c consider a detrimental impact when the inducement is solely or predominantly based on quantitative commercial criteria or when the value of the inducement is disproportionate when considered against the value of the product: Qualitative criteria are generally not objective; only quantitative criteria can be measured 	<p>Please see EIOPA's feedback statement in the final report.</p> <p>Please see EIOPA's feedback statement in the final report.</p>
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			<p>a contract within 14 days – with life insurance policies the withdrawal period is even 30 days. During this period, the contract can be unwound entirely. The intermediary is also obliged to repay commission during the five-year cancellation liability period. It is thus in the intermediary’s own interest to provide professional consultation that is tailored to the customer’s needs. This is an effective instrument in countering conflicts of interest. It is not right for the insurance company to receive no compensation if the customer cancels the contract after expiry of the five-year period. At the very least, the company has organisational expenses that need to be compensated in monetary terms. A disincentive for the sale would thus exist if customers were to get their money back in full after five years of payments without any compensation for the insurance company. In practice, the customer would not run any major risk in concluding the contract. Once again, the EIOPA proposal would result in over-regulation of an area that requires no additional rules.</p> <ul style="list-style-type: none"> • Point 4f considers a detrimental impact when the inducement scheme entails a threshold which is unlocked by attaining a sales target based on volume or value of sales: Volume targets are calculated on the basis of market conditions and analyses of corresponding market potential. The targets are geared to customer demand, which is determined by objective means. At a time when private pension planning is hugely important, demand for such products is correspondingly high, making access to appropriate insurance products essential. It is justifiable to pay remuneration for the distribution of appropriate insurance products that meet customers’ needs. That entails no detriment to customers. In fact, the remuneration is what makes the entire process – i.e. the required needs-oriented consultation for customers, and the intermediaries’ willingness to invest in the ongoing professionalisation of business processes, in new employees to continue supporting customers into the future, and in further training – possible in the first place. 	
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506	Verbraucherzentrale Bundesverband e.V.	Question 12	While recognising that upfront commission has a devastating impact on the quality of the service to the customers, sales target agreements can lead to the same bias, when the intermediary is trying to reach the target. Gifts and benefits are a common reward in sales target agreements. That is why a gifts and benefits policy must be mandatory.	In EIOPA's view sales targets per se do not fall within the scope of the definition of an inducement.
507	Allianz SE	Question 13	To which extent are inducements which are considered bearing a high risk of detrimental impact part of existing business and distribution models? Please specify your answer and describe the potential impact of these proposals (if possible, with quantitative data). <input type="checkbox"/> Several of the elements listed in DTA 4, p. 54 are currently used in many distribution models, e.g. upfront commissions.	Noted.
508	AMICE	Question 13	In its current form, the draft technical advice could introduce a de facto prohibition on the receipt/payment of inducements due to a lack of risk-reducing factors that can be used to counterbalance the extensive blacklist and oversimplified presentation of inducements. We believe that a holistic approach is necessary while taking into account the context of the overall situation. See also our response to question 11.	Noted. The Technical Advice has been revised to take account of risk reducing factors.
509	ANASF	Question 13	-	Noted.
510	Association of International Life Offices	Question 13	Offers of free gifts especially to more vulnerable elderly clients can distort ability to make an unbiased informed decision – for example UK "over 50's" plans. Qualification for sales conventions and other/ incentives where qualification is dependent on volume sales without any 'quality' metrics.	Noted.
511	Assuralia	Question 13	In its current form, the draft advice could introduce a de facto prohibition on the receipt/payment of inducements due to a lack of risk-reducing factors that can be used to	Noted. Risk reducing factors have now been explicitly introduced in

			<p>counterbalance the extensive blacklist and oversimplified presentation of inducements. This is not in line with the IDD, where the European legislators deliberately choose not to introduce a ban on inducements and the introduction of further restrictions or prohibitions is a member state option (IDD art.29, 3).</p> <p>A ban on inducements would not benefit customers. In markets where such a ban was introduced, the negative effects of the alternative fee-based system are starting to emerge. In the UK an 'advice gap' is forming, since not all customers can afford to pay high fees to intermediaries. A fee-based system could also encourage distributors to focus their efforts on high-end customers only.</p> <p>See also our response to Q11.</p>	the Technical Advice as possible criteria for the assessment of detrimental impact.
512	BEUC	Question 13	As stated already in our response to question 11, there is currently a lack of understanding of how exactly these inducement schemes between manufacturers and distributors are designed. We therefore invite EIOPA to further investigate these practices	Noted.
513	BFV - Bundesarbeitsge- meinschaft zur Förderun	Question 13	-	Noted.
514	BIPAR	Question 13	As explained under Q 11 - pont 6, most commissions are paid upfront. Unless the example is rephrased, this leads to a de facto ban on commission. This would go against IDD level 1 that has been adopted by the EU legislators.	Noted. The policy proposal has been revised now requiring an appropriate refunding mechanism.
515	Bund der Versicherten (BdV - German Association of	Question 13	We clearly underline the fact that all inducements pointed out for questions 11 and 12 are part of existing business and distribution models. They are considered bearing a high risk of detrimental impact. In its Final Report on the Discussion Paper on Conflicts of Interest of PRIIPs (October 2014, p. 6/7),	Noted.

			<p>EIOPA itself had clearly pointed out that “sales targets, sales pressure, sales contests, performance measurement systems and sales incentives like “churning” in order to generate commissions (e.g excessive switching of funds)” have to be included under this perspective. These inducements clearly incentivise “quick sales” and turnover maximization instead of fostering long-term customer relationship based upon suitable or even best advice (cf. our comment on Q 12).</p> <p>Additionally we stress the following examples of detrimental impact for consumers which we had already outlined in one of the former EIOPA consultations on conflicts of interest in July 2014:</p> <p><input type="checkbox"/> In October 2012 one of the most important German economic newspapers, the Handelsblatt, published a large report on mis-selling practices by the life insurer ERGO. It was reported that there were more than 5000 cases of mis-selling practices in only a few months. Agents of ERGO pushed customers to exchange their life insurance contracts to accident insurance contracts with much lower interest rates (“Umdeckungen”).</p> <p><input type="checkbox"/> In the sector of health insurance for many years there was the problem of low budget tariffs especially for young people. High increases of these premiums after some years were inevitable, and affected costumers tried to change these tariffs. But even if there is the legal obligation to offer a different tariff by the same insurer, there are lots of cases in which insurers tried to prevent any change of tariff (cf. our comments for EIOPA discussion/consultation papers on conflicts of interests in PRIIPs, July and December 2014).</p>	
516	CNCIF - Chambre Nationale des Conseillers en	Question 13	We have no comment.	Noted.
517	Czech Insurance Association CAP	Question 13	<p>Below please find our answer in regards with several inducements:</p> <p>Ad a) “the inducement encourages the insurance intermediary</p>	Noted.

		<p>or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when from the outset a different product or service exists which would better meet the customer's needs";</p> <p>The intermediary in the Czech Republic is obliged to act with due diligence. The insurance companies take every possible effort to avoid any breaches within their distribution channels (training, controls). Such provision is already applied and complied with. Nevertheless, how this should work with tied agents who have exclusive contract with particular insurance company to sell their products?</p> <p>Ad d) "the inducement is entirely or mainly paid upfront when the product is sold";</p> <p>The Czech legislation allows for such system of payments. It is highly used by distributors in the Czech market. As it is legal in at least one Member State, we question whether such inducement shall really have a detrimental impact. Any change will bring increased financial expenses to change the distribution system in the market which may have to be projected in the costs of the products.</p> <p>Ad f) "if the inducement scheme entails any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a sales target based on volume or value of sales".</p> <p>The Czech market allows for commissions to differ depending on the business results (quantitative criteria), i.e. the higher amount of sales, the higher commission. Any change will affect the Czech insurance market considerably. It is questionable why such inducement shall present a detrimental</p>	<p>The wording has been revised in view of the specific situations of tied agents, now requiring that another product is available for the distributor.</p> <p>Noted.</p>
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			impact while legal in at least one Member States of the EU.	
518	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 13	-	Noted.
519	Fachverband der Versicherungsmakler und Berater in	Question 13	As explained under Q 11, most commissions are paid upfront. Unless the example is rephrased, this leads to a de facto ban on commission. This would be against IDD Level 1 that has been adopted by the EU legislators.	Noted. The example has been rephrased and added with an refunding mechanism.
520	Fédération Française de l'Assurance (FFA) 26 bo	Question 13	We do not believe that a detrimental impact on the quality of service can be determined solely on the basis of a particular model for calculating benefits or payment methods, but rather a holistic approach is necessary that takes into account the context of the overall situation, including the long-term customer relationship.	Noted.
521	FRENCH BANKING FEDERATION	Question 13	No.	Noted.
522	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 13	In Germany the commission-based insurance distribution is, and has always been, the rule. This model has proven itself over time. The commission-based advisory ensures a comprehensive service for all customers on all income tiers. A prohibition of commissions in contrast will exclude large parts of the population from accessing essential insurances. Not every customer can afford the fee for an expensive consultant. It is actually not the type of compensation that is decisive for better consumer protection, but the quality of the advisory services. The Bavarian cooperative banks are continuously looking for improvement in this area, in favour of the customer and consumer protection. A prohibition of commissions would disadvantage small investors. Only with commission-based advisory services a consultancy can also be offered to customers with limited financial resources. In addition, commissions also allow a	Noted. EIOPA does not intend to introduce a prohibition of commissions which would be contrary to the Level 1 decision of the European Legislators. Instead, EIOPA aims to balance the interests of the customers and stakeholders in an appropriate way requiring a thorough assessment whether inducements have a

			qualified and personal advice for insurance products with low contribution rates (personal liability, travel insurance, etc.).	detrimental impact on the quality of service.
523	German Association of Private Health Insurers (PKV)	Question 13	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
524	German Banking Industry Committee (GBIC)	Question 13	<p>Upfront commissions are a main feature of the existing commercial custom. To include upfront commissions in the list of inducements that are generally considered to have a high risk of leading to a detrimental impact on the quality of the relevant service to the customer does not sufficiently reflect the principle of proportionality since the form of the payment (upfront instead of partial payments) does not imply that the distributed insurance product is not in line with the best interests of the customer.</p> <p>As a minimum approach we, therefore, propose to delete at least paragraph 4 d of the Draft TA (although we would still like to recommend to delete the non-exclusive list in the Draft TA (p. 54) in its entirety - please see also the answers to questions 11 and 12) and to further emphasize in the Draft TA that the principle of proportionality is also of importance in connection with the determination of types of inducements which might have a detrimental impact on the relevant service to the customer.</p>	Noted. The example of "upfront commissions" has been revised to take better account of the principle of proportionality.
525	German Insurance Association (GDV)	Question 13	<p>The risk types proposed under Draft Technical Advice (DTA) p. 54 no.4 b) to d) affect the core of the commission-based sales of insurance products and can act as a de facto ban on commissions (see also question 12).</p> <p><input type="checkbox"/> List of risk types introduces de facto ban on commissions</p>	Noted. EIOPA is aware that a formal ban on the receipt/payment of commissions was not included in the Level 1 text of IDD and would like to reiterate and stress that the

			<p>Art. 29 (3) IDD explicitly leaves the decision on a ban on commissions for insurance-based investment products to the Member States. The European co-legislator has thus clearly decided against an explicit ban on commissions in IDD and its delegated acts. This result of the political trialogue may not be changed into a de facto ban on commissions on Level 2.</p> <p>EIOPA states in DTA p. 51 no. 15 that it does not intend to introduce a de facto prohibition on the receipt/payment of inducements. However, it also claims in the analysis on p. 53 no. 18 that there are no appropriate measures legitimizing inducements or inducement schemes which are detrimental for the customer from the outset, such as the types of inducements listed under DTA p. 54 no. 4 – thereby, EIOPA is introducing a de facto ban on inducements, since the listed types of inducements are considered illegitimate, i.e. prohibited. It should be urgently clarified that inducement schemes that include the types of inducements listed under DTA p. 54 no. 4 are not prohibited, but that measures must be taken to reduce the risk of a detrimental impact for customers. Otherwise, insurance intermediaries working on a commission basis would lose the financial basis of their intermediation activities.</p> <p>In commission-based distribution, the measures to be taken are contractually agreed upon between insurer and intermediary. Therefore, the list should refer to the overall inducement scheme laying down the rules of inducements, and not to individual inducements as suggested under DTA p. 54 no. a) to d). The German insurance industry would very much welcome a clear limitation of DTA p. 54 no. 4 on the “inducement scheme”.</p> <p><input type="checkbox"/> Balanced assessment of the effects of inducements</p>	<p>intention of proposing a list of practices that increase the risk of detrimental impact, is not to introduce a ban on commission through the backdoor. The aim of the list is to make market participants aware that the interests of their customers are put at risk and the likelihood of customer detriment exists, if these types of inducements are paid or received.</p> <p>Furthermore, EIOPA has amended the respective policy proposals of the Technical Advice, clarifying that the assessment should be based upon an overall analysis which takes into consideration all relevant factors which may increase or decrease the risk of detrimental impact, and appropriate organisational measures taken by the insurance undertaking</p>
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			<p>The German Insurance Association recommends abandoning the list of risk types in favour of a holistic approach, based on the principles for remuneration models described under question 11. In case EIOPA intends not to consider this approach, acceptable risk reducing factors should be included into the wording of the draft technical advice. It must at least be made clear that the list of risk types under DTA p. 54 no. 4 does not include any prohibitions.</p> <p>We support the general statement that certain factors can lead to a risk reduction. With this in mind, it remains unclear why EIOPA presents a list of risks but no list of risk-mitigating factors, even though a balanced assessment of all effects of inducements had been intended. The EU Commission's mandate specifically requests a collection of circumstances under which payments by third parties and benefits are generally acceptable (p. 8 of the mandate). Unfortunately, EIOPA does not comply with this requirement, listing four insufficient risk-mitigating circumstances instead (analysis p. 52 no. 17).</p>	<p>or insurance intermediary to decrease the risk of detrimental impact which aim to ensure that the inducements do not provide any incentive to carry out the insurance distribution activities in a way which is not in accordance with the best interests of the customer.</p>
526	Institute and Faculty of Actuaries	Question 13	Tied distributors or distributors owned by the insurance manufacturer would automatically constitute high risk inducements.	Noted.
527	Insurance Europe	Question 13	<p>The types of inducements that are listed in paragraph 4(b) to (d) of the draft technical advice do not necessarily have a high risk of leading to a detrimental impact. This should not result in imposing a de facto ban on commissions. As already mentioned in the response to Q.11, EIOPA refers to a distinctive list of inducements that are not acceptable and that it will no longer be possible to pay or receive certain inducements which entail a high risk of detrimental impact on the quality of the service provided to customers. This would not be in line with the provisions of the level 1 text of the IDD.</p> <p>A detrimental impact on the quality of service cannot be</p>	<p>Noted. EIOPA is aware that a formal ban on the receipt/payment of commissions was not included in the Level 1 text of IDD and would like to reiterate and stress that the intention of proposing a list of practices that increase the risk of</p>

			<p>determined solely on the basis of a particular model for calculating benefits or payment methods. A holistic approach is needed that takes into account the context of the overall situation, including the long-term customer relationship.</p> <p>Recommendation: The main criterion for the overall assessment of inducements should be the one in paragraph 4(a) on page 54 of the draft technical advice stating that there is a high risk of a detrimental impact on the quality of the relevant service to the customer when the inducement encourages the insurance intermediary or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when from the outset a different product or service available within the distributor's portfolio exists which would better meet the customers' needs.</p>	<p>detrimental impact, is not to introduce a ban on commission through the backdoor. The aim of the list is to make market participants aware that the interests of their customers are put at risk and the likelihood of customer detriment exists, if these types of inducements are paid or received.</p>
528	Liechtenstein Insurance Association (LVV)	Question 13	<p>The risk types proposed under Draft Technical Advice (DTA) p. 54 no.4 b) to d) affect the core of the commission-based sales of insurance products and can act as a de facto ban on commissions (see also question 12).</p> <p>- List of risk types introduces de facto ban on commissions</p> <p>Art. 29 (3) IDD explicitly leaves the decision on a ban on commissions for in-surance-based investment products to the Member States. The European co-legislator has thus clearly decided against an explicit ban on commissions in IDD and its delegated acts. This result of the political dialogue may not be changed into a de facto ban on commissions on Level 2.</p> <p>EIOPA states in DTA p. 51 no. 15 that it does not intend to introduce a de facto prohibition on the receipt/payment of inducements. However, it also claims in the analysis on p. 53 no. 18 that there are no appropriate measures legitimizing inducements or inducement schemes which are detrimental for the customer from the outset, such as the types of inducements listed under DTA p. 54 no. 4 – thereby, EIOPA is introducing a de facto ban on inducements, since the listed</p>	Noted.

		<p>types of inducements are considered illegitimate, i.e. prohibited. It should be urgently clarified that inducement schemes that include the types of inducements listed under DTA p. 54 no. 4 are not prohibited, but that measures must be taken to reduce the risk of a detrimental impact for customers. Otherwise, insurance intermediaries working on a commission basis would lose the financial basis of their intermediation activities.</p> <p>In commission-based distribution, the measures to be taken are contractually agreed upon between insurer and intermediary. Therefore, the list should refer to the overall inducement scheme laying down the rules of inducements, and not to individual inducements as suggested under DTA p. 54 no. a) to d). The Liechtenstein insurance industry would very much welcome a clear limitation of DTA p. 54 no. 4 on the "inducement scheme".</p> <p>- Balanced assessment of the effects of inducements</p> <p>The Liechtenstein Insurance Association recommends abandoning the list of risk types in favour of a holistic approach, based on the principles for re-muneration models described under question 11. In case EIOPA intends not to consider this approach, acceptable risk reducing factors should be included into the wording of the draft technical advice. It must at least be made clear that the list of risk types under DTA p. 54 no. 4 does not include any prohibitions.</p> <p>The Liechtenstein Insurance Association supports the general statement that certain factors can lead to a risk reduction. With this in mind, it remains unclear why EIOPA presents a list of risks but no list of risk-mitigating factors, even though a balanced assessment of all effects of inducements had been intended. The EU Commission's mandate specifically requests a collection of circumstances under which payments by third parties and benefits are generally acceptable (p. 8 of the</p>	
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			mandate). Unfortunately, EIOPA does not comply with this requirement, listing four insufficient risk-mitigating circumstances instead (analysis p. 52 no. 17).	
529	MALTA INSURANCE ASSOCIATION These comments have b	Question 13	<p>We disagree with the view that the types of inducements that are listed in paragraph 4(b) to (d) of the draft technical advice have a high risk of leading to a detrimental impact. We fear that this will result in imposing a de facto ban on commissions.</p> <p>The detrimental impact on the quality of service should not be determined solely on the basis of a particular model for calculating benefits or payment methods, but rather a holistic approach that takes into account the context of the overall situation, including the long-term customer relationship.</p>	Noted.
530	Mediterranean Insurance Brokers (Malta) Ltd.	Question 13	<p>To which extent are inducements which are considered bearing a high risk of detrimental impact part of existing business and distribution models? Please specify your answer and describe the potential impact of these proposals (if possible with quantitative data).</p> <p>As explained above most commissions are paid upfronts. Unless the example is rephrased, the leads to a de facto ban on commission. This would go against IDD level 1 that has been adopted by the EU legislators.</p>	Noted. The example on “upfront commission” has been rephrased to better take account of the principle of proportionality.
531	Slovenian Insurance Association	Question 13	The most established channel for sale of insurance products in Slovenia is sale via insurance agencies and insurance brokerage companies which are paid by commissions. Establishing a list of types of inducements, which have detrimental impact on the quality of the service to the customer, by the fact that no inducement has a detrimental impact on the quality of the service to the customer us such	Noted.

			and that its main purpose is a payment to the distributor for its work, will seriously threaten existing business models. Too restrictive conditions on inducements could enable freedom of services and de facto also enable carrying out insurance business. For unit linked insurance products we believe that they would not be sold in future under such circumstances. More than 30 % of all new concluded contracts for life insurance products in 2015 represent unit linked insurance products. More than 45 % of those contracts have been sold via insurance agencies and insurance brokerage companies.	
532	Verband der Automobilindustrie e.V. Arbeitskreis	Question 13	Not applicable.	Noted.
533	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 13	<p>13: Inwiefern sind Anreize, die als hohes Risiko für die Entstehung nachteiliger Auswirkungen gelten, Teil bestehender Geschäfts- und Vertriebsmodelle? Bitte führen Sie Ihre Antwort aus und beschreiben Sie die möglichen Auswirkungen dieser Vorschläge (wenn möglich mit quantitativen Daten).</p> <p>Die unter Draft Technical Advice (DTA) S. 54 Nrn. 4 b) bis d) vorgeschlagenen Risiko-typen treffen den Kern des provisionsbasierten Vertriebs von Versicherungsprodukten und können als faktisches Provisionsverbot wirken (siehe dazu auch Frage 12.).</p> <p><input type="checkbox"/> Verbotsscharakter der Liste der Risikotypen</p> <p>Art. 29 Abs. 3 IDD überträgt die Entscheidung über ein Provisionsverbot für Versicherungsanlageprodukte ausdrücklich den Mitgliedstaaten. Der europäische Co-Gesetzgeber hat sich damit explizit gegen ein ausdrückliches Provisionsverbot durch die IDD und ihre delegierten Rechtsakte entschieden. Dieses Ergebnis des politischen Trilogs darf nicht auf Level 2 in ein faktisches Provisionsverbot</p>	Noted.

		<p>verwandelt werden.</p> <p>Obwohl EIOPA selbst erläutert (DTA S. 51 Nr. 15), kein faktisches Provisions-verbot einführen zu wollen, wird in Erläuterungen S. 53 Nr. 18 konstatiert, dass es keine geeigneten Maßnahmen gibt, die Anreize oder Anreizsysteme legitimieren, die von vornherein nachteilig („detrimental“) für den Kunden sind – wie zum Beispiel die Konstellationen, die unter DTA S. 54 Nr. 4 aufgelistet sind. Damit wird diese Liste faktisch doch zur Verbotsliste, denn die Konstellationen gelten als nicht legitimierbar, also unzulässig. Es wäre dringend klarzustellen, dass Vergütungssysteme, die die in DTA S. 54 Nr. 4 DTA aufgelisteten Anreize aufweisen, nicht verboten sind, dass aber Maßnahmen zu ergreifen sind, die das Risiko von Nachteilen für Verbraucher reduzieren. Sonst wird den Versicherungs-vermittlern auf Provisionsbasis die finanzielle Grundlage für die Ausübung ihrer Vermittlungstätigkeit entzogen.</p> <p>Zu ergreifende Maßnahmen werden im provisionsbasierten Vertrieb vertraglich zwischen Versicherer und Vermittler vereinbart bzw. vom Versicherer gegenüber dem Makler zugesagt.. Deshalb ist es nicht hilfreich, dass sich die Liste, wie in DTA S. 54 Nrn. 4 a) bis d) vorgeschlagen, auf die einzelne Vergütung bezieht und nicht auf das Vergütungssystem, das die Bedingungen für die Zahlung von Vergütung regelt. Die deutsche Versicherungswirtschaft würde es sehr begrüßen, wenn sich DTA S. 54 Nr. 4 konsequent auf das „inducement scheme“ bezieht.</p> <p><input type="checkbox"/> Ausbalancierte Betrachtung der Anreizwirkung</p> <p>Der VDVM spricht sich dafür aus, statt der Risikotypenliste den unter Frage 11 dargestellten gesamtheitlichen Bewertungsansatz auf Basis formulierter Prinzipien für Vergütungsmodelle zu verwenden. Hilfsweise sollten risikoreduzierende Aspekte gleichberechtigt in den Entwurf</p>	
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			<p>des technischen Ratschlags aufgenommen werden. Mindestens muss klargestellt werden, dass die Risikotypenliste unter DTA S. 54 Nr. 4 keinen Verbotscharakter hat.</p> <p>Die grundsätzliche Aussage, dass eine Risikoreduzierung durch bestimmte Faktoren eintreten kann, ist zu unterstützen. Es ist dann aber unverständlich, warum in einer vermeintlich ausbalancierten Betrachtung der Anreizwirkung eine Risikoliste vorgelegt wird, während eine Liste an risikomindernden Faktoren fehlt. Das Mandat der EU-Kommission spricht ausdrücklich davon, die Risikoliste mit einer Aufzählung an Umständen zu ergänzen, in denen Vergütungszahlungen durch Dritte und Vorteile generell akzeptabel sind (dort S. 8). EIOPA weist die Vorgabe der EU-Kommission zurück. Die stattdessen benannten vier risikomindernden Umstände genügen der Mandatsvorgabe nicht ausreichend (Erläuterungen S. 52 Nr. 17).</p>	
534	Verband öffentlicher Versicherer (Association of G	Question 13	See our response to Question 11.	Noted.
535	Verbraucherzentrale Bundesverband e.V.	Question 13	-	Noted.
536	Allianz SE	Question 14	<p>Are there any further organisational measures or procedural arrangements which you would consider important to monitor whether and to ensure that inducements have no detrimental impact on the relevant service to the customer and do not prevent the professional from complying with their obligation to act honestly, fairly and in accordance with the best interests of their customers?</p> <p><input type="checkbox"/> No.</p> <p><input type="checkbox"/> In particular, the organizational requirement to assess each inducement (as opposed to inducement scheme, see</p>	<p>Noted.</p> <p>The wording has been rephrased to clarify that the assessment concerns the generic</p>

			DTA 8, p.55) may in many cases be disproportionate and create unnecessary administrative burdens (see also Q11). While it is sometimes relevant to look at single inducements to assess the riskiness of a practice, it is typically more adequate to assess the inducement scheme applied to a product or a distribution channel (i.e. the overall set of rules) than each individual inducement. The inducement scheme often gives a better holistic perspective on the remuneration and whether it is fairly balanced with view to the financial service provided. In addition, the assessment of each single payment to each distributor (as indicated in DTA 8, p.55) would not only fragment the perspective but also be disproportionately burdensome. It should therefore be clarified that the holistic assessment of the inducement scheme is the predominant concept of evaluation of inducements, being well understood as a special case of conflict of interest management unless single inducements trigger a material change to the holistic assessment.	(type of) inducement, but not every individual inducement which is paid to the distributor.
537	AMICE	Question 14	We do not consider any further organisational or procedural measures to be relevant.	Noted.
538	ANASF	Question 14	Yes, there are. Pursuant to Article 24, par. 9, Directive 2014/65EU (MiFID II) the existence, nature and amount of an inducement (or, where the amount cannot be ascertained, the method of its calculation) must be clearly disclosed to the client, prior to the provision of the service; where applicable, information must be provided also on mechanisms for transferring to the client the inducement. Neither Directive 2016/97/EU (IDD) nor the Draft Technical Advice provide for similar requirements: the absence of disclosure requirements concerning inducements is likely to create a case of regulatory inconsistency because, under IDD, customers would not be provided with the same level of information available to investors under MiFID II. As a starting point, we propose to further develop, by means of IDD delegated acts, the content of Article 19(1)(e), Directive 2016/97/UE (IDD), whereby, in good time before the conclusion of an insurance contract, an insurance intermediary is required to provide the customer with information on the source of its remuneration, including	Noted. EIOPA refers to Article 29 IDD which already introduces disclosures rules which also apply in the context of inducements.

			the case it works "on the basis of any other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract" (inducement).	
539	Association of International Life Offices	Question 14	Consumer complaints should be monitored during inducement /incentive drives to get early warning of any abuse.	Noted.
540	Assuralia	Question 14	We do not consider any further organizational or procedural measures to be relevant. The basic criterion for the overall assessment of inducements should be the obligation to always act in the best interest of the customer. The main focus is to ensure that remunerations do not provide an incentive to recommend a particular insurance product to a customer based on self-interest (for instance a higher commission), while from the outset another product could be offered that would better fit the customer's needs. See also our response to Q11.	Noted.
541	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 14	Korrespondierend mit 4f der EIOPA-Ausführungen (an Verkaufsvolumen gekoppelte Vergütungen) ist auf den Verhaltenskodex des Gesamtverbandes der Deutschen Versicherungswirtschaft für den Vertrieb von Versicherungsprodukten hinzuweisen. Kodex-Punkt 9 weist darauf hin, dass Vereinbarungen zwischen Versicherungsunternehmen und Versicherungsmaklern über umsatzbezogene Zusatzvergütungen die Unabhängigkeit des Versicherungsmaklers tangieren können und daher darauf zu achten ist, dass solche Vereinbarungen die Unabhängigkeit des Maklers und das Kundeninteresse nicht beeinträchtigen. Umsatzabhängige Zusatzvergütungen sollten insoweit bereits heute nicht mehr angeboten werden. Sie dürfen insbesondere von Versicherungsmaklern nicht angestrebt werden, sie würden sich damit Haftungsansprüchen aussetzen. Um Wiederholungen zu vermeiden, verweisen wir auf die diesbezüglichen Ausführungen in Antwort 9.	Noted.

542	BIPAR	Question 14	No, we believe it is much too early in the process to start discussing monitoring or taking any further organizational measures or procedural arrangements.	Noted.
543	Bund der Versicherten (BdV – German Association of	Question 14	<p>As EIOPA has assessed (CP, p. 52, point 16), a positive list outlining circumstances generally to be considered acceptable may entail the high risk of creating loopholes for regulatory arbitrage. This may be correct, but we would like to underline strongly that without such a positive list the risk of legal uncertainty continues pending for the consumers as well as for the insurers. If an inducement is later considered having prevented the distributors from complying with their obligation to act honestly, fairly and in accordance with the best interests of their customers, then these customers will already have suffered from financial losses (not suitable insurance coverage, high entry and exit fees etc.). For the insurers this may ensue actions for damages (compensation or indemnification) by their customers.</p> <p>EIOPA has already acknowledged (cf. CP, p. 52, point 16) that “specific circumstances may be considered reducing the risk of detrimental impact on the quality of the relevant service to the customer and could be taken into consideration as part of an overall-assessment”. Under this perspective we strongly recommend EIOPA urging the insurers to implement to following organizational measure or procedural arrangement: in order to avoid any legal uncertainty, distributors should be paid either by fixed income inducements (like employees) or by acquisition fees paid not upfront but during the entire lifetime of the product and without any sales targets.</p> <p>Another procedural arrangement concerns the calculation of costs of inducements: the calculated costs included in the IBIP must be – at minimum – as high the actual costs. Detrimental impact for customers results from any difference between calculated and actual costs, because the investment</p>	Noted. In view of the risks of creating loopholes EIOPA has abstained from introducing a positive list in the core elements of the Advice. However, for the sake of a balanced approach, it has also been clarified that factors which reduce the risk of detrimental impact (in particular organisational measures to monitor and control) may also be considered.

			part of the premium (and consequently possible rewards) will inevitably be reduced. In Germany the regional court of Cologne (Oberlandesgericht Köln) recently forbade any additional costs not being disclosed in the insurance contract before.	
544	BVI Bundesverband Investment und Asset Management	Question 14	EIOPA did not include specific rules on the disclosure of inducements to clients, while this has been done under MiFID II. However, receipt of inducements in relation to a distribution service has been recognised by EIOPA as a potential source of conflicts of interest. Therefore, it could potentially be derived from the provisions governing conflict of interest disclosure in Article 28(2) IDD that insurance intermediaries and insurance undertakings are under the obligation to specifically inform clients about inducements.	Noted. EIOPA refers to Article 29 IDD which entails disclosure rules, also applicable to inducements.
545	CNCIF - Chambre Nationale des Conseillers en	Question 14	No, there are no further organisational measures or procedural arrangements which we would consider important to monitor. The organisational specifications under this Draft technical advice already constitute an important (or even excessive) burden for distributors.	Noted.
546	CSCA French broker Association, 91, rue Saint Laza	Question 14	We are not looking to up the stakes at all in terms of a prudential, developed, specific and controlled national law.	Noted.
547	Czech Insurance Association CAP	Question 14	No.	Noted.
548	EFAMA - The European Fund and Asset Manageme	Question 14	EIOPA did not include specific rules on the disclosure of inducements to clients, while this has been done in MiFID II. However, receipt of inducements in relation to a distribution service has been recognised by EIOPA as a potential source of conflicts of interest (cf. para. 2 (c)) on page 45 of the consultation paper). Therefore, it would make sense to	Noted. EIOPA refers to Article 29 IDD which entails disclosure rules, also applicable to inducements.

			disclose all costs and charges to the clients and the transparency requirements in the conflicts of interests section, that the firm has an obligation to specifically inform clients about inducements.	
549	European Federation of Financial Advisers and Fina	Question 14	<p>Are there any further organisational measures or procedural arrangements which you would consider important to monitor whether and to ensure that inducements have no detrimental impact on the relevant service to the customer and do not prevent the professional from complying with their obligation to act honestly, fairly and in accordance with the best interests of their customers?</p> <p>Insurance intermediaries operating under the IDD are already obliged to maintain and operate appropriate organisational arrangements and procedures to avoid, mitigate or disclose conflicts of interest. We do not see any sense in replicating one and the same regulation several times by introducing another policy for inducements.</p>	Noted.
550	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 14	-	Noted.
551	Fachverband der Versicherungsmakler und Berater in	Question 14	No, we believe it is much too early in the process to start discussing monitoring or taking any further organizational measures or procedural arrangements.	Noted.
552	Fédération Française de l'Assurance (FFA) 26 bo	Question 14	With regard to the proposed organisational requirements, we would question the wording of paragraph 8 on page 55 which refers to documenting the assessment of each inducement in a durable medium. We believe this to be a too heavy administrative requirement and that it would be better dealt at the level of the inducement scheme (rather than each individual inducement).	Noted. In EIOPA's view the obligation to document refers to the assessment of the generic (type of) inducement, only.

553	FNMF, 255 rue de Vaugirard, 75015 PARIS	Question 14	No further organisational measures have to be added. The proposed measures should be sufficient and, as such, are already source of burden costs for the operators.	Noted.
554	Forum per la Finanza Sostenibile (FFS)	Question 14	Inducements should also be based on qualitative aspects as well as on environmental, social and governance (ESG) criteria. thus encouraging professionals to design and distribute more sustainable products and to raise awareness among their clients on ESG related risks and their financial materiality. As an example, insurance products tackling an urgent issue such as climate change should benefit of inducements.	Noted.
555	Genossenschaftsv erband Bayern e.V. (GVB – Bavarian	Question 14	No matter if it is about investment or about insurance: The decisions on their financial transactions with the Bavarian cooperative banks are always made by the customers themselves. Therefore the banks are providing the customer with any information that could be crucial to his decision to then consider together with the customer, whether the conclusion of a specific deal makes sense for him (or is in his “best interest”). Hence, there is no need for protection of the customer by the legislators in this context.	Noted.
556	German Association of Private Health Insurers (PKV	Question 14	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
557	German Insurance Association (GDV)	Question 14	No, the organizational specifications under Draft Technical Advice (DTA) p. 55 no. 6 and no. 8 already constitute a disproportionate burden for distributors, without offering any added value for the customer. The list of principles presented under question 11 can contribute to a more successful introduction of procedures for assessing inducements and the structure of inducement schemes, as required under DTA p. 55 no. 6. It is vital that such assessment procedures do not focus on individual inducements, but rather on the overall inducement scheme that regulates questions of payments and benefits.	Noted. The wording has been rephrased to clarify that the assessment and documentation concerns the generic (type of) inducement, but not every individual inducement which is paid to the distributor.

			<p>In particular, DTA p. 55 no. 8 requires an excessive amount of documentation, asking insurers to assess each single inducement. It is unclear in what way this requirement might benefit customers.</p> <p>The documentation requirements included in the consultation paper are generally very extensive (conflicts of interests, documentation of advice including assessment of suitability, appropriateness test, written arrangements on review requirements, arrangements on the exchange of information between intermediary and insurer). Intermediaries are simply not able to fulfil yet more documentation requirements on the effects of each payment / each single benefit.</p> <p>Ultimately, the additional burdens placed on intermediaries reduce the time they have for their original task: providing high-quality advice and long-term customer support. Documentation requirements should have a positive impact on consumer protection. For instance, consumer protection could benefit from a documentation of the agreement and assessment of inducement schemes. Such documentation would satisfy the requirement to inform about the implementation of the high-level principle without overburdening insurers and intermediaries. The German Insurance Association recommends clarifying this aspect in the wording of DTA p. 55 no. 8.</p>	
558	Institute and Faculty of Actuaries	Question 14	No.	Noted.
559	Insurance Europe	Question 14	As already mentioned in the response to Q.13, the proposed list of types of inducements would effectively result in imposing a de facto ban on commissions.	Noted. EIOPA is of the view that these arrangement may provide

			<p>Recommendation: Rather than using a 'blacklist', the following arrangements can also be used by insurance companies to monitor the services offered to customers:</p> <ul style="list-style-type: none"> a) Product lapse analyses, b) Customer satisfaction surveys, c) Sales quality monitoring. <p>Documenting the assessment of inducements</p> <p>With regard to the proposed organisational requirements, there is an issue with the wording of paragraph 8 on page 55 that refers to documenting the assessment of each inducement in a durable medium.</p> <p>Recommendation: EIOPA must provide clarification in the final technical advice that paragraph 8 refers to documenting the inducement scheme itself rather than each individual inducement, which would create a considerable and unjustified administrative burden.</p>	<p>appropriate organisational measures as required in the policy proposals on inducements. The wording has been rephrased to clarify that the assessment concerns the generic (type of) inducement, but not every individual inducement which is paid to the distributor.</p>
560	Intesa Sanpaolo S.p.A.	Question 14	<p>The policy proposals in the Technical Advice mirror similar provisions that are in place for the provision of investment services. We believe it is very important to maintain consistency with the provisions under MiFID II and with ESMA's advice in order to allow a transparent and fair conduct of business vis-à-vis clients and ensure a level playing field in financial markets, preventing regulatory arbitrage.</p>	Noted.
561	IRSG	Question 14	<p>As is the case for further work regarding proportionality (Q 10), IRSG believes it is too early to look at further specific monitoring in this area.</p>	
562	Liechtenstein Insurance Association (LVV)	Question 14	<p>The additional burdens placed on intermediaries reduce the time they have for their original task: providing high-quality advice and long-term customer support. Documentation requirements should have a positive impact on consumer protection. For instance, consumer protection could benefit from a documentation of the agreement and assessment of inducement schemes. Such documentation would satisfy the</p>	Noted.

			requirement to inform about the implementation of the high-level principle without overburdening insurers and intermediaries. The Liechtenstein Insurance Association recommends clarifying this aspect in the wording of DTA p. 55 no. 8.	
563	MALTA INSURANCE ASSOCIATION These comments have b	Question 14	Insurers monitor and carry out various analysis in order to ensure that inducements have no detrimental effect on customers. Such regimes vary between insurers, and we disagree that there should be a one size fits all system applicable across the board.	Noted.
564	Mediterranean Insurance Brokers (Malta) Ltd.	Question 14	Are there any further organisational measures or procedural arrangements which you would consider important to monitor whether and to ensure that inducements have no detrimental impact on the relevant service to the customer and do not prevent the professional from complying with their obligation to act honestly, fairly and in accordance with the best interests of their customers? No, we believe it is much too early in the process to start discussing monitoring or taking any further organizational measures or procedural arrangements.	Noted.
565	Slovenian Insurance Association	Question 14	No. We believe that proposed measures are appropriate and they are already realised in a practice. Insurance companies with the goal to ensure quality of the service to the customer carry out many other activities: analyse early termination of the contracts and adoption of necessary measures, individual treatment of the customer – advice to the customers who want to terminate a contract, carry out research of satisfaction and loyalty of the customers, permanent training and educating of the distributors for the sale of insurance products in accordance with the specific needs and preferences of the customers, sale monitoring and adoption of measures if necessary.	Noted.

			<p>Quality of the advice is ensured with legal requirements. According to Slovenian Insurance Act insurance agency or brokerage services may be performed only by distributors that obtain an authorisation from the insurance supervision agency. The insurance supervision agency withdraws an authorisation to provide insurance agency or brokerage services in cases of infringements. An insurance agent or a broker may perform services if she/he holds an authorisation from the insurance supervision agency to perform insurance agent or brokerage transactions. The insurance supervision agency withdraws such authorisation in case of repeatedly violating the obligations to protect the interests of customers (not fulfilling a duty to define customers' needs, preferences and grounds for advice).</p> <p>The insurance supervision agency issues an authorisation if a person passed the required test of professional knowledge and has at least three months of experience in insurance transactions acquired on the basis of employment or other legal relationship with an insurance company or an insurance agency or a brokerage company. Until issuing an authorisation the person has a status of an assistant insurance agent or broker. An assistant insurance agent or broker is under the supervision and in the presence of a mentor who is a holder of above mentioned authorisation of the Insurance Supervision Agency. An assistant insurance agent or broker seeks potential policyholders and works on the mentor's presentation of insurance to potential customers whereby she/he may introduce only the basic features of insurance such as the subject matter of insurance, risks insured, insurance coverage, insurance coverage exclusion, and sums insured. She/he is not allowed to conclude insurance contracts. The mentor is responsible for the accuracy and validity of statements made by the assistant insurance agent or broker to a potential customer.</p>	
566	Verband der Automobilindustri	Question 14	Not applicable.	Noted.

	e e.V. Arbeitskreis			
567	Verband Deutscher Versicherungsmak ler e. V. (VDVM)	Question 14	<p>14: Gibt es noch weitere organisatorische Maßnahmen oder verfahrensorientierte Vorkehrungen, die Sie für wichtig halten, um zu beobachten, ob Anreize sich nachteilig auf eine entsprechende Dienstleistung für den Kunden auswirken und Versicherungsunternehmen bzw. Versicherungsvermittler davon abhalten, ehrlich, redlich und im besten Interesse ihrer Kunden zu handeln bzw. um sicherzustellen, dass dies nicht geschieht.</p> <p>Nein, bereits die organisatorischen Vorgaben der Draft Technical Advice (DTA) S. 55 Nrn. 6 und 8 stellen eine unverhältnismäßige Belastung für Vertreter dar, ohne dem Kunden einen entsprechenden Mehrwert zu bieten. Die von DTA S. 55 Nr. 6 verlangte Einrichtung von Prozessen zur Bewertung von Vergütungen und Strukturen von Vergütungssystemen kann auf Grundlage der Prinzipienliste unter Frage 11 besser gelingen. Kern ist dabei, dass nicht auf den einzelnen Anreiz, sondern das Anreizsystem abgestellt wird, das die Zahlung von Vergütung oder die Gewährung von Vorteilen regelt.</p> <p>Insbesondere DTA S. 55 Nr. 8 ist hinsichtlich des Umfangs der verlangten Dokumentationspflicht wahrlich überbordend. Dort wird gefordert, dass die Bewertung jedes einzelnen Anreizes zu dokumentieren ist. Wie diese Dokumentationspflicht dem Kunden dient, ist nicht nachvollziehbar.</p> <p>Die Dokumentationsanforderungen im Konsultationspapier sind insgesamt sehr umfangreich (auftretende Interessenkonflikte, Dokumentation der Beratung samt Geeignetheitsprüfung bzw. Aufzeichnung der Angemessenheitsprüfung, schriftliche Vereinbarungen zu</p>	Noted. The wording of the Technical Advice has been rephrased to clarify that the assessment and its documentation concern the generic (type of) inducement, but not every individual inducement which is paid to the distributor.

			<p>Review-Pflichten, Absprachen hinsichtlich des Informationsaustausch Vermittler – Versicherungsunternehmen). Es ist dem Vermittler nicht zumutbar, zusätzlich weitere Dokumentationsunterlagen zur Wirkungsweise jeder einzelnen Zahlung / jedes einzelnen Vorteils zu erstellen.</p> <p>Die Mehrbelastung reduziert letzten Endes die Zeit, die ein Vermittler auf die qualitativ hochwertige Beratung und langfristige Kundenbetreuung aufwenden kann. Entscheidend sind Dokumentationsvorgaben mit echtem Mehrwert für den Verbraucherschutz. Dieser würde von der Dokumentation der Beurteilung und Vereinbarung von Vergütungsregeln profitieren. Das würde auch die Prüfung der Anwendung der vorgeschriebenen Prinzipien ermöglichen. Damit wäre dem verlangten Überblick über die Anwendung des high level-Prinzips genügt, ohne Versicherer und Vermittler übermäßig zu überlasten. Der VDVM regt eine entsprechende Klarstellung im Wortlaut der DTA S. 55 Nr. 8 an.</p>	
568	Verband öffentlicher Versicherer (Association of G	Question 14	<p>Yes, there are other points that need to be taken into account in the design of the delegated acts.</p> <p>As a general rule, key basic principles for the sale of insurance should be elaborated, not particular details. If a principles-based approach is taken, neither a negative list nor a positive list is necessary. Lists of this kind take account of individual aspects only, which lack meaning when viewed in isolation and do not adequately, reflect actual practice. It is always necessary to view the situation as a whole. Lists of this kind cannot keep pace with the latest developments and are often outdated very quickly, making them impossible to apply in actual practice.</p> <p>If the Technical Advice is nevertheless to include such lists, then a positive list would be preferable to a negative list. If both types of list are to be included, it is essential to have a</p>	<p>Noted.</p> <p>EIOPA has abstained from introducing a positive list into the core elements of the Technical Advice in view of the risks of</p>

			<p>positive list in the Technical Advice. This is especially necessary given that the Commission specifically requested examples of situations in which inducements are acceptable and the IDD contains no general prohibition of commission. The positive list should always be open-ended and non-exhaustive. However, EIOPA's proposals for a positive list (see p. 52, Point 17) are inappropriate. All they do is turn the points in the (far too restrictive) negative list into supposedly positive ones, thus going much further than is necessary. As a result, the content of the list is neither appropriate, nor does it serve its purpose.</p> <p>We do not consider it useful for EIOPA to formulate additional details and guidelines in a separate paper.</p>	regulatory arbitrage.
569	Verbraucherzentrale Bundesverband e.V.	Question 14	<p>As EIOPA describes itself, a "positive list" outlining circumstances that are considered generally acceptable entails the high risk of creating loopholes for regulatory arbitrage. This is the case, when the list is recognised as a conclusive enumeration. A positive list can also be used with the phrase "particularly", where the examples have a mere describing character.</p>	Noted. EIOPA has abstained from introducing a positive list into the core elements of the Technical Advice in view of the risks of regulatory arbitrage.
570	Allianz SE	Question 15	<p>Do you agree with the high level criteria used to specify the assessment of suitability and appropriateness? Are there any criteria you would exclude, and why?</p> <p><input type="checkbox"/> Yes, we agree with high level criteria used for the assessment of suitability and appropriateness. The relevant investment objectives, the financial situation and knowledge and experience typically can often not be assessed fully using schematic approaches. It is therefore important that the responsibility rests with the distributor (DTA 5) and rules permit for a adaptation of the criteria to the relevant situation as proposed in EIOPA's DTA.</p>	Noted.
571	AMICE	Question 15	<p>We agree with the high-level criteria proposed by EIOPA to specify the assessment of suitability and appropriateness. We did not identify any criteria</p>	Noted. Please see also the section titled "feedback statement"

		<p>that should be excluded.</p> <p>As a general remark, we believe that the need for collecting information from customers or potential customers might be in contradiction with the General Data Protection Regulation which is currently being implemented. According to the latter only a minimum amount of data should be collected.</p> <p>Paragraph 3 of the draft technical advice rightly points out the possibility that the information to obtain for the suitability assessment is covered already by other requirements in Chapter V of IDD. We agree that retrieving the same information from the customer through several procedures (i.e. demands and needs test, suitability analysis etc.) should be avoided as much as possible in order to limit the burden on both the industry and the customer. A customer would only be confused if he had to provide the same information multiple times.</p> <p>Not all transactions require an additional suitability or appropriateness assessment as this would hamper the correct execution of the contract (i.e. execution of contractually agreed options). Furthermore, additional assessments are not always to the benefit of the customer.</p> <p>We believe that paragraph 3 of the draft technical advice should not result in putting the demands and needs test at the same level as the suitability assessment. The determination of the customer's demands and needs is required before the conclusion of any contract and aims at avoiding mis-selling (cf. recital 44 of IDD), while the suitability assessment is only required when IBIPs are sold with advice and involves a much broader analysis (knowledge, experience, financial situation and investment objectives). The analysis of the demands and needs is thus much narrower and less extensive than the suitability assessment. EIOPA should recognize that the general obligation to analyse the demands and needs can be fulfilled by the suitability assessment. Similarly, a demands and needs test seems unnecessary in case of an appropriateness assessment. Moreover, MiFID 2 does not require an additional/separate demands and needs test on top of the suitability or appropriateness assessment, therefore, we consider that the demands and needs test can be covered by the assessment of suitability or appropriateness.</p> <p>In paragraph 8 (page 64) EIOPA refers to "collective contracts". We would appreciate if EIOPA provides more guidance on what type of contracts it refers to.</p>	<p>to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>
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			<p>Pursuant to paragraph 12 of the draft technical advice, the benefits of switching embedded investment should be greater than the costs. We believe that this paragraph puts too much emphasis on costs. There are other reasons why it could be better for a customer to switch his/her embedded investments. We therefore suggest the following amendment: "When providing advice that involves switching embedded investments, either by selling an embedded element and buying another or by exercising a right to make a change in regard to an existing embedded element, the insurance intermediary or insurance undertaking shall collect the necessary information on the customer's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch. such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs."</p>	
572	ANASF	Question 15	Yes, we do.	Noted.
573	Association of International Life Offices	Question 15	<p>This whole section can be viewed as offering a blinkered view for it ignores the reality of the distributor already obtaining detailed KYC irrespective of an IBIP and utilises investment rather than insurance language in places due to the attempt to copy across from MiFID.</p> <p>Point 2c uses the expression "the investment field" despite the product being a life policy. In any event this would be difficult to judge and be based on what a consumer himself states as his 'necessary knowledge and experience in the investment field'. We would suggest that for many consumers an IBIP will be their first venture into any "investment field" – good advisers should be able to compensate for lack of knowledge and/or experience. E.g by recommending managed funds.</p> <p>We find point 12 of the draft Technical Advice difficult to follow especially with use of the expression "embedded investments/element" which is not common insurance language. If it refers to a situation where one product is surrendered and another is taken in replacement, then AILO would concur with the draft. By using the word "switching" there is an implicit suggestion that it refers to a decision to change one underlying unit linked asset with another. We presume that is not intended and would welcome that being made clear in the text as such a decision is purely a rearrangement of the</p>	<p>Noted. With regard to terminology, the Directive reads "knowledge and experience in the investment field relevant to the specific type of product or service".</p> <p>Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>

			<p>products underlying investment portfolio normally with no product cost for the change.</p> <p>The collection of the data required by Point 13 is quite intrusive and can give a bad customer experience – e.g. level of education? – At the end of collection of data it’s only as good as the customer has been honest – and down to experienced assessment by the distributor.</p> <p>Again the language used in 13(b) may be suitable for investment business but is totally inappropriate for a long term and infrequently purchased contract such as an IBIP. To talk of the “volume” and frequency of transactions” and period over which carried out makes no sense whatsoever and equates them with an everyday purchase! As part of KYC a distributor would question what insurance products the client already holds.</p> <p>We believe that the data should be split between ‘essential’ (with evidence) – what assets (if any) has the client got and what is missing – can he afford it earnings/ savings etc – what is his risk appetite?</p> <p>And ‘guidance’ – in your opinion is this client an experienced investor and able to understand complex products? - After advice – is the client able to understand?</p> <p>A good adviser will match their recommendation to the conclusions they reach.</p> <p>People are very different and the guidance needs to be flexible to suit all circumstances. Too rigid and the novice investor risks limited access to product and may never move out of ‘novice’ category.</p>	
574	Assuralia	Question 15	<p>Assuralia agrees in general with the criteria proposed by EIOPA to specify the assessment of suitability and appropriateness and did not identify criteria that should be excluded. We also welcome the high level nature of the policy proposals. The Belgian insurance industry is already subject to requirements that are very similar to the proposed criteria. In order to avoid that existing legal frameworks would need to be adapted for the sake of formality only, the principles should remain sufficiently high level.</p>	<p>Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>

		<p>In particular, we support paragraph 3 of the draft advice (page 64 CP) which recognizes that it is possible that the information to obtain for the suitability assessment is already covered by other requirements in chapter V of the IDD. We agree that retrieving the same information from the customer through several procedures (for example demands and needs, suitability analysis...) should be avoided as much as possible in order to limit the burden on both the industry and the customer. A customer would only be confused if he had to provide the same information multiple times. This principle should not only apply in the subscription phase, but also in the contractual phase. When an appropriateness or a suitability test has been undertaken at subscription, the distributor should be able to rely on this analysis for subsequent transactions in that contract, provided that the transactions in question are compatible with that initial analysis. For example: a customer has subscribed a unit-linked life insurance with three different underlying funds and the insurer adds a new, fourth fund in which the customer can invest. If the new fund does not fundamentally differ from the others, the customer should be able to switch on an execution only basis (see also Q17). It should be acknowledged that not all transactions require an additional suitability or appropriateness assessment as this would hamper the correct execution of the contract (e.g. execution of contractually agreed options). Furthermore, additional assessments are not always to the benefit of the customer: for example, when a customer requests an early exit any delays in the execution could have a possible negative impact on the redemption value.</p> <p>On the other hand, paragraph 3 of the draft advice should not result in putting the demands and needs test at the same level as the suitability assessment. The determination of the customer's demands and needs is required before the conclusion of any contract and aims at avoiding mis-selling (cf. recital 44 IDD), while the suitability assessment is only required when IBIPS are sold with advice and involves a much broader analysis (knowledge, experience, financial situation and investment objectives). The analysis of the demands and needs is thus much narrower and less extensive than the suitability assessment. Because of this comprehensive nature of the suitability assessment, the Belgian supervisory authority (FSMA) acknowledges that distributors who have thoroughly checked a product against the knowledge, experience, financial situation and investment objectives of a customer can presume that the product covers the demands</p>	
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		<p>and needs of that customer (circular FSMA_2015_14 dated 1 September 2015, page 40). Assuralia therefore calls on EIOPA to recognize that the general obligation to analyse the demands and needs can be fulfilled by the suitability assessment. Assuralia considers an additional, separate demands and needs analysis also unnecessary in case of an appropriateness test. As MiFID 2 does not require an additional, separate demands and needs test on top of the suitability or appropriateness assessment, we consider that the demands and needs test can be covered by the assessment of suitability or appropriateness (level playing field).</p> <p>For the sake of clarity, we suggest the following small adjustment in paragraph 5 of the draft advice (p.64): "When advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system, the responsibility to undertake the suitability assessment shall lie with the insurance intermediary or insurance undertaking providing the service and that responsibility shall not be reduced by the use of an electronic system in making the personal recommendation." We agree that the distributor is responsible for the suitability assessment, but it should remain possible to have the assessment conducted by means of, for example, a roboadviser.</p> <p>Paragraph 12 of the draft advice (p.65) states that, in case of switching embedded investments, the benefits of switching should be greater than the costs. We feel this paragraph puts too much emphasis on costs. There are other reasons why it could be better for a customer to switch his embedded investments. For example: given the recent Brexit some risk-averse customers might prefer not to invest anymore in British shares, as they don't feel comfortable with potential fluctuations. This shows that not all benefits are monetary and can be easily set off against costs. We therefore suggest the following rephrasing: "When providing advice that involves switching embedded investments, either by selling an embedded element and buying another or by exercising a right to make a change in regard to an existing embedded element, the insurance intermediary or insurance undertaking shall collect the necessary information on the customer's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch. such that they are reasonably able to demonstrate that the benefits of switching are greater</p>	
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			<p>than the costs.”</p> <p>With regard to paragraph 13 (c) on p.66, it is important to leave some room for nuance by the distributor involved. Not having a higher degree should, for example, not automatically lead to the conclusion that the customer does not understand more complex products.</p> <p>Under Q17 Assuralia further elaborates on the relationship between demands and needs, suitability and appropriateness, also taking into account the member state option for an execution only.</p>	
575	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 15	<p>Hervorzuheben ist Punkt 11, wonach bei der Erbringung von Beratungsleistungen der Versicherungsvermittler keine Empfehlung abgeben darf, das/die Produkt/e für den Kunden nicht geeignet ist/sind. Dies entspricht dem Leitbild des Versicherungsmaklers.</p>	Noted.
576	BIPAR	Question 15	<p>General comments</p> <p>-We believe that Article 30 is clear as it already lists the criteria that need to be considered and we believe that the demands and needs test in the general part of the Directive, which has been very efficient so far, should be used as a basis (but there should not be a cumul of both tests).</p> <p>Specific comments on EIOPA draft technical advice regarding the assessment of suitability or appropriateness</p> <p>-We stress the need of a level playing field between distributors for these requirements and support in this respect the reference in point 5 (p 64) for (semi-) automated systems to follow the same rules regarding the suitability assessment. We believe that also in the part of requirements for the appropriateness assessment, for non-advised sales, this level playing field should be explicitly reflected.</p>	<p>Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>

			<p>-Regarding point 7 of the suitability assessment, we wonder if this is not too much copy paste of MiFID. Point 7 looks at the investment objectives from a strictly investment angle. It should be remembered that the purpose for taking out an IBIP is not solely the investment element (otherwise an investment-only product would be purchased) but that some form of insurance cover is required. This suggests that the insurance element may actually be more dominant in the customer's thinking when making the decision to seek out an IBIP. The name/reputation of the insurance undertaking for meeting claims under the insurance/assurance element of the product e.g. is therefore equally as important as the investment performance of the contracts available.</p>	
577	BNP Paribas	Question 15	<p>EIOPA states that product advice provided to clients in case of arbitrage between units must be subject to a cost-benefit analysis by the distributor that should demonstrate that benefits for clients are greater than their costs.</p> <p>This provision is very dangerous as it may lead the distributor to make numeric estimates of the benefit to clients when in reality it is impossible to know in advance the actual future performance of the units. This insecurity could lead to reticence on the part of distributors for whom making arbitrage recommendations would become a legally risky activity. For clients, the risk would be to not receive recommendations when in fact they would be useful to them.</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
578	Bund der Versicherten (BdV – German Association of	Question 15	<p>We fully agree with EIOPA's statement that the assessment of suitability and of appropriateness is one of the most relevant obligations for consumer protection. Suitability and appropriateness have to be assessed against:</p> <ul style="list-style-type: none"> <input type="checkbox"/> customer's investment objectives, including that person's risk tolerance; <input type="checkbox"/> customer's financial situation, including that person's ability to bear losses; <input type="checkbox"/> customer's knowledge and experience in the investment field relevant to the specific type of product or service, including the nature, volume and frequency of the transaction with which the customer is familiar. <p>No criteria should be excluded from those which are explicitly outlined in the related Draft Technical Advice (cf. CP, p. 64-66: points 2 (a) to (c) and 13 (a) to (c)). Only by doing so, the insurance intermediary or insurance</p>	Noted.

			undertaking will be able to determine whether that customer has the necessary experience and knowledge in order to understand the risks involved in relation to the product proposed.	
579	BVK Germany	Question 15	We think that the IDD in Article 30 is very clear in this respect.	Noted.
580	CNCIF - Chambre Nationale des Conseillers en	Question 15	Yes, we agree with the high level criteria used to specify the assessment of suitability and appropriateness.	Noted.
581	CSCA French broker Association, 91, rue Saint Laza	Question 15	In the case of IIP, the French regulations impose specific rules that largely meet expectations.	Noted.
582	Czech Insurance Association CAP	Question 15	<p>The similar amount of information is gathered when the insurance company provides for the assessment of needs of its clients. We consider problematic to prove anyhow whether the obtained information are reliable (para 9. of the proposal). In relation to the above, the para 12 of the proposal is highly problematic, i.e. to collect information to demonstrate that the benefits of switching are greater than the costs.</p> <p>In practice, clients quite often do not want to provide all of the required information. It may ended up in a situation that IBIPs could not be sold to clients in accordance with para 10 of the proposal. It may result in an example that client is not covered for a case of future difficult life situation.</p>	Noted.
583	EFAMA - The European Fund and Asset Manageme	Question 15	<p>In order to better align the IDD requirements with the MiFID II requirements, EIOPA could follow the logical order used in MiFID II. Paras. 4 and 5 of the Technical Advice could therefore be moved to become paras. 1 and 2 of the Technical Advice.</p> <p>Furthermore, para. 2 of the draft Technical Advice should be aligned further with the equivalent MiFID II text as the requirement under MiFID II and IDD</p>	Noted. The Commission has asked EIOPA in its mandate "to ensure regulatory consistency, the technical advice should be consistent with the line taken in the delegated acts

		<p>are the same. The amended paragraph should read as follows:</p> <p>“Without prejudice to the fact that any contract of insurance proposed shall be consistent with the customer’s insurance demands and needs under Article 20(1), IDD, an insurance intermediary or insurance undertaking shall obtain from customers or potential customers such information as is necessary for the insurance intermediary or the insurance undertaking to understand the essential facts about the customer and to have a reasonable basis for determining, giving due consideration to the nature and extent of the service provided, that the personal recommendation satisfies the following criteria:</p> <p>(a) it meets the customer’s investment objectives, including that person’s risk tolerance;</p> <p>(b) it meets the customer’s financial situation is such that the customer is able financially to bear any related investment risks consistent with the customer’s investment objectives, including that person’s ability to bear losses;</p> <p>(c) it is such that the customer has the necessary knowledge and experience in the investment field relevant to the specific type of product or service, in order to understand the risks involved in the transaction.”</p> <p>Furthermore, para. 9 of the draft Technical Advice is missing a MiFID II requirement [Draft Delegated Regulation, Article 54(7), para 2] to maintain adequate and up-to-date information when having an on-going relationship with a customer. Such a requirement should also be included in EIOPA’s Technical Advice.</p> <p>Lastly, para. 13 of the draft Technical Advice should be further aligned with the equivalent MiFID II requirement [Draft Delegated Regulation, Article 55(1)] as the IDD/MiFID II texts are the same. The amended paragraph should read:</p> <p>“The necessary information regarding the customer’s or potential customer’s knowledge and experience in the investment field, includes, where relevant, the following to the extent appropriate to the nature of the customer and the</p>	<p>expected to be adopted under Article 25 (8) of MiFID II.”</p> <p>The Technical Advice is striving to achieve this, while reflecting specificities of insurance-based investment products.</p>
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			<p>nature and extent of the specific type of product or service, including the complexity and risks involved.”</p> <p>Even though IDD does not set out different customer categories, it is still relevant to consider the nature of the customer as it will be a part of the target market considerations.</p>	
584	European Federation of Financial Advisers and Fina	Question 15	<p>Do you agree with the high level criteria used to specify the assessment of suitability and appropriateness? Are there any criteria you would exclude, and why?</p> <p>In our opinion EIOPA’s high level criteria would give the insurance intermediary the necessary flexibility to conduct the assessment of suitability and/or appropriateness for clients on a case by case basis.</p>	Noted.
585	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 15	<p>EFPA agrees with the high level criteria used to specify the assessment of suitability and appropriateness.</p> <p>Nevertheless, EFPA would like to remark that the suitability or appropriateness of an insurance recommendation or offer requires staff’s qualification and training. In addition, professional standards are extremely useful to ensure suitability and appropriateness.</p>	Noted.
586	Fachverband der Versicherungsmakler und Berater in	Question 15	<p>It should be clearly mentioned that the Delegated Acts based on IDD articles 27, 28, 29 and 30 (chapter VI) only apply to IBIPs.</p> <p>We believe that Article 30 is clear as it already lists the criteria that need to be considered and we believe that the demands and needs test in the general part of the Directive, which has been very efficient so far, should be used as a basis (but there should not be a cumul of both tests).</p> <p>Specific comments on EIOPA draft technical advice regarding the assessment of suitability :</p> <ul style="list-style-type: none"> ▪ We stress the need of a level playing field between distributors for these requirements and support in this respect the reference in point 5 (p 	Noted. The Commission has asked EIOPA in its mandate "to ensure regulatory consistency, the technical advice should be consistent with the line taken in the delegated acts expected to be adopted under Article 25 (8) of MiFID II." The Technical Advice is striving to achieve this, while reflecting

			<p>64) for (semi-) automated systems to follow the same rules regarding the suitability assessment. We believe that also in the part of requirements for the appropriateness assessment, for non-advised sales, this level playing field should be explicitly reflected.</p> <ul style="list-style-type: none"> ▪ Regarding point 7 of the suitability assessment, we wonder if this is not too much copy paste of MiFID. Point 7 looks at the investment objectives from a strictly investment angle. It should be remembered that the purpose for taking out an IBIP is not solely the investment element (otherwise an investment-only product would be purchased) but that some form of insurance cover is required. This suggests that the insurance element may actually be more dominant in the customer's thinking when making the decision to seek out an IBIP. The name/reputation of the insurance undertaking for meeting claims under the insurance/assurance element of the product e.g. is therefore equally as important as the investment performance of the contracts available. ▪ Regarding points 10 and 11 "...shall not recommend...": We wonder whether this mean that in this situation an intermediary is not permitted to make a recommendation. Does this include a recommendation not to purchase a particular product? The current 'blanket' wording would suggest that even a recommendation not to buy is prohibited and this could be against the customer's interests. This would seemingly also run contrary to paragraph 2 of Article 30(2) that allows the offering of products on a non-advised basis but with a warning '...provided in a standardised format'. ▪ Regarding point 14 (page 66), we wonder when and why would an intermediary discourage a client from giving information 	<p>specificities of insurance-based investment products.</p> <p>Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>
587	Fédération Française de l'Assurance (FFA) 26 bo	Question 15	<p>We agree with the high-level principle approach regarding the specification of suitability and appropriateness test. Advice and assessment of suitability require individual consideration of each customer by the distributor.</p> <p>We agree that the information set by Article 30 (1) IDD could be provided by means of a clear and understandable questionnaire about the customer's knowledge and experience, his financial situation including ability to bear</p>	<p>Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the</p>

		<p>losses (where relevant, information on the source of his regular income, his assets and real property) and his risk tolerance or and his objectives (where relevant, preferences regarding risk and the purposes). Information required from the customer should be appropriate, proportionate and should focus on factual data concerning existing personal situation of the customer upon information given by the customer (as EIOPA said in its proposition, distributor "should rely on the information provided by the customer" (page 66)).</p> <p>However, some precisions will be welcomed as to:</p> <p>1. Suitability assessment (advice):</p> <p>EIOPA must provide clarification that in cases where customers deliberately withhold information under Art. 30(1) IDD, distributors may continue with the sales process after providing and documenting a risk warning to the customer (Art. 30(2) IDD). This clarification is needed because in some member states, as in France, intermediaries are not allowed to sell insurance products without giving prior advice (page 65, point 10 and 11).</p> <p>Suitability assessment cannot be done at individual level in case of occupational contract. Thus paragraph 8 about collective contracts (page 64) is not understandable and is in need for clarification.</p> <p>2. Advice that involves switching embedded investments</p> <p>The requirement set up in Paragraph 12 of the draft advice (p.65) concerning the "analysis of the cost and benefits of the switch of embedded investments" is too far reaching and puts too much emphasis on costs. Market fluctuation due to certain events (recent Brexit for example) could trigger a switch of embedded investments.</p>	Final Report.
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			Moreover requiring the distributor to quantify the benefit of a switch may prove very dangerous as it is impossible to say in advance the future performance of the embedded investments (past performance is not a guide to future performance). As a consequence, there is a risk that distributors will no longer propose a switch even if it could be of benefit for the customer.	
588	Financial Services Consumer Panel	Question 15	The Panel agrees with the high level criteria used. There is no criteria we would suggest excluding.	Noted.
589	FRENCH BANKING FEDERATION	Question 15	<p>The industry thanks EIOPA for the major work undertaken for this consultation. However, it stresses that EIOPA's approach does not take into account particular cases where Member States have opted to introduce a duty of advice for the distribution of insurance products, as expressly permitted by the directive (Articles 20.1 and 30.1). It would be desirable for such cases to be subject to special treatment insofar as the duty of advice affectively addresses many of the proposed provisions put forward within this consultation. The level 2 texts derived from this consultation should not obstruct or undermine good sales practices already in place and which already address these recommendations.</p> <p>While the policy proposals on the whole do not call for any particular comment, some require clarification or development.</p> <p>As such, the notion of "collective contracts" used in point 8 is not clear and requires clarification.</p> <p>Indeed, this notion is not cited anywhere in IDD, which refers solely, in recital 49, to "group insurance", a notion that clearly covers a different scenario to that to which EIOPA refers.</p> <p>Similarly, the directive mandates EIOPA to specify the information to be provided to customers to give them a clearer understanding of the products offered. By importing provisions derived from level 2 work conducted as part of MiFID, EIOPA goes beyond its mandate, since IDD does not impose a duty to analyse the costs and related charges of the product. EIOPA goes beyond the mandate given to the European Commission by Article 30 of the Directive, which merely requires distributors to conduct periodic assessments of a product's suitability in regard to the customer's profile.</p> <p>In addition, EIOPA, in this case, ignores the specificities of insurance</p>	<p>Noted. The Commission has asked EIOPA in its mandate "to ensure regulatory consistency, the technical advice should be consistent with the line taken in the delegated acts expected to be adopted under Article 25 (8) of MiFID II."</p> <p>Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>

			products (unlike the point dealt with in question 16). Indeed, some contracts allow the introduction of different underlying funds, which, depending on the purpose of the contract, can be numerous, thereby virtually precluding an accurate analysis, comprehensible by the customer, of all the underlying funds in question. Such an approach may lead to a reduction in the offer available to customers, and may also restrict the offer covering their goals and needs.	
590	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 15	No comment	
591	German Association of Private Health Insurers (PKV	Question 15	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
592	German Banking Industry Committee (GBIC)	Question 15	<p>GBIC agrees with the high level principle of suitability and appropriateness. Generally, every counseling interview regarding the sale of financial or insurance products requires an individual review of the customer’s specific needs. Here, one needs to take into account the financial situation, the investment goals and the knowledge and experience of each individual. The use of predetermined questions for general application would potentially harm the consumer and should thus not be considered as an option.</p> <p>High-Level-Criteria should take into account the cases for special treatments within the responsibility of manufacturer or distributor in case of switching embedded investments. They might be changed from distributor to manufacturer and vice versa. For example, there might be insurance-based investment products under which the customer has the right to change, for instance, the investment funds from time to time. We understand that the distributor does not have the obligation to conduct a full suitability assessment but to consider all the information the distributor obtains from the customer.</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

593	German Insurance Association (GDV)	Question 15	<p>The German insurance industry agrees with the high-level principle approach regarding the specification of the suitability and appropriateness test. The customer's investment objectives, financial situation, knowledge and experience cannot be captured by abstract, stereotype questions, intruding into every last detail of his/her life. Instead, distributors need sufficient flexibility to meet the requirements of the individual intermediation process and the specific needs of the individual customer.</p> <p>To achieve such flexibility, the draft technical advice should consider the relevance of the information to be assessed in suitability and appropriateness tests. Thus, the limitations intended in the EIOPA draft are of vital importance and much welcomed by the German insurance industry.</p>	Noted.
594	Institute and Faculty of Actuaries	Question 15	Yes.	Noted.
595	Insurance Europe	Question 15	<p>The high-level principle approach regarding the specification of the suitability and appropriateness test is positive and in line with the requirements set out in the Level 1 text of the IDD.</p> <p>Advice and the assessment of suitability require individual consideration of each customer by the distributor. Her/his investment objectives, financial situation, as well as knowledge and experience, cannot be determined by reference to general questions on the customer's personal life, such as his/her level of education or profession. Instead, it requires sufficient flexibility for distributors to meet the individual requirements of each customer's situation and his/her need for advice. The draft technical advice therefore needs to carefully consider the relevance of the respective information to be assessed in suitability and appropriateness tests and follow a proportionate approach.</p> <p>Scope of suitability test</p> <p>The suitability test under Art. 30(1) IDD is aimed at the sale of insurance-based investment products. It does not intend to cover any ongoing advice or administration of ongoing insurance-based investment products, without the distributor informing the customer that it will carry out an ongoing suitability assessment under Art. 30(5) of the IDD. A corresponding clarification is</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

			<p>needed regarding the content in paragraph 8 of the analysis on page 62.</p> <p>Provision of customer information</p> <p>According to paragraph 10 of the draft technical advice on page 65, EIOPA does not allow the distributor to provide any recommendation where the customer does not provide sufficient information for the suitability test in the advisory process. However, it should be noted and respected that customers are not always willing to give personal information on every aspect required.</p> <p>According to the Level 1 text of the IDD, distributors are still allowed to sell IBIPs in cases where the customer is unwilling to share certain information with the distributor, despite the fact that the latter is obliged to request it.</p> <p>Recommendation: EIOPA must provide clarification that in cases where customers deliberately withhold information under Art. 30(1) IDD, distributors may continue with the advisory and sales process after providing and documenting a risk warning to the customer (Art. 30(2) IDD). This clarification is needed because in some member states, eg Germany and France, intermediaries are not allowed to sell insurance products without giving prior advice.</p> <p>Switching embedded investments</p> <p>Paragraph 12 of the draft advice on page 65 puts too much emphasis on costs. There are other reasons why it could be better for a customer to switch his embedded investments. For example, a customer might prefer investments that pursue social or environmental objectives for ethical reasons, or upheaval in a particular sector that makes market shares temporarily volatile may lead certain risk averse customers to divest due to the uncertainty.</p> <p>Recommendation: The last part of the paragraph should be deleted: "When providing advice that involves switching embedded investments, either by selling an embedded element and buying another or by exercising a right to make a change in regard to an existing embedded element, the insurance intermediary or insurance undertaking shall collect the necessary information on the customer's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs."</p>	
596	Intesa	Question	For insurance-based investment products, the assessment of suitability and	Noted.

	Sanpaolo S.p.A.	15	appropriateness should be as consistent as possible with the provisions under MIFID II and related Delegated Acts / guidelines defined by ESMA – which require the assessment to be done on the basis of the customer’s overall financial situation. Therefore, we think that the criteria identified in the consultation paper are consistent with this approach.	
597	IRSG	Question 15	<p>Yes we do agree with the high level criteria.</p> <p>The high level criteria is the minimum required to ensure adequate consumer protection is in place when recommending or selling insurance-based investment products, given that the purchase of an unsuitable product can have dire consequences for consumers.</p> <p>Consumers ‘don’t know what they don’t know’ and are often over confident when taking out investment-linked products, underestimating the true risk involved. It is therefore essential that the insurance intermediary or insurance undertaking hold the responsibility for ensuring the customer is aware of all the relevant facts, including risks, and has had the opportunity to consider the potential disadvantages as well as advantages of the purchase.</p> <p>In sales of investment-linked products, the benefits of the purchase should not be over promoted. This criteria ensures that the insurance intermediary/insurance undertaking will take more responsibility when assessing the risks and proving the product is suitable.</p> <p>We also strongly agree with the proposal that “when advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system, the responsibility to undertake the suitability assessment shall lie with the insurance intermediary or insurance undertaking providing the service and shall not be reduced by the use of an electronic system in making the personal recommendation”. This will ensure that in with the increasing onset of financial technology, full responsibility still lies in the correct quarter.</p>	
598	Italian Banking Association	Question 15	As anticipated above, it would be very important to allow for an integrated way of collection of information about clients under both IDD and MiFID II in order to enable distributors having on-going integrated relationship with their clients to conclude a framework contract, mentioning the reciprocal conduct	Noted.

			<p>rules and to adopt a unified questionnaire both for insurance based investment products and financial instruments. This would mean that the questionnaire should aim at collecting information about clients on the whole set of subjects relevant to the suitability/appropriateness assessment of the different investment products (financial instruments and insurance based investment products) available to clients, which should be subject to periodic updating and/or to updating in case of relevant event.</p> <p>According to this approach, the collection of information about clients would be structured in such a way to properly detect the characteristics of clients towards different products in order to enable distributors to have the necessary information to carry on the suitability/appropriateness assessment before any investment, also with a portfolio approach if it is required by the framework contract.</p>	
599	Liechtenstein Insurance Association (LVV)	Question 15	The draft technical advice should consider the relevance of the information to be assessed in suitability and appropriateness tests. Thus, the limitations intended in the EIOPA draft are of vital importance.	Noted.
600	MALTA INSURANCE ASSOCIATION These comments have b	Question 15	<p>We agree with the high level principle approach regarding the specification of suitability and appropriateness.</p> <p>Paragraph 8 of the analysis seems to suggest that the suitability test subsists throughout the customer relationship. It is our view that the suitability test under Art. 30 (1) IDD is not aimed to cover any ongoing advice or administration of ongoing insurance-based investment products, without ongoing suitability tests being announced to the customer by the distributor, (Art. 30(5) IDD). We would appreciate a corresponding clarification in this regard.</p> <p>We also believe that paragraph 12 of the draft advice (p.65) puts too much emphasis on costs. There are other reasons why it could be better for a customer to switch his embedded investments. We would appreciate a corresponding recognition of this in this regard.</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

601	Mediterranean Insurance Brokers (Malta) Ltd.	Question 15	<p>Do you agree with the high level criteria used to specify the assessment of suitability and appropriateness? Are there any criteria you would exclude, and why?</p> <p>It should be very clear and mentioned explicitly for all delegated acts that are part of chapter VI on IBIPs that the delegated acts are indeed only applicable to IBIPs.</p> <p>We believe that Article 30 is clear as it already lists the criteria that need to be considered and we believe that the demands and needs test in the general part of the Directive, which has been very efficient so far, should be used as a basis (but there should not be a cumul of both tests).</p>	Noted.
602	Slovenian Insurance Association	Question 15	<p>Yes, we agree with the high-level criteria used to specify the assessment of suitability and appropriateness. We believe that paragraph 12 on page 65 of the draft technical advice puts too much emphasis on costs. We suggest to delete: „such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.“.</p>	Noted.
603	Verband der Automobilindustrie e.V. Arbeitskreis	Question 15	<p>Not applicable.</p>	
604	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 15	<p>15: Stimmen Sie den Grundsatzkriterien für die Spezifizierung der Beurteilung der Eignung und Zweckmäßigkeit zu? Gibt es Kriterien, die Sie weglassen würden, und wenn ja, warum?</p> <p>Der VDVM stimmt mit dem Ansatz eines high level-Prinzips zur Spezifizierung der Geeignetheits- und Angemessenheitsprüfung überein. Die Investmentziele des jeweiligen Kunden, seine finanzielle Situation sowie sein Wissen und seine Erfahrungen können nicht durch schablonenhafte Fragen bis ins letzte Detail erfasst werden. Es bedarf vielmehr einer ausreichenden Flexibilität für Vertreter, den Anforderungen der jeweiligen Vermittlungssituation und der Individualität des Kunden gerecht zu werden.</p>	Noted.

			Dafür ist es entscheidend, dass die technischen Entwürfe die Relevanz der jeweiligen Informationen innerhalb der Geeignetheits- und Angemessenheitsprüfung berücksichtigen. Den von EIOPA im Entwurf vorgesehenen Einschränkungen kommt damit entscheidende Bedeutung zu.	
605	Verbraucherzentrale Bundesverband e.V.	Question 15	<p>We agree with the high level principle. Especially the obligation to demonstrate that the benefits of switching are greater than the costs, is essential to avoid misselling and misleading advice.</p> <p>Regarding collective contracts where more than one person is insured or participating as contractual party it is absolutely necessary, that the suitability assessment is provided for every single consumer by either the insurance intermediary or the insurance undertaking. Only they have the expertise to provide these tests in an adequate way and with reasonable results.</p> <p>We believe that the question, how often a consumer wants to deal with his investment, is also a necessary information to provide with an adequate suitability and appropriateness test. Consumers who do not want to deal with their investment, have to be offered non-complex insurance-based investment products or containing ETF´s.</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
606	Zurich Insurance Company, CH 8045 Zurich	Question 15	<p>Assessment of Suitability</p> <p>The draft presents the very same objectionable expansion of obligations and muddling of roles in the context of the assessment of suitability. Similar to its authority over Conflicts of Interest and Inducements, the Commission's authority here is to adopt delegated acts "to further specify how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article when carrying out insurance distribution activities with their customers." Article 30(6). Further, the suitability assessment itself is only an obligation of the insurer "when providing advice" or "when carrying out insurance distribution activities [other than providing advice]." Article 30(1) and (2). Accordingly, EIOPA must revise the technical advice so that it only reaches the insurance undertaking when the insurance undertaking is carrying out distribution. EIOPA can do as with the following changes:</p> <p>Assessment of suitability</p>	Noted. The IDD reference to "carrying out insurance distribution activities with their customers" has been reflected accordingly in EIOPA's Technical Advice.

		<p>1. The insurance intermediary or insurance undertaking carrying out the distribution shall determine the extent of the information to be collected from customers in light of all the features of the advice to be provided to those customers.</p> <p>2. Without prejudice to the fact that any contract of insurance proposed shall be consistent with the customer's insurance demands and needs under Article 20(1), IDD, an insurance intermediary or insurance undertaking carrying out the distribution shall obtain from customers or potential customers such information as is necessary for the insurance intermediary or the insurance undertaking to understand the essential facts about the customer and to have a reasonable basis for determining that the personal recommendation satisfies the following criteria:</p> <p>(a) it meets the customer's investment objectives, including that person's risk tolerance;</p> <p>(b) it meets the customer's financial situation, including that person's ability to bear losses;</p> <p>© it is such that the customer has the necessary knowledge and experience in the investment field relevant to the specific type of product or service.</p> <p>3. It can be the case that the information to obtain for the suitability assessment is covered already by other requirements of Chapter V of Directive 2016/97/EU.</p> <p>4. The insurance intermediary or the insurance undertaking carrying out the distribution shall not create any ambiguity or confusion about their responsibilities in the process when assessing the suitability in accordance with Article 30(1) of Directive 2016/97/EU. The insurance intermediary or insurance undertaking carrying out the distribution shall inform customers, clearly and simply, that the reason for assessing suitability is to enable them to act in the customer's best interest.</p> <p>5. When advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system, the responsibility to undertake the suitability assessment shall lie with the insurance intermediary or insurance undertaking carrying out the distribution providing the service and shall not be reduced by the use of an electronic system in making the personal recommendation.</p>	
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607	Allianz SE	Question 16	<p>When EIOPA is reflecting insurance specificities in the policy proposals above, do you agree with them? In particular, with regard to insurance specificities related to the protection elements within an insurance-based investment product (e.g. biometric risk cover), are there aspects regarding the information to obtain (such as the 'risk profile') for the assessment of suitability and appropriateness that would necessitate further and/or more explicit insurance specificities?</p> <p><input type="checkbox"/> The DTA restricts the provision of advice to customers which do not provide sufficient information (DTA 10, p. 65). We would welcome a clarification that this does not amount to a ban on sales of such product to that customer but typically to the application of the rules for non-advised sales (i.e. typically an appropriateness test). In practice, this may be a very relevant case when potential customers of insurance-based investment products want to purchase a product but do not want to disclose all personal information requested, especially on his or her financial situation.</p> <p><input type="checkbox"/> In effect, the customer should ultimately decide which personal</p>	<p>Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>

			<p>information he or she wants to disclose but should be fully aware of the implications. To this end, the customer should be notified (see DTA 9 (a), p. 65) and the distributor should generate the relevant documentation.</p> <p><input type="checkbox"/> In addition for group contracts, it should be clarified DTA 8, p. 64/65, that the policy should specify that information request and assessment should take the perspective of the collective, since this is the relevant perspective for the assessment of suitability.</p>	
608	AMICE	Question 16	<p>We believe that the assessment of suitability or appropriateness should only concern the investment part of an IBIP.</p> <p>EIOPA should clarify the consequences for cases in which the customer is not willing to share certain information with the insurance undertaking or the insurance intermediary despite the fact that the latter is required to request it. Paragraph 10 of the draft technical advice only prohibits the insurance intermediary or the insurance undertaking to recommend IBIPs to the customer. It is unclear whether distributors are still allowed to sell IBIPs following the rules under Article 30(2) of IDD (sale after documented warning) when customers withhold information under Article 30(1) of IDD.</p> <p>Despite the provisions of Article 30(6)(c) of IDD, EIOPA fails to specify the type of customer/potential customer (retail or professional customers). We would appreciate a clarification on this point.</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
609	ANASF	Question 16	<p>We believe that more explicit insurance specificities are needed for the assessment of suitability and appropriateness. From this point of view, the Consultation paper on EIOPA's advice on the development of an EU Single Market for personal pension products (PPP – EIOPA-CP-16/001, pp. 32-33) provides some useful hints. I.e., to encompass insurance specificities, the information to obtain should be complemented with an assessment of:</p> <p>i) the reasons for purchasing a life insurance policy. Particularly, the potential customer should be asked to choose among: retirement (plus income expectations at retirement), protection of family and loved ones in case of death/illness/long-term care, a combination of the aforementioned issues;</p> <p>ii) customer's needs to protect some other individuals (e.g., family members or loved ones to be named beneficiaries) and information about the persons to be covered/protected under the policy;</p> <p>iii) customer's preferences between a lump sum or an annuity to be paid according to contractual clauses and options.</p>	Noted.

610	Association of International Life Offices	Question 16	See 17 below	
611	Assuralia	Question 16	<p>Assuralia considers that the paragraphs 5, 12 and 13(c) need some rephrasing (see our concrete suggestions under Q15).</p> <p>The assessment of suitability or appropriateness should only concern the investment part of an IBIP. We therefore do not see any need for further insurance specificities. Furthermore, the requirements should not go further than the MiFID 2 requirements.</p>	Noted.
612	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 16	-	
613	BIPAR	Question 16	See above	
614	Bund der Versicherten (BdV – German Association of	Question 16	<p>It is crucial to underline that the suitability and appropriateness assessment focusses on the investment part of any IBIP (insurance-based investment product). As private life and annuity insurances have that investment part included in their total premiums, they are part of PRIIPs aiming at a level playing field among all types of packaged investment products. Therefore the suitability and appropriateness assessment must be considered as an additional procedure completing the analysis of the actual biometric risk cover or insurance specificities (cf. IDD Recitals 44 and 45).</p> <p>As we have already outlined in our previous comments (cf. Q15 of EIOPA Online Survey on IDD in January 2016), the explicit insurance specificities ought to be analysed at least by the following criteria: age, gender, family status, professional status, income, health status. The analysis of these insurance specificities may be added to the suitability and appropriateness assessment or separately be provided by the analysis of the demands and needs of the customer (following to article 20 (1) IDD).</p>	Noted.
615	CNCIF -	Question		Noted.

	Chambre Nationale des Conseillers en	16	Yes, we agree with them.	
616	CSCA French broker Association, 91, rue Saint Laza	Question 16	The CSCA stresses the paramount importance of simplifying matters and avoiding excessive administrative complexity.	Noted.
617	Czech Insurance Association CAP	Question 16	We see difficulties with the overload of information any client should be provided with when interested in IBIPs (under IDD, delegated acts and PRIIPs (RTS)). It may result in complete misunderstanding of the IBIPs by clients and their unwillingness to invest in them.	Noted.
618	European Federation of Financial Advisers and Fina	Question 16	When EIOPA is reflecting insurance specificities in the policy proposals above, do you agree with them? In particular, with regard to insurance specificities related to the protection elements within an insurance1based investment product (e.g. biometric risk cover), are there aspects regarding the information to obtain (such as the 'risk profile') for the assessment of suitability and appropriateness that would necessitate further and/or more explicit insurance specificities? We agree with EIOPA that insurance specificities should be considered.	Noted.
619	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 16	-	
620	Fachverband der Versicherungsmakler und Berater in	Question 16	See above	
621	Financial	Question	The Panel agrees that insurance specificities should be reflected in the policy	Noted. The reasons for EIOPA's preferred

	Services Consumer Panel	16	<p>proposals. However, we note that Policy Option 2 (Preferred Option) whilst offering a reasonable 'middle ground' may not capture all the elements required to assess whether an insurance-based investment is a suitable product for a consumer.</p> <p>Investments which also have an insurance element will have additional costs which will affect the performance of the investment (as any cost or charge applied against a product must). Insurance-based investment products (IBIPs) serve two needs: one for protection and one for investment. Bundling these two very different requirements together may not always be the most efficient or cost effective method of providing either. Therefore it is essential that the manufacturer or the distributor fully reflects why an IBIP is the most suitable product for both the investment and protection needs and why this cannot be replicated elsewhere through two separate products.</p> <p>Policy Option 3 on the other hand has a requirement for substantially different types of information to be obtained from the customer in order to fully take into account the customer's "basic needs" and certain insurance-specific elements of an IBIP (such as biometric risk cover).</p> <p>Given that the costs and charges associated with IBIPs are higher and that the need for both investment and protection is likely to be less prevalent with many consumers, the Panel favours Option 3.</p>	option are explained in Annex I, "Impact Assessment".
622	FRENCH BANKING FEDERATION	Question 16	<p>EIOPA does not address the directive's demand concerning the category of customers to be considered (Article 30 point 6 c).</p> <p>In pursuit of consistency with the level 2 MIFID texts, EIOPA does not seem to have truly factored in the specificities of the insurance industry.</p> <p>In addition, it creates confusion in the interpretation of the directive by separating advice and recommendation to the customer, bearing in mind that the directive's articles 2.15, 20.1 and 30.1 state that the provision of advice implies the provision of a personalised recommendation to the customer by the insurance undertaking or insurance intermediary. Moreover, EIOPA fails</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

		<p>to address the case where a Member State has opted to introduce a duty of advice, mandatory before the sale of any insurance product (open option in articles 20.1 and 30.1 IDD).</p> <p>The proposal that an investment firm "shall not recommend" requires clarification: does the absence of recommendation mean a ban on allowing the customer to subscribe? If this is the case, EIOPA's policy proposals go too far, and do not take into account the existence of a duty of advice.</p> <p>They put insurance professionals at the legal risk of being accused of a refusal to sell by the consumer. Similarly, they do not match the customer experience, which closely links advice to questioning aimed at gathering information to make sense of the questioning conducted.</p> <p>As such, we feel that EIOPA should distinguish two cases:</p> <ul style="list-style-type: none"> - the case where, for the provision of advice, the customer refuses to provide the information necessary for the insurance intermediary to issue a recommendation: the professional may in such cases leave the customer free to purchase the relevant product once it has issued a disclaimer as to the impossibility of making a recommendation and stressing that the customer acknowledges that he or she is purchasing the product in question under their sole responsibility. The insurance intermediary must ensure traceability of the delivery of this disclaimer to the customer. - the case where, following the provision of advice, the customer refuses to follow the recommendation given by the insurance professional: the insurance professional will again leave the customer free to purchase the relevant product, and the customer will make the purchase under his or her sole responsibility. <p>Lastly, proposal 9 provides that the insurance intermediary or insurance undertaking shall take reasonable steps to ensure that the information collected about the customer is reliable. As customer knowledge is already subject to many regulations imposed on insurance undertakings and insurance intermediaries, it seems important not to create new provisions further burdening existing organisations and complicating or introducing confusion on action already taken in this respect by the professionals concerned by imposing further regulations.</p> <p>In many cases, especially when the bank is an insurance intermediary, it is already subject to extensive know-your-customer obligations in the fight against money laundering and the financing of terrorism. Existing regulations</p>	
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			<p>should be taken into account.</p> <p>The removal of the idea that an insurance intermediary or insurance undertaking "ought to be aware" is requested so as to confine the obligations of the relevant distributors to updating information to the context of know-your-customer obligations. This recommendation should not lead the distributor to infringe the privacy of its customers through the use of information available to or brought to its attention through channels other than voluntary statements or customer information obtained lawfully in compliance with professional requirements in respect of know-your-customer obligations.</p>	
623	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 16	No comment	
624	German Association of Private Health Insurers (PKV	Question 16	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
625	German Insurance Association (GDV)	Question 16	<p>EIOPA prohibits insurers to give recommendations to clients who did not provide sufficient information to undertake a suitability assessment. The German insurance industry would appreciate a clarification that the rules of the appropriateness test (sale permitted after documented warning to the customer) apply in case of customers who are willing to take advice but not ready to provide all the information. A ban on recommendations should not automatically result in a ban on sales. We recommend avoiding any unclarity, especially in Member States where sales without advice is inadmissible under national law).</p> <p>The customer should be free to choose to what extent he or she wishes to disclose detailed personal information, particularly with regards to his or her financial situation. However, the customer should be aware of the</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

			<p>implications of providing – or not providing – such information [DTA p. 65 no. 9 (a)]. To that end, the distributor should be able to document a respective notification/warning as well as the following decision of the customer to provide or not provide the information under DTA p. 64 no. 6 and 7.</p> <p>To take into account the particularities of collective contracts, the German Insurance Association would like to recommend amending DTA p. 64 no. 8: The required policy should stipulate that the basis of information and suitability assessments is always the collective of insureds, not the individual. When it comes to suitability assessments in occupational old-age provision, it is the collective that matters, not the assessment of individual employees.</p>	
626	Institute and Faculty of Actuaries	Question 16	Yes.	Noted.
627	Insurance Europe	Question 16	<p>The risk tolerance for advice regarding insurance-based investment products should be determined by means of the subjective preferences of the customer, as this cannot be objectively observed by the distributor. The customer has to express his/her personal willingness to bear a risk (potential loss of the investment) to the distributor. For example, there are customers who have the financial capacity to bear risks, but are very risk-averse.</p> <p>Type of customer</p> <p>EIOPA does not include any reference to the type of customer (retail or professional) in its draft technical advice. Article 30(6)(c) of the IDD explicitly requests this to be taken into account. Distributors will therefore be able to consider this when applying the legal restrictions “where relevant” or “necessary”.</p> <p>Recommendation: EIOPA should confirm this assessment under paragraph 10(b) of the analysis on page 62, where there is reference to the MiFID II definition of professional clients and its relation with the IDD.</p>	Noted.
628	Intesa Sanpaolo S.p.A.	Question 16	Notwithstanding that the interest of the client in purchasing an insurance-based investment product shall always be checked, the assessment of suitability and appropriateness shall be performed in a way that is as close as possible to MiFID II and further ESMA’s requirements. Hence, we think that questions aimed at assessing biometrical risks or other personal information,	Noted.

			fall outside the “financial/insurance aspects” of the product.	
629	IRSG	Question 16	<p>We agree that insurance specificities should be reflected in the policy proposals however, note that the preferred option is Option 2 which states: “This Option consists in ensuring consistency with the provisions in the draft MiFID II Delegated Regulation pertaining to the information to be obtained from the customer under the suitability and appropriateness assessments, but adapting some key elements of the substance and terminology used in those provisions further to reflect insurance specificities.</p> <p>This Option seems to offer a reasonable ‘middle ground’, consistent with MiFID II but also with some adaptations to reflect insurance specificities.</p> <p>However, some members of the IRSG are concerned that Option 2 may not capture all the elements required to assess whether an insurance-based investment is a suitable product for a consumer. Other members of the IRSG are of the opinion that the demands and needs test is offering the guarantee that consumers know what they buy and that intermediaries and insurers will offer an IBIP only where it is demanded and needed. In this respect it was also considered that for MIFID products this demands and needs test is not applicable and that extra requirements under the suitability or appropriateness test could lead to a unlevel playing field and to less comparability or confusion by consumers.</p> <p>IBIPs are a unique product, essentially serving two needs – one for protection and one for investment – and this specificity has to be taken fully into account . Bundling these two very different requirements together may not always be the most efficient method of providing. It is essential that the insurance intermediary/insurance undertaking fully reflects why an IBIP is the most suitable product reflecting both the investment and the protection need which cannot be replicated elsewhere through two separate products.</p>	
630	MALTA INSURANCE ASSOCIATION These	Question 16	We would ask EIOPA to clarify the consequences where the customer is unwilling to share certain information with the distributor, despite the fact that the latter is obliged to request it. Paragraph 10 of the draft technical advice prevents the insurer from recommending the IBIP. Please confirm that in such situation the distributor would be able to sell the insurance-	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice

	comments have b		<p>based investment product under the rules of Art. 30 (2) IDD (ie under the appropriateness test after due warning).</p> <p>Unlike the rules under MIFID, EIOPA abstains from making any distinction on account of the retail or professional nature of the customer, as required under Art. 30(6)(c) of the IDD. We would like EIOPA to confirm the relevance of these criteria.</p>	on possible Delegated Acts under IDD" in the Final Report.
631	Mediterranean Insurance Brokers (Malta) Ltd.	Question 16	<p>When EIOPA is reflecting insurance specificities in the policy proposals above, do you agree with them? In particular, with regard to insurance specificities related to the protection elements within an insurance-based investment product (e.g. biometric risk cover), are there aspects regarding the information to obtain (such as the 'risk profile') for the assessment of suitability and appropriateness that would necessitate further and/or more explicit insurance specificities?</p> <p>See above</p>	
632	Slovenian Insurance Association	Question 16	<p>Yes, we agree with the insurance specificities.</p> <p>For the assessment of suitability and appropriateness there is no need for more information such as the »risk profile« of the customer.</p>	Noted.
633	Verband der Automobilindustrie e.V. Arbeitskreis	Question 16	Not applicable.	
634	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 16	<p>16: Stimmen Sie den von EIOPA in die Vorschläge aufgenommenen Versicherungs-besonderheiten zu? Gibt es insbesondere im Hinblick auf Versicherungs-besonderheiten hinsichtlich der Schutzelemente innerhalb von Versicherungsanlageprodukten (z. B. Abdeckung biometrischer Risiken) Aspekte hinsichtlich der für die Beurteilung der Eignung und Zweckmäßigkeit einzuholenden Informationen (wie beispielsweise das ‚Risikoprofil‘), die weitere und/oder explizitere Versicherungsbesonderheiten erfordern würden?</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

			<p>EIOPA untersagt das Aussprechen einer Empfehlung für den Fall, dass der Kunde im Zuge der Beratung bei der Geeignetheitsprüfung ungenügende Informationen gibt. Der VDVM würde eine Klarstellung begrüßen, dass bei Kunden, die sich beraten lassen, aber nicht zur Auskunft bereit sind, die Regeln der Angemessenheitsprüfung (zulässiger Verkauf nach Warnung und entsprechender Dokumentation) anzuwenden sind. Die Konsequenz eines Empfehlungsverbots soll nicht gleichzeitig ein Verkaufsverbot sein. Es gilt Unklarheiten gerade in denjenigen Mitgliedstaaten zu vermeiden, in denen ein Verkauf ohne Beratung nicht erlaubt ist.</p> <p>Der Verbraucher muss entscheiden dürfen, inwieweit er Informationen zu seiner Person, insbesondere zu seiner finanziellen Situation, im Detail preisgeben will. Entscheidend ist, dass er sich über die Bedeutung seiner Angaben bzw. deren Fehlen im Klaren ist. Dazu erscheint es ausreichend, wenn dieser Hinweis nach Draft Technical Advice (DTA) S. 65 Nr. 9 (a) und die darauf folgende Kundenentscheidung zur Informationsmitteilung zu DTA S. 64 Nrn. 6 und 7 durch den Vertreiber dokumentiert werden.</p> <p>Um den Besonderheiten von Kollektivverträgen gerecht zu werden, regt der VDVM unter DTA S. 64 Nr. 8 die Ergänzung an, dass die verlangte Policy hinsichtlich der Informationsabfrage und -bewertung in diesen Fällen beim Kollektiv ansetzt. In der betrieblichen Altersvorsorge kommt es bei der Geeignetheitsbewertung auf das Versichertenkollektiv, nicht auf die Einzelbewertung des individuellen Arbeitnehmers an.</p>	
635	Verbraucherzentrale Bundesverband e.V.	Question 16	<p>vzbv's opinion is that the question of risk coverage has to be discussed under the demand and needs test. Additional insurance intermediaries and insurance undertakings have to follow disclosure requirements for cross-selling under Article 24. They have to inform the customer if it is possible to buy the product(s) separately.</p>	Noted.
636	Allianz SE	Question 17	<p>In practice, what information do you expect to collect for the assessment of suitability and appropriateness in addition to the demands and needs?</p> <p><input type="checkbox"/> This is highly product specific and in accordance with Art. 30 (1) IDD</p>	Noted.

			<p>may also need to be tailored to specific circumstances. Details should be left open on Level 2.</p> <p><input type="checkbox"/> In addition, IDD standards should seek consistency here with respective terms and terminology set out in PRIIPs in order to establish a harmonized minimum concept for suitability and appropriateness testing, that allows both advisors and customers to understand, which level of detailed information is for good reasons needed to be taken into account to prepare a sustainable choice of financial product.</p>	
637	AMICE	Question 17	<p>We believe that Article 30(1) of IDD already indicates the necessary information to obtain for the assessment of suitability and appropriateness in addition to the demands and needs test:</p> <p><input type="checkbox"/> 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,</p> <p><input type="checkbox"/> that person's financial situation including that person's ability to bear losses, and</p> <p><input type="checkbox"/> that person's investment objectives, including that person's risk tolerance.</p>	Noted.
638	Association of International Life Offices	Question 17	<p>As already mentioned detailed KYC which will include information on affordability and long term objectives and life insurance needs.</p>	Noted.
639	Assuralia	Question 17	<p>With regard to the sale of IBIPs, Assuralia sees the following relation between the assessment of suitability, appropriateness and demands and needs:</p> <p>Advised sales</p> <p>In case of advised sales, the distributor should assess the customer's knowledge, experience, financial situation and investment objectives (cf. IDD). As already stated under Q15, Assuralia calls on EIOPA to recognize that the general obligation to analyse the demands and needs is fulfilled by the suitability assessment. Because of the comprehensive nature of the suitability assessment, the Belgian supervisory authority (FSMA) acknowledges that distributors who have thoroughly checked a product against the knowledge,</p>	Noted. The assessment of suitability and appropriateness is, according to Article 30, IDD, "without prejudice to Article 20(1)". Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated

		<p>experience, financial situation and investment objectives of a customer can presume that the product covers the demands and needs of that customer (circular FSMA_2015_14 dated 1 September 2015, page 40).</p> <p>Non-advised sales: not execution-only</p> <p>The distributor has to assess the customer's knowledge and experience ('appropriateness assessment'). Assuralia considers an additional, separate demands and needs analysis unnecessary in case of an appropriateness test. The demands and needs would in practice consist of checking whether the product that the customer wants to subscribe (cf. sales without advice) is in line with his knowledge and experience. This should not result in two separate procedures/analyses, as the demands and needs test can be included in the overall assessment of appropriateness.</p> <p>Non-advised sales: execution only</p> <p>The IDD foresees a member state option to allow for the sale of non-complex IBIPs under an execution only regime (cf. chapter 7.2. of the consultation paper). However, such execution only sales have to be accompanied by an analysis of the customer's demands and needs. In order to respect the principle of an "execution only", Assuralia suggests the following approach:</p> <p>In the underwriting phase, the execution only could be applicable when a customer requests the distributor to subscribe to a specific insurance contract. This means that the customer himself would clearly indicate his demands and needs. In such cases, the distributor only has to check if the requested product is in fact a non-complex product. If that is the case, the distributor can execute the demand of the customer and close the contract without further obligations (= he only executes the customer's demand). Further obligations on the distributor would blur the line between execution only and appropriateness / suitability, which could mislead customers.</p>	<p>Acts under IDD" in the Final Report.</p>
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			<p>The situation is different in the contractual phase. IBIPs can contain contractually agreed options with regard to additional premium payments/top-ups, switching, early redemption... It is in the interest of customers to allow for a swift and smooth execution of such non-complex transactions, even in products that are themselves not regarded as non-complex. A good balance between consumer protection and the execution only of their contractual rights could be the following approach:</p> <ul style="list-style-type: none"> <input type="checkbox"/> in case of surrender an execution only should be allowed, provided that the customer receives information on the costs and conditions related to the transaction; <input type="checkbox"/> switching should be handled on a case by case basis. <p>Example: a customer has subscribed a unit-linked life insurance with three different underlying funds and the insurer adds a new, fourth fund in which the customer can invest. If the new fund does not fundamentally differ from the others, the customer should be able to switch on an execution only basis. However, if the new investment option differs significantly from the previous options an execution only would not be appropriate;</p> <ul style="list-style-type: none"> <input type="checkbox"/> additional premium payments / top-ups should always be possible under execution only, as this action is the mere execution of the contract. <p>As the execution only principle is important in light of a swift and smooth execution of the customer's requests and could become more important in light of online sales and services (e.g. more and more customers want to be able to manage their contracts themselves and execute simple transactions online), Assuralia wanted to provide EIOPA with the above stated proposals. The draft advice (cf. the Commission's mandate) does, in our opinion, not pay enough attention to the possible benefits of the execution only regime and its practical application.</p>	
640	BFV -	Question	Die Beurteilung der Eignung und Zweckmäßigkeit ist seitens EIOPA bereits	Noted.

	Bundesarbeitsgemeinschaft zur Förderung	17	sehr umfassend angelegt. Die Einholung von Kundeninformationen darf nicht einen Umfang erreichen, der den Kunden dazu verleitet, in Dokumenten ungelesene Antwortmöglichkeiten anzukreuzen oder Dokumente ungelesen zu unterschreiben. Hier sollte auch auf die Belastbarkeit der Kunden Rücksicht genommen werden.	
641	BIPAR	Question 17	Article 30(1) is clear as it already lists the criteria that need to be considered and we believe that the demands and needs test in the general part of the Directive, which has been very efficient so far, should be used as a basis (but there should not be a cumul of both tests).	Noted. The assessment of suitability and appropriateness is, according to Article 30, IDD, "without prejudice to Article 20(1)".
642	BNP Paribas	Question 17	For the subscription of life insurance contracts, the duty of advice in France already requires undertaking a suitability test taking into account the demands and needs of the client. More generally, considering the extensive "know your customer" obligations of intermediaries, it is important to ensure a consistent approach between the different regulations and to allow for a proportionate application as well as meaningful "exercise" for clients.	Noted.
643	Bund der Versicherten (BdV – German Association of	Question 17	In practice, as a minimum list we expect the following information to be collected prior to the conclusion of any IBIP contract: Insurance specificities: <input type="checkbox"/> age <input type="checkbox"/> gender <input type="checkbox"/> family status <input type="checkbox"/> professional status <input type="checkbox"/> health status <input type="checkbox"/> income	Noted.

			<p>Suitability and appropriateness assessment:</p> <ul style="list-style-type: none"> <input type="checkbox"/> liquid reserves <input type="checkbox"/> assets <input type="checkbox"/> property <input type="checkbox"/> credit commitments <input type="checkbox"/> prior conclusion of any other IBIPs (private life / annuity insurances) <input type="checkbox"/> prior conclusion of any other personal, state-subsidized or occupational pensions plans (retirement provision) <input type="checkbox"/> investment objectives (asset allocation, retirement provision etc.) <input type="checkbox"/> expected time frame <input type="checkbox"/> nature, volume, frequency and period of transactions already having been carried out <input type="checkbox"/> person's risk tolerance ("Risikobereitschaft") <input type="checkbox"/> person's ability to bear losses (highest possible lost in absolut figures) <p>Additionally we underline that the French NCA (ACPR) has even published the "Recommendation on gathering customer information in the framework of the duty to provide advice on life insurance policies" (2013-R-01 of 8 January 2013). Particularly important is point 4.2 (Recommendation regarding the contents of the information gathered), where precise criteria are outlined.</p>	
644	CNCIF - Chambre Nationale des Conseillers en	Question 17	We have no comment.	
645	CSCA French broker Association, 91, rue Saint Laza	Question 17	The national approach corresponds to certain EU countries that practice non-advisory selling, rather than to EIOPA's approach. This notion will not catch on in France on as the advisory duty has been generally adopted by IIP.	Noted.

646	Czech Insurance Association CAP	Question 17	For example, insurance companies ask clients about the age, job, sports, his expectations from the product, his financial possibilities, income, period of time he would like to be covered and what should be covered.	Noted.
647	EFAMA - The European Fund and Asset Manageme	Question 17	<p>We would expect suitability and appropriateness assessments by the distributor of insurance-based investment products to be aligned with the requirements in MiFID II. Information to be collected should thus contain the following:</p> <ul style="list-style-type: none"> - Personal situation, including family situation, education and profession - Investment objectives and purpose, including time horizon - Financial situation, including regular income, assets, liabilities and commitments - Customer perception about risks and risk willingness as well as the customer's views on returns and return expectations - Customer knowledge and experience with the relevant products in scope of the service 	Noted.
648	European Federation of Financial Advisers and Fina	Question 17	<p>In practice, what information do you expect to collect for the assessment of suitability and appropriateness in addition to the demands and needs?</p> <p>The list of information in Par. 6, 7, 8 of the DTA in conjunction with the obligations in Par. 9 are sufficient in our opinion and need no extension.</p>	Noted.

649	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 17	-	
650	Fachverband der Versicherungsmakler und Berater in	Question 17	Article 30(1) is clear as it already lists the criteria that need to be considered and we believe that the demands and needs test in the general part of the Directive, which has been very efficient so far, should be used as a basis (but there should not be a cumul of both tests).	Noted.
651	Fédération Française de l'Assurance (FFA) 26 bo	Question 17	No further information than those already provided by Article 30(1) of IDD is needed. Customers are often complaining that too intrusive questions are asked about their personal life.	Noted.
652	Financial Services Consumer Panel	Question 17	<p>The consultation document provides good guidance on the information that would be required in order for suitability and appropriateness to be fully assessed. Specifically, the following information should be included in addition to demands and needs:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Details of the customer's current income and expenditure and any expectations of future changes; <input type="checkbox"/> Breakdown of customer's assets and other financial products, including protection products and employment benefits, if applicable; <input type="checkbox"/> Family circumstances, including any dependencies; <input type="checkbox"/> The customer's risk profile. Their appetite for risk, but more importantly their capacity for loss. So how much can they realistically afford to lose? <input type="checkbox"/> The customer's knowledge and experience of investing in this type of product; <input type="checkbox"/> The customer's savings and investment objectives, including how long the investment will be held and their retirement plans. 	Noted.

653	FNMF, 255 rue de Vaugirard, 75015 PARIS	Question 17	No further information is needed	Noted.
654	FRENCH BANKING FEDERATION	Question 17	As customers are, under the regulations currently governing the insurance industry, already subject to numerous demands from advisors, which is not without causing some tension on their part, as well as being flooded with pre-contractual information, it is not desirable to seek additional information.	Noted.
655	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 17	No comment	
656	German Association of Private Health Insurers (PKV	Question 17	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
657	German Insurance Association (GDV)	Question 17	The information required under Art. 30 (1) IDD must take into account the individual circumstances in each individual case. Consequently, any list of information expected in practice can only have an exemplary character.	Noted.
658	Institute and Faculty of Actuaries	Question 17	Information criteria for both of these assessments should be largely overlapping.	Noted.
659	Insurance Europe	Question 17	Article 30(1) of the IDD already specifies the necessary information to obtain for an assessment: 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; the person’s financial situation including that person’s ability to bear losses; and the person’s investment objectives, including the person’s risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer or	Noted.

			potential customer the insurance-based investment products that are suitable for the person and that they are in accordance with that person's risk tolerance and ability to bear losses.	
660	IRSG	Question 17	<p>The consultation document provides good guidance on the information that would be required in order for suitability and appropriateness to be fully assessed. This would include:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Details of the customer's current income and expenditure and any expectations of future changes <input type="checkbox"/> Breakdown of customer's assets and other financial products, including protection products and employment benefits, if applicable <input type="checkbox"/> Family circumstances, including any dependencies <input type="checkbox"/> The customer's risk profile. Their appetite for risk, but more importantly their capacity for loss. So how much can they realistically afford to lose? <input type="checkbox"/> The customer's knowledge and experience of investing in this type of product <input type="checkbox"/> The customer's savings and investment objectives, including how long the investment will be held and their retirement 	Noted.
661	MALTA INSURANCE ASSOCIATION These comments have b	Question 17	The information which the insurer is required to obtain is contained in Article 30 (1).	Noted.
662	Mediterranean Insurance Brokers (Malta) Ltd.	Question 17	<p>In practice, what information do you expect to collect for the assessment of suitability and appropriateness in addition to the demands and needs?</p> <p>Article 30(1) is clear as it already lists the criteria that need to be considered and we believe that the demands and needs test in the general part of the</p>	Noted. The assessment of suitability and appropriateness is, according to Article 30, IDD, "Without prejudice to Article

			Directive, which has been very efficient so far, should be used as a basis (but there should not be a cumul of both tests).	20(1)".
663	Slovenian Insurance Association	Question 17	We believe that we will obtain all necessary information from the customer for the assessment of suitability and appropriateness. However in some cases the customer will not want to answer to all questions. Consequently it will not be possible to give assessment of suitability and appropriateness. We propose clear provisions, which enable distributors selling unit-linked insurance products with the corresponding obligation to document a notice to the customer, that she/he didn't provide all requested information.	Noted.
664	Verband der Automobilindustrie e.V. Arbeitskreis	Question 17	Not applicable.	
665	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 17	17: Welche Informationen werden Sie in der Praxis für die Beurteilung der Eignung und Zweckmäßigkeit wahrscheinlich zusätzlich zu den Wünschen und Bedürfnissen einholen? Die nach Art. 30 Abs. 1 IDD abzufragenden Informationen müssen die individuellen Gegebenheiten im jeweiligen Einzelfall berücksichtigen. Folglich kann eine Aufzählung der in der Praxis erwarteten Informationen nur einen exemplarischen Charakter haben und keine absoluten Inhalte vorgeben.	Noted.
666	Verband öffentlicher Versicherer (Association of G)	Question 17	In general, there is no question of the need to interview customers in order to determine their personal financial situation, their goals, wishes and needs when it comes to insurance. It is decisive, however, to take account of the differences that exist between the investment sector and the insurance industry. The investment risk with insurance products is far lower than with dedicated investment products. Insurers deliver on the guarantees to customers that are typically involved in their products. With the aid of model calculations, customers are shown before they purchase an insurance product what they will have to pay and	Noted.

			<p>what commitments are being made in return. Therefore, customers know from the very outset what they are letting themselves in for and are able to make a conscious decision to purchase an insurance product or not. It is not possible to offer customers this same level of assurance in the investment sector. The risk for customers is substantially lower with insurance products than with direct investments. That is why assessments of suitability and appropriateness must always be geared to the products and to the guarantees granted.</p> <p>In several instances, the EIOPA paper adopts rules from the investment sector without verifying whether such aspects play a role in the insurance market at all and consequently need to be regulated in that sector. No rules should be set down for the insurance industry regulating matters that do not exist in that industry. The result would otherwise be over-regulation, unnecessary administrative expense and an obligation to implement things that are impossible in practice.</p> <p>Similarly, EIOPA must pay attention to the fact that there are also differences between the individual EU Member States and that some of them already have additional instruments in place to protect customers. In Germany, for example, "Protektor" has been established. The goal of Protektor is to safeguard the insured persons' amassed savings against the consequences of insurer insolvency. In the event of insolvency, the customers' contracts remain in force in order to preserve their benefits. It is thus virtually impossible for a customer to suffer financial losses with a guarantee product – and correspondingly unnecessary in such cases to determine the customer's ability to sustain losses.</p>	
667	Verbraucherzentrale Bundesverband e.V.	Question 17	In addition to the demands and needs test the following subjects are deemed essential to be asked: income, running expenses, credit commitments, liquid reserves, assets and property, investment objectives, expected time frame of the investment, flexibility and availability, time to spend with the allocation of the investment, ability to bear losses, risk tolerance, nature, volume, frequency and period of transactions already having been carried out, experience with this product category.	Noted.

668	Allianz SE	Question 18	<p>Do you think that it could be useful for EIOPA to provide any specification and/or guidance on the relationship between the demands and needs test and the suitability/appropriateness assessment, in a separate policy instrument, given that this point is not addressed in this technical advice?</p> <p><input type="checkbox"/> No. There is no mandate to specify the demands and needs test for EIOPA in IDD Level 1 and therefore this element should be left to the Member States for implementation where in many cases there are pre-existing standards.</p> <p><input type="checkbox"/> The text of IDD Level 1 gives sufficient clarity on the relation of the concepts. While the demands and needs test is applicable to all insurance products, while suitability and appropriateness assessment signify specific (stricter) standards for insurance-based investment products. Therefore, with regard to substance, the demands and needs test required by IDD Level 1 should be considered a lower level requirement than tests for appropriateness and suitability.</p> <p><input type="checkbox"/> The material requirements for a demands and needs test will also probably depend on the type of product, e.g.</p> <ul style="list-style-type: none"> o the (known) purchase of a car typically constitutes sufficient indication to require demand and need for (mandatory) motor third party liability cover o Based on the intent of the rule, there should be a clear emphasis on the demand side. In particular, a self-directed (e.g. web-based) research on product availabilities should constitute a valid and sufficient indication for demand or need for a customer. In such case, no onerous additional needs test requirements should be imposed on the manufacturer / distributor, except where the provider has positive knowledge of detrimental factors. o More generally, the regulation must take special care not to overburden digital sales processes. 	Noted.
669	AMICE	Question 18	<p>AMICE does not consider any further guidance or specification on the relationship between the demands and needs test and the suitability/appropriateness assessment to be useful as this would go beyond the level 1 provisions and the Commission's mandate for technical advice. EIOPA points out in paragraph 12 (page 63) that its technical advice should</p>	Noted.

			be limited to the information to obtain under the suitability/appropriateness assessment, and not the demands and needs test. We also believe that the suitability or appropriateness assessment does not require an additional demands and needs analysis.	
670	Association of International Life Offices	Question 18	No	Noted.
671	Assuralia	Question 18	Assuralia does not consider any further guidance on the relationship between demands and needs and appropriateness/suitability to be useful or necessary. In our opinion the suitability or appropriateness assessment does not require an additional, separate demands and needs analysis (see our answer to Q15 and Q17).	Noted.
672	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 18	Nein. Wenn die EIOPA zusätzlich eine Spezifizierung und/oder eine Leitlinie für die Beziehung zwischen dem Wunsch- und Bedürfnistest und der Beurteilung der Eignung/Zweckmäßigkeit in einem gesonderten Instrument anbietet, erscheint dies als zusätzliche, ohnehin bereits sehr umfangreiche Regulierung.	Noted.
673	BIPAR	Question 18	As mentioned above, we believe that the demands and needs test should be used as a basis for appropriateness and suitability tests and that there should not be a cumul of the demands and needs vs. appropriateness/suitability tests. BIPAR does not believe that the IDD and the Commission mandate for EIOPA technical advice require or mention the need for specification and/or guidance on the relationship between the demands and needs test and the suitability/appropriateness assessment. Besides, EIOPA notes in paragraph 12 on page 63 that its technical advice should be limited to the information to obtain under the suitability/appropriateness assessment only, and not the demands and needs test.	Noted.
674	BNP Paribas	Question	Given the French legal framework and in certain other Member States (see	Noted.

		18	answer to question 17), we do not consider that it would be necessary to have additional specifications or guidelines on this matter.	
675	Bund der Versicherten (BdV – German Association of	Question 18	Yes, there should be a guidance by EIOPA on the relationship between the demands and needs tests and the suitability / appropriateness assessment. It must be underlined that the usual test of demands and needs as required in IDD article 20 (1) is clearly not sufficient for an IBIP. Any IBIP is a very complex product including an investment option as well as a biometric risk cover. Only a comprehensive suitability / appropriateness assessment including a fundamental test of the demands and needs of the customer (cf. our comment on Q17) will enable this customer to make a well-informed decision related to both aspects of this contract. Probably most of the consumers only once in their life-time will conclude such a contract, so there is the crucial importance for them to get the best advice.	Noted.
676	CNCIF - Chambre Nationale des Conseillers en	Question 18	We have no comment.	
677	CSCA French broker Association, 91, rue Saint Laza	Question 18	The CSCA regards EIOPA’s involvement in this matter as unnecessary.	Noted.
678	Czech Insurance Association CAP	Question 18	Each client is individual and may not fall under such converter. The delegated act shall stick to the suitability/appropriateness. IDD does not require to adopt level2 acts on the demands and needs. Delegated act shall not go beyond level1 act (i.e. IDD).	Noted.
679	EFAMA - The European Fund and Asset Manageme	Question 18	We do not believe it necessary to further clarify the relationship between the demands and needs test and the suitability/appropriateness assessment. Since the suitability/appropriateness assessment is strictly applicable for the distribution of insurance-based investment products, and since it effectively includes an assessment of the demands and needs of the customer, fulfilling the requirements on assessing suitability/appropriateness should automatically fulfil the demands and needs test.	Noted.
680	European	Question	Do you think that it could be useful for EIOPA to provide any	

	Federation of Financial Advisers and Fina	18	specification and/or guidance on the relationship between the demands and needs test and the suitability/appropriateness assessment, in a separate policy instrument, given that this point is not addressed in this technical advice?	
681	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 18	Yes, EFPA believes that it could be useful for EIOPA to provide some guidance on the relationship between the demands and needs test and the suitability/appropriateness assessment, in a separate policy instrument.	Noted.
682	Fachverband der Versicherungsmakler und Berater in	Question 18	As mentioned above, we believe that the demands and needs test should be used as a basis for appropriateness and suitability tests and that there should not be a cumul of the demands and needs vs. appropriateness/suitability tests.	Noted.
683	Fédération Française de l'Assurance (FFA) 26 bo	Question 18	As in France suitability test (advice) is mandatory, we do not see a need for EIOPA to introduce further specification and guidance in a separate policy instrument on the relationship between the demands and needs test and the suitability/appropriateness assessment. In any way, this would go beyond the provisions of IDD and the relevant EC mandate for technical advice (Article 30-6)).	Noted.
684	Federation of Finnish Financial Services	Question 18	We feel further guidance from EIOPA on the relationship between demands and needs and suitability/appropriateness is not needed.	Noted.
685	Financial Services Consumer Panel	Question 18	The Panel believes this would be useful. It is essential that crucial information is collected so that suitability and appropriateness can be adequately assessed and then applied against the established demands and needs of the customer. However, there is likely to be overlap in the collection of information and data to comply with these two statutory requirements.	Noted.

			<p>Some manufacturers/distributors may be better equipped than others to collect this data in a streamlined fashion which won't over burden the customer. Others may be over compliant, concerned only with the regulatory consequences of 'getting it wrong'. Nor should the collection of data be reduced to a tick-box exercise. Therefore, we feel guidance and some prescription is needed here to help intermediaries and firms get this right.</p> <p>The process for collecting data to satisfy both the suitability and appropriateness requirements and the demands and needs test should be personal and on a one-to-one basis with the customer. It is essential that the customer understands why these questions are being asked and the importance of answering them fully and honestly – and the consequences should they provide inadequate answers or 'guessing'.</p> <p>We feel that EIOPA could provide valuable guidance which all manufacturers and distributors could follow when collecting information from customers to meet both of these statutory requirements. More importantly, this would ensure that the necessary data is being collected in order for a full suitability assessment to be made against the customer's demands and needs.</p>	
686	FNMF, 255 rue de Vaugirard, 75015 PARIS	Question 18	No further criteria is needed. We don't think that it would be useful to have, from EIOPA, guidance and specification in a specific document concerning suitability and test assessment.	Noted.
687	FRENCH BANKING FEDERATION	Question 18	At this point, it would seem appropriate for EIOPA to limit its action to the mandate given to it by the Commission.	Noted.
688	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 18	No comment	
689	German	Question	Regarding this question we would like to refer to the statement filed by the	Noted.

	Association of Private Health Insurers (PKV)	18	German Insurance Association (GDV) that is supported by us.	
690	German Banking Industry Committee (GBIC)	Question 18	<p>According Art. 20 (1) IDD the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and needs. The relevant paragraph does not provide any definition for the demands and needs. We would highly appreciate a high level definition or at least details regarding demands and needs. Art. 20 IDD applies for all insurances in context to IDD, so that the relevant information from the customer to specify the relevant demands and needs depends on the specific insurance product. For example a customer asks for an insurance product that might be less complex (e.g. homeowner's insurance). The insurance distributor shall only obtain information from the customer with regard to his home, e.g. the kind and value of furniture, etc. As a result, the information is limited to the specific insurance product. In context to the non IBIPs we would appreciate if the definition of 'demands' and 'needs' was specified further.</p> <p>With regard to the suitability/appropriateness assessment and between the "demands" and "needs" test we need more specification to avoid uncertainties. Especially, with respect to civil law the "demands" and "needs" test could be understood as advice according to civil law. Furthermore, we understand that the "demands" and "needs" test has to be done in context to Art. 30 (3) IDD. It is unclear how it is possible to distribute an insurance product on a non-advice basis "execution-only" if the insurance distributor shall obtain information from the customer to perform the "demands" and "needs" test. According to Art. 30 (3) IDD the distribution must also be carried out at the initiative of the customer or potential customer.</p> <p>In general there should be as little legislation as possible on Level II and III. Hence, the national legislator should define all areas of regulation as clearly as possible in order to avoid too much legislation without democratic legitimation.</p>	Noted.
691	German Insurance	Question 18	All stakeholders involved (consumers, distributors and manufacturers) require timely and final clarity on the rules which have to be followed by	Noted.

	Association (GDV)		<p>insurance distributors in the future. Further work on Level 3 would unreasonably complicate the implementation process.</p> <p>In particular, there is no need for further EIOPA guidelines on the relationship between Art. 20 (1) IDD (demands and needs test) and Art. 30 (1), (2) IDD (suitability and appropriateness assessment). The legal system of the IDD already offers sufficient guidance regarding their relationship. Art. 30 (1) IDD is part of Chapter VI, which includes special rules for the distribution of insurance-based investment products, complementing the demands and needs test. Hence, Art. 20 (1) IDD is to be considered the basic rule for all insurance products, whereas insurance-based investment products are subject to the cumulative rules under Chapter VI.</p>	
692	Institute and Faculty of Actuaries	Question 18	Yes.	Noted.
693	Insurance Europe	Question 18	<p>EIOPA should not suggest introducing further specification and guidance in a separate policy instrument on the relationship between the demands and needs test and the suitability/appropriateness assessment. This would go beyond the provisions of the Level 1 text of the IDD and the relevant European Commission mandate for technical advice, transforming what should be understood as a general principle into prescriptive and potentially restrictive requirements.</p> <p>EIOPA already notes in paragraph 12 on page 63 that its technical advice should be limited to the information to be obtained under the suitability/appropriateness assessment only, and not the demands and needs test.</p>	Noted.
694	Intesa Sanpaolo S.p.A.	Question 18	<p>We think that further guidance on the relationship between the demands and needs and the suitability test is highly needed. In particular, with regard to the content of the demands and needs' test – which Member States may make mandatory for insurance-based investment products.</p> <p>Besides, it is important that the Technical Advice defines the content and details of the demands and needs test, in order to clarify whether it can be integrated within the suitability/appropriateness assessment.</p>	Noted.

695	IRSG	Question 18	<p>It is essential that crucial information is collected so that suitability and appropriateness can be adequately assessed and then applied against the established demands and needs of the customer, however there is likely to be overlap in the collection of information and data to comply with these two statutory requirements.</p> <p>Some insurance intermediaries or undertakings may be better equipped than others to collect this data in a streamlined fashion which won't over burden the customer and encourage them to give less than full answers. Others may be over compliant, concerned with the regulatory consequences of 'getting it wrong'. All too often we have seen consumers deluged with information which they don't read in order to satisfy regulations. Nor should the collection of data be reduced to a tick-box exercise. Some members of the IRSG feel that guidance and some prescription is needed here to help intermediaries and firms get this right. Other members of the the IRSG would not agree with EIOPA's suggestion to introduce further specification and guidance in a separate policy instrument on the relationship between the demands and needs test and the suitability/appropriateness assessment, as this would go beyond the provisions of IDD and the relevant EC mandate for technical advice, transforming what should be understood as a general principle into prescriptive and potentially restrictive requirements. EIOPA already notes in paragraph 12 on page 63 that its technical advice should be limited to the information to obtain under the suitability/appropriateness assessment only, and not the demands and needs test.</p> <p>The process for collecting data to satisfy both the suitability and appropriateness requirements and the demands and needs test should be personal and on a one-to-one basis with the customer. It is essential that the customer understands why these questions are being asked and the importance of answering them fully and honestly – and the consequences of providing inadequate answers or 'guessing'.</p>	Noted.
696	Italian Banking Association	Question 18	<p>It is in our opinion important that the Technical Advice defines the content and details of the demands and needs test in order to clarify whether it can be integrated within the suitability/appropriateness assessment or, alternatively, it must be adopted a separate demands and needs test.</p>	Noted.

697	Liechtenstein Insurance Association (LVV)	Question 18	There is no need for further EIOPA guidelines.	Noted.
698	MALTA INSURANCE ASSOCIATION These comments have b	Question 18	It is not necessary to introduce further specifications with regards to the demands and needs test.	Noted.
699	Mediterranean Insurance Brokers (Malta) Ltd.	Question 18	Do you think that it could be useful for EIOPA to provide any specification and/or guidance on the relationship between the demands and needs test and the suitability/appropriateness assessment, in a separate policy instrument, given that this point is not addressed in this technical advice? As mentioned above, we believe that the demands and needs test should be used as a basis for appropriateness and suitability tests and that there should not be a cumul of the demands and needs vs. appropriateness/suitability tests.	Noted. The assessment of suitability and appropriateness is, according to Article 30, IDD, "Without prejudice to Article 20(1)".
700	Slovenian Insurance Association	Question 18	We believe that separate policy instrument on the demands and needs is not necessary. Guidelines on the demands and needs should be determined by national insurance associations, aiming at establishing provisions based on the principles of insurance industry and good business practice.	Noted.
701	Verband der Automobilindustrie e.V. Arbeitskreis	Question 18	Not applicable.	
702	Verband Deutscher Versicherungsmakler e. V.	Question 18	18: Denken Sie, dass es angesichts der Tatsache, dass dieser Punkt nicht im Technical Advice adressiert wird, nützlich sein könnte, wenn EIOPA eine Spezifizierung und/oder eine Leitlinie für die Beziehung zwischen dem Wunsch- und Bedürfnistest und der Beurteilung der Eignung/Zweckmäßigkeit	Noted.

	(VDVM)		<p>in einem gesonderten Instrument bietet?</p> <p>Alle Beteiligten (Verbraucher, Vertrieb und Anbieter) benötigen zeitnah und abschließend Klarheit darüber, welche Regeln im Versicherungsvertrieb künftig zu beachten sind. Weitere Arbeiten auf Level 3 würden die Umsetzung unzumutbar erschweren.</p> <p>Es besteht insbesondere kein Bedarf nach weiteren EIOPA-Vorgaben zur Beziehung Art. 20 Abs. 1 IDD (demands and needs-Test) und Art. 30 Abs. 1 und 2 IDD (Geeignetheits- und Angemessenheitsprüfung). Die IDD gibt durch ihre systematische Unterteilung bereits eine ausreichende Anleitung vor, in welchem Verhältnis diese Prüfungen zueinander stehen: Art. 30 Abs. 1 IDD steht im Kapitel VI als Sonderregel für Versicherungs-anlageprodukte mit zusätzlichen Anforderungen an die Bedarfsanalyse. Damit gilt Art. 20 Abs. 1 IDD als Basisfall für alle Versicherungsprodukte, während nur im Fall eines Versicherungsanlageproduktes die Sonderregeln kumulativ zu beachten sind.</p>	
703	Verbraucherzentrale Bundesverband e.V.	Question 18	<p>As written in the general comment, the main decision has to be made at the level of the „demands and needs“ test. Do the consumers need a risk coverage and is it necessary to combine it with an investment component? Generally vzbv advocates a separation of saving and risk coverage. Only in case of mandatory bundling by national law a connection of these aspects is unavoidable. Only in that case the suitability and appropriateness test in relation to the investment component has to be provided.</p> <p>Therefore it is absolutely necessary to provide a specification and guidance on the relationship between the demands and needs test and the suitability/appropriateness assessment in a separate policy instrument.</p>	Noted.
704	Allianz SE	Question 19	Do you agree with the high level and cumulative list of criteria used to	

			<p>define other non-complex products? Are there any you would make optional or exclude, and why?</p> <p><input type="checkbox"/> Generally, complexity should be defined from the perspective of the customer, not from the perspective of the technical product design.</p> <p><input type="checkbox"/> For example, many (life) insurance products contain guarantee elements which are add protection by clearly reducing the risk exposure of the customer, thereby making it more (not less) predictable.</p> <p><input type="checkbox"/> It would therefore be counterproductive to the protective idea behind the introduction of complexity criteria to label such products more (not less) complex.</p> <p><input type="checkbox"/> DTA 1.(g) p. 71 should be excluded from the list since it introduces a non-defined legal term creating legal uncertainty on the potential qualification of a product as being “complex”.</p>	<p>Partially agreed. The criteria are defined from the perspective of the complexity of the insurance product features which are relevant to the customer and in particular the return that is received on the investment.</p> <p>Partially agreed. EIOPA has considered this point and introduced a new criterion to the technical advice. Please see the section Feedback statement. EIOPA is also considering this issue in the context of the Guidelines based on the empowerment in Article 30(7) and (8) of IDD.</p> <p>Not agreed. This provision replicates the drafting in Article 30(3)(a)(i) of IDD.</p>
705	AMICE	Question 19	<p>We do not agree with the cumulative list of high-level criteria in the draft technical advice. This exhaustive list will result in a de facto ban on execution-only, as all products are deemed complex besides products with a unit-linked investment element (cf. paragraphs 5 and 6, page 68-69). Such an approach would seriously undermine Member States’ option under the IDD to allow for the execution-only sale of non-complex IBIPs. Furthermore, in light of a level playing field, we call on EIOPA not to</p>	<p>Please see the section Feedback statement in terms of the role of execution-only sales.</p>

		<p>introduce criteria under the IDD that are more stringent than MiFID 2.</p> <p>The MiFID 2 requirements are not adapted to the insurance context and do not fit a considerable part of the life insurance products. Furthermore, we wonder why EIOPA refers to the ESMA final guidelines on complex debt securities and structured products for further guidance.</p> <p>EIOPA seems to imply in its draft technical advice that insurance products with pooled investments such as with-profits should not be classified as "other non-complex IBIPs" that fall within the scope of Article 30(a)(ii) of IDD (page 68). EIOPA should take into consideration the wide variety of different insurance products that could be classified as "with-profits" among Member States. In some countries, "with-profits life insurance" uses different guarantees (i.e. between 80-100% of the customer's initial investment is guaranteed and the customer is also guaranteed a certain return on the investment). The structure of endowment insurance with traditional asset management is easy to understand for the customer allowing the customer to understand the risks involved. The customer is guaranteed a certain percentage of the investment (up to 100%) and a certain turnover. In addition, the customer is entitled to a share in the return on capital generated by the management of asset. The share is proportional to the investment of the customer. In contrast to unit-linked insurance, the customer does not have to take any investment decisions regarding the management of assets. The customer trusts instead the insurance undertaking to manage the assets carefully and properly. Furthermore, the management of assets is rigorously regulated by Solvency II.</p> <p>We believe that EIOPA should only prescribe high-level criteria that indicate whether the product is complex or not and should not use terms such as with-profits that can refer to very different products with different levels of protection/structures in different Member States. In addition, EIOPA should allow national supervisory authorities some flexibility to take into consideration the specificities of national products, otherwise there is a risk that IBIPs that are simple for the customer to understand and provide the customer a high level of protection are classified as complex IBIPs, while other IBIPs, such as deposit insurance or unit-linked insurance, are classified as non-complex despite the fact</p>	<p>EIOPA agrees that such products are not necessarily complex (it depends whether they can satisfy the relevant criteria) and has removed this sentence from the technical advice.</p> <p>Partially agreed. EIOPA does not use specific product terms, such as "with-profits" in the proposed legislative provisions part of the advice (in the Blue Box section). Whilst the criteria should be capable of application across Member States it is also important</p>
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		<p>that the level of protection for the customer is much lower.</p> <p>With regard to the criteria listed in the draft technical advice, we have the following remarks:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The proposed criteria do not fit guaranteed life insurance products and capital redemption operations. These products are not captured by the criteria; do not pose a high risk to customers and do not have a complex structure. We consider them to be non-complex and suitable for sales on an execution-only basis; <input type="checkbox"/> We agree with EIOPA that unit-linked life products investing in open funds are non-complex (cf. MiFID 2), while structured unit-linked products are complex; <input type="checkbox"/> For unit-linked products the criteria should be assessed at the level of the underlying funds; <input type="checkbox"/> Criterion (b) does not take into account the long-term nature of life insurance products and does not fit guaranteed life insurance products and capital redemption operations. Publically available market prices or independent valuation systems are not relevant for products which contain a guaranteed interest rate; <input type="checkbox"/> The formulation of criterion (c) is very vague and not adapted to the terminology used in the insurance sector. The scope and exact meaning of this criterion is therefore unclear; 	<p>to ensure harmonised minimum standards.</p> <p>Please see the section Feedback statement regarding guarantees.</p> <p>It is not clear which part of the technical advice this comment relates to.</p> <p>Partially agreed. For unit-linked or multi-option products the criteria should be addressed taking into account the overall product features as well as the features of all the possible investment options.</p> <p>Partially agreed. This criterion has been amended taking into account this concern.</p> <p>Partially agreed. This criterion has been removed from the final technical advice.</p>
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			<p><input type="checkbox"/> We consider criterion (d) to be fulfilled by the obligation to provide a KID to customers, as the latter includes information on the characteristics of the product, costs, risk and performance;</p> <p><input type="checkbox"/> Criterion (e) is overly broad compared to the corresponding MiFID 2 criterion (point (d) on page 68). MiFID 2 reads as follows: "it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment". Criterion (e) has expanded the scope considerably, by falsely putting switching clauses on the same level as converting rights. This is inaccurate, as switching takes place in the contractual sphere, while converting does not;</p> <p><input type="checkbox"/> Criterion (f) fails to take into account the existing national and European legal framework and the long-term nature of life insurance products. The KID will provide the customer with information on the costs related to the product. It should also be acknowledged that exit costs are being applied to protect the customers who stay in the products, which are often long-term in case of insurance;</p> <p><input type="checkbox"/> With regard to criterion (h), EIOPA seems to imply that the use of beneficiary clauses is a strong indication that the product is complex. We do not agree with such an assessment. Beneficiary clauses do not influence the performance or return on the product. The criterion undermines the right of a customer to alter a product to his particular needs and ignores the fact that modifiable beneficiary clauses are in the interest of the customer as they enable them to keep control over the beneficiary to their investments. EIOPA should allow the national authorities to classify the IBIPs taking into consideration the specificities of the national IBIPs based on a high-level principles prescribed by EIOPA.</p>	<p>Agreed. This criterion has been removed from the final technical advice.</p> <p>Partially agreed. This criterion has been amended in the final advice. Please see the section Feedback statement.</p> <p>Not agreed. It is not sufficient for the exit charges to simply be disclosed. Such charges should also not be disproportionate.</p> <p>Partially agreed. Please see the section Feedback statement.</p>
706	AMUNDI	Question	We support the reply expressed by EFAMA:	

		19	<p>“We think that the relation between the scope of non-complex products under MiFID II and the non-complexity test provided in the draft Technical Advice should be made clearer: According to Article 30(3)(a)(i) of IDD, insurance contracts which only provide investment exposure to financial instruments deemed non-complex under MiFID II and do not incorporate a structure which makes it difficult to understand the risk involved shall be deemed non-complex without further testing. This privileged treatment applies not only to financial instruments which are explicitly classified as non-complex in Article 25(4)(a) of MiFID II, but also to instruments which pass the non-complexity test provided for in Article 57 of Delegated Regulation to MiFID II. Consequently, any insurance product which offers investment exposure to any non-complex financial instrument shall itself be deemed non-complex provided that it complies with the second criterion foreseen in Article 30(3)(a)(i) of IDD.</p> <p>This understanding of the underlying Level-1 provision is insufficiently reflected in the draft Technical Advice which speaks only about “investments embedded that are not explicitly specified in Article 25(4)(a) [as being non-complex]”. This wording seems not to include underlying investments which pass the complexity text according to MiFID II Level-2 and therefore, does not adequately take into account the relevant IDD provision. In our view, para. 1 should be supplemented as follows:</p> <p>An insurance-based investment products with investments embedded that are not explicitly specified in Article 25(4)(a) of Directive 2014/65/EU or do not fulfil the requirements of Article 57 of Delegated Regulation [No. to be inserted] shall be considered as non-complex [...]”</p>	<p>Agreed. This has been more clearly explained in the revised final technical advice.</p> <p>Partially agreed. Paragraph 1 of the technical advice has been amended to address this point.</p>
707	ANASF	Question 19	<p>As a general remark, the innate variability of returns, risks and costs of IBIPs makes it necessary to provide the investor at least with the assessment of appropriateness, so as to assess her/his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded (i.e., execution-only sales should not be admitted). This is also the position of the Italian regulator: cf. Consob Regulation no. 16190/2007, whereby Article 87 does not apply the</p>	<p>Please see the section Feedback statement regarding the role of execution-only sales.</p>

			provisions on execution-only (Articles 43 and 44) to financial insurance products. I.e., for these products the assessment of appropriateness or suitability is always required, thereby providing for an effective standard of investor protection.	
708	Association of International Life Offices	Question 19	<p>It is our opinion that categorisation of products as non-complex has to be considered in the context of the wording of Article 30.3(a) and so relates solely to the investments provided under the product and not other considerations. As such then we do not consider the technical advice to be in line with the legislation.</p> <p>We would however offer the following observations on the Analysis and draft advice:</p> <p>Over 50s products do not have a cash or maturity value and pay benefits solely upon death and so source of much complaint and disgruntled customers when the premiums paid exceeded the guaranteed sum insured the more so with elderly clients attracted by the inducement of a "free gift". However, such products do not meet the definition of an IBIP in Article 1 (17).</p> <p>We also do not understand why unit linked single premium "short term" (ie endowment) investment bonds are singled out for mention as against whole life contracts?</p> <p>We consider that the draft technical advice is difficult to understand and we have found capable of misinterpretation. We find use of the expression "investments embedded" difficult to comprehend in an insurance context given its literal interpretation as an item which is fixed. It might be more appropriate to refer to "underlying assets" especially as this expression is used elsewhere and clearly has in mind changes to the underlying chosen funds. We would consider a product where the insurer decides the investment such as with profits business meets the definition? if that is the case then some at least of the following</p>	<p>Partially agreed. This example has been removed from the final technical advice.</p> <p>Partially agreed. This example has been removed from the final technical advice.</p> <p>Partially agreed. Paragraph 1 of the final technical advice has been amended to address this point.</p>

			<p>examples infer a choice of assets.</p> <p>By concentrating on the investment aspect it seems to largely ignore the long term contractual nature of life insurance product. In respect of item (e) the insurer is unable to alter the terms of the contract and we have difficulty in understanding what the examples in the second line of the text are trying to identify. Use of the word "fundamentally" also suggests that they would result in a new contract. There is also use of the expression "pay out profile" which is not in ordinary life insurance usage and so needs to be defined. Use of the expression "switch clauses" also seems at odds with a product with embedded investments.</p> <p>We find the wording of item (h) unacceptable and would question why it has been considered to be necessary. It infers that the use of trusts and in civil law jurisdictions nominations can or will result in a complex structure (It is not clear what is envisaged by use of the expression "a modification or personalisation of contractual provisions...") The use of trusts and nominations is recognised in Member States legal systems and indeed in many cases nominations of life insurance policies is the only legitimate method of succession planning and not available to holders of collective investment schemes. We would again mention that the expression "pay out profile" needs to be defined.</p>	<p>Partially agreed. This criterion has been amended in the final advice including to delete the term "switch clauses". However, it is still considered appropriate to address the point that the contractual terms may allow the insurer to make material changes to key aspects of the IBIP. The term "pay-out profile" is also considered to be understandable within an insurance context in view of the investment element of the product. Please also see the section Feedback statement.</p> <p>Partially agreed. Please see the Section feedback statement.</p>
709	Assuralia	Question 19	We do not agree with the cumulative list of high-level criteria in the draft advice. This exhaustive list will result in a de facto ban on execution only, as all products are deemed complex besides products with a unit-linked	Please see the section Feedback statement regarding the role of

		<p>investment element (cf. §5 and 6 page 68-69). Such an approach would seriously undermine the explicit member state option in the IDD to allow for the execution only sale of non-complex IBIPs. Furthermore, in light of a level playing field, we call on EIOPA not to introduce criteria under the IDD that are more stringent than MiFID 2.</p> <p>The MiFID 2 requirements are not adapted to the insurance context and do not fit a considerable part of the life insurance products (see comments to the list of criteria below). Furthermore, we wonder why EIOPA refers to the ESMA final guidelines on complex debt securities and structured products for further guidance, as these guidelines (i) seem hard to reconcile with the proposed criteria and (ii) are level 3 guidance for banking regulation and therefore not adapted to the insurance sector.</p> <p>With regard to the criteria listed in the draft technical advice, Assuralia has the following remarks:</p> <ul style="list-style-type: none"> - the proposed criteria do not fit guaranteed life insurance products and capital redemption operations. As these products (i) are not captured by the criteria, (ii) do not pose an elevated risk to customers and (iii) do not have a complex structure, Assuralia considers them to be non-complex and suitable for sales on an execution only basis; - we agree with EIOPA that unit-linked life products investing in open funds are non-complex and therefore eligible for execution only sales (cf. MiFID 2), while structured unit-linked products are complex; - for unit-linked products the criteria should be assessed at the level of the underlying funds; 	<p>execution-only sales.</p> <p>Partially agreed. The reference to the ESMA Guidelines has been removed from this part of the final technical advice. These Guidelines, are however, being considered in the context of the empowerments in Article 30(7) and (8) of IDD.</p> <p>Please see the section Feedback statement regarding guarantees.</p> <p>It is not clear which part of the technical advice this comment relates to.</p> <p>Partially agreed. For unit-linked or multi-option products the criteria should be addressed taking into account the</p>
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			<p>- criterion B does not take into account the long-term nature of life insurance products and does not fit guaranteed life insurance products and capital redemption operations. Publically available market prices or independent valuation systems are not relevant for products which contain a guaranteed interest rate;</p> <p>- the formulation of criterion C is very vague and not adapted to the terminology used in the insurance sector. The scope and exact meaning of this criterion is therefore unclear;</p> <p>- we consider criterion D to be fulfilled by the obligation to provide a KID to customers, as this European standardised information document includes key information on the characteristics of the product, costs, performance,... ;</p> <p>- criterion E is overly broad compared to the corresponding MiFID 2 criterion (point D on page 68). MiFID 2 reads as follows: "it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment". Criterion E has expanded the scope considerably, by falsely putting switching clauses on the same level as converting rights. This is inaccurate, as switching takes place in the contractual sphere, while converting does not;</p>	<p>overall product features, as well as the features of all the possible investment options.</p> <p>Partially agreed. This criterion has been amended taking into account this concern.</p> <p>Partially agreed. This criterion has been removed from the final technical advice.</p> <p>Agreed. This criterion has been removed from the final technical advice.</p> <p>Partially agreed. This criterion has been amended in the final advice including to delete the term "switch clauses". However, it is still considered appropriate to address the point that the contractual terms may allow the insurer to make material changes to key aspects of the IBIP. Please also see the section Feedback statement.</p>
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		<p>- criterion F fails to take into account (i) the existing national and European legal framework and (ii) the long-term nature of life insurance products. In Belgium, for example, exit costs are already capped by law. Furthermore, the European KID will already provide the customer with information on the costs related to the product. It should also be acknowledged that exit costs are being applied to protect the customers who stay in the products, which are often long-term in case of insurance;</p> <p>- with regard to criterion G, Assuralia wishes to highlight that in the Belgian market criteria have been introduced that determine which structured products for the retail market are to be considered as particularly complex (see Communication FSMA 2011_02 of 20/06/2011, moratorium on the distribution of particularly complex structured products, available on http://www.fsma.be/en/Sitemap/Article/nipic/nipic_tsspersonen.aspx).</p> <p>These criteria are based on the same principles that are mentioned in Recital 18 of the PRIIPs Regulation and can be resumed as follows:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the underlying of the derivative component is not sufficiently accessible, because the relevant market data or the specific characteristics of the (combination of) underlyings cannot be observed by means of the customary channels (internet, printed press). A customized selection of individual shares or a customized index can be considered accessible where a number of cumulative conditions are being met; <input type="checkbox"/> the derivative component's strategy is considered overly complex on account of the difficulty in determining the value offered by the product (such as where a teaser is being used for the distribution of the product, the investor may incur capital loss without being able to participate to at least the same degree in the increase of the underlying, a minimal change in the performance of the underlying can have a disproportionate impact on the payment of a return); <input type="checkbox"/> the calculation formula for the return is overly complex, i.e. when the formula comprises more than three mechanisms (with the exception 	<p>Not agreed. It is not sufficient for the exit charges to simply be disclosed. Such charges should also not be disproportionate.</p> <p>EIOPA has noted this comment.</p>
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			<p>both of mechanisms that provide for a minimum return or that limit the volatility of the underlying, such as a floor or a “cliquet”, ...);</p> <p><input type="checkbox"/> there is insufficient transparency regarding the costs, credit risk and market value.</p> <p>Belgian legislation also determines that certain financial products are not suitable to be sold to retail investors, such as life settlements, or products that invest in so-called ‘unconventional assets’ that are not correlated with the traditional financial market and are speculative and complex in their nature.</p> <p>Assuralia considers that products that correspond to the criteria could be useful for the identification of structures which make it difficult for the customer to understand the risk involved (criterion G of the draft technical advice). Furthermore, we call on EIOPA to take a consistent approach in the IDD (execution only) and the PRIIPs Regulation (comprehension alert).</p> <p>- we find criterion H to be unjustified as beneficiary clauses do not influence the performance or return of the product. Criterion H even undermines the right of a customer to alter a product to his particular needs and ignores the fact that modefiable beneficiary clauses are in the interest of the customers as they enable them to keep control over the beneficiary to their investments.</p>	<p>The PRIIPs Regulation is subject to a separate process to the IDD.</p> <p>Partially agreed. Please see the section Feedback statement.</p>
710	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 19	-	
711	BIPAR	Question 19	BIPAR wishes to point out that in general, and for many customers, we believe that some insurance-based investment products are more or less difficult products. In any event, the consumer is always complex and his or her situation is always unique. Therefore, we are pleased that for IBIPs, there will always be at least a demands and needs test. This test does however not exist for execution-only products under MiFID II, which	The comparable Directive provisions in the IDD and MiFID II are not within the scope of EIOPA’s technical advice.

			leads to the issue of level playing field.	
712	BNP Paribas	Question 19	In our view questions 19 to 21 are no longer relevant given that EIOPA has undertaken the Survey on the empowerment for EIOPA to develop Guidelines in Article 30(7) of the Insurance Distribution Directive.	Not agreed. These questions are still relevant in the context of the technical advice based on the empowerment in Article 30(6) of IDD.
713	Bund der Versicherten (BdV – German Association of	Question 19	<p>No, we do not agree with the high level and cumulative list of criteria used to define other non-complex products. These criteria (CP, p. 71) are neither precise enough nor suitable for insurance specificities. If they are not changed, we definitely see the danger that they may be mis-used by manufacturers and by distributors in order to override the IDD regulation on suitability and appropriateness assessment as well as to counter-balance the PRIIPs-Regulation which tries to establish a level-playing field between retail investors products and insurance-based investment products. The more IBIPs are classified as non-complex the more this danger will become real. Therefore we additionally urge EIOPA to classify an IBIP as non-complex only if all and not just one of these criteria will be relevant.</p> <p><input type="checkbox"/> Related to point a, we underline that usually unit-linked products refer to investment funds (based on shares, bonds, indexes etc.), some of them include even several funds with different investment strategies (“hybrid” products). That is this reason why the right to acquire or sell a single transferable security or to raise a partial cash settlement is not relevant. This criteria must be excluded.</p> <p><input type="checkbox"/> Related to points b and f, we underline again that usually life or annuity insurance contracts include “hidden” acquisition costs by commissions and additional exit fees (“Stornogebühren”) which strongly reduce the surrender value. In case of early withdrawal the charges make an investment illiquid even though technically it may be possible to redeem. Additionally it is not clarified at all, what are “excessive” burdens? Which are the thresholds? That is why these criteria must be excluded.</p>	<p>Partially agreed. All of the criteria would need to be satisfied in order for an IBIP to be classified as non-complex. Please also see the section Feedback Statement regarding the role of execution-only sales.</p> <p>Agreed.</p> <p>Partially agreed. Criterion (d) in the final technical advice intends to address disproportionate surrender charges. The term “excessive burdens” has been deleted from the final advice.</p>

		<p><input type="checkbox"/> Related to point c (liability for the customer to incur that exceeds the costs of acquiring the insurance-based investment), we do not know any life insurances which have embedded such a feature (only pure retail investment products may have included this). This criteria is an alarming example why we definitely see the danger that the provision of non-complex IBIPs may be mis-used by manufacturers and by distributors in order to counter-balance the PRIIPs-Regulation as well as the IDD regulation on the suitability and appropriateness assessment. This criteria must be excluded.</p> <p><input type="checkbox"/> Related to points d and g, we do not see, which category of IBIP may need less information requirements in comparison to all other IBIPs. We are very astonished that EIOPA's evidence-gathering points out that some IBIPs with an unit-linked investment element may be considered as non-complex (point 5 of the EIOPA's analysis, in: CP, p. 68). Usually these unit-linked products refer to investment funds (based on shares, bonds, indexes etc.), some of them include even several funds with different investment strategies ("hybrid" products). So, as far as we can see these are very complex products, consumers need comprehensive information to readily understand their structure enabling them to make an informed decision. That is why these criteria must be excluded.</p> <p><input type="checkbox"/> Related to point e, at least in Germany it is very usual that life and annuity insurance contracts have included different pay-out options (lump-sum or annuity: "Kapitalwahlrecht"). This clause must be specified aiming at not prohibiting the possibility for different pay-out options, otherwise it must be excluded.</p> <p><input type="checkbox"/> Related to point h, we underline that the modification or personalization of contractual provisions with regard to the receiving benefits at the end of the contractual relationship (the "beneficiary</p>	<p>This criterion is not included in the final technical advice, since as noted by various respondents to the consultation paper (CP), such a liability will not exist in the case of IBIPs.</p> <p>Agreed regarding point (d) of the draft technical advice CP, which is not included in the final advice. Partially agreed regarding point 5 of EIOPA's analysis in the CP, which EIOPA has revised in its final analysis. Not agreed regarding point (g) which is considered important to avoid IBIPs which incorporate a complex structure being sold via execution-only.</p> <p>Agreed. The final technical advice has been amended to not exclude such options.</p> <p>Partially agreed. Please see the section Feedback statement.</p>
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			clause”) is – at least following to the German insurance contract law – a quite usual contract option (“widerrufliches / unwiderrufliches Bezugsrecht”). So this criteria must be specified in order not to prohibit this usual option, otherwise it must be excluded.	
714	BVI Bundesverband Investment und Asset Management	Question 19	<p>We think that the relation between the scope of non-complex products under MiFID II and the non-complexity test provided in the draft technical advice should be made more clear: According to Article 30(3)(a)(i) of IDD, insurance contracts which only provide investment exposure to financial instruments deemed non-complex under MiFID II and do not incorporate a structure which makes it difficult to understand the risk involved shall be deemed non-complex without further testing. This privileged treatment applies not only to financial instruments which are explicitly classified as non-complex in Article 25(4)(a) of MiFID II, but also to instruments which pass the non-complexity test provided for in Article 57 of Delegated Regulation to MiFID II. Consequently, any insurance product which offers investment exposure to any non-complex financial instrument shall itself be deemed non-complex provided that it complies with the second criterion foreseen in Article 30(3)(a)(i) of IDD.</p> <p>This understanding of the underlying Level 1 provision is insufficiently reflected in the draft technical advice which speaks only about “investments embedded that are not explicitly specified in Article 25(4)(a) [as being non-complex]”. This wording seems not to include underlying investments which pass the complexity text according to MiFID II Level 2 and therefore, does not adequately take into account the relevant IDD provision. In our view, it should be supplemented as follows:</p> <p>1. An insurance-based investment product with investments embedded that are not explicitly specified in Article 25(4)(a) of Directive 2014/65/EU or do not fulfill the requirements of Article 57 of Delegated Regulation [No. to be inserted] shall be considered as non-complex [...]</p>	<p>Agreed. This has been more clearly explained in the revised final technical advice.</p> <p>Partially agreed. Paragraph 1 of the technical advice has been amended to address this point.</p>
715	CNCIF - Chambre Nationale des	Question 19	<p>We agree that the insurance products can be considered non-complex if they do not incorporate a structure with makes difficult for the consumer to understand the risk involved (customer’s perspective).</p>	<p>Agreed.</p>

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716	CSCA French broker Association, 91, rue Saint Laza	Question 19	See answer 15 as regards both the legislation and the regulations. Also, the regulators have put in place very strict KYC requirements in terms of customers' proven financial capacity. We would stress that in practice, requests for further details of their wealth come up against the reticence of customers who deem such requests intrusive.	Noted.
717	EFAMA - The European Fund and Asset Manageme	Question 19	<p>We think that the relation between the scope of non-complex products under MiFID II and the non-complexity test provided in the draft Technical Advice should be made clearer: According to Article 30(3)(a)(i) of IDD, insurance contracts which only provide investment exposure to financial instruments deemed non-complex under MiFID II and do not incorporate a structure which makes it difficult to understand the risk involved shall be deemed non-complex without further testing. This privileged treatment applies not only to financial instruments which are explicitly classified as non-complex in Article 25(4)(a) of MiFID II, but also to instruments which pass the non-complexity test provided for in Article 57 of Delegated Regulation to MiFID II. Consequently, any insurance product which offers investment exposure to any non-complex financial instrument shall itself be deemed non-complex provided that it complies with the second criterion foreseen in Article 30(3)(a)(i) of IDD.</p> <p>This understanding of the underlying Level-1 provision is insufficiently reflected in the draft Technical Advice which speaks only about "investments embedded that are not explicitly specified in Article 25(4)(a) [as being non-complex]". This wording seems not to include underlying investments which pass the complexity text according to MiFID II Level-2 and therefore, does not adequately take into account the relevant IDD provision. In our view, para. 1 should be supplemented as follows:</p> <p>An insurance-based investment products with investments embedded that are not explicitly specified in Article 25(4)(a) of Directive 2014/65/EU or do not fulfil the requirements of Article 57 of Delegated Regulation [No. to be inserted] shall be considered as non-complex [...]</p>	<p>Agreed. This has been more clearly explained in the revised final technical advice.</p> <p>Partially agreed. Paragraph 1 of the technical advice has been amended to address this point.</p>

718	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 19	-	
719	Fachverband der Versicherungsmakler und Berater in	Question 19	<p>It should be clearly mentioned that the Delegated Acts based on IDD articles 27, 28, 29 and 30 (chapter VI) only apply to IBIPs</p> <p>We are concerned that the cumulative list of high-level criteria to assess non-complex insurance-based investment products could result in a de facto ban on execution-only, as all products are deemed complex besides products with a unit-linked investment element. This would not be in line with the explicit possibility given to Member States in the IDD to allow for the execution-only sale of non-complex IBIPs.</p>	<p>Not agreed. This is considered to be clear based on the Directive.</p> <p>Please see the section Feedback statement regarding the role of execution-only sales.</p>
720	Fédération Française de l'Assurance (FFA) 26 bo	Question 19	<p>Because of insurance specificities, we believe the definition of complex/non-complex products in IDD should not be aligned to MiFID II.</p> <p>Complexity should be judged on the the difficulty to understand the risk linked to investment exposure to the financial instruments.</p> <p>For example, IBIP's with an unconditional underlying guarantee to the capital that has been invested for the duration of the contract should be considered non-complex, even if the instruments or structures used to</p>	<p>Please see the section Feedback statement regarding the role of execution-only sales.</p> <p>Partially agreed. The criteria are defined from the perspective of the complexity of the insurance product features which are relevant to the customer and in particular the return that is received on the investment.</p> <p>Please see the section Feedback statement regarding guarantees.</p>

			<p>produce such guarantees are non-trivial.</p> <p>As for us with-profit participation product should be considered as non-complex because it is not a risky product but one with a guaranteed capital offering a high level of protection to consumers.</p> <p>We do not agree with criterion (h) of the draft technical advice about beneficiary clauses. They do not influence the performance or return of the product and thus the understanding of the financial risk. This is a right of a customer to alter a product to his particular needs and these clauses are in the interests of customers as they enable them to keep control over the beneficiary of their investments.</p>	<p>Please see the section Feedback statement regarding the beneficiary clause.</p>
721	Federation of Finnish Financial Services	Question 19	<p>We do not agree with the definition 1. h) of the criteria defining non-complex products. Contractual features allowing alteration of material consequences with regards to benefits and gains in the pay-out profile should not be included in the list of complex features. These elements often work in the favor of the customer and on the contrary what EIOPA suggests, it might be a risk for the client not to have these elements in the contract.</p>	<p>Please see the section Feedback statement regarding the beneficiary clause.</p>
722	Financial Services Consumer Panel	Question 19	<p>The Panel broadly agrees with the high level and cumulative list of criteria used to define other non-complex products. There is no criteria we would suggest making optional or any we would exclude.</p> <p>However, we do have concerns that the perception of what is, in truth, a non-complex product or a complex product, depends very much on the knowledge and experience of the purchaser. Our concern is that even relatively simple investment-based products might appear complex to the inexperienced investor, but if sold without advice, there may be no requirement to establish suitability or appropriateness.</p>	<p>Please see the section Feedback statement regarding the role of execution-only sales.</p>
723	FNMF, 255	Question	<p>The definition of complex and non complex products has not to be</p>	<p>Please see the section</p>

	rue de Vaugirard, 75015 PARIS	19	aligned to MIFID II. According to us, the complexity notion has not to be based on the complex mechanism of the product but has to be based on the difficulties of understanding the product.	Feedback statement regarding the role of execution-only sales.
724	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 19	No comment	
725	German Association of Actuaries (DAV)	Question 19	<p>To point (a):</p> <p><input type="checkbox"/> From our point of view, it is appropriate to apply the criteria as defined in the Draft Technical advice to determine whether it is a complex or non-complex product, when there is a direct link between the amount and maturity of insurance payment and the underlying capital market product.</p> <p><input type="checkbox"/> A look through approach is not possible when the insurance company invests into “complex” capital market products at its own risk and there is no direct link between the capital market product which is held by the insurer and the amount or maturity of the insurance payment. This is the case for many insurance products where the insurer promises to guarantee an amount of insurance payment. Examples are traditional German life insurance products or other life insurance products with significant guarantees, i.e. the amount of guarantee reaches a significant level (e.g. dynamic hybrid products).</p> <p>To point (e) and (h):</p> <p><input type="checkbox"/> A lot of insurance products have a very long duration, often several decades. This is the reason why the policyholder typically has the right to change the insurance product during the term. It would not be appropriate if an insurance product becomes “complex” only because the policyholder has the right to change the insurance contract in a way where the underlying investment product is not touched. There are a lot of examples where this is the case:</p> <ul style="list-style-type: none"> o The policyholder changes the beneficiary of the insurance payment. o The policyholder takes a lump sum instead of an annuity. 	<p>Not agreed. The criteria are relevant to all insurance-based investment products as defined in point 17 of Article 2 of IDD.</p> <p>Partially agreed. Please see the section Feedback Statement regarding the changes to points (e) and (h) of the draft technical advice in the CP.</p>

			<ul style="list-style-type: none"> o The policyholder uses his legal right to surrender the insurance contract. o The policyholder contradicts an indexation of the insurance contract. o The policyholder reduces the annual premium of the insurance contract. o ... <input type="checkbox"/> In addition an insurance product should not get the "complex"-status when the policyholder has the right to change the underlying investment product from a non-complex one to another non-complex one. <input type="checkbox"/> It is indispensable to change the insurance product during the term because of the long duration of insurance products. The change of an insurance contract should not change its status to "complex" when the changes of insurance benefits and premiums are calculated in an actuarial way. <p>To point (f):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Insurance products with a long duration typically have acquisition costs (for the whole duration of the contract) that are financed with a significant portion of the first premiums. The result is a lower surrender value of the insurance contract than the paid premiums. In this situation the insurance product should not be categorised as complex. 	<p>Point (f) has been revised to state that the surrender charges should not be disproportionate to the cost to the insurance undertaking of the surrender.</p>
726	German Association of Private Health Insurers (PKV)	Question 19	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
727	German Insurance Association (GDV)	Question 19	Complex products in the sense of MIFID II include factors that make it difficult for the customer to understand the risks involved. Examples for such products are investments in derivatives, contracts of difference, structured notes or asset backed securities (ABS). They involve	These general points have been noted. Please see the responses to your more detailed positions below.

		<p>investment strategies with complex derivative instruments, non-transparent exposure to several market risks and / or credit risks.</p> <p>The German insurance industry agrees that the assessment of the complexity of insurance-based investment products should focus on factors that make it difficult for the customer to understand the risks involved, as EIOPA rightly points out in its analysis on p. 68 no. 3. We also agree that in any case the insurance products can be considered non-complex if their structure does not make it difficult for the customer to understand the risks involved.</p> <p>Furthermore, the German Insurance Association agrees that the European level should merely develop suitable, abstract and universally applicable high-level criteria and leave it to the Member States to further specify them according to their national legal framework.</p> <p>Insurance-based investment products reduce the risk exposure of consumers, e.g. by providing certain guarantees cushioning them from market volatility or even covering this risk entirely. Thus, such products are non-complex in the sense of p. 68 no. 3. It is much welcomed that EIOPA acknowledges this fact on p. 69 no. 8. The German Insurance Association also agrees that whole of life insurance with attached additional benefits (for example waiver of premium or contribution or separate pay-out for critical illness diagnosis) or an Over 50's Life plan with a guaranteed pay-out within the first year of premiums are considered to be non-complex.</p> <p>However, DTA p. 71 no. 1 partly contradicts this EIOPA analysis; as a consequence, various insurance-based investment products are classified as complex nonetheless.</p> <p>Customers investing in insurance-based investment products primarily purchase insurance, i.e. (biometric) risk cover or guarantees on investment. From the consumer's perspective, the focus should therefore</p>	
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		<p>be on the insurance product itself and not on underlying investment aspects.</p> <p>Please see our detailed positions on DTA p. 71 (1):</p> <p><input type="checkbox"/> DTA p. 71 no. 1 (a)</p> <p>Insurance-based investment products do not qualify as complex if they provide investment exposure e.g. to a derivative, which holds true for most UCITS funds. Traditional life insurance products that minimise risk to consumers through guarantees and smoothing mechanisms would wrongly fall within the scope of this provision, since it is an integral part of insurers' day-to-day business to invest in all available asset classes, without causing harm to their customers. Therefore, it is vital to remember the statement of EIOPA, according to which complexity must be assessed from the customer's perspective and based on the existence of unpredictable risks.</p> <p>The criterion under point a) is not in line with this EIOPA statement and would wrongly apply to insurance-based investment products with guarantees, such as unit-linked or hybrid products. Any potential risks arising from these investments are reduced to an absolute minimum by the extensive regulation on this subject, e. g. under Solvency II. Moreover, the German insurance industry holds the view that investments in derivatives or other securities should also be qualified as non-complex if the corresponding investment is non-significant. The German Insurance Association strongly recommends clarifying the exact meaning of "giving rise to a cash settlement".</p> <p><input type="checkbox"/> DTA p. 71 no. 1 (d)</p> <p>Due to the PRIIP Regulation, consumers purchasing insurance-based investment products receive Key Information Documents (KIDs) enabling them to make an informed decision. In fact, this has been the main objective of the Regulation. For this reason, we recommend deleting point (d).</p>	<p>Partially agreed. Paragraph (1)(a) has been removed from the final technical advice.</p> <p>Agreed.</p>
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			<p><input type="checkbox"/> DTA p. 71 no. 1 (e)</p> <p>The German insurance industry recommends clarifying that an alteration of the pay-out profile may not be detrimental for consumers. For example, consumers can choose between a lump sum pay-out and an annuity. This choice makes a product more flexible for consumers and therefore reduces their risks in case their life situation changes during the course of the contract. It would be very helpful to clarify that this provision does not apply to trustee clauses or clauses relating to annuity factors.</p> <p><input type="checkbox"/> DTA p. 71 no. 1 (h)</p> <p>Since insurance-based investment products often have a term of more than 30 years, it is not uncommon for the consumer to change e.g. the beneficiary of payments in case of death (e.g. after divorce). Most of the consumers will understand the ramification of such change. In fact, under German insurance contract law, the possibility of the consumer to change the beneficiary of his/her life insurance is the legal rule from which the contract can only deviate by explicit determination (§ 159 German Insurance Contract Act). From the German Insurance Association's point of view, the product should rather qualify as complex if the consumer were not allowed to change the beneficiary. We therefore recommend clarifying that only complex non-standard beneficiary clauses should be taken into account when assessing the complexity of an insurance-based investment product.</p> <p>The German insurance industry would also like to point out that the remarks made by EIOPA in its impact assessment (p. 161 to 165) regarding the policy options for complex products are difficult to follow. The IDD does not contain any restrictions on the sale of complex insurance-based investment products. Complex products are merely not subject to the members states' option stipulated in Art. 30 (3) IDD.</p> <p>Moreover, the German Insurance Association would also like to stress</p>	<p>Please see the section Feedback statement regarding this provision.</p> <p>Please see the section Feedback Statement regarding this provision.</p> <p>Agreed. The impact assessment has been revised to reflect this point.</p> <p>Agreed. This provision has been changed in the final</p>
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			that the reference in DTA p. 71 no. 1 should be to Art. 30 (3) (a) (ii) of Directive 2016/97/EU instead of Directive 2014/65/EU (MiFID II).	technical advice.
728	Institute and Faculty of Actuaries	Question 19	<p>Complexity should be judged in respect of the customer outcome rather than the underlying investment / product characteristics. Labelling products as complex could be a hindrance to non-advised / internet sales.</p> <p>It is not appropriate to assume that a product should automatically be classified as complex where it includes derivative instruments. Such instruments could be used for efficient portfolio management (as per article 132 of the Solvency II framework directive) and not materially affect customer outcomes apart from this. A distinction needs to be drawn between the uses of derivatives to structure a specific intended customer outcome or to carry out portfolio management activities.</p>	<p>Partially agreed. The criteria are defined from the perspective of the complexity of the insurance product features which are relevant to the customer and in particular the return that is received on the investment.</p> <p>Partially agreed. Point (a) of the draft technical advice in the CP is not included in the final technical advice.</p>
729	Insurance Europe	Question 19	<p>The cumulative list of high-level criteria in the draft technical advice poses a serious concern. This exhaustive list will result in a de facto ban on execution-only sales, as all products are deemed complex besides products with a unit-linked investment element under paragraphs 5 and 6 on pages 68-69 of the analysis.</p> <p>This approach would seriously undermine the explicit member state option in the IDD to allow for the execution-only sales of non-complex IBIPs, as well as interfere with the consumer's choice of whether or not to seek advice. Insurance Europe is therefore opposed to the inclusion of such a list in the draft technical advice.</p> <p>Complex products in the sense of MiFID II include factors that would make it difficult for the client to understand the risks involved. Examples of these products are investments in derivatives, contracts of difference, structured notes or asset backed securities. They involve investment strategies with complex derivative instruments, non-transparent exposure to several market risks and/or credit risks.</p>	Please see the section Feedback Statement regarding the role of execution-only sales.

		<p>The focus should be on factors that make it difficult for the client to understand the risks involved when assessing the complexity of insurance-based investment products, as EIOPA rightly points out in paragraph 3 of the analysis on page 68. In any case, the insurance products can be considered non-complex if they do not incorporate a structure which makes it difficult for the customer to understand the risks involved.</p> <p>It is also true that suitable high-level criteria capable of general application could be developed at European level and specified by member states having regard to their specific statutory regimes.</p> <p>It should be noted that in their core business, insurers use professional actuarial methods to determine their obligations and many financial instruments to match them. Insurance-based investment products primarily reduce the consumer's risk exposure, for example by providing certain guarantees which offer a greater level of protection to consumers, cushioning them from the volatility of the market. These products are therefore non-complex in the sense of paragraph 3 of the analysis on page 68 (no look-through regarding complexity, only the product itself should be viewed when assessing complexity for consumers).</p> <p>Criterion (e) on page 71 is overly broad compared to the corresponding MiFID 2 criterion (point (d) on page 68), which states that "it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment".</p> <p>EIOPA's proposed criterion (e) expands the scope considerably, by wrongly putting switching clauses on the same level as converting rights. This is inaccurate, as switching takes place in the contractual sphere, while converting does not. Switching does not alter the characteristics of the product, but merely places the investment in another investment option within the same product.</p> <p>Criterion (h) of the draft technical advice would pose a serious issue if it</p>	<p>Partially agreed. This criterion has been amended in the final advice including to delete the term "switch clauses".</p> <p>However, it is still considered appropriate to address the point that the contractual terms may allow the insurer to make material changes to key aspects of the IBIP. Please also see the section Feedback statement.</p>
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			<p>would not allow the customer the possibility to change the beneficiary. Beneficiary clauses do not influence the performance or return of the product. This criterion even undermines the right of a customer to alter a product based on their particular needs and ignores the fact that modifiable beneficiary clauses are in the interests of customers as they enable them to keep control over the beneficiary of their investments.</p> <p>Recommendation: In addition to the above, EIOPA should amend the incorrect references to MiFID II (Directive 2014/65/EU) in paragraph 1 on page 71. The correct references should be to Article 25(4)(a) and Article 30(3)(a)(ii) of Directive (EU) 2016/97 (IDD).</p>	<p>Partially agreed. Please see the section Feedback statement.</p> <p>The incorrect references have been corrected in the final technical advice.</p>
730	Insurance Sweden/ Svensk Försäkring	Question 19	<p>Defining other non-complex products</p> <p>We believe that the draft technical advice regarding what should be deemed as an "other non-complex products" is too detailed and will exclude safe, consumer friendly products from being looked upon as non-complex.</p> <p>Eiopa/the European Commission should only prescribe a high-level criteria that indicate whether the product is complex or not and rather leave the judgement of whether a product is to be deemed-complex or non-complex, to the member states. Otherwise, local product development and distribution will be unnecessarily hindered by EU legislation. In short, we strongly believe that Eiopa should allow flexibility for the national supervision authorities to take into consideration the specificities of national products, otherwise there is a risk that IBIPs that are simple for the customer to understand and give the customer a high level of protection are classified as complex IBIPs, while other IBIPs, such as deposit insurance or unit-linked insurance, are classified as non-complex despite the fact that the level of protection for the customer is much lower (the customer risks losing the entire initial investment). Such an effect at the national level would be to the detriment of the customer.</p>	<p>EIOPA has considered these points during the finalisation of its technical advice and as explained in the section Feedback Statement has made some revisions to the draft technical advice in the CP.</p> <p>In addition, whilst EIOPA has considered the different types of insurance-based investment products currently sold, EIOPA has sought to define criteria that can be applied to all types of insurance products which have an "investment element" and therefore fall within the definition in Article 2(17) of IDD.</p>

		<p>As an example to illustrate the above, in Sweden, one of the best IBIPs from a customer point of view is endowment insurance with traditional asset management (also called "with-profits life insurance", "livförsäkring med traditionell förvaltning" in Swedish). This type of insurance normally uses different guarantees, i.e. between 80-100% of the customer's initial investment is guaranteed and the customer is also guaranteed a certain return on the investment (generally 1,5-3% of the investment). The structure of endowment insurance with traditional asset management is easy to understand for the customer allowing the customer to understand the risks involved. The customer is guaranteed a certain percentage of the investment (up to 100%) and a certain turnover. In addition, the customer is entitled to a share in the return on capital generated by the management of asset.</p> <p>The share is proportional to the investment of the customer. In contrast to unit-linked insurance, the customer does not have to take any investment decisions regarding the management of assets. The customer trusts instead the insurance company to manage the assets carefully and properly. How the insurance company manages the assets is rigorously regulated by Solvency II.</p> <p>This product would most likely be looked upon as complex if the draft technical advice would remain unchanged. This is because the draft technical advice contains very detailed criteria on how to decide whether a product is non-complex or not. We struggle to see the importance of some of the detailed criteria, which is explained further below.</p> <p>Eiopa seems to imply that exposure to derivatives per se makes the insurance product complex(draft technical advice 1. (a)). Most traditional asset management contains some exposure to a derivative. We firmly believe that it is counter-productive if Eiopa should enforce such a restriction making it impossible to have any derivative within the asset management of a with profits policy. As mentioned above, it is the insurance company, and not the customer, that makes the investment decisions and manages the assets carefully in accordance with Solvency II. This criteria should therefore be deleted. As an alternative, we believe</p>	<p>Partially agreed. This criterion is not included in the final technical advice.</p>
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			<p>it will be sufficient if the technical advice prescribes the following:</p> <p>“the contract does not provide substantial investment exposure to a derivative.....”</p> <ul style="list-style-type: none"> • Eioipa also seems to imply that the use of beneficiary clauses per se is a strong indication that the product is complex (draft technical advice 1. (h)). This is a very strange requirement from a Swedish perspective. One of the customer’s most protected rights in Sweden is to allow the customer to decide who should be the beneficiary. This is a mandatory requirement for all types of life insurances, including IBIPs. It is hard to understand how a beneficiary clause could make it difficult for the customer to understand the risks related to the investment, not least since this apparently is without importance for unit- link products which are automatically deemed non-complex products and where the contracts provide equal opportunities to change beneficiary. We therefore believe this prerequisite should be deleted. <p>Finally, the existence of exit charges should not either be considered as a factor which makes the product complex per se (draft technical advice 1. (f)). Again, this exists under unit-link contracts as well and apparently does not influence the assessment of being non-complex.</p>	<p>Please see the section Feedback Statement regarding the provision on beneficiary clauses.</p> <p>Partially agreed. The existence of exit changes does not automatically result in an IBIP being deemed complex. The technical advice requires that the exit charges are not disproportionate.</p>
731	Intesa Sanpaolo S.p.A.	Question 19	We think that the criteria to define the complexity of products shall be consistent with what is already established under MiFID II and further ESMA’s guidances, in order to prevent different classifications between insurance-based investment products and other financial products.	Partially agreed. As explained in the sections Feedback Statement and Analysis, EIOPA has sought to strike an appropriate balance between cross-sectoral consistency and the need to reflect the specificities

				of insurance-based investment products.
732	IRSG	Question 19	<p>Broadly we do agree with the high level and cumulative list of criteria used to define other non-complex products.</p> <p>However the IRSG is concerned that the cumulative list of high-level criteria to assess non-complex insurance-based investment products could result in a de facto ban on execution-only, as all products are deemed complex besides products with a unit-linked investment element. Such an approach would undermine the explicit member state option in the IDD to allow for the execution-only sale of non-complex IBIPs.</p> <p>The IRSG also has concerns that the perception of what is, in truth, a non-complex product or a complex product, depends very much on the knowledge and experience of the purchaser. Our concern is that even relatively simple investment-based products might appear complex to the inexperienced investor, but if sold without advice, there may be no requirement to establish suitability or appropriateness.</p> <p>It should however be ensured that in practice IBIP's are not discriminated against MIFID products. There is always a demand and needs test for IBIPS products.</p>	Please see the section Feedback statement regarding the role of execution-only sales.
733	MALTA INSURANCE ASSOCIATION These comments have b	Question 19	<p>We disagree that the criteria in the draft technical advice should be a cumulative test.</p> <p>The cumulative nature of the list will result in a de facto ban on execution-only, as all products are deemed complex besides products with a unit-linked investment element. This would go contrary to the IDD which allows execution only sales on non complex IBIPs.</p> <p>With regard to criterion (e) on page 71, we believe that this is overly broad compared to the corresponding MiFID 2 criterion (point (d) on</p>	<p>Please see the section Feedback statement in terms of the role of execution-only sales.</p> <p>Partially agreed. This criterion has been</p>

			<p>page 68), which states that “it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment”. EIOPA’s proposed criterion (e) expands the scope considerably, by wrongly putting switching clauses on the same level as converting rights. This is inaccurate, as switching takes place in the contractual sphere, while converting does not.</p> <p>We do not agree with criterion (h) of the draft technical advice if this would not allow the customer the possibility to change the beneficiary. Beneficiary clauses do not influence the performance or return of the product. This criterion even undermines the right of a customer to alter a product to his particular needs and ignores the fact that modifiable beneficiary clauses are in the interests of customers as they enable them to keep control over the beneficiary of their investments.</p>	<p>amended in the final advice including to delete the term “switch clauses”.</p> <p>However, it is still considered appropriate to address the point that the contractual terms may allow the insurer to make material changes to key aspects of the IBIP. Please also see the section Feedback statement.</p> <p>Please see the section Feedback statement regarding the provision on the beneficiary clause.</p>
734	Mediterranean Insurance Brokers (Malta) Ltd.	Question 19	<p>Do you agree with the high level and cumulative list of criteria used to define other non-complex products? Are there any you would make optional or exclude, and why?</p> <p>It should be very clear and mentioned explicitly for all delegated acts that are part of chapter VI on IBIPs that the delegated acts are indeed only applicable to IBIPs.</p> <p>We are concerned that the cumulative list of high-level criteria to assess non complex insurance based investment products could result in a de facto ban on execution-only, as all products are deemed complex besides</p>	<p>Not agreed. This is considered to be clear already based on the Directive.</p> <p>Please see the section Feedback Statement</p>

			products with a unit-linked investment element. This would not be in line with IDD to allow for the execution only sale of non complex IBIPs.	regarding the role of execution-only sales.
735	Slovenian Insurance Association	Question 19	The list of criteria used to define non-complex products should be amended. Level of the criteria used to define non-complex products is excessive (non-complex products are determined too narrow)	Please see the section Feedback Statement regarding the role of execution-only sales.
736	Unipol Gruppo Finanziario S.p.A.	Question 19	<p>With regard to the criteria for assessing non-complex insurance-based investment products under point 1 of the Draft Technical Advice, we believe that the current formulation does not allow some products having objective characteristics of low risk for the client to be included in the definition of non-complex products.</p> <p>We refer to the revaluable insurance products (or those with profit-sharing) structured to include a guarantee of returning the capital, and in some cases a minimum return, so the investment risk is shouldered by the insurance undertaking, and not by the investor. Only a return exceeding this return of capital and the minimum return, if any, is indirectly exposed to market fluctuations in consideration of the fact that the benefits falling due or in case of redemption may be revalued based on the yield, certified and publicly available free of costs, according to an algorithm contractually established and easily comprehensible.</p> <p>We therefore think that there are no elements of complexity for these insurance-based investment products identifiable with revaluable insurance products as long as they are characterised by the guarantee of returning the capital, and that they are to be expressly removed from the category of complex products.</p> <p>For this reason we propose to explicitly consider them in the documents clarifying point a-i) of paragraph 3 of Article 30 of the Insurance Distribution Directive 2016/97 (IDD).</p> <p>These products, on the other hand, might meet the whole set of conditions listed in the documents implementing a-ii) of paragraph 3 of Article 30 of the IDD for some configurations.</p> <p>To this regard, the following considerations are made on the represented criteria in answer to the question asked in the consultation:</p> <p><input type="checkbox"/> Criterion a): In consideration of the circumstance that national life</p>	<p>Please see the section Feedback Statement regarding guaranteed products.</p> <p>Partially agreed. This</p>

		<p>insurance regulations allow embedding derivatives as cover, we propose to make the regulatory provision that, on the other hand, appears to concern only exposure in derivatives with investment purposes, and not coverage purposes, more explicit. As a result, we suggest that the text of letter a) be reformulated to reflect the part inserted in italics with underscoring: « a) the contract does not provide investment exposure (whether directly or via underlying investment) to a derivative having a purpose other than that of coverage, or of another security that gives the right to acquire or sell a transferable security or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures »;</p> <p><input type="checkbox"/> Criterion c): We request confirmation that all insurance-based investment products that do not give rise to a loss other than the invested premiums are excluded from this case in point.</p> <p><input type="checkbox"/> Criterion h): we propose that letter h) be eliminated as it appears to refer to the possibility of entering into a life insurance contract in favour of third parties and/or to change its designation in the course of the same contract. Indeed, we find that:</p> <ul style="list-style-type: none"> o this right connotes all life insurance policies, even those not qualifiable as insurance-based investment products pursuant to the IDD, so it does not constitute a proprietary factor of these latter products, which leads one to consider greater client protection in terms of assessment of the adequacy/appropriateness as being necessary; o the existence of this clause has no relevance with regard to its services being or not being exposed, even only in part, to market fluctuations; <p>this clause cannot contain complex aspects as it is, apart from everything else, accessible and immediately transparent already in the disclosure documentation available to the client during the pre-contractual stage, and does not jeopardise the client's ability to take conscious decisions since specific expertise is unnecessary in order to comprehend this</p>	<p>criterion is not included in the final technical advice.</p> <p>Agreed. This criterion is not included in the final technical advice, since as noted by various respondents to the consultation paper (CP), such a liability will not exist in the case of IBIPs.</p> <p>Please see the section Feedback statement regarding the provision on the beneficiary clause.</p>
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			feature, and neither does it affect abilities to understand the structure of the product and the risk assumed along with it, also considering that any change in the beneficiary of the services does not constitute any change in the nature or structure of the same services due based on the product.	
737	Verband der Automobilindustrie e.V. Arbeitskreis	Question 19	Not applicable.	
738	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 19	<p>19: Stimmen Sie der grundsätzlichen und kumulativen Kriterienliste für die Definition anderer nicht komplexer Produkte zu? Gibt es Kriterien, die optional sein sollten oder die Sie weglassen würden, und wenn ja, warum?</p> <p>Komplexe Produkte im Sinne der MIFID-II-Richtlinie beinhalten Elemente, die es den Kunden erschweren, die mit dem Produkt verbundenen Risiken zu verstehen. Beispiele hierfür sind Anlagen in Derivate, Differenzkontrakte, strukturierte Schuldtitel oder forderungsbesicherte Wertpapiere (ABS). Die Anlagestrategien hinter diesen Produkten basieren auf komplexen derivativen Instrumenten. Darüber hinaus weisen komplexe Produkte im Sinne von MiFID II eine nicht-transparente Exponierung gegenüber verschiedenen Markt- und/oder Kreditrisiken auf.</p> <p>Der VDVM stimmt mit EIOPA (Erläuterungen S. 68, Nr. 3) darin überein, dass bei der Bewertung der Komplexität von Versicherungsanlageprodukten der Fokus auf jenen Elementen liegen sollte, die dem Kunden das Verständnis der ihn betreffenden Risiken erschweren. Der VDVM stimmt auch damit überein, dass Produkte in jedem Fall dann als nicht-komplex einzustufen sind, wenn den Kunden das Verständnis der Risiken nicht durch den Produktaufbau erschwert wird.</p> <p>Weiterhin teilt der VDVM die Auffassung, dass auf europäischer Ebene lediglich geeignete abstrakte und allgemein anwendbare Kriterien entwickelt werden sollten, die von den Mitgliedstaaten entsprechend</p>	These general points have been noted. Please see the responses to your more detailed positions below.

		<p>ihrer jeweiligen gesetzlichen Rahmenbedingungen näher zu spezifizieren sind.</p> <p>Versicherungsanlageprodukte reduzieren die Risikoexponierung des Verbrauchers, etwa durch bestimmte Garantien, die ihn vor der Marktvolatilität schützen oder dieses Risiko gar vollständig eindämmen. Somit sind solche Produkte nicht-komplex im Sinne von Erläuterungen S. 68, Nr. 3. Der VDVM begrüßt, dass EIOPA dies in Erläuterungen S. 69, Nr. 8 bestätigt. Darüber hinaus teilt der VDVM die Einschätzung, dass Lebensversicherungen mit Zusatzleistungen (z. B. Prämien- oder Beitragsbefreiungen oder Sonderzahlungen bei diagnostizierter schwerer Krankheit) als nicht-komplex anzusehen sind.</p> <p>Der Draft Technical Advice (DTA S. 71 Nr. 1) folgt dieser Analyse von EIOPA allerdings nicht konsequent genug. Im Konsultationspapier und in der Folge werden zahlreiche Versicherungsanlageprodukte doch als komplex eingestuft:</p> <p>Kunden, die in Versicherungsprodukte investieren, kaufen primär eine Versicherung, also (biometrischen) Versicherungsschutz oder Kapitalanlagegarantien. Dies bedeutet, dass das Versicherungsprodukt und nicht die mittelbare Anlage aus Kundensicht im Vordergrund stehen soll.</p> <p>Im Einzelnen zu den Unterpunkten der DTA S. 71 Nr. 1:</p> <p><input type="checkbox"/> DTA S. 71 Nr. 1 (a)</p> <p>Versicherungsanlageprodukte gelten nicht als komplex, wenn sie z. B. gegenüber einem Derivat exponiert sind, was bei den meisten OGAW-Fonds der Fall ist. Traditionelle Lebensversicherungsprodukte, die das Risiko der Verbraucher über Garantien und Glättungsmechanismen minimieren, würden fälschlicherweise unter diese Bestimmung fallen, da es zum Kerngeschäft der Versicherer gehört, ohne Nachteil für ihre Kunden in sämtliche Anlageklassen zu investieren. Daher ist es wichtig, EIOPAs Statement zu betonen, dass die Komplexität aus Kundensicht</p>	<p>Partially agreed. Paragraph (1)(a) has been removed from the final technical advice.</p>
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		<p>beurteilt werden soll und auf unvorhersehbaren Risiken für den Kunden abzielt.</p> <p>Das Kriterium in a) widerspricht dem und würde fälschlicherweise auf Versicherungsanlageprodukte mit Garantien, etwa fondsgebundene oder hybride Produkte zutreffen. Alle potenziell mit diesen Investments verknüpften Risiken werden durch ihre umfassende Regulierung, etwa im Zusammenhang mit Solvency II, minimiert.</p> <p>Darüber hinaus vertritt der VDVM die Auffassung, dass auch Anlagen in Derivate oder andere Wertpapiere als nicht-komplex eingestuft zu betrachten sind, wenn sie keinen signifikanten Anteil am Vertragsvermögen darstellen.</p> <p>Unklar ist für den Verband, was unter „zu einem Barausgleich führen“ zu verstehen ist. Hier ist eine Präzisierung unbedingt zu empfehlen.</p> <p><input type="checkbox"/> DTA S. 71 Nr. 1 (d) Verbraucher erhalten für Versicherungsanlageprodukte Basisinformationsblätter nach der PRIIP-VO, sodass sie eine informierte Entscheidung treffen können. Dies war der Grundgedanke der PRIIP-Verordnung. Buchstabe d) kann daher gestrichen werden.</p> <p><input type="checkbox"/> DTA S. 71 Nr. 1 (e) Der VDVM regt an klarzustellen, dass eine Änderung des Auszahlungsprofils nicht nachteilig für die Kunden sein darf. Die Kunden können zum Beispiel zwischen einer Pauschalzahlung und einer Rente entscheiden. Diese Wahlmöglichkeit schafft Flexibilität für den Kunden und Sicherheit für den Fall, dass sich ihre Lebenssituation während der Vertragslaufzeit ändert. Eine Präzisierung, dass z. B. Treuhänderklauseln hier nicht gemeint sein können, wäre hilfreich.</p>	<p>Agreed.</p> <p>Please see the section Feedback statement regarding this provision.</p> <p>Please see the section</p>
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			<p><input type="checkbox"/> DTA S. 71 Nr. 1 (h)</p> <p>Da Versicherungsanlageprodukte häufig Laufzeiten von über 30 Jahren aufweisen, geschieht es nicht selten, dass die Kunden den Anspruchsberechtigten für z. B. Todesfalleistungen ändern (etwa nach einer Scheidung). Es ist davon auszugehen, dass die meisten Kunden eine solche Änderung und ihre Folgen verstehen. Nach deutschem Versicherungsvertragsrecht ist die Möglichkeit, den Anspruchsberechtigten einer Lebensversicherung zu ändern, der rechtliche Regelfall und eine eventuelle Abweichung hiervon bedarf einer ausdrücklichen Vereinbarung (§ 159 VVG). Nach Auffassung des VDVM müsste ein Produkt eher dann als komplex gelten, wenn es dem Versicherungsnehmer nicht erlaubt wäre, den Anspruchsberechtigten zu ändern. Es ist daher klarzustellen, dass nur von der Norm abweichende Vertragsklauseln mit Bezug auf Anspruchsberechtigte ein Versicherungsanlageprodukts komplex machen.</p> <p>Weiterhin möchte der VDVM darauf hinweisen, dass die Anmerkungen von EIOPA in ihrem impact assessment (S. 161 bis 165) zu den Handlungsoptionen im Zusammenhang mit komplexen Produkten schwer verständlich sind. Die IDD enthält keinerlei Restriktionen bezüglich des Verkaufs komplexer Versicherungs-anlageprodukte. Komplexe Produkte sind schlicht nicht Gegenstand der Option, die den Mitgliedstaaten in Artikel 30(3) IDD eingeräumt wird.</p> <p>Darüber hinaus merkt der VDVM an, dass der Verweis in Ziff. 1 der DTA zu Komplexität (S. 71 des Konsultationspapiers) auf Art. 30 (3) (a) (ii) der Richtlinie 2016/97/EU (IDD) lauten sollte, und nicht der Richtlinie 2014/65/EU (MiFID).</p>	<p>Feedback Statement regarding this provision.</p> <p>Agreed. The impact assessment has been revised to reflect this point.</p> <p>Agreed. This provision has been changed in the final technical advice.</p>
739	Verbraucherzentrale Bundesverband e.V.	Question 19	<p>We do not believe that the integration of insurance aspects into the definition of non-complex insurance-based investment product is helpful to create a more or less consistent legal framework between MiFID II and IDD. Insurance aspects have to be discussed in the demand and needs test and under cross selling provisions.</p>	<p>Not agreed. Whilst Article 30(3)(a) of IDD provides a clear link between rules regarding complex products in IDD and MiFID II, it indicates that the assessment of complexity should be in relation to the</p>

				contract for an insurance-based investment product. It is therefore necessary for EIOPA to consider insurance aspects, whilst also having regard to the mandate of the Commission that "the technical advice should be consistent with the line taken in the delegated acts expected to be adopted under Article 25 (8) of MiFID II".
740	Allianz SE	Question 20	<p>Are there any further high level criteria which you would consider necessary and important, and why? In particular, how could insurance specificities be taken into account?</p> <p><input type="checkbox"/> From a customer centric perspective the the label of complexity should be applied only to such areas the customer needs to understand in order to take a well-informed decision; namely in all product features / categories of risk coverage where the customer benefit is guaranteed by the product provider, there is no need for the customer to understand the technical/ actuarial etc. concept of how the manufacturer will be able to comply with its obligations. In other words: the risks involved which the customer needs to understand and take into account for his decision are those which may influence the future benefit and economic outcome of the investment part of an IBIP.</p> <p><input type="checkbox"/> In particular, products which contain elements which clearly and demonstrably reduce the risk exposure for the customer (and can be understood by the customer in this regard) should be classified as non-complex. In particular, products which systematically reduce the capital market risk exposure of the customer, e.g. products with collective investment character, products containing guarantees and other safety mechanisms, as well as product with non-material investments in instruments classified as complex under MiFID II, should be classified as non-complex.</p> <p><input type="checkbox"/> Insurance specificities can be taken into account by recognizing</p>	<p>EIOPA has taken these points into consideration when finalising the technical advice.</p> <p>Please see the section Feedback statement regarding guaranteed products.</p> <p>The provisions in (a) and (e) in the CP on the draft</p>

			the role of guarantees in rendering the structure of a product suitably non-complex (Analysis sec. 5, p. 68). These guarantees neutralize, from a customer's perspective, any potential investment risk underlying the product and enable client understanding of the risks involved (Analysis sec. 5, p. 68) by giving him full assurance of the amount paid out. We strongly recommend reflecting that principle in DTA 1(a), (e) and (g) in particular.	technical advice have been amended. Point (g) is still considered important and this is explained in the analysis part of the final technical advice.
741	AMICE	Question 20	We believe that the list of criteria in the draft technical advice is already very extensive, so further criteria would not be necessary nor appropriate. We agree that insurance products can be considered non-complex if they do not incorporate a structure which makes it difficult for the customer to understand the risk involved.	Noted.
742	Association of International Life Offices	Question 20	No	
743	Assuralia	Question 20	The list of criteria in the draft advice is already very extensive, so further criteria would not be necessary nor appropriate. A thorough revision of the criteria in the draft advice however is in order (see our remarks in Q19).	EIOPA has reviewed all of the criteria in view of the comments received.
744	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 20	-	
745	Bund der Versicherten (BdV - German Association of	Question 20	First we would like to stress that from our perspective there are no non-complex insurance based investment products. At least for the German market we clearly reject any suggestions that "there are a limited number of insurance-based investment product types which offer complex investments but have a suitably non-complex structure" (cf. CP, p. 68). The "execution-only"-presumption does not fit for any unit-linked IBIP offered on the current German market (including those from Anglo-Saxon manufacturers), because customers have always multiple choices while and after concluding the contract.	Please see the section Feedback statement regarding the role of execution-only sales. EIOPA has also revised the analysis that was included in paragraph 5 of page 68 of the CP.

			<p>We urge EIOPA to strongly limit the possible types of non-complex IBIPs, because otherwise this provision will surely open a indefinite possibility for the insurers of circumventing the suitability and appropriateness assessment on a large scale.</p> <p>That is why further efforts must be made in order to enhance the transparency of the product. Transparency is essential and necessary for the customer in order to enable a fully informed investment decision. More transparency can only be achieved by the mandatory disclosures of actual risk-reward relations, of realistic return probabilities and of comprehensive cost structures as foreseen by the forthcoming PRIIPs Key Information Documents.</p> <p>Only related to traditional capital life-insurance contracts, where the customer cannot choose the investment strategy and therefore the insurers guarantees an interest rate on the investment part of the premium, the individual knowledge and experience of the customer related to investment strategies is not directly relevant. Instead of this, the comprehensive disclosure of costs which strongly reduce the investment part of the premium is all the more necessary. The most important risk of consumer detriment consist in cancelling the contract before reaching maturity: no capital guarantees are valid, and additional high penalty fees heavily reduce the accumulated savings of the customer being paid out.</p> <p>Related to the insurance specificities we underline the necessary changes outlined in our comments on Q 19 (mainly points e and h).</p>	<p>EIOPA also supports the introduction of such disclosures via the PRIIPs Key Information Documents.</p> <p>Please see the section Feedback statement regarding the role of execution-only sales. The final technical advice addresses the issue of guaranteed products and products with penalty fees.</p>
746	CNCIF - Chambre Nationale des Conseillers en	Question 20	We have no comment.	
747	EUROPEAN FINANCIAL	Question 20	-	

	PLANNING ASSOCIATION- EFPA Aisb			
748	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 20	No comment	
749	German Association of Actuaries (DAV)	Question 20	Please see our answer to question No. 19.	Please see our response to your comments on question 19.
750	German Association of Private Health Insurers (PKV	Question 20	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
751	German Insurance Association (GDV)	Question 20	The German insurance industry agrees that insurance products can be considered non-complex if their structure does not make it difficult for the customer to understand the risks involved. Therefore, the German Insurance Association considers products that reduce the investment risk borne by the customer to be non-complex, such as products with collective investment, products with capital guarantees or other security mechanisms as well as products with non-significant investments in complex MiFID instruments.	Please see the section Feedback statement regarding guaranteed products. Please see the analysis section and final technical advice regarding investment in complex MiFiD instruments.
752	Institute and Faculty of Actuaries	Question 20	No.	
753	Insurance Europe	Question 20	It is true that insurance products can be considered non-complex if they do not incorporate a structure which makes it difficult for the customer to understand the risks involved. Products that reduce the risk for consumers should therefore be seen as non-complex. This includes products with guarantees or other security mechanisms (no look-through	Please see the section Feedback statement regarding guaranteed products. Please see the analysis section and final

			regarding complexity, only the product itself should be viewed when assessing complexity for consumers) and products with non-significant investments in complex MiFID instruments.	technical advice regarding investment in complex MiFiD instruments.
754	Liechtenstein Insurance Association (LVV)	Question 20	The Liechtenstein insurance industry agrees that insurance products can be considered non-complex if their structure does not make it difficult for the customer to understand the risks involved. Therefore, the Liechtenstein Insurance Association considers products that reduce the investment risk borne by the customer to be non-complex, such as products with collective investment, products with capital guarantees or other security mechanisms as well as products with non-significant investments in complex MiFID instruments.	Please see the section Feedback statement regarding guaranteed products. Please see the analysis section and final technical advice regarding investment in complex MiFiD instruments.
755	MALTA INSURANCE ASSOCIATION These comments have b	Question 20	We agree that insurance products can be considered non-complex if they do not incorporate a structure which makes it difficult for the customer to understand the risks involved. Thus, products that reduce the risk for consumers should be seen as non-complex, such as products with collective investment, products with guarantees or other security mechanisms (no look-through regarding complexity, only the insurance "wrapper" should be viewed when assessing complexity for consumers) and products with non-significant investments in complex MiFID instruments.	Please see the section Feedback statement regarding guaranteed products. Please see the analysis section and final technical advice regarding investment in complex MiFiD instruments.
756	Mediterranean Insurance Brokers (Malta) Ltd.	Question 20	Are there any further high level criteria which you would consider necessary and important, and why? In particular, how could insurance specificities be taken into account? NA	
757	Slovenian Insurance Association	Question 20	Unit-linked insurance products with financial instruments, which enable to reduce the risk for the customers or which enable to the customers guarantees from the financial markets volatility should be seen as non-complex products.	Please see the section Feedback statement regarding guaranteed products.
758	Verband der Automobilindustrie e.V. Arbeitskreis	Question 20	Not applicable.	
759	Verband	Question	20: Gibt es noch weitere Grundsatzkriterien, die Sie für notwendig und	

	Deutscher Versicherungsmakler e. V. (VDVM)	20	<p>wichtig halten, und wenn ja, warum? Insbesondere, wie könnten Versicherungsbesonderheiten berücksichtigt werden?</p> <p>Der VDVM stimmt damit überein, dass Versicherungsprodukte als nicht-komplex betrachtet werden können, wenn ihr Aufbau das Verständnis der Risiken des Produkts für den Kunden nicht erschwert. Daher betrachtet der Verband Produkte, die das Kapitalanlagerisiko für den Kunden reduzieren, nicht als komplex (etwa Produkte mit kollektiver Kapitalanlage, Produkte mit Kapitalgarantien oder anderen Sicherheitsmechanismen. Gleiches gilt für Produkte mit nicht-signifikanter Anlage in komplexe MiFID-Instrumente).</p>	Please see the section Feedback statement regarding guaranteed products. Please see the analysis section and final technical advice regarding investment in complex MiFiD instruments.
760	Verbraucherzentrale Bundesverband e.V.	Question 20	See answer above.	
761	Allianz SE	Question 21	<p>While point (i) of point (a) of paragraph 3 of Article 30 is intended to capture the majority of non-complex products, the above listed criteria should capture equally non-complex products falling outside of point (i). Are there any gaps?</p> <p><input type="checkbox"/> Art. 30(3)(a)(i) IDD primarily establishes a link between MiFID II and IDD and applies to insurance products which are closely related to typical MiFID-instruments, e.g. unit linked products. Therefore this article does not target insurance products which contain guarantee elements thereby reducing the capital market exposure of the customers.</p> <p><input type="checkbox"/> Since we take the position that guarantee elements in insurance products can significantly contribute to reduce complexity from the customer perspective (see also answers to Q19 and Q20), it is not clear, why the question assumes that Art. 30(3)(a)(i) IDD is "intended to capture the majority of non-complex products".</p> <p><input type="checkbox"/> In particular, products which contain elements which clearly and demonstrably reduce the risk exposure for the customer (and can be understood by the customer in this regard) should be classified as non-complex. In particular, products which systematically reduce the capital market risk exposure of the customer, e.g. products with collective</p>	Please see the section Feedback statement regarding guaranteed products.

			<p>investment character, products containing guarantees and other safety mechanisms, as well as product with non-material investments in instruments classified as complex under MiFID II, should be classified as non-complex.</p> <p><input type="checkbox"/> In any case, no criteria should be introduced which exceed the approach taken under MiFID.</p>	
762	AMICE	Question 21	<p>We do not agree with EIOPA's assumption that Article 30, paragraph (3), point (a)(i) of IDD is intended to capture the majority of non-complex products. We consider that this point only captures insurance products that are closely related to funds such as unit-linked insurance products.</p> <p>In our opinion, products which reduce the risk for customers should be considered as non-complex, such as products with collective investment, products with guarantees or other security mechanisms.</p>	Please see the section Feedback statement regarding guaranteed products.
763	ANASF	Question 21	Cf. our answer to Question 19: effective investor protection makes it necessary to provide at least the assessment of appropriateness (i.e., execution-only sales should not be admitted).	Please see the section Feedback statement regarding the role of execution-only sales.
764	Association of International Life Offices	Question 21	See Qu 19 – we would suggest that if there are other products types it would be helpful to provide a non exhaustive list of those currently perceived.	Not agreed. The examples provided were illustrative and have also been reviewed during the finalisation of the advice. Given differences in product names and terminology across Member States it is not considered possible to provide a list of complex or non-complex IBIPs.
765	Assuralia	Question 21	<p>Assuralia does not see any gaps. In fact, criterion E is overly broad compared to the corresponding MiFID 2 requirement (see Q 19). IDD should not go further than MiFID 2.</p> <p>Assuralia considers unit-linked life products investing in open funds, guaranteed life insurance products and capital redemption operations to</p>	<p>Please see the response to question 19.</p> <p>EIOPA is not able to confirm whether specific products are non-complex.</p>

			be non-complex and eligible for execution-only sales (see also Q19). For the sake of clarity, this should be explicitly acknowledged by EIOPA in the final technical advice.	Each product type would need to be assessed against the criteria in the delegated acts. EIOPA also intends to issue Guidelines on this assessment in accordance with Article 30(7) and (8) of IDD.
766	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 21	-	
767	Bund der Versicherten (BdV – German Association of	Question 21	No, there are no gaps. The mentioned criteria refer to retail investor products which are relevant for regulation under MIFID2, but not under IDD. The reason is that usually unit-linked IBIPs refer to investment funds (based on shares, bonds, indexes etc.), some of them may even include several funds with different investment strategies (“hybrid” products). In consequence even a non-complex retail investor product will become a “packaged” product, if only it is embedded in a unit-linked IBIP. We definitely consider any “packaged” IBIP as a complex product (cf. our comment on Q 20).	Noted. However, all insurance-based investment products are “packaged products” within the context of the Regulation (EU) No 1286/2014 (PRIIPs).
768	BVI Bundesverband Investment und Asset Management	Question 21	We think that the relation between the scope of non-complex products under MiFID II and the non-complexity test provided in the draft technical advice should be made more clear: According to Article 30(3)(a)(i) of IDD, insurance contracts which only provide investment exposure to financial instruments deemed non-complex under MiFID II and do not incorporate a structure which makes it difficult to understand the risk involved shall be deemed non-complex without further testing. This privileged treatment applies not only to financial instruments which are explicitly classified as non-complex in Article 25(4)(a) of MiFID II, but also to instruments which pass the non-complexity test provided for in Article 57 of Delegated Regulation to MiFID II. Consequently, any insurance product which offers investment exposure to any non-complex financial instrument shall itself be deemed non-complex provided that it complies with the second criterion foreseen in Article 30(3)(a)(i) of IDD.	Please see the response to your comment on question 19.

			<p>This understanding of the underlying Level 1 provision is insufficiently reflected in the draft technical advice which speaks only about "investments embedded that are not explicitly specified in Article 25(4)(a) [as being non-complex]". This wording seems not to include underlying investments which pass the complexity text according to MiFID II Level 2 and therefore, does not adequately take into account the relevant IDD provision. In our view, it should be supplemented as follows:</p> <p>1. An insurance-based investment product with investments embedded that are not explicitly specified in Article 25(4)(a) of Directive 2014/65/EU or do not fulfill the requirements of Article 57 of Delegated Regulation [No. to be inserted] shall be considered as non-complex[...]</p>	
769	CNCIF - Chambre Nationale des Conseillers en	Question 21	We have no comment.	
770	EFAMA - The European Fund and Asset Manageme	Question 21	Please see the first part of our response to Question 19.	Noted.
771	EUROPEAN FINANCIAL PLANNING ASSOCIATIO N- EFPA Aisb	Question 21	-	
772	Genossensch aftsverband Bayern e.V. (GVB - Bavarian	Question 21	No comment	
773	German	Question	Please see our answer to question No. 19.	Noted.

	Association of Actuaries (DAV)	21		
774	German Association of Private Health Insurers (PKV)	Question 21	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
775	German Insurance Association (GDV)	Question 21	<p>The German Insurance Association holds the view that Article 30 (3) (a) (i) IDD links MiFID II to IDD and captures insurance products that are closely related to funds, such as unit-linked insurance products. Hence, Article 30 (3) (a) (i) IDD does not capture insurance products that primarily reduce consumers' risk exposure, for example by providing certain guarantees which offer a greater level of protection to consumers, cushioning them from the volatility of the market. In Germany, the vast majority of products would clearly fall under Article 30 (3) (a) (ii) IDD. Therefore, we do not understand why EIOPA assumes that Article 30 (3) (a) (i) IDD is intended to capture the majority of non-complex products.</p> <p>We hold the view that products reducing the risk for consumers are not complex from the consumers' perspective. This holds true for products with collective investment, products with focus on capital guarantees or with other security mechanisms as well as products with non-significant investments in complex MiFID instruments.</p> <p>We recommend expressly clarifying that no new criteria going beyond the MiFID II provisions are being introduced.</p>	Please see the section Feedback statement regarding guaranteed products. Please see the analysis section and final technical advice regarding investment in complex MiFiD instruments.
776	Institute and Faculty of Actuaries	Question 21	No.	
777	Insurance	Question	It is not clear why EIOPA assumes that sub-point (i) of point (a) of	Please see the section

	Europe	21	<p>paragraph 3 of Article 30 is intended to capture the majority of non-complex products. Sub-point (i) of point (a) of paragraph 3 of Article 30 is merely the straightforward and direct link between MiFID and IDD. This point, therefore, only captures insurance products that are closely related to funds such as unit-linked insurance products. Sub-point (i) of point (a) of paragraph 3 of Article 30 does not capture the vast majority of insurance products that primarily reduce consumers' risk exposure by, for example, providing certain guarantees that offer a greater level of protection to consumers, cushioning them from the volatility of the market.</p> <p>Products that reduce the risk for consumers should be seen as non-complex, such as products with guarantees or other security mechanisms (no look-through regarding complexity, only the product itself should be viewed when assessing complexity for consumers) and products with non-significant investment in complex MiFID instruments.</p>	Feedback statement regarding guaranteed products. Please see the analysis section and final technical advice regarding investment in complex MiFiD instruments.
778	Liechtenstein Insurance Association (LVV)	Question 21	<p>The Liechtenstein Insurance Association holds the view that Article 30 (3) (a) (i) IDD links MiFID II to IDD and captures insurance products that are closely related to funds, such as unit-linked insurance products. Hence, Article 30 (3) (a) (i) IDD does not capture insurance products that primarily reduce consumers' risk exposure, for example by providing certain guarantees which offer a greater level of protection to consumers, cushioning them from the volatility of the market. In Liechtenstein, the vast majority of products would clearly fall under Article 30 (3) (a) (ii) IDD. Therefore, we do not understand why EIOPA assumes that Article 30 (3) (a) (i) IDD is intended to capture the majority of non-complex products.</p> <p>We hold the view that products reducing the risk for consumers are not complex from the consumers' perspective. This holds true for products with collective investment, products with focus on capital guarantees or with other security mechanisms as well as products with non-significant investments in complex MiFID instruments.</p> <p>We recommend expressly clarifying that no new criteria going beyond the MiFID II provisions are being introduced.</p>	Please see the section Feedback statement regarding guaranteed products. Please see the analysis section and final technical advice regarding investment in complex MiFiD instruments.
779	MALTA INSURANCE ASSOCIATION	Question 21	<p>Point (i) of point (a) of paragraph 3 of Article 30 does not capture the vast majority of insurance products that primarily reduce consumers' risk exposure, for example by providing certain guarantees which offer a greater level of protection to consumers, cushioning them from the</p>	Please see the section Feedback statement regarding guaranteed products. Please see the

	These comments have b		<p>volatility of the market.</p> <p>Products that reduce the risk for consumers should be seen as non-complex, such as products with collective investment, products with guarantees or other security mechanisms (no look-through regarding complexity, only the insurance "wrapper" should be viewed when assessing complexity for consumers) and products with non-significant investment in complex MiFID instruments.</p>	analysis section and final technical advice regarding investment in complex MiFiD instruments.
780	Mediterranean Insurance Brokers (Malta) Ltd.	Question 21	<p>While point (i) of point (a) of paragraph 3 of Article 30 is intended to capture the majority of non-complex products, the above listed criteria should capture equally non-complex products falling outside of point (i). Are there any gaps?</p> <p>NA</p>	
781	Slovenian Insurance Association	Question 21	The list of criteria used to define non-complex products should be amended. Unit-linked insurance products with financial instruments, which enable to reduce the risk for the customers or which enable to the customers guarantees from the financial markets volatility should be seen as non-complex products.	Please see the section Feedback statement regarding guaranteed products.
782	Verband der Automobilindustrie e.V. Arbeitskreis	Question 21	Not applicable.	
783	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 21	<p>21: Während Artikel 30 Absatz 3 Buchstabe a Ziffer i den Großteil der nicht komplexen Produkte betreffen soll, sollten die oben aufgeführten Kriterien gleichermaßen nicht komplexe Produkte betreffen, die nicht unter Ziffer i fallen. Gibt es irgendwelche Lücken?</p> <p>Nach Auffassung des VDVM stellt Artikel 30 (3)(a)(i) eine Verbindung zwischen MiFID und IDD her und erfasst Versicherungsprodukte, die</p>	Please see the section Feedback statement

			<p>fondsnahe sind, etwa fondsgebundene Versicherungsprodukte. Artikel 30 (3)(a)(i) erfasst demzufolge nicht diejenigen Versicherungsprodukte, die vorrangig das Risiko der Kunden mindern, etwa indem sie ihnen über bestimmte Garantien Schutz z. B. vor Marktvolatilität bieten. In Deutschland würde klar die Mehrheit der Produkte unter 30 (3)(a)(ii) fallen. Deshalb ist für uns nicht ersichtlich, warum EIOPA davon ausgeht, dass Artikel 30 (3)(a)(i) die Mehrzahl aller nicht-komplexen Produkte erfassen soll.</p> <p>Produkte, die das Risiko für den Kunden reduzieren, sind nach unserer Auffassung für die Kunden nicht komplex. Das gilt für Produkte mit kollektiver Kapitalanlage oder Produkte mit Kapitalgarantien oder anderen Sicherheitsmechanismen genauso wie für Produkte mit Fokus auf Kapitalgarantie oder auch Produkte mit nicht-signifikanter Anlage in komplexe MiFID-Instrumente.</p> <p>Es ist wichtig zu betonen, dass keine Kriterien eingeführt werden, die über MiFID hinausgehen.</p>	<p>regarding guaranteed products. Please see the analysis section and final technical advice regarding investment in complex MiFiD instruments.</p>
784	Verbraucherzentrale Bundesverband e.V.	Question 21	-	
785	Allianz SE	Question 22	<p>On retention of records, do you agree with the high level criteria used? Are there any you would exclude, and why?</p> <p><input type="checkbox"/> We generally agree with a high-level approach regarding record keeping.</p> <p><input type="checkbox"/> It should be noted that agreements between the parties are governed by national law. The rules should not be in conflict with this fact, which is also in line with the minimum harmonization approach which governs the IDD.</p> <p><input type="checkbox"/> We also support the approach to avoid excessive overload for consumers and administrative burdens for intermediaries and undertakings (see sec. 9, p.76)</p> <p><input type="checkbox"/> While we support the general scope of record keeping, some</p>	<p>Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>

			<p>clarifications would be helpful</p> <p><input type="checkbox"/> the records on changes on suitability assessments (DTA 17, p. 77) should only need to be updated if this has explicitly been agreed upon (according to Art. 29 (1) a) IDD and Art. 30 (5) IDD.</p> <p><input type="checkbox"/> DTA 17 b) should only require the recording regarding the recommended product (i.e. it should be a mirror image of the suitability assessment), not a multitude of potentially fitting product types. Such broader obligation would be disproportionately burdensome.</p>	
786	AMICE	Question 22	<p>We agree in general with the proposed high level criteria, with the exception of paragraphs 16(b) and 17(b) of the draft technical advice (page 77).</p> <p>EIOPA rightly points out in paragraph 9, page 76 that record-keeping obligations could overload the consumer and create administrative burdens for the insurance undertaking or the insurance intermediary.</p> <p>Paragraph 16(b) of the draft technical advice requires insurance intermediaries or insurance undertakings to keep the relevant records in order to enable the competent authorities to detect failures regarding the suitability assessment. We believe that the wording of this paragraph is too vague and needs further clarification.</p> <p>Paragraph 17(b) refers to a customer's risk profile. In insurance, there is no automatic link between a customer's profile and certain products. These practices are more common in the banking sector, but not in the insurance sector. Furthermore, the IDD does not require distributors to draw up investment risk profiles.</p> <p>Finally, EIOPA should specify how the data protection principles set out in the General Data Protection Regulation would apply when insurance undertakings or insurance intermediaries comply with the record-keeping and retention obligations listed under the draft technical advice.</p>	Noted.
787	ANASF	Question 22	<p>1. We emphasise the evidence presented in par. 9, p. 76, of the Consultation Paper: the requirement for the insurance intermediary or insurance undertaking to keep a record of documents on services provided (including the insurance contract, the suitability statements and the periodic reports) is to be considered sufficient to ensure effective consumer protection and that a request to record any additional information could overload the consumer and create administrative burdens for the insurance intermediary or the insurance undertaking.</p>	Noted.

			<p>2. Generally speaking, we point out the need to reduce the costs of compliance with record-keeping requirements, including every case whereby these requirements are referred to those persons acting on behalf of an insurance intermediary or insurance undertaking (employees, tied agents ...). For instance, we can consider the case of Italian regulation: pursuant to Article 109, Consob Regulation no. 16190/2007, financial advisors shall be responsible for record-keeping obligations (also when they advise on and distribute insurance-based investment products). Specifically, they are required to keep, for at least five years, a copy of: a) the contracts they have promoted; b) other documents signed by the customers; c) correspondence with the persons on whose behalf financial advisors have acted. In this sense, Article 109 neither envisages nor denies the possibility to keep the aforementioned documents in a non-paper-based durable medium: in order to fully grasp the benefits of technological development and reduce administrative burdens, European (in this case, MiFID II and IDD delegated acts) and national legislation should explicitly acknowledge this possibility. Accordingly, we propose the following amendment to par. 19 of the Draft Technical Advice (p. 78):</p> <p>19. With reference to the format, the document or documents agreed between the insurance intermediary or insurance undertaking and the customer that set out the rights and obligations of the parties, shall be kept and provided: [...]</p> <p>c) in the format as defined by Article 2(1)(18) of Directive 2016/97/EU.</p> <p>The format as defined by Article 2(1)(18) of Directive 2016/97/EU shall also be used when record-keeping requirements are referred to persons acting on behalf of an insurance intermediary or insurance undertaking.</p>	
788	Association of International Life Offices	Question 22	It is assumed that item 16 (a) only applies to changes to chosen assets that the distributor has been a party to?	Noted.
789	Assuralia	Question 22	Assuralia agrees in general with the proposed high level criteria, with the exception of paragraphs 16b and 17b of the draft technical advice (p. 77). In our understanding, paragraph 16(b) aims at ensuring that insurance	Noted.

			<p>intermediaries or undertakings keep the relevant records at the disposal of the competent authorities in order to enable them to detect failures regarding the suitability assessment. Those records should allow the competent authorities to examine if the necessary assessments took place and if the advice given was in line with the outcome of those assessments. We call on EIOPA to clarify this in the technical advice, as the current paragraph is too vague.</p> <p>Paragraph 17(b) refers to a customer's risk profile. In insurance, there is no automatic link between a customer's profile and certain products. These practices are more common in the banking sector, but not in the insurance sector. Furthermore, the IDD does not require distributors to draw up investment risk profiles. We therefore suggest to rephrase paragraph 17(b) as follows: the types of insurance-based investment product that fit that profile and The rationale for such an assessment, as well as any changes and the reasons for them.</p>	
790	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 22	<p>Bereits heute ist es gesetzliche Verpflichtung, dass der Versicherungsvermittler den Versicherungsnehmer nach seinen Wünschen und Bedürfnissen zu befragen hat, soweit nach der Schwierigkeit, die angebotene Versicherung zu beurteilen, oder der Person des Versicherungsnehmers und dessen Situation hierfür Anlass besteht. Dies auch unter Berücksichtigung eines angemessenen Verhältnisses zwischen Beratungsaufwand und der vom Versicherungsnehmer zu zahlenden Prämien. Zudem hat der Versicherungsvermittler den Kunden zu beraten sowie die Gründe für jeden zu einer bestimmten Versicherung erteilten Rat anzugeben. Dies hat der Versicherungsvermittler zu dokumentieren. Wir halten diese Verpflichtung für angemessen und zugleich ausreichend.</p> <p>Darüber hinausgehende den Versicherungsvermittler treffende Verpflichtungen, wie unter den Punkten 7.3 und 7.4 von EIOPA vorgeschlagen, begegnen Bedenken hinsichtlich Verwaltungsaufwand. Hier gilt es auch zu berücksichtigen, dass, jedenfalls in Deutschland, Vermittlungsvergütungen in der privaten Krankenversicherung und insbesondere der Lebensversicherung deutlich rückläufig sind und die Ertragskraft der Vermittlerbetriebe entsprechend sinkt, was auch existenz- und arbeitsplatzgefährdende Ausmaße annimmt.</p>	Noted. EIOPA acknowledges that insurance distribution is also carried out by small and medium-sized enterprises. Therefore, EIOPA has considered in the Technical Advices the proportionality of the solutions it proposes, while also considering the objectives pursued by IDD.

			<p>Die Beratungsdokumentation sollte vom Versicherungsnehmer unterzeichnet werden.</p> <p>Die Beratungs- und Dokumentationspflichten sollten alle Beratungs-, Vermittlungs- und Vertriebswege im gleichen Umfang treffen.</p>	
791	BIPAR	Question 22	<p>- We wish to recall that intermediaries are mainly micro to small entrepreneurs and that reporting requirements have to be proportionate. The proportionality also has to apply with regard to the type of product and type of customer.</p> <p>All these reporting and record-keeping requirements have to be seen in the context of in how far the product is already documented. It is important that the customer receives relevant information (which may depend on the type of product / situation). One should avoid the duplication of information/ provision of unnecessary information as this leads to confusion of the customer and legal uncertainty.</p> <p>- EIOPA recognizes that contrary to MiFID II, in IDD there is no concept of a written basic agreement with the customer for the provision of services. However, EIOPA states that it could be interpreted as the contractual terms and conditions and that the content of the written basic agreement does not appear inconsistent with the IDD framework (p 75, point 5-7):</p> <p>BIPAR believes that the concept of a written agreement should not be introduced at level 2 of IDD.</p> <p>It also is to be noted that the MiFID II delegated Regulation (art 58) specifies re. written agreement: "Investment firms providing investment advice shall comply with this obligation only where a periodic assessment of the suitability of the financial instruments or services recommended is performed. Member States may consider using such a concept but it should not be introduced at level 2 of IDD.</p>	<p>Noted. EIOPA acknowledges that insurance distribution is also carried out by small and medium-sized enterprises. Therefore, EIOPA has considered in the Technical Advices the proportionality of the solutions it proposes, while also considering the objectives pursued by IDD.</p>
792	BNP Paribas	Question 22	<p>The requirements for retention of records related to the suitability test for the distributor are already effective in France where advice is mandatory.</p>	<p>Noted.</p>

793	Bund der Versicherten (BdV – German Association of	Question 22	Yes, we agree with the high level criteria used, no criteria outlined in the DTA for the retention of records (CP, p. 77/78) should be excluded.	Noted.
794	BVK Germany	Question 22	We like to stress that most of the tied intermediaries are small entrepreneurs. So any reporting requirements have to be proportionate.	EIOPA has considered in the Technical Advices the proportionality of the solutions it proposes, while also considering the objectives pursued by IDD.
795	CNCIF - Chambre Nationale des Conseillers en	Question 22	Yes, we agree with the high level criteria used.	Noted.
796	CSCA French broker Association, 91, rue Saint Laza	Question 22	We need to remain vigilant on this point to ensure that the information collected does not conflict with national or European personal data protection and processing requirements.	Noted.
797	Czech Insurance Association CAP	Question 22	We are of the opinion that in the phase of highly developing electronic forms of communication, it should be fully allowed for use of all available, secured, electronic means (e.g. apps, web stores).	Noted.
798	EFAMA - The European Fund and Asset Manageme	Question 22	We question EIOPA’s analysis and conclusion to not include an equivalent to the MiFID II requirement to enter into a basic written agreement with the customer. The MiFID II requirement is based on Article 25(5) which is identical to IDD’s Article 30(4). The Commission’s request is also very similar. During its Level-2 work on MiFID II ESMA eventually concluded that the requirement to enter into a basic written agreement was consistent with the Commission’s mandate. This was included in the draft Delegated	Noted.

			<p>Regulation Article 58. Based on the fact that written agreements strengthen legal certainty and enable clients to better understand the nature of the service provided, EIOPA should also include a requirement to enter into a basic written agreement.</p> <p>Lastly, after reading para. 16 we would consider para.17 of the draft Technical Advice redundant and should thus be removed. The specific cases referred to in subparas. (a) and (b) are an integral part of the suitability assessment and are already covered by the obligation of para.16 to maintain adequate recording and retention arrangements regarding the suitability assessment.</p>	
799	European Federation of Financial Advisers and Fina	Question 22	<p>On retention of records, do you agree with the high level criteria used? Are there any you would exclude, and why?</p> <p>We agree with the high-level criteria that have been used.</p>	Noted.
800	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 22	-	
801	Fachverband der Versicherungsmakler und Berater in	Question 22	<p>It should be clearly mentioned that the Delegated Acts based on IDD articles 27, 28, 29 and 30 (chapter VI) only apply to IBIPs</p> <p>We wish to recall that intermediaries are mainly micro to small entrepreneurs and that reporting requirements have to be proportionate. The proportionality also has to apply with regard to the type of product and type of customer.</p> <p>All these reporting and record-keeping requirements have to be seen in the context of in how far the product is already documented. It is important that the customer receives relevant information (which may depend on the type of product / situation). One should avoid the duplication of information/ provision of unnecessary information as this leads to confusion of the customer and legal uncertainty.</p>	Noted. EIOPA acknowledges that insurance distribution is also carried out by small and medium-sized enterprises. Therefore, EIOPA has considered in the Technical Advices the proportionality of the solutions it proposes, while also considering the objectives pursued by IDD.

			<p>EIOPA recognizes that contrary to MiFID II, in IDD there is no concept of a written basic agreement with the customer for the provision of services. However, EIOPA states that it could be interpreted as the contractual terms and conditions and that the content of the written basic agreement does not appear inconsistent with the IDD framework (p 75, point 5-7):</p> <p>We believe that the concept of a written agreement should not be introduced at level 2 of IDD.</p> <p>It also is to be noted that the MiFID II delegated Regulation (art 58) specifies re. written agreement: Investment firms providing investment advice shall comply with this obligation only where a periodic assessment of the suitability of the financial instruments or services recommended is performed . Member States may consider using such a concept but it should not be introduced at level 2 of IDD.</p> <p>EIOPA states that the MiFID II framework only covers record-keeping in an appropriateness scenario. EIOPA has looked at the 2012 ESMA MiFID suitability guidelines to build its advice re suitability record keeping for IDD.</p>	
802	Fédération Française de l'Assurance (FFA) 26 bo	Question 22	<p>The proposed high level criteria seem to be acceptable in general. However we have some remarks :</p> <ul style="list-style-type: none"> - IDD does not require for detention of records about "business and internal organisation" - Paragraph 17(a) should be clarified to explain that any periodic recording of the changes in the suitability assessment is only necessary in cases where the distributor has explicitly informed the customer that it will carry out this periodic suitability assessment, in line with Article 30(5) subparagraph 4 of the IDD. 	Noted.
803	Federation of Finnish Financial Services	Question 22	<p>We would comment on the EIOPA 's list in point 13. on instruments considered as durable medium: CD-ROMs, DVDs and hard drives. These arrangements are hardly used anymore and should not be listed as preferable or common types of instruments. The question of what</p>	Noted.

			instruments are durable medium should be looked at more horizontally in the financial services area and the criteria should be flexible towards new innovations.	
804	Financial Services Consumer Panel	Question 22	We agree with the high level criteria used. There are no criteria we would exclude.	Noted.
805	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 22	No comment	
806	German Association of Private Health Insurers (PKV	Question 22	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
807	German Insurance Association (GDV)	Question 22	<p>We generally agree with a high level approach regarding the regulation of recording. Agreements on rights and obligations of the parties are subject to national contract law. With a view to the objective of minimum harmonisation, EIOPA’s technical advice should not contradict the respective regulations.</p> <p>The German Insurance Association strongly supports the position set out on p.76 no. 9 of the analysis: Record-keeping requirements overloading the customer with additional information and creating administrative burdens for distributors should be avoided.</p> <p>We recommend clarifying DTA p. 77 no. 17 (a) to the effect that a subsequent recording of changes in the suitability assessment is only required where a periodic assessment of the suitability of the insurance-based investment product has been agreed upon between the customer and the distributor in accordance with IDD Art. 29 (1) (a) and IDD Art. 30 (5) subparagraph 4.</p>	Noted.

			<p>The internal record-keeping requirement under DTA p. 77 no. 17 (b) reflects the documentation of the suitability test for the customer under Art. 30 (5) IDD. As such, it should not go beyond the latter's obligation. The suitability statement includes a recommendation for a product. As a consequence, DTA p. 77 no. 17 (b) should not require recording various types of insurance-based investment products. Requiring distributors to record any changes to a wide range of product types would be disproportionate. The objective in the analysis on p. 76 no. 9 can only be met by reducing the requirements under DTA p. 77 no. 17 (b) accordingly. The German Insurance Association recommends clarifying that archiving the suitability statement can be sufficient for the distributor to comply with the requirements under DTA p. 77 no. 17.</p>	
808	Institute and Faculty of Actuaries	Question 22	Yes.	Noted.
809	Insurance Europe	Question 22	<p>The proposed high-level criteria seem to be acceptable in general. A positive example is the recognition that obligations should not overload the customer with additional information, and insurance undertakings and intermediaries should not be faced with administrative burdens in paragraph 9 of the analysis on page 76. However, there are still several clarifications needed with regard to certain proposals.</p> <p>Recommendations:</p> <ul style="list-style-type: none"> <input type="checkbox"/> It appears that paragraph 16(b) aims to ensure that insurance intermediaries or undertakings keep the relevant records at the disposal of the competent authorities in order to enable them to detect failures regarding the suitability assessment. Those records should allow the competent authorities to examine if the necessary assessments took place and if the advice given was in line with the outcome of those assessments. EIOPA should clarify this in the technical advice, as the current paragraph is too vague. <input type="checkbox"/> Paragraph 17(a) should be clarified to explain that any periodic recording of the changes in the suitability assessment is only necessary in cases where the distributor has explicitly informed the customer that it will 	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

			<p>carry out this periodic suitability assessment, in line with Article 30(5) subparagraph 4 of the IDD.</p> <p><input type="checkbox"/> With regard to paragraph 17(b), the recording obligation should not extend beyond the event that it intends to record. The suitability statement specifies the advice given and therefore states the product which has been recommended. The delegated act should not introduce a disproportionate obligation to additionally record a multitude of product types and any changes to them. A clarification is needed to explain that the distributor complies with their obligations under paragraph 17(b) by archiving the suitability statement.</p> <p>Paragraph 17(b) refers to a customer's risk profile. In insurance, there is no automatic link between a customer's profile and certain products. These practices are more common in the banking sector, but not in the insurance sector. Furthermore, the IDD does not require distributors to draw up investment risk profiles.</p> <p><input type="checkbox"/> Agreements with respect to the rights and obligations of the parties are subject to national contract law. EIOPA's technical advice must not contradict the respective regulations.</p>	
810	IRSG	Question 22	We agree with the high level criteria used.	Noted.
811	Liechtenstein Insurance Association (LVV)	Question 22	The Liechtenstein Insurance Association strongly supports the position set out on p.76 no. 9 of the analysis: Record-keeping requirements overloading the customer with additional information and creating administrative burdens for distributors should be avoided.	Noted.
812	MALTA INSURANCE ASSOCIATION These comments have b	Question 22	<p>Firstly we believe that cloud services should not be excluded from the kind of instruments that can be considered as durable medium. So we would invite EIOPA to clarify what is meant by "Internet sites" in the first bullet of paragraph 13 of the draft advice (p.76)</p> <p>Secondly, whilst we agree with the proposed high level criteria, we have the following questions:</p> <p>Paragraph 17(a) should be clarified to the effect that any periodic recording of the changes in the suitability assessment is necessary only in cases in</p>	Noted.

			<p>which the distributor has explicitly informed the customer that it will carry out such periodic suitability assessment, according to Article 30(5) subparagraph 4 of the IDD.</p> <p>Paragraph 17(b) refers to a customer’s risk profile. In insurance, there is no automatic link between a customer’s profile and certain products. These practices are more common in the banking sector, but not in the insurance sector. Furthermore, the IDD does not require distributors to draw up investment risk profiles.</p>	
813	Mediterranean Insurance Brokers (Malta) Ltd.	Question 22	<p>On retention of records, do you agree with the high level criteria used? Are there any you would exclude, and why</p> <p>It should be very clear and mentioned explicitly for all delegated acts that are part of chapter VI on IBIPs that the delegated acts are indeed only applicable to IBIPs.</p> <p>We wish to recall that intermediaries are mainly micro to small entrepreneurs and that reporting requirements have to be proportionate. The proportionality also has to apply with regard to the type of product and type of customer.</p> <p>All these reporting and record-keeping requirements have to be seen in the context of in how far the product is already documented. It is important that the customer receives relevant information (which may depend on the type of product / situation). One should avoid the duplication of information/ provision of unnecessary information as this leads to confusion of the customer and legal uncertainty.</p> <p>EIOPA recognizes that contrary to MiFID II, in IDD there is no concept of a written basic agreement with the customer for the provision of services. However, EIOPA states that it could be interpreted as the contractual terms and conditions and that the content of the written basic agreement does not appear inconsistent with the IDD framework (p 75, point 5-7):</p>	<p>Noted. EIOPA acknowledges that insurance distribution is also carried out by small and medium-sized enterprises. Therefore, EIOPA has considered in the Technical Advices the proportionality of the solutions it proposes, while also considering the objectives pursued by IDD.</p>

			<p>We believe that the concept of a written agreement should not be introduced at level 2 of IDD.</p> <p>It also is to be noted that the MiFID II delegated Regulation (art 58) specifies re. written agreement: "Investment firms providing investment advice shall comply with this obligation only where a periodic assessment of the suitability of the financial instruments or services recommended is performed. Member States may consider using such a concept but it should not be introduced at level 2 of IDD.</p> <p>EIOPA states that the MiFID II framework only covers record-keeping in an appropriateness scenario. EIOPA has looked at the 2012 ESMA MiFID suitability guidelines to build its advice re suitability record keeping for IDD.</p>	
814	Slovenian Insurance Association	Question 22	<p>Range of the records is too excessive. Records of business and internal organisation, including all services provided, are also included into draft technical advice. Insurance companies already have to keep all of those records, so we think that there is no need that record keeping obligation for those records is determined by IDD delegated acts.</p> <p>It should be clarified that any periodic recording of the changes in the suitability assessment is necessary only in cases in which the distributor has explicitly informed the customer that it will carry out such periodic suitability assessment.</p>	Noted.
815	Verband der Automobilindustrie e.V. Arbeitskreis	Question 22	Not applicable.	
816	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 22	<p>22: Sind Sie bezüglich der Aufbewahrung von Aufzeichnungen mit den Grundsatzkriterien einverstanden? Gibt es Kriterien, die Sie weglassen würden, und wenn ja, warum?</p> <p>Grundsätzlich stimmt der VDVM einem high level-Ansatz hinsichtlich der Vorgaben für die Aufzeichnungen zu. Vereinbarungen zu Rechten und Pflichten der Parteien unterliegen dem nationalen Vertragsrechts. EIOPAs</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

			<p>technische Ratschläge sollten im Sinne der Minimalharmonisierung nicht mit diesen Regelungen kollidieren.</p> <p>Der VDVM unterstützt ausdrücklich die in Erläuterungen S. 76 Nr. 9 dargelegte Position, dass die Aufzeichnungspflichten zu vermeiden sind, die den Kunden mit Informationen überladen und die für Vertreiber administrative Belastungen schaffen.</p> <p>Der VDVM würde eine Klarstellung der DTA S. 77 Nr. 17 (a) dahingehend begrüßen, dass eine nachträgliche Aufzeichnung der eingetretenen Änderungen der Geeignetheitsprüfung nur für diejenigen Fälle notwendig ist, in denen eine regelmäßige Prüfung der Eignung des Versicherungsanlageprodukts zwischen Kunde und Vertreiber im Sinne von Art. 29 Abs. 1 a), Art. 30 Abs. 5 Unterabsatz 4 IDD vereinbart wurde.</p> <p>Die interne Aufzeichnungspflicht unter DTA S. 77 Nr. 17 (b) darf als Spiegelbild zur dokumentierten Geeignetheitserklärung für den Kunden unter Art. 30 Abs. 5 IDD nicht weitergehen als die dortige Darstellungspflicht. Die Geeignetheitserklärung enthält die Empfehlung für ein Produkt. Folglich sollte DTA S. 77 Nr. 17 (b) keine Verpflichtung zur Aufzeichnung einer Vielzahl an Typen von Versicherungsanlageprodukten aufstellen. Eine laufende Aufzeichnungspflicht für jedwede Änderungen an einer Vielzahl an Produkttypen wäre für Vertreiber unverhältnismäßig. Nur durch eine entsprechende Beschränkung der DTA S. 77 Nr. 17 (b) kann dem Ziel aus Erläuterungen S. 76 Nr. 9 entsprochen werden. Der VDVM würde die Klarstellung begrüßen, dass ein Archivieren der Geeignetheitserklärung beim Vertreiber dessen Pflichten nach DTA S. 77 Nr. 17 genügen kann.</p>	
817	Verbraucherzentrale Bundesverband e.V.	Question 22	<p>Generally, we agree with the high level criteria. Only relating to the language, we would refer to Article 6 of the Regulation 593/2008 on the law applicable to contractual obligations (Rome I). That means, that in relation to consumers an official language of the Member State, where the consumer has his habitual residence, when the insurer pursues his commercial or professional activities in the country where the consumer has his habitual residence, or by any means, directs such activities to that country or to several countries including that country.</p>	Noted.

818	Zurich Insurance Company, CH 8045 Zurich	Question 22	<p>Retention of Records</p> <p>The same correction of the draft technical advice should be applied to avoid confusion with respect to the obligation to retain records:</p> <p>Retention of records</p> <p>15. The insurance intermediary or insurance undertaking carrying out the distribution shall keep orderly records of its business and internal organisation including all services provided by it. These records may be expected to include the customer information obtained where the insurance intermediary or the insurance undertaking carrying out the distribution is required to produce a suitability statement or the customer information obtained to assess appropriateness.</p> <p>Record-keeping obligations for the assessment of suitability</p> <p>16. The insurance intermediary or the insurance undertaking carrying out the distribution shall at least:</p> <p>(a) maintain adequate recording and retention arrangements to ensure orderly and transparent record(keeping regarding the suitability assessment, including any advice provided, the result of the suitability assessment and all changes to investments embedded in the insurance-based investment product made;</p> <p>(b) ensure that record-keeping arrangements are designed to enable the detection of failures regarding the suitability assessment (such as mis-selling);</p> <p>(c) ensure that records kept are accessible for the relevant persons within the insurance intermediary or insurance undertaking carrying out the distribution, and for competent authorities;</p> <p>(d) have adequate processes to mitigate any shortcomings or limitations of the record-keeping arrangements.</p> <p>17. The insurance intermediary or the insurance undertaking carrying out the distribution shall record all relevant information about the suitability</p>	Noted.

		<p>assessment, such as information about the customer, and information about insurance-based investment products recommended to the customer or purchased on the customer's behalf. Those records shall include:</p> <p>(a) any changes made by the insurance intermediary or the insurance undertaking carrying out the distribution regarding the suitability assessment, in particular any change to the customer's investment risk profile;</p> <p>(b) the types of insurance-based investment product that fit that profile and the rationale for such an assessment, as well as any changes and the reasons for them.</p> <p>Record-keeping obligations for the assessment of appropriateness</p> <p>18. Insurance intermediary or insurance undertaking carrying out the distribution shall maintain records of the appropriateness assessments undertaken which shall include the following:</p> <p>(a) the result of the appropriateness assessment</p> <p>(b) any warning given to the customer where the product was assessed as potentially inappropriate for the customer, whether the customer asked to proceed with concluding the contract despite the warning and, where applicable, whether the insurance undertaking carrying out the distribution or the insurance intermediary accepted the customer's request to proceed with concluding the contract;</p> <p>(c) any warning given to the customer where the customer did not provide sufficient information to enable the insurance undertaking carrying out distribution or the insurance intermediary to undertake an appropriateness assessment, whether the customer asked to proceed with concluding the contract despite this warning and, where applicable, whether the insurance undertaking carrying out distribution or the insurance intermediary accepted the customer's request to proceed with concluding the contract.</p> <p>Format</p> <p>19. With reference to the format, the document or documents agreed between the insurance intermediary or insurance undertaking carrying out the distribution and the customer that set out the rights and obligations of the parties, shall be kept and provided:</p>	
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			<p>a) in an official language of the Member State in which the risk is situated or of the Member State of the commitment or in any other language agreed upon by the parties;</p> <p>b) in a clear and accurate manner, comprehensible to the customer;</p> <p>c) in the format as defined by Article 2(1)(18) of Directive 2016/97/EU.</p>	
819	Allianz SE	Question 23	<p>When EIOPA is reflecting insurance specificities in the policy proposals, do you agree with them?</p> <p><input type="checkbox"/> We generally welcome the efforts by EIOPA to reflect insurance specificities in the proposals. The reflection of these specificities is justified both by the specific nature of the products as well as some specificities in the organization of the distribution.</p>	Noted.
820	AMICE	Question 23	<p>As mentioned above, paragraph 17(b) of the draft technical advice refers to a customer's risk profile. In insurance, there is no automatic link between a customer's profile and certain products. These practices are more common in the banking sector, but not in the insurance sector. Furthermore, the IDD does not require distributors to draw up investment risk profiles.</p>	Noted.
821	Association of International Life Offices	Question 23	<p>Our comments are made from an insurance perspective.</p>	Noted.
822	BIPAR	Question 23	<p>The EIOPA technical advice is largely a copy-paste of the MiFID wording (2012 Guidelines and the draft MiFID II delegated Regulation). EIOPA has deleted some of the references and specificities of MiFID, but this can hardly be interpreted as "reflecting insurance specificities".</p>	<p>Noted. The Commission has asked EIOPA in its mandate "to ensure regulatory consistency, the technical advice should be consistent with the line taken in the delegated acts expected to be adopted under Article 25 (8) of MiFID II."</p>

823	BNP Paribas	Question 23	Point 19 of the draft technical advice should be reviewed. In France there is no contractual document between the insurance product distributor and the client. The distributor's obligations vis-à-vis the client are defined by regulation, not set through a contract.	Noted.
824	Bund der Versicherten (BdV – German Association of	Question 23	<p>Related to insurance specificities we underline the crucial importance of additional information the distributor should be required to record. This additional information is linked to IDD article 27 (prevention of conflicts of interests), article 28 (conflicts of interest) and article 29 (information to customers):</p> <p><input type="checkbox"/> if advice had been given on basis of a fair and personal analysis (difference between a "suitable" and a "best" advice and the possible consequences for the analysis of his individual financial conditions)?</p> <p><input type="checkbox"/> if the customer got the information that he may request an itemized breakdown of the costs and charges ("soft" disclosure of all costs and charges, including any commissions or other inducements by third parties)?</p> <p><input type="checkbox"/> which organizational and administrative arrangements have been implemented in order to identify, to prevent and to manage conflicts of interest?</p>	Noted.
825	CNCIF - Chambre Nationale des Conseillers en	Question 23	Yes.	Noted.
826	Czech Insurance Association CAP	Question 23	We welcome any recognition of insurance specificities which will help to adopt corresponding and suitable delegated acts. Nevertheless, there are few provisions that do not wholly reflect the insurance business. For example, insurers are not required to draw up investment risk profiles. Any reference linking risk profiles of customers and insurance products does not fully get by in the insurance market.	Noted.
827	European Federation of Financial Advisers and Fina	Question 23	When EIOPA is reflecting insurance specificities in the policy proposals, do you agree with them?	Noted.

			We agree with the reflection of insurance specificities in the policy proposal.	
828	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 23	-	
829	Fachverband der Versicherungsmakler und Berater in	Question 23	The EIOPA technical advice is largely a copy-paste of the MiFID wording (2012 Guidelines and the draft MiFID II delegated Regulation). EIOPA has deleted some of the references and specificities of MiFID, but this can hardly be interpreted as "reflecting insurance specificities".	Noted. The Commission has asked EIOPA in its mandate "to ensure regulatory consistency, the technical advice should be consistent with the line taken in the delegated acts expected to be adopted under Article 25 (8) of MiFID II."
830	Financial Services Consumer Panel	Question 23	Yes.	Noted.
831	Genossenschaftsverband Bayern e.V. (GVB - Bavarian	Question 23	No comment	
832	German Association of Private Health Insurers (PKV	Question 23	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
833	German Insurance Association	Question 23	The German Insurance Association welcomes EIOPA's efforts to recognize the particularities of insurance-based investment products. The situation of investment product distributors is not identical to the situation of insurance	Noted.

	(GDV)		distributors. The products offered by investment product distributors are directly linked to the markets and therefore potentially influenced by the behaviour of other groups of customers. By contrast, insurance distributors offer long-term products for old-age provision. The included guarantees reduce market risks and benefit customers.	
834	Institute and Faculty of Actuaries	Question 23	Yes.	Noted.
835	Insurance Europe	Question 23	As mentioned in the response to Q.22, paragraph 17(b) refers to a customer's risk profile. In insurance, there is no automatic link between a customer's profile and certain products. These practices are more common in the banking sector, but not in the insurance sector. Furthermore, the IDD does not require distributors to draw up investment risk profiles.	Noted.
836	IRSG	Question 23	Yes.	Noted.
837	MALTA INSURANCE ASSOCIATION These comments have b	Question 23	We do not think that EIOPA is reflecting insurance specificities when referring to IBIP that fit the customer's risk profiles. These practices are more common in the banking sector, but not in the insurance sector. Furthermore, the IDD does not require distributors to draw up investment risk profiles.	Noted.
838	Mediterranean Insurance Brokers (Malta) Ltd.	Question 23	When EIOPA is reflecting insurance specificities in the policy proposals, do you agree with them? The EIOPA technical advice is largely a copy-paste of the MiFID wording (2012 Guidelines and the draft MiFID II delegated Regulation). EIOPA has deleted some of the references and specificities of MiFID, but this can hardly be interpreted as "reflecting insurance specificities".	Noted. The Commission has asked EIOPA in its mandate "to ensure regulatory consistency, the technical advice should be consistent with the line taken in the delegated acts expected to be adopted under Article 25 (8) of MiFID II."

839	Slovenian Insurance Association	Question 23	Yes.	Noted.
840	Verband der Automobilindustrie e.V. Arbeitskreis	Question 23	Not applicable.	
841	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 23	<p>23. Stimmen Sie den von EIOPA in die Vorschläge aufgenommenen Versicherungs-besonderheiten zu?</p> <p>Der VDVM begrüßt die Bemühungen EIOPAs zur Berücksichtigung der Besonderheiten von Versicherungsanlageprodukten. Die Situationen im Vertrieb von Finanzanlageprodukten ist nicht 1:1 auf den Versicherungsvertrieb übertragbar. Während erstere ihren Kunden Produkte anbieten, die einen direkten Marktbezug aufweisen, bietet der Versicherungsvertrieb langfristige Produkte für die Alterssicherung an. Garantieelemente reduzieren Marktrisiken und wirken zugunsten des Kunden.</p>	Noted.
842	Verbraucherzentrale Bundesverband e.V.	Question 23	-	
843	Allianz SE	Question 24	<p>Do you agree with the high level criteria used with regard to the suitability statement and the periodic communications to customers? Are there any criteria you would exclude, and why?</p> <p><input type="checkbox"/> We generally agree with the principles-based approach set forth in DTA 7 and 8, p.86, however, we are concerned about some of the specific proposals in the details of DTA 8 (a) – (l). In particular, we are concerned with the extension and / or potential inconsistency of these requirements with those under Art. 185 (5) Solvency II. This may lead to “notification fatigue” and/or “information overload” of customers. For many points, notably DTA 8 (b), (c), (d), (h), (j), (k), the DTA may extend the Solvency II reporting requirements (sometimes depending on the interpretation). Some concepts also seem to be transferred from the investment context where it is not always clear how they can be applied to many insurance products,</p>	Noted. Please see also the section titled “feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD” in the Final Report.

			<p>namely DTA 8 (d), (h) and (j). For instance, it is not always clear whether the requirement focuses on the reporting period or the total period from conclusion of the contract.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Specifically: <ul style="list-style-type: none"> o DTA 8 (b): Which types of cost does "other cost" address (would this address fees instead of commissions included in DTA 8 (a))? o DTA 8 (c): Does this constitute an additional (new) reporting requirement whenever the value of the contract drops below the values reported initially? In our understanding this would already be addressed in Art. 185(5) Solvency II. May be dispensable. o DTA 8 (f), (g): Does this constitute an additional reporting requirement on the development of the underlying fund. May already be covered under Art. 185 (3) h) and 185 (5) c) Solvency II. May be dispensable o DTA 8 (h): Annual yield. May not deliver relevant information for many IBIP contracts which often run for decades, therefore an annual yield is of limited value. o DTA 8 (j): Requirement could be limited to components where investment risk is borne by the customer o DTA 8 (k): Is an annual reminder on the process (not the value) of these customer options relevant and necessary? If yes, there may be other options which could also be relevant, e.g. additional options to top-up premiums / coverage. <input type="checkbox"/> Generally, we propose to amend the DTA to conform to Solvency II where similar points are addressed. Any other approach may produce inconsistency and cause confusion. <input type="checkbox"/> In addition, we also support EIOPA's perspective, that the empowerment under Art. 30 (6) IDD does not extend to the introduction of a mandatory "demands and needs statement". 	
844	AMICE	Question 24	<p>We agree with the high level criteria with the exception of paragraph 2 (page 85), paragraph 8 (page 86) and paragraph 9 (page 87).</p> <p>With regard to the obligation to provide a periodic statement, we believe that EIOPA should not prescribe any defined intervals for the review process. The period should depend on the type of product and it should occur only in case</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice

			<p>of significant changes (i.e. market evolution).</p> <p>Paragraph 2 (page 85) states that “the insurance intermediary or insurance undertaking shall draw the customer’s attention to, and shall include in the suitability statement, information on whether the recommendation is likely to require the customer to seek a periodic review of their arrangements”. EIOPA should clarify in the final technical advice that the distributor involved can decide himself if he provides periodic assessments of suitability or not (cf. Article 30(5) of IDD). In case of ongoing advice provided by the distributor, the latter should determine the triggers for such periodic assessments and not the customer.</p> <p>With regard to paragraph 8 (page 86) of the draft technical advice, we believe that the required information will result in duplication of the information requirements under the Solvency II Directive. Furthermore, some of the requirements are unclear and are only suitable for pure fund concepts. Therefore, they do not properly reflect the specificities of insurance-based investment products.</p> <p>Pursuant to paragraph 9 (page 87), distributors have to provide customers with a periodic statement on the services provided and transactions undertaken. There is a possibility to provide such a statement by means of an online platform. We support that digital platforms are considered by EIOPA, but regret that insurance undertakings or insurance intermediaries need to have evidence that the customer has accessed the information at least once during the relevant reporting period. This is not in line with the provisions of IDD which only contain an information obligation for the distributors and do not oblige them to check if their customers read/access the information. We do not understand why EIOPA imposes more stringent conditions on online platforms. We also wonder what the consequences would be in case the customer does not access the information in the relevant reporting period. As an alternative, we suggest that the distributor should inform the customer (i.e. by means of an email-alert) that the periodic statement is available on the platform.</p>	<p>on possible Delegated Acts under IDD" in the Final Report.</p> <p>In EIOPA's view, the proposed rules on activities under Article 30 of the IDD apply irrespective of the channel that is used to carry-out those activities.</p>
845	ANASF	Question 24	<p>With regard to the frequency of periodic communications, we do not agree with EIOPA’s analysis (“substantial differences exist ... between reporting with regard to portfolio management and periodic communication with regard to insurance-based investment products”). Indeed, although recommended holding period may differ, for the sake of correct investor information harmonization is needed: inasmuch as IBIPs are conceived as an alternative</p>	Noted.

			<p>to portfolio management solutions, the same frequency of reporting should be required (i.e., quarterly reporting) to foster product comparability.</p> <p>Concerning suitability statement, we propose the following amendment, to ensure complete alignment with MiFID II (Article 54, par. 12, Draft Commission Delegated Directive):</p> <p>"When providing advice, the insurance intermediary or insurance undertaking shall provide a statement to the customer that includes an outline of the advice given and how the recommendation provided is suitable for the customer, including how it meets the customer's investment objectives and personal circumstances, including that person's risk tolerance [...]."</p>	
846	Association of International Life Offices	Question 24	<p>Irrespective of the provision of advice, other than item 8 (b) many of the items listed in item 8 of the draft are provided automatically by an insurer at least annually and generally available at any time from the client extranet facility. Again there is use of non insurance language ("investments embedded"/ "subscription"). Given that MOPs may have a considerable number of underlying assets which change from time to time it is unclear what items 8(h) and (j) intend to achieve and in the former case what "asset value" means and what relevance the requested information will have or achieve given that the insurers statement will show opening and closing policy values. Item (j) appears excessive It is unclear what item (k) intends to achieve given that the policy contract will contain any relevant surrender provisions. It is not clear what "transfer and reduction" practicalities refers to.</p>	<p>Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>
847	Assuralia	Question 24	<p>Assuralia agrees with the proposed high level criteria, with the exception of paragraph 9 (p.87), paragraph 2 (p.85) and paragraph 8 (p.86).</p> <p>According to paragraph 9, distributors have to provide customers with a periodic statement on the services provided and transactions undertaken. This statement can be provided by means of an online platform. We support that digital platforms are considered by EIOPA, but regret that distributors need to have evidence that the customer has actually accessed the information at least once during the relevant reporting period. This is not required under the IDD, as the Directive only contains an information obligation for the distributors and does not oblige them to check if their customers read / access the information. Distributors can provide customers</p>	<p>Noted. In EIOPA's view, the proposed rules on activities under Article 30 of the IDD apply irrespective of the channel that is used to carry-out those activities.</p>

		<p>with information, but can't force them to read it. When a distributor provides his customers with the statement in the form of a letter, there is no way of checking if the customer has actually taken the letter out of his letter box and opened the letter. Why impose more stringent conditions on online platforms? We also wonder what the consequences would be in case the customer does not access the information in the relevant reporting period. As an alternative, we suggest that the distributor should inform the customer (for example by means of an email-alert) that the periodic statement is available on the platform.</p> <p>Paragraph 2 page 85 states that "the insurance intermediary or insurance undertaking shall draw the customer's attention to, and shall include in the suitability statement,</p> <p>information on whether the recommendation is likely to require the customer to seek a periodic review of their arrangements". We call on EIOPA to clarify in the final advice that the distributor involved can decide himself if he provides periodic assessments of suitability or not (cf. IDD art.30,5). In case the distributor does provide such ongoing advice, then he himself should determine the triggers for such periodic assessments and not the customer.</p> <p>With regard to paragraph 8 (p.86) of the technical advice, we suggest the following modifications:</p> <ul style="list-style-type: none"> - point J should read as follows: "Value of each investment element embedded in the insurance-based investment product, global trend since subscription and significant changes affecting the investments embedded in the insurance-based investment product." By providing a customer with periodic statements at least annually, distributors already give the customer the necessary information to get insight in the global trend of the investment. Furthermore, significant changes affecting the investment need to be communicated on an ad-hoc basis; - point k should be deleted entirely, as this information is already contained in the European standardised key information document (KID) and the terms and conditions of the insurance contract. As the PRIIPs regulation already 	
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			<p>contains rules on the revision of the KID and changes to the general terms need to be communicated ad hoc, there is no need to retain this duplicative requirement;</p> <p>- we find point h to be disproportionate, as the customer already has all necessary information available in order to get insight in the annual rate of return and request EIOPA to delete this phrase.</p>	
848	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 24	Siehe Antwort zu Frage 22.	
849	BIPAR	Question 24	<p>- With regard to the periodic suitability assessment/report, BIPAR believes that the draft advice is not sufficiently clear that this is a voluntary extra service to the customer, to be decided between the parties (intermediary or undertaking and the customer).</p> <p>For instance, in point 2, EIOPA states that "The insurance intermediary or insurance undertaking shall draw the customer's attention to, and shall include in the suitability statement, information on whether the recommendation is likely to require the customer to seek a periodic review of their arrangements."</p> <p>Also point 3 states "Where an insurance intermediary or insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the subsequent reports after the initial service is established, may only cover changes in the services or investments embedded in the insurance-based investment product and/or the circumstances of the customer and may not need to repeat all the details of the first report."</p> <p>The additional service of providing periodic suitability assessments is not to be decided unilaterally by the intermediary / undertaking as could be understood from point 3, but is something to be agreed between the parties.</p>	Noted.
850	BNP Paribas	Question 24	<p>1. Life insurance contracts are designed to meet different client objectives (retirement planning, savings for specific projects...) and are of a long-term nature. It is the major milestones in the client's life (marriage, children, retirement...) and the evolution of his/her objectives that should</p>	Noted. Please see also the section titled "feedback statement to the Public"

			<p>drive any review of the suitability statement.</p> <p>2. The review of the suitability statement at a set identical frequency for all contracts is not the appropriate solution. An annual review, even more frequently as suggested by EIOPA, would not fit the features of a life insurance contract at all.</p> <p>3. Moreover, EIOPA's proposals are underpinned by the idea that advice is a service proposed to clients; they do not consider situations where the advice is mandatory. To impose the same formalism in all cases seems to us to be a disproportionate administrative burden.</p>	<p>Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>
851	Bund der Versicherten (BdV – German Association of	Question 24	<p>Yes, we agree with the high level criteria used, no criteria outlined in the DTA for the suitability statement and the periodic communications to customers (CP, p. 85-87) should be excluded.</p>	<p>Noted.</p>
852	CNCIF - Chambre Nationale des Conseillers en	Question 24	<p>We have no comment.</p>	
853	CSCA French broker Association, 91, rue Saint Laza	Question 24	<p>The agreement between the producer and the distributor will be the reference document for the parties' rights and duties, so that the distributor has information to give the customer.</p>	<p>Noted.</p>
854	Czech Insurance Association CAP	Question 24	<p>Bearing in mind the highly respected consumer protection, the used criteria and conditions may be deemed too excessive (too detailed, extensiveness, too rigid). We are afraid that it will be counterproductive for consumers in the end. Customers might be overwhelmed with the amount and details which may result in the misunderstanding of the product.</p>	<p>Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated</p>

			Further, we do not consider appropriate and necessary to be obliged to review the suitability statement and recommendations annually. Our long-term products do not change day-to-day. The suitability must be assessed within longer period of time. At least three years frequency will be more appropriate.	Acts under IDD" in the Final Report.
855	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 24	-	
856	Fachverband der Versicherungsmakler und Berater in	Question 24	<p>It should be very clear and mentioned explicitly for all delegated acts that are part of chapter VI on IBIPs that the delegated acts are indeed only applicable to IBIPs.</p> <p>With regard to the periodic suitability assessment/report, we believe that the draft advice is not sufficiently clear that this is a voluntary extra service to the customer, to be decided between the parties (intermediary or undertaking and the customer).</p> <p>For instance, in point 2, EIOPA states that: " 2. The insurance intermediary or insurance undertaking shall draw the customer's attention to, and shall include in the suitability statement, information on whether the recommendation is likely to require the customer to seek a periodic review of their arrangements."</p> <p>Also point 3 states "3. Where an insurance intermediary or insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the subsequent reports after the initial service is established, may only cover changes in the services or investments embedded in the insurance-based investment product and/or the circumstances of the customer and may not need to repeat all the details of the first report."</p> <p>The additional service of providing periodic suitability assessments is not to be decided unilaterally by the intermediary / undertaking as could be understood from point 3, but is something to be agreed between the parties.</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

			Regarding point 8(b) (page 86), we wonder whether the disclosure of costs incurred by transactions occurs after the customer has incurred a liability to pay them if reporting is periodic.	
857	Fédération Française de l'Assurance (FFA) 26 bo	Question 24	<p>1. Periodic Suitability assessment (page 85, point 2 and 5):</p> <p>EIOPA requires that the distributor who provides advice shall include in the suitability statement information to the customer about the need for a periodic assessment of the suitability of provided recommendations.</p> <p>This goes beyond the requirement set out in art 30 (5) IDD which only requires a periodic suitability if distributor announced it so initially. We thus call upon EIOPA to clarify in the final advice that the distributor involved can decide if he provides periodic assessments of suitability or not.</p> <p>Eiopa also requires that the periodic suitability assessment should be given at least annually.</p> <p>As for us, no predetermined period could be welcomed but rather a review could be done in case of significant changes (market evolution, Brexit), depending to customer's profile and only if customer is willing to cooperate and give information. One year could be relevant for short life Mifid investment products, but it will not be for long-term life insurance.</p> <p>2. Periodic communication (page 86 point 7,8,9)</p> <p>We believe that the information set out in paragraph 8 of the draft technical advice on page 86 will result in a duplication of the information that is already required under Article 185(5) of the Solvency II Directive. In addition, many of the newly added requirements are extremely unclear and seem to be copied across from fund concepts, without careful adaption to the features of insurance-based investment products.</p> <p>As a consequence, this chapter should be deleted</p>	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.

858	Federation of Finnish Financial Services	Question 24	According to paragraph 9, distributors have to provide customers with a periodic statement on the services provided and transactions undertaken. This statement can be provided by means of an online platform. NLH supports that digital platforms are considered by EIOPA, but regret that distributors need to have evidence that the customer has actually accessed the information at least once during the relevant reporting period. This is not required under the IDD, as the Directive only contains an information obligation for the distributors and does not oblige them to check if their customers read / access the information.	Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.
859	Financial Services Consumer Panel	Question 24	<p>The Panel agrees with the high level criteria used with regard to the suitability statement and periodic communications to customers. There are no criteria we would wish to see excluded.</p> <p>However, the Panel believes the suitability statement should highlight any needs identified that are not met by the recommended product. Many consumers may not, unprompted, identify all their needs but during the data collection phase further needs may be uncovered that the customer does not wish to have addressed at that time. We believe these should be noted and the suitability statement is a good document to use for this purpose.</p> <p>If it is decided that a periodic review shall take place, the fact that needs not met by the original recommendation are contained in the suitability statement will act as a prompt for both the customer and the intermediary during the review.</p>	Noted.
860	FNMF, 255 rue de Vaugirard, 75015 PARIS	Question 24	EIOPA requires a periodic assessment of the suitability of provided advices by insurance undertakings or intermediaries. The periodic suitability assessment has to be given at least annually. For us, no predetermined period has to be fixed. It has to depend on the product (annual / non annual) and it has to occur only in case of significant changes (market evolution for exemple).	Noted.
861	FRENCH BANKING FEDERATION	Question 24	EIOPA's recommendations on the criteria to be taken into account in preparing the suitability/appropriateness assessment are based on the provisions of the directive and do not require specific comments.	Noted. Please see also the section titled "feedback statement to the Public

			<p>By contrast, EIOPA has gone beyond its mandate by imposing new obligations on insurance intermediaries in terms of information to be given to customers, namely the need for a periodic review of choices made and the fixing of a minimum frequency for such reviews (point 4 of the policy proposals).</p> <p>Indeed, Article 29.4 IDD does not give the European Commission a mandate to lay down the frequency of suitability/appropriateness assessments. It states solely that delegated acts shall clarify the criteria used to determine the content of such assessments.</p> <p>The consultation opens up the possibility of using online channels to provide periodic communications to customers.</p> <p>As regards the transmission of the periodic assessment, obligations imposed on providers preparing the information cannot differ, on the ground of the use of an online channel, from those imposed when the information is distributed in paper form. Such obligations must remain obligations of means, it being up to the provider to prove that it has established a process to make information relating to the contract available to the customer, or to inform the customer that such information is available on its website.</p> <p>Both points should be deleted.</p>	<p>Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>
862	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 24	No comment	
863	German Association of Actuaries (DAV)	Question 24	<p>To point (4), (5) and (6):</p> <p><input type="checkbox"/> In many cases insurance contracts have a very long duration, often several decades. From our point of view an annual frequency or more frequently is not appropriate for insurance contracts which have a duration of several decades.</p> <p><input type="checkbox"/> With respect to insurance contracts that already exist on the date of IDD becoming effective, it has to be ensured that the periodic suitability assessment must not be carried out according to new rules.</p> <p><input type="checkbox"/> The proposed rules for the suitability assessment and the trigger</p>	<p>Noted. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>

			events place high demands on the data storage concerning the advice to the customer and the insurance product. It will be very expensive to save all the data permanently over the whole duration of the insurance contract which is often several decades. The insurance products will become more expensive.	
864	German Association of Private Health Insurers (PKV)	Question 24	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
865	German Banking Industry Committee (GBIC)	Question 24	<p>An IDD-recommended frequency for a recurrent Suitability- and/or Appropriateness-Assessment shall be proportionate to the nature of an insurance product with a minimum duration of 20 or 30 years. The customers decision, to spend money on a retirement provision product, shall not be put into question each year, but shall support the long-running nature of this kind of product.</p> <p>Additionally as EIOPA pointed out in No. 16 and No. 17 of "Periodic communications to customer" a report on relevant information is feasible but not a "complete" Suitability and Appropriateness Assessment.</p> <p>A recurrent Suitability and Appropriateness Assessment shall accommodate these circumstances (e.g. 5 years for insurance products with constant and long-lasting investment focus).</p>	Noted.
866	German Insurance Association (GDV)	Question 24	<p>The German Insurance Association agrees with EIOPA that the empowerment under Art. 30 (6) IDD may not result in a mandatory introduction of a "demands and needs statement".</p> <p>The German Insurance Association agrees with the high level criteria, provided that "high level" refers to Draft Technical Advice (DTA) p. 86 no. 7 and the introductory sentence of DTA p. 86 no. 8 („shall provide a fair and balanced review of the services provided to and transactions undertaken on behalf of that customer"). However, we believe that the specific proposals under DTA p. 86 no. 8 (a) to (l) should be reconsidered.</p>	Noted. With the proposed amendments to the list of elements in the Technical Advice, EIOPA expects in practice a clearer demarcation of reporting obligations for insurers underwriting (reporting foreseen by Article 185 Solvency

			<p>To begin with, it is unclear why Art. 185 (5) of Solvency II should already be complemented directly after the new supervisory system entered into force. Looking at the current information requirements, in our opinion already very extensive, any newly added information requirements should be checked for a potential "information overload". This holds true for both customers and companies. Overburdening customers with a multitude of – potentially redundant – information should be avoided. There is a serious risk of relevant information not being sufficiently taken into account due to the sheer mass of information.</p> <p>DTA p. 86, no. 8 (b), (c), (d), (h), (j) and (k) (6 out of 12 requirements) potentially go beyond the Solvency II requirements, even though some of them might also be interpreted in a narrower sense (cf. our detailed comments on the individual points below). The newly added points seem to be transferred from fund concepts – hence, it would be inappropriate to apply them in an insurance context (see our answer to Question 25). For instance, in some cases it remains unclear whether the text refers to the reporting period or to the period after entry in force of the contract.</p> <p>The German Insurance Association strongly believes that the points that are similar to Solvency II requirements should be transferred to the DTA as they stand. Any other approach would lead to great legal uncertainty and further ambiguities. To give an example: Throughout the term of the contract, Solvency II only requires insurers to provide new information on the surrender value and the extent to which it is guaranteed where the values have changed due to changes in policy conditions or amendments of the law applicable to the contract [Art. 185 (5) (d) in conjunction with Art. 185 (3) (f)]. However, the wording of DTA p. 86 no. 8 (e) could be interpreted as a mandatory periodic information requirement on surrender value, regardless of whether or not the value has changed.</p> <p>Where additional information requirements are introduced, they should only apply to new business. Determining some of the values for existing contracts would prove impossible or entail disproportionate efforts.</p>	<p>II) and periodic communications following from the direct customer relationship, Article 30(5), IDD. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>
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		<p>Our positions in detail:</p> <p><input type="checkbox"/> DTA p. 86 no. 8 (b) We understand the wording "other cost" as including only optional costs arising due to additional services not recognized in the product's cost calculation.</p> <p><input type="checkbox"/> DTA p. 86 no. 8 (c) We believe this point deals with a specific separate information requirement that applies where the actual development of the contract deviates (unfavourably) from the initial data provided. However, this clause could be disregarded since the relevant information requirement already applies under Solvency II, Art. 185 (5).</p> <p><input type="checkbox"/> DTA p. 86 no. 8 (f), (g) Provided that these points refer to an additional information requirement on the performance of a fund, such requirement can be disregarded, given that it already applies under Solvency II, Art. 185 (3) (h) in conjunction with Art. 185 (5) (c).</p> <p><input type="checkbox"/> DTA p. 86 no. 8 (h) This point is interpreted as an annual return figure, which does not have to be provided so far. However, the German Insurance Association does not see any potential added value in this requirement and therefore recommends deleting it. Information on insurance contracts is never meaningful where it focusses on investment aspects alone. An isolated view on one-year-returns can prove very misleading for customers, given that insurance contracts usually have durations of several decades.</p> <p><input type="checkbox"/> DTA p. 86 no. 8 (j)</p>	
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			<p>We recommend limiting this information requirement to the investment elements whose risks are borne by the customer. Providing on-going information on each investment in the premium reserve fund would be absolutely unfeasible.</p> <p><input type="checkbox"/> DTA p. 86 no. 8 (k)</p> <p>We do not see the benefits of informing customers annually on possible contractual arrangements. Should this requirement be maintained, one might consider also including information on increasing insurance cover.</p>	
867	Institute and Faculty of Actuaries	Question 24	Yes.	Noted.
868	Insurance Europe	Question 24	<p>According to paragraph 9 on page 87 of the draft technical advice, distributors have to provide customers with a periodic statement on the services provided and transactions undertaken. This statement can be provided by means of an online platform.</p> <p>It is important that digital platforms are considered by EIOPA, but counterproductive that distributors need to have evidence that the customer has actually accessed the information at least once during the relevant reporting period. This is not required under the IDD, which only contains an information obligation for distributors and does not oblige them to check if their customers read/access the information.</p> <p>Paragraph 2 of the draft technical advice on page 85 states that “the insurance intermediary or insurance undertaking shall draw the customer’s attention to, and shall include in the suitability statement information on whether the recommendation is likely to require the customer to seek a periodic review of their arrangements”.</p> <p>Recommendation: EIOPA must provide clarification in the final advice that the distributor involved can decide if they provide periodic assessments of suitability or not (as set out in Article 30(5) IDD). Where the distributor provides ongoing advice, they should determine the triggers for such periodic assessments and not the customer.</p> <p>The information set out in paragraph 8 of the draft technical advice on page</p>	Noted. With the proposed amendments to the list of elements in the Technical Advice, EIOPA expects in practice a clearer demarcation of reporting obligations for insurers underwriting (reporting foreseen by Article 185 Solvency II) and periodic communications following from the direct customer relationship, Article 30(5), IDD. Please see also the section titled "feedback statement to the Public Consultation on the draft Technical Advice

			<p>86 will result in a duplication of the information that is already required under Article 185(5) of the Solvency II Directive. In addition, many of the newly added requirements are extremely unclear and seem to be copied across from fund concepts, without careful adaption to the features of insurance-based investment products.</p> <p>Recommendation: Where Solvency II already sets out information requirements covering the same issues, then these requirements should be deemed to be met. Potential inconsistencies in the wording of the delegated acts would otherwise lead to legal uncertainty and further ambiguities for customers, insurance undertakings and intermediaries.</p> <p>For example, according to Solvency II, during the term of the contract, information on surrender value and the extent to which it is guaranteed only have to be given in case of a change in the policy conditions or amendment of the law applicable to the contract (Article 185(5), Article 185(3)(f)). However, the wording of point (e) of paragraph 8 could be understood as a mandatory periodic information requirement on surrender value without regard to any such changes.</p> <p>Finally, it is not appropriate to require a review of the suitability statement and recommendations annually, as insurers' long-term products do not change on a day-to-day basis.</p>	<p>on possible Delegated Acts under IDD" in the Final Report.</p>
869	IRSG	Question 24	<p>We do agree with the high level criteria used with the suitability statement and periodic communications to customers.</p> <p>The information set out in paragraph 8 of the draft technical advice on page 86 will result in a duplication of the information that is already required under Article 185(5) of the Solvency II Directive. In addition, many of the newly added requirements seem to be copied across from fund concepts, A careful adaption to the features of insurance-based investment products is needed.</p>	<p>Noted. With the proposed amendments to the list of elements in the Technical Advice, EIOPA expects in practice a clearer demarcation of reporting obligations for insurers underwriting (reporting foreseen by Article 185 Solvency II) and periodic communications following from the direct customer relationship, Article 30(5), IDD.</p>

870	Liechtenstein Insurance Association (LVV)	Question 24	<p>Looking at the current information requirements, in our opinion already very extensive, any newly added information requirements should be checked for a potential "information overload". This holds true for both customers and companies. Overburdening customers with a multitude of – potentially redundant – information should be avoided. There is a serious risk of relevant information not being sufficiently taken into account due to the sheer mass of information.</p> <p>Where additional information requirements are introduced, they should only apply to new business.</p>	Noted.
871	MALTA INSURANCE ASSOCIATION These comments have b	Question 24	<p>We support that digital platforms are allowed, but regret that distributors need to have evidence that the customer has actually accessed the information at least once during the relevant reporting period. This is not required under the IDD, as the Directive only contains an information obligation for the distributors and does not oblige them to check if their customers read / access the information.</p> <p>Paragraph 2 of the draft technical advice on page 85 requires the insurer to state whether the recommendation is likely to require the customer to seek a periodic review of their arrangements". We ask EIOPA to confirm that it is for the insurer to decide whether he provides periodic assessments of suitability or not, and also what should trigger such periodic assessments.</p> <p>We believe that the information set out in paragraph 8 of the draft technical advice on page 86 will result in a duplication of the information that is already required under Article 185(5) of the Solvency II Directive. This duplication can lead to inconsistencies and legal ambiguities.</p>	Noted. With the proposed amendments to the list of elements in the Technical Advice, EIOPA expects in practice a clearer demarcation of reporting obligations for insurers underwriting (reporting foreseen by Article 185 Solvency II) and periodic communications following from the direct customer relationship, Article 30(5), IDD.
872	Mediterranean Insurance Brokers	Question 24	Do you agree with the high level criteria used with regard to the suitability statement and the periodic communications to customers? Are there any criteria you would exclude, and why?	Noted. Please see also the section titled "feedback statement to the Public"

	(Malta) Ltd.		<p>It should be very clear and mentioned explicitly for all delegated acts that are part of chapter VI on IBIPs that the delegated acts are indeed only applicable to IBIPs.</p> <p>With regard to the periodic suitability assessment/report, we believe that the draft advice is not sufficiently clear that this is a voluntary extra service to the customer, to be decided between the parties (intermediary or undertaking and the customer).</p> <p>For instance, in point 2, EIOPA states that: " 2. The insurance intermediary or insurance undertaking shall draw the customer's attention to, and shall include in the suitability statement, information on whether the recommendation is likely to require the customer to seek a periodic review of their arrangements."</p> <p>Also point 3 states "3. Where an insurance intermediary or insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the subsequent reports after the initial service is established, may only cover changes in the services or investments embedded in the insurance-based investment product and/or the circumstances of the customer and may not need to repeat all the details of the first report."</p> <p>The additional service of providing periodic suitability assessments is not to be decided unilaterally by the intermediary / undertaking as could be understood from point 3, but is something to be agreed between the parties.</p>	<p>Consultation on the draft Technical Advice on possible Delegated Acts under IDD" in the Final Report.</p>
873	Slovenian Insurance Association	Question 24	<p>Carrying out subsequent reports of suitability assessment is not mandatory, the decision about this is in discretion of the insurance company. Based on this we think that there is no need for obligation for annually periodic suitability assesment. We propose a deletion of the obligation for annually periodic suitability assesment and that paragraph 5 on page 86 of the draft tehcnical advice should be amended in such a way that it determines that when an insurance company decides to carry our periodic assessment of suitability it should give the customer information about the frequency of the periodic assessment of suitability or about the conditions that trigger the periodic assessment of suitability.</p>	<p>Noted.</p>

874	Verband der Automobilindustrie e.V. Arbeitskreis	Question 24	Not applicable.	
875	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 24	<p>24: Stimmen Sie den Grundsatzkriterien in Bezug auf die Geeignetheitserklärung und die regelmäßigen Mitteilungen an die Kunden zu? Gibt es Kriterien, die Sie weglassen würden, und wenn ja, warum?</p> <p>Der VDVM unterstützt EIOPAs Erläuterung, dass die Ermächtigung unter Art. 30 Abs. 6 IDD nicht zu einer verpflichtenden Einführung eines „demands and needs statements“ führen kann.</p> <p>Soweit mit “high level” Draft Technical Advice (DTA) S. 86 Nr. 7 und der Einleitungssatz von DTA S. 86 Nr. 8. gemeint sind („shall provide a fair and balanced review of the services provided to and transactions undertaken on behalf of that customer“), stimmt der VDVM dem zu. Die konkreten Vorschläge DTA S. 86 Nrn. 8 (a) - (l) sind dagegen problematisch.</p> <p>Zunächst ist die Frage zu stellen, warum direkt nach dem Inkrafttreten von Solvency II über eine Erweiterung des dortigen Art. 185 Absatz 5 nachgedacht wird. Mit Blick auf die bereits aktuell sehr umfangreichen Informationspflichten muss unseres Erachtens jede neu hinzukommende Information mit Blick auf einen potenziellen „information overload“ geprüft werden. Das betrifft sowohl die Kunden als auch die Unternehmens-seite. Kunden sollten nicht mit einer Vielzahl an – möglicherweise nun gedoppelten – Informationen überfordert werden. Es besteht die Gefahr, dass Wesentliches in der Masse an Informationslieferungen nicht ausreichend wahrgenommen wird.</p> <p>Die DTA S. 86 Nrn. 8 (b), (c), (d), (h), (j), (k) (also 6 von 12 Punkten) gehen potenziell über Solvency II hinaus, auch wenn teilweise eine einschränkendere Lesart möglich ist (vgl. Ausführungen zu den einzelnen Buchstaben weiter unten). Die neu hinzu-gekommenen Punkte sind augenscheinlich Fondskonzepten entnommen und damit im</p>	<p>Noted. With the proposed amendments to the list of elements in the Technical Advice, EIOPA expects in practice a clearer demarcation of reporting obligations for insurers underwriting (reporting foreseen by Article 185 Solvency II) and periodic communications following from the direct customer relationship, Article 30(5), IDD. Please see also the section titled “feedback statement to the Public Consultation on the draft Technical Advice on possible Delegated Acts under IDD” in the Final Report.</p>

		<p>Versicherungskontext nicht wirklich anwendbar (vgl. Antwort zur Frage 25). Es ist zum Beispiel in einigen Punkten nicht erkennbar, ob es um den Berichtszeitraum oder um den Zeitraum ab Vertragsbeginn geht.</p> <p>Bei den zu Solvency II vergleichbaren Punkten regt der VDVM dringend eine 1:1-Übertragung an. Alles andere würde zu großer Rechtsunsicherheit und weiteren Unklarheiten führen. Beispielsweise ist gemäß Solvency II über den Rückkaufswert und das Ausmaß, in dem er garantiert ist, während der Laufzeit nur dann zu informieren, wenn es im Fall eines Zusatzvertrages oder einer Änderung der für den Vertrag geltenden Rechtsvorschriften zu Änderungen der Werte gegenüber der Information bei Vertragsabschluss gekommen ist (Art. 185 Absatz 5 d i. V. m. Art. 185 Absatz 3 f). Die Vorgabe in DTA S. 86 Nr. 8 (e) des Entwurfs von EIOPA könnte aber so verstanden werden, dass immer über den Rückkaufswert zu informieren ist.</p> <p>Soweit über die bisherigen Vorgaben hinausgehende Informationspflichten getroffen werden, ist zudem ein Bestandsschutz erforderlich, d. h. die erweiterten, laufenden Informationspflichten betreffen nur das Neugeschäft. Für bestehende Verträge sind die Werte zum Teil nicht bzw. nur unter extrem hohem Aufwand ermittelbar.</p> <p>Zu den Buchstaben im Einzelnen:</p> <p><input type="checkbox"/> DTA S. 86 Nr. 8 (b)</p> <p>Aufgrund der Formulierung „other cost“ sind nach unserer Lesart nur optionale Kosten erfasst, die aufgrund zusätzlicher, von der Kostenkalkulation des Produktes nicht erfasster, Leistungen entstehen.</p> <p><input type="checkbox"/> DTA S. 86 Nr. 8 (c)</p> <p>Nach unserer Lesart geht es hier um eine gesonderte Informationspflicht, wenn die tatsächliche Entwicklung des Vertrages von den anfänglichen Angaben (nach unten) abweicht. Diese Informationspflicht besteht bereits, siehe Art. 185 (5) Solvency 2. Der Passus könnte entfallen.</p>	
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			<p><input type="checkbox"/> DTA S. 86 Nrn. 8 (f), (g)</p> <p>Wenn hier eine zusätzliche Informationspflicht über die Fonds-Wertentwicklung gemeint ist, so besteht auch diese bereits heute, siehe Art. 185 (3) h) i.V. m. Art 185 (5) c) Solvency 2. Der Passus könnte entfallen.</p> <p><input type="checkbox"/> DTA S. 86 Nr. 8 (h)</p> <p>Den Punkt interpretiert der Verband als jährliche Renditekennzahl. Diese Informationspflicht besteht bisher nicht. Einen Mehrwert für den Kunden kann der VDVM allerdings nicht erkennen – insofern sollte auch dieser Punkt entfallen. Eine auf den Kapitalanlageaspekt reduzierte Information zu einem Versicherungsvertrag ist grundsätzlich fraglich. Eine isolierte Ein-Jahres-Renditebetrachtung bei einem üblicherweise auf mehrere Jahrzehnte angelegten Vertrag kann den Kunden in die Irre führen.</p> <p><input type="checkbox"/> DTA S. 86 Nr. 8 (j)</p> <p>Die Informationspflicht sollte auf solche Teile des Anlagebetrages eingeschränkt werden, bei denen das Kapitalanlagerisiko vom Kunden getragen wird. Eine Einzelinformation über die Kapitalanlagen im Sicherungsvermögen würde jede laufende Informationspflicht sprengen.</p> <p><input type="checkbox"/> DTA S. 86 Nr. 8 (k)</p> <p>Die Sinnhaftigkeit eines sich jährlichen wiederholenden Hinweises über die vertraglichen Gestaltungsmöglichkeiten muss kritisch hinterfragt werden. Wenn diese Informationspflicht dennoch beibehalten werden sollte, stellt sich für uns die Frage, weshalb nicht auch über Aufstockungsmöglichkeiten des Versicherungsschutzes informiert werden soll.</p>	
876	Verbraucherzentrale Bundesverband e.V.	Question 24	Yes, we agree.	Noted.
877	Zurich	Question	Suitability Assessment	Noted.

<p>Insurance Company, CH 8045 Zurich</p>	<p>24</p>	<p>The same challenge exists in the suitability assessment portion of the draft technical advice. The technical advice must be corrected as follows:</p> <p>Suitability statement</p> <ol style="list-style-type: none"> 1. When providing advice, the insurance intermediary or insurance undertaking carrying out the distribution shall provide a statement to the customer that includes an outline of the advice given and how the recommendation provided is suitable for the customer, including how it meets the customer's investment objectives, including that person's risk tolerance; the customer's financial situation, including that person's ability to bear losses; and the customer's knowledge and experience. 2. The insurance intermediary or insurance undertaking carrying out the distribution shall draw the customer's attention to, and shall include in the suitability statement, information on whether the recommendation is likely to require the customer to seek a periodic review of their arrangements. 3. Where an insurance intermediary or insurance undertaking carrying out the distribution has informed the customer that it will carry out a periodic assessment of suitability, the subsequent reports after the initial service is established, may only cover changes in the services or investments embedded in the insurance-based investment product and/or the circumstances of the customer and may not need to repeat all the details of the first report. 4. Insurance intermediary or insurance undertaking carrying out the distribution providing a periodic suitability assessment shall review, in accordance with the best interests of their customers, the suitability of the recommendations given at least annually. 5. The frequency of this assessment shall be increased depending on the characteristics of the customer, such as the risk profile of the customer, and the insurance-based investment product recommended. 6. The insurance intermediary or insurance undertaking carrying out the distribution providing a periodic suitability assessment pursuant to paragraph 1, shall disclose all of the following: <ol style="list-style-type: none"> (a) the frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment; (b) the extent to which the information previously collected will be subject 	
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		<p>to reassessment; and</p> <p>(c) the way in which an updated recommendation will be communicated to the customer.</p> <p>Periodic communications to customers</p> <p>7. The insurance intermediary or insurance undertaking carrying out the distribution shall provide the customer with a periodic statement in a durable medium of the services provided to and transactions undertaken on behalf of that customer.</p> <p>8. The periodic statement required under paragraph 7, shall provide a fair and balanced review of the services provided to and transactions undertaken on behalf of that customer and shall include, where relevant, the following information:</p> <p>(a) Amount of the premium during the reporting period;</p> <p>(b) Other cost associated with the services provided to and transactions undertaken on behalf of the customer during the reporting period;</p> <p>(c) Any potential reduction to the contract during the reporting period;</p> <p>(d) Guaranteed return;</p> <p>(e) Surrender value;</p> <p>(f) Information on the state of bonuses;</p> <p>(g) Amount of profit participation;</p> <p>(h) Annual rate of return on the asset value;</p> <p>(i) Amount of guaranteed investment;</p> <p>(j) Value of each investment element embedded in the insurance-based investment product, global trend since subscription and significant changes affecting the investments embedded in the insurance(based investment product;</p> <p>(k) Information on surrender, transfer, and reduction practicalities;</p> <p>(l) Date of maturity.</p> <p>9. The periodic statement referred to in paragraph 7 shall be provided annually, except where the insurance intermediary or insurance undertaking provides its customers with access to an online system, which qualifies as a</p>	
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			<p>durable medium, where up-to-date information can be accessed and the insurance intermediary or the insurance undertaking has evidence that the customer has accessed the information at least once during the relevant reporting period.</p>	
878	Allianz SE	Question 25	<p>When EIOPA is reflecting insurance specificities in the policy proposals, do you agree with them?</p> <p><input type="checkbox"/> We generally welcome EIOPA's approach to reflect insurance specificities.</p>	Noted.
879	AMICE	Question 25	<p>As mentioned in our response to question 24, some of the requirements under paragraph 8 of the draft technical advice are only suitable for pure fund concepts and do not properly reflect the specificities of insurance-based investment products.</p>	Noted.
880	Association of International Life Offices	Question 25	<p>See 23</p>	
881	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 25	<p>Zu Punkt 8 a-I verweisen wir auf die vom Gesamtverband der Deutschen Versicherungswirtschaft e.V. (GDV) am 03.03.2016 veröffentlichten Empfehlungen an seine Mitgliedsunternehmen bzgl. Aufbau, Inhalt und Gestaltung von Standmitteilungen zu Lebensversicherungsverträgen.</p>	Noted.
882	Bund der Versicherten (BdV - German Association of	Question 25	<p>DTA point 7 of the periodic communications to customers (CP, p. 86) on "services provided" is not precise enough. Therefore we refer to IDD article 20 paragraph 8 (information included in the future product information document for non-life contracts): at a minimum any change of these "terms and conditions" mentioned under this article must be reported.</p>	Noted.
883	CNCIF - Chambre Nationale des	Question 25	<p>Yes.</p>	Noted.

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884	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 25	-	
885	Fachverband der Versicherungsmakler und Berater in	Question 25	The proposed (non-exhaustive) list focuses mainly on costs. Should there not be periodic information on the insurance benefits as well?	Noted.
886	Fédération Française de l'Assurance (FFA) 26 bo	Question 25	See question 24 above	
887	Federation of Finnish Financial Services	Question 25	We welcome EIOPA's efforts to take account of the specific nature of insurance-based investment products. However, point 8(d), (h) and (j) of the draft technical advice are requirements that are only suitable for pure fund concepts. They should not be applied for insurance-based investment products.	Noted.
888	Financial Services Consumer Panel	Question 25	Yes.	Noted.
889	FRENCH BANKING FEDERATION	Question 25	In point 19 on page 78, EIOPA seems to imply that a service contract is always concluded between the customer and the intermediary. It requires that the contract be formalised and presented to the client on a durable medium. However, the role of an insurance intermediary is simply to sell an insurance policy drawn up by an insurance undertaking. The intermediary does not provide the customer with a distribution service. Rather, it sells an insurance contract under the conditions governed by the relevant laws. As such, the intermediary's obligations in regard to the customer are regulatory rather than contractual in nature. We therefore deem proposal 19 to be	Noted.

			<p>inappropriate and ask that it be removed.</p> <p>Furthermore, as regards point 8 on page 86, it is important for the customer that there be no overlap of information between that provided by the insurance undertaking and that provided by the insurance intermediary.</p> <p>EIOPA should therefore clarify:</p> <ul style="list-style-type: none"> - the scope of the information to be provided to the customer by the various stakeholders (insurance undertakings and insurance intermediaries) - the provider of such information. <p>Indeed, as all customers currently benefit from annual statements containing all information relating to the contract defined by the insurance undertaking, it must be ensured that prospective regulatory changes do not make the information less comprehensible for the customer by resulting in a multiplicity of sources.</p> <p>In this regard, as the insurance undertaking already has an obligation to disclose items relating to the contract, it should be possible for it to continue to centralise information to be passed on to the customer. The intermediary, in turn, should only be required to provide the customer with information regarding the service it provides.</p>	
890	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 25	No comment	
891	German Association of Actuaries (DAV)	Question 25	We agree with the insurance specificities, but it would be important to add the “insured benefits”.	Noted.
892	German Association of Private Health Insurers (PKV	Question 25	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.

893	German Insurance Association (GDV)	Question 25	We welcome EIOPA's efforts to take account of the specific nature of insurance-based investment products. However, DTA p. 86 no. 8 (h) and (j) are requirements only suitable for pure fund concepts. They should not be applied for insurance-based investment products.	Noted.
894	Institute and Faculty of Actuaries	Question 25	For insurance cover it would be useful to include product exclusions, excesses, limitations and specific conditions.	Noted.
895	Insurance Europe	Question 25	It is positive that EIOPA has made efforts to take account of the specific nature of insurance-based investment products. However, paragraph 8(h) and (j) of the draft technical advice are requirements that are only suitable for pure fund concepts. They should not be applied for insurance-based investment products.	Noted.
896	IRSG	Question 25	Yes	Noted.
897	Italian Banking Association	Question 25	We believe necessary to require the periodic/annual statement only to the insurance undertaking which is the only entity having all the related information.	Noted.
898	MALTA INSURANCE ASSOCIATION These comments have b	Question 25	Paragraph 8(d), (h) and (j) of the draft technical advice are requirements that are only suitable for pure fund concepts. They should not be applied for insurance-based investment products.	Noted.
899	Mediterranean Insurance Brokers (Malta) Ltd.	Question 25	When EIOPA is reflecting insurance specificities in the policy proposals, do you agree with them? The proposed (non-exhaustive) list focuses mainly on costs. Should there not be periodic information on the insurance benefits as well?	Noted.
900	Slovenian Insurance	Question 25	Yes, except in a part about the obligation for annually periodic suitability assessment. Concerning periodic communications to customers (page 86 of	Noted.

	Association		the draft technical advice) we explain that paragraph 8(d (Guaranteed return)), (h (Annual rate of return on the asset value)) and (i (Value of each investment element embedded in the insurance-based investment product, global trend since subscription and significant changes affecting the investments embedded in the insurance-based investment product)) of the draft technical advice are requirements that are not suitable for insurance products.	
901	Unipol Gruppo Finanziario S.p.A.	Question 25	<p>With reference to the paragraph "Periodic communications to customers" (point 8), is requested to this Authority to provide clarification on the information requested accompanying the periodic note to the customer, which, in some cases shown below, seem not always relevant to specific insurance investment products.</p> <p>In particular:</p> <ul style="list-style-type: none"> <input type="checkbox"/> letter b): "transactions undertaken on behalf of the customer"; <input type="checkbox"/> letter f): "Information on the state of bonuses"; <input type="checkbox"/> letter j): "investment element", "significant changes" and "global trend since subscription"; <input type="checkbox"/> letter k): "Information on surrender"; <input type="checkbox"/> letter l): "Date of maturity" of insurance contracts that is a fixed date already reported in the contract and not subsequently modified. Specific information is still provided to the customers closer to the deadline in accordance with current regulations <p>We also think that it is appropriate for the periodic communications to customer should be drawn up and sent by the insurance undertakings, in line with national rules.</p>	Noted.
902	Verband der Automobilindustrie e.V. Arbeitskreis	Question 25	Not applicable.	
903	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 25	<p>25: Stimmen Sie den von EIOPA in die Vorschläge aufgenommenen Versicherungsbesonderheiten zu?</p> <p>Der Verband begrüßt die Bemühungen EIOPAs zur Berücksichtigung der</p>	Noted.

			Besonderheiten von Versicherungsanlageprodukten. Die DTA S. 86 Nrn. 8 (d), (h) und (j) sind aber Faktoren, die lediglich zu reinen Fondskonzepten passen. Sie eignen sich nicht zur Übertragung auf Versicherungsanlageprodukte.	
904	Verbraucherzentrale Bundesverband e.V.	Question 25	Yes, we agree.	Noted.
905	Allianz SE	Question 26	Should EIOPA specify further criteria with regard to the periodic communication to customers, such as the division of responsibility or more details on the online system? <input type="checkbox"/> We would not consider Level 3 Guidelines helpful at this point in time: they may further delay the urgently needed clarity on specific rules in insurance distribution which are an important precondition to successful transposition of IDD into national law and implementation in practice.	Noted.
906	AMICE	Question 26	AMICE does not consider any further guidance or specification on the criteria with regard to the periodic communication to customers for online systems to be useful. With regard to the division of responsibility, AMICE prefers a practical implementation at national level, taking into account the existing market conditions.	Noted.
907	ANASF	Question 26	Yes, further guidance with regard to online systems may be helpful: particularly, EIOPA should specify the wording of the warning that shall be provided to the customer (something like "you will not be provided with the periodic statement because you have chosen to access our online system, which qualifies as a durable medium, whereby you shall download and read up-to-date information concerning ... at least once during the relevant reporting period").	Noted.
908	Association of International Life Offices	Question 26	See 24, and existing obligations and information provided to distributors and policyholders by insurers. Online capability means all, not just currently advised, policyholders have almost instant ability to drill down to specifics on each asset including that contemplated in the draft.	Noted.
909	Assuralia	Question 26	EIOPA should not further specify criteria with regard to the periodic communication for online systems. With regard to the division of responsibility, Assuralia prefers a practical implementation at national level, taking into account the existing frameworks.	Noted.

910	BFV - Bundesarbeitsgemeinschaft zur Förderung	Question 26	Nein.	Noted.
911	BNP Paribas	Question 26	<p>The IDD Directive does not provide a basis for the proposal to require an annual communication to customers by the distributor (point 7 to 9 of the draft technical advice). It recognizes the respective roles of insurers and distributors: informing clients regarding the insurance contract is the responsibility of the insurer, while the distributor provides the information and services, e.g., advice, and verifies the adaptation/ suitability of the contract for the client.</p> <p>In France and in some other Member States there exists already a legal requirement to inform clients regarding their life insurance contracts. This obligation falls naturally on the insurer which is the holder of the relevant information. To require an equivalent information measure of distributors would represent a source of additional costs for no benefit and of confusion for the client.</p>	Noted.
912	Bund der Versicherten (BdV – German Association of	Question 26	<p>Related to criteria with regard to the periodic communication to customers we again recommend the information which following to the German law (provision on information duties of insurance contracts: VVG-InfoV – Verordnung über Informationspflichten bei Versicherungsverträgen, article 2) life insurance contracts must include:</p> <ul style="list-style-type: none"> • Amount of calculated costs included in the premium; • Total amount of entry cost (in absolute figures); • Ongoing administrative and other costs as percentage of annual premium; • With profit mechanism; • Probable development of surrender values (in absolute figures); • Promised capital guarantees and related interest rates; • Conditions for exemption from or at least reduction of payment of premiums (in absolute figures); 	Noted.

			<ul style="list-style-type: none"> • Possible choice of funds (in case of unit-linked contracts); • Relevant tax provisions; • Insured loss and risk coverage. <p>We underline that point 8b (other costs) of the DTA on periodic communications to customers (CP, p. 86) is not as precise as the first three points mentioned above following to the German law (VVG-InfoV article 2). Therefore these three points should be included in the DTA.</p>	
913	CNCIF - Chambre Nationale des Conseillers en	Question 26	<p>No.</p> <p>We consider that EIOPA does not need to specify further criteria with regard to the periodic communication to customers. Introducing additional criteria would excessively complicate the IDD requirements.</p>	Noted.
914	CSCA French broker Association, 91, rue Saint Laza	Question 26	See above	
915	Czech Insurance Association CAP	Question 26	No.	Noted.
916	European Federation of Financial Advisers and Fina	Question 26	<p>Should EIOPA specify further criteria with regard to the periodic communication to customers, such as the division of responsibility or more details on the online system?</p> <p>We agree in principal with the concept of a periodic statement of the status of the insurance based investment product for the client. The specific information</p>	Noted.

			EIOPA requires in the DTA Par. 8 is only available to the manufacturer. In a case where the insurance distributor is the manufacturer of the product we agree with the assignment of the outset duties to the distributor. However, the vast majority of insurance intermediaries are not in the position of the manufacturer and therefore have to refer the client to the periodic statements edited and communicated by the insurance companies, the manufacturers.	
917	EUROPEAN FINANCIAL PLANNING ASSOCIATION- EFPA Aisb	Question 26	-	
918	Fachverband der Versicherungsmakler und Berater in	Question 26	<p>We note that this concept of an online reporting system is taken from art 60, point 3 of the MiFID II draft delegated Regulation on reporting requirements in case of portfolio management:</p> <p>3. The periodic statement referred to in paragraph 1 shall be provided once every three months, except in the following cases: (a) where the investment firm provides its clients with access to an online system, which qualifies as a durable medium, where up-to-date valuations of the client's portfolio can be accessed and where the client can easily access the information required by Article 63(2) and the firm has evidence that the client has accessed a valuation of their portfolio at least once during the relevant quarter.</p>	Noted.
919	Fédération Française de l'Assurance (FFA) 26 bo	Question 26	No further criteria is needed	Noted.
920	Financial Services Consumer Panel	Question 26	<p>See response to Question 24 concerning any needs not met by the original recommendation. It would also be useful if the periodic communication could highlight if a more suitable product or solution has been introduced since the first recommendation was made.</p> <p>In addition, it would be helpful if the total cost paid into the policy could be</p>	Noted.

			published alongside the current surrender value, so the customer can easily identify the actual performance of the investment to date. Often only premiums paid during the last year are shown which does not provide a complete picture.	
921	FNMF, 255 rue de Vaugirard, 75015 PARIS	Question 26	No further criteria is needed	Noted.
922	FRENCH BANKING FEDERATION	Question 26	In its consultation, EIOPA should bear in mind that regulators in certain Member States have already implemented customer information procedures, simply fine-tuning them so as not to jeopardise systems already in place. EIOPA should confine its action to its mandate, and as such define the items to be disclosed to the customer. Determining what processes should be established should be left to the discretion of Member States so that they can define, adapt or develop, in consultation with professionals, the provisions already in place to meet the recommendations of European directives while limiting impacts in terms of the comprehensibility, transparency and clarity of information provided to customers.	Noted.
923	Genossenschaftsverband Bayern e.V. (GVB – Bavarian	Question 26	No comment	
924	German Association of Private Health Insurers (PKV	Question 26	Regarding this question we would like to refer to the statement filed by the German Insurance Association (GDV) that is supported by us.	Noted.
925	German Banking Industry Committee	Question 26	Everyone involved in the process (customers, distributors and manufacturers) need legal certainty regarding the distribution of insurance products as soon as possible. Level III measures should therefore be reduced to an absolute minimum.	Noted.

	(GBIC)			
926	German Insurance Association (GDV)	Question 26	All stakeholders (consumers, distributors and product providers alike) require a clear understanding in due time of what rules are to be observed in distribution of insurance products in the future. Further work on Level 3 would complicate the implementation of rules unreasonably.	Noted.
927	Institute and Faculty of Actuaries	Question 26	No.	Noted.
928	Insurance Europe	Question 26	All stakeholders (consumers, distributors and manufacturers alike) require a clear understanding as soon as possible concerning the rules that are to be observed in the distribution of insurance products in the future. Further work at Level 3 would delay and complicate the implementation of these rules.	Noted.
929	IRSG	Question 26	For regular premium policies the total cost paid into the policy is a crucial piece of information and should be published alongside the current surrender value, so the customer can easily identify the actual performance of the investment to date. Too often only premiums paid in the last year are shown which does not provide a complete picture.	Noted.
930	MALTA INSURANCE ASSOCIATION These comments have b	Question 26	There is no need for EIOPA to further specify criteria regarding the periodic communications to customers.	Noted.
931	Mediterranean Insurance Brokers (Malta) Ltd.	Question 26	Should EIOPA specify further criteria with regard to the periodic communication to customers, such as the division of responsibility or more details on the online system? We note that this concept of an online reporting system is taken from art 60, point 3 of the MiFID II draft delegated Regulation on reporting requirements in case of portfolio management:	Noted.

			<p>3. The periodic statement referred to in paragraph 1 shall be provided once every three months, except in the following cases: (a) where the investment firm provides its clients with access to an online system, which qualifies as a durable medium, where up-to-date valuations of the client's portfolio can be accessed and where the client can easily access the information required by Article 63(2) and the firm has evidence that the client has accessed a valuation of their portfolio at least once during the relevant quarter.</p> <p>This should be further clarified for intermediaries to comment on whether there should be further criteria for periodic communication.</p>	
932	Slovenian Insurance Association	Question 26	<p>Concerning division of responsibility we think that requirement, that the use of online system to ensure up-to-date information to the customer is qualified as a durable medium only when insurance company has evidence that customer has accessed the information at least once during the relevant reporting period, is pointless. Customers can also throw away durable paper medium without a look into it. And a question is why the passivity of the customer would influence on ensuring up-to-date information to the customer by online system.</p>	Noted.
933	Verband der Automobilindustrie e.V. Arbeitskreis	Question 26	Not applicable.	
934	Verband Deutscher Versicherungsmakler e. V. (VDVM)	Question 26	<p>26: Sollte EIOPA weitere Kriterien im Hinblick auf die regelmäßigen Mitteilungen an die Kunden festlegen, wie beispielsweise die Aufteilung von Verantwortlichkeiten oder ausführlichere Angaben zu dem Online-System?</p> <p>Alle Beteiligten (Verbraucher, Vertrieb und Anbieter) benötigen zeitnah und abschließend Klarheit darüber, welche Regeln im Versicherungsvertrieb künftig zu beachten sind. Weitere Arbeiten auf Level 3 würden die Umsetzung unzumutbar erschweren.</p>	Noted.
935	Verbraucherzentrale	Question 26	<p>Yes, there is need for information about the actual premium and the totalised premium paid by the consumer until now. These information are necessary to</p>	Noted.

	Bundesverband e.V.		make informed decision: surrender, exemption from payment or continuation of the contract.	
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