

<b>Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive</b>		<b>Deadline 3 October 2016 18:00 CET</b>
Name of Company:	Italian Banking Association	
Disclosure of comments:	<p>EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.</p> <p>Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.</p>	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ <u>Do <b>not</b> change the numbering</u> in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool</li> <li>⇒ Leave the last column <u>empty</u>.</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.</li> </ul> <p><b>Please send the completed template, in <u>Word Format</u>, to <a href="mailto:CP-16-006@eiopa.europa.eu">CP-16-006@eiopa.europa.eu</a>.</b></p> <p><b>Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the questions refers to the Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive</p>		
Reference	Comment	
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, <b>where there is no fundamental difference in the wording of the provisions in the IDD and corresponding provisions in MiFID II.</b> Actually the approach adopted by the consultation paper</p>	

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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:

- 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”*;
- 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 updated, as provided for by MiFID II delegated acts.

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:

- make unclear the way distributors shall implement in their selling procedures insurance based investment products;

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	<ul style="list-style-type: none"> <li>are inconsistent with PRIIPs Regulation under which insurance based investment products need the same precontractual document (the Key Information Document) provided for financial investment products due to the recognition by EU legislation that these products are able to satisfy very similar needs and consequently need to be comparable; are likely to raise confusion in retail investors who could be affected by such different selling rules in properly understanding the many alternatives offered by the products available on the markets.</li> </ul>	
Question 1		
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"> <li>the many conduct rules of distributors (suitability/appropriateness assessment and demands and needs test);</li> <li>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.</li> </ul> <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</p>	

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share in advance the information that the parties deem necessary to exchange for the purpose of their respective product governance obligations.

The approach regulated by MiFID II Delegated Acts:

- 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.

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.

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:

- paragraph 9, to admit that insurance manufacturers use the data provided by distributors, thus giving value to the activity of accompaniment of distributors towards manufacturers;
- 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.

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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>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.</p>	
Question 4		
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 (<i>manufacturer</i>) for the following reasons:</p> <ul style="list-style-type: none"> <li>- first of all, the Article 25 of the IDD refers to "<i>Intermediaries which manufacture insurance product</i>": 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;</li> </ul>	

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	<ul style="list-style-type: none"> <li>- 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 <i>"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"</i>, which may be difficult to apply;</li>   <li>- in addition the IDD, Article 25, specifies that <i>"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"</i> 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;</li>   <li>- 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;</li>   <li>- 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.</li> </ul>	
Question 6		
Question 7		
Question 8		
Question 9		
Question 10		
Question 11	It is important to underline that according to IDD provisions on inducements, which	

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	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.	
Question 12		
Question 13		
Question 14		
	<p>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 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>	
Question 15		
Question 16		

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Question 17		
Question 18	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.	
Question 19		
Question 20		
Question 21		
Question 22		
Question 23		
Question 24		
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.	
Question 26		