

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

Name of Company:	Association of International Life Offices	
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"> ⇒ <u>Do not change the numbering</u> in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ 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>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-16-006@eiopa.europa.eu.</p> <p>Our IT tool does not allow processing of any other formats.</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	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.	
Question 1	Impossible for AILO to quantify on behalf of members.	
Question 2	We consider that the proposals should address the issues of legacy business written	

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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.

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 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.

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.

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.

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The insurer may sell its contracts under a particular tax treatment. Provided it has adequately disclosed the tax treatment before conclusion of the contract, i.e. the rules in force as at the date of the contract and in accordance with its duty as set out 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.

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.

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.

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 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.

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Question 3	No	
Question 4	AILO is not able to quantify.	
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.	
Question 6	See Qu 5	
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.	
Question 8	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. What is the intention in respect of closed books of business?	
Question 9	We have concern that the draft Technical advice uses undefined expressions. Firstly in 1, “ <i>potential</i> to influence the <i>outcome</i> of the services to the <i>detriment</i> of the customer. Use of “potential” suggests this could enable future retrospective interpretation and use of hindsight 20/20 vision. We also believe that the wording should align with Article29.2 (a) IDD and refer to “quality” rather than “outcome” of the service. 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	

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	<p>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 <i>and prevent</i> 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>	
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>	
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> <ul style="list-style-type: none"> • 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: • Para 4.a – We believe this needs amendment to refer to other products or services available to the particular distributor • 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 	

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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.

- 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.
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
- 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 policy.
- 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

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	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.	
Question 12	Volume incentives to distributor employees.	
Question 13	Offers of free gifts especially to <i>more</i> 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.	
Question 14	Consumer complaints should be monitored during inducement /incentive drives to get early warning of any abuse.	
Question 15	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. 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. 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	

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	<p>rearrangement of the 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? 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? 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>	
Question 16	See 17 below	
Question 17	As already mentioned detailed KYC which will include information on affordability and long term objectives and life insurance needs.	
Question 18	No	
Question 19	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.	

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We would however offer the following observations on the Analysis and draft advice:

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).

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?

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 examples infer a choice of assets.

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.

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

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	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.	
Question 20	No	
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.	
Question 22	It is assumed that item 16 (a) only applies to changes to chosen assets that the distributor has been a party to?	
Question 23	Our comments are made from an insurance perspective.	
Question 24	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.	
Question 25	See 23	
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.	