	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:	**ANASF**	
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	Please follow the following instructions for filling in the template: ⇨ Do **not** change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-16-006@eiopa.europa.eu.** **Our IT tool does not allow processing of any other formats.** The numbering of the questions refers to the Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive	
Reference	**Comment**	
General Comment		
Question 1		
Question 2	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".	
Question 3	Yes, there are two additional arrangements: 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 MiFID II provisions. 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).	
Question 4		
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.	
Question 6		
Question 7	Yes, we do.	
Question 8	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.	
Question 9	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. For the rest, the Draft Technical Advice achieves an effective level playing field with MiFID II.	
Question 10		
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 inconsticency 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).	
Question 12	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. 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: - 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: "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.* - example b) is important for the sake of investor protection; - 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 …).	
Question 13	-	
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 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).	
Question 15	Yes, we do.	
Question 16	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: 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; 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; iii) customer's preferences between a lump sum or an annuity to be paid according to contractual clauses and options.	
Question 17		
Question 18		
Question 19	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 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.	
Question 20		
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).	
Question 22	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. 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):	

	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: […] c) in the format as defined by Article 2(1)(18) of Directive 2016/97/EU. *The format as defined by Article 2(1)(18) of Directive 2016/97/EU shall also be used when record-keeeping requirements are referred to persons acting on behalf of an insurance intermediary or insurance undertaking.*	
Question 23		
Question 24	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 to portfolio management solutions, the same frequency of reporting should be required (i.e., quarterly reporting) to foster product comparability. Concerning suitability statement, we propose the following amendment, to ensure complete alignment with MiFID II (Article 54, par. 12, Draft Commission Delegated Directive): "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 […]."	
Question 25		
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"*.	

Template comments