	Comments Template on Consultation Paper on the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved	**Deadline 28 April 2017 18:00 CET**
Name of Company:	**ANASF – Associazione Nazionale Consulenti Finanziari**	
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Reference	**Comment**	
General Comments		

Comments Template on Consultation Paper on the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved		Deadline 28 April 2017 18:00 CET
Question 1	For the sake of investor protection, we believe that *for all types of IBIP*s at least the assessment of appropriateness shall be required (i.e., execution-only sales shall not be admitted). This approach is adhered to by the Italian regulator as the assessment of appropriateness or suitability is always required for financial products issued by insurance companies: cf. Article 87 of Consob Regulation no. 16190/2007, which excludes the application of the provisions on execution-only (Articles 43 and 44) to this category of products, thereby providing for an enhanced standard of investor protection.	
Question 2	As we explain in our answer to Q1, execution-only sales of IBIPs shall not be admitted for the sake of investor protection.	
Question 3	As we explain in our answer to Q1, execution-only sales of IBIPs shall not be admitted for the sake of investor protection.	
Question 4	As outlined in our answer to Q1, execution-only sales of IBIPs shall not be admitted and this approach is already adhered to by the Italian regulator. In the event that other Member States choose to exercise the derogation under Article 30(3) of the IDD, and thereby allow for the execution-only sale of IBIPs, we believe that the following "product-based" principle shall be generally valid: the identification of complex and non-complex IBIPs shall not be merely based on the types of underlying financial instruments; rather, it shall be based on the content of the product. Indeed, all the features of the insurance product (and their interaction) result in the complex or non-complex nature of the product itself: that is to say, the idea of considering only the underlying financial instruments is not enough, especially from the point of view of a thorough customer protection.	
Question 5	As outlined in our answer to Q1, execution-only sales of IBIPs shall not be admitted and this approach is already adhered to by the Italian regulator. In the event that other Member States choose to exercise the derogation under Article 30(3) of the IDD,	

	we restate the "product-based" principle mentioned in our answer to Q4: the identification of complex and non-complex IBIPs shall be based on the content of the product. That is to say, all the features of the insurance product (and their interaction, let's consider the effects of financial engineering) result in the complex or non-complex nature of the product itself. We also propose to amend Guideline 2 in light of the statements exposed in the Consultation Paper (p. 23, 2.20 and 2.21): "guarantee" is a term that creates certain customer expectations (in particular, customers may assume there are no conditions attached to it) and the nature of the guarantee needs to be considered. We also consider that guarantees are typically product features developed to meet the customer's demands and needs (cf. p. 24, 2.20 of the Consultation Paper) and manufacturers incur costs to provide these guarantees. Accordingly, the cost of the guarantee may be reflected in the price of the product and surrender fees (specifically, these fees may decrease over time, in order to disincentive early surrender). Specifically, we propose the following amendment: *3. Where the contract contains any of the following features, the insurance undertaking or insurance intermediary should deem it as not satisfying the conditions in Article 30(3)(a) of the IDD: […]* *(e) the guarantee regarding the amount of premiums paid or the maturity or surrender value or pay out upon death are conditional or have time limitations which makes it difficult for the customer to understand the risks involved.*	
Question 6		
Question 7		
Question 8	Examples 3, 8 and 10 confirm our request to amend Guideline 2 to consider the importance of the guarantee mechanism (cf. our answer to Q5). In particular, it is necessary to verify that the guarantee is actually effective, thereby complying with	

	precise standards of customer protection (specifically, a guarantee by a third party that is subject to the supervision of a competent national authority). Indeed, it is of utmost importance that the guarantee is not influenced by specific risks pertaining to the activities of the insurance undertaking which developed the IBIP distributed to the customer. Example 2 needs further explanation, particularly with regard to the definition of a surrender fee which is/is not « disproportionate to the cost to the insurance undertaking ». The definition of Example 5, being too extended, may lead to the improper qualification as "non-complex" of products which would be too difficult for the customer to understand the underlying investments: let's consider, for instance, a unit-linked product whose underlying financial instruments are equity funds which invest in the markets of different countries (encompassing both EU Member States and third countries). On the contrary, a prudential approach is needed, based on the "product-based" principle espoused in our answer to Q4. The product described in Example 6 should be deemed complex in order to completely prevent possible cases of mis-selling. We do <u>not</u> believe that Example 7 refers to a non-complex product: although the "other" product structures may not be "difficult", the way in which the surrender or maturity value reflects the performance of underlying investments makes the product difficult to understand for the "average" retail investor (let's consider, for instance, a unit-linked product whose underlying financial instruments are equity funds which invest in the markets of different countries, encompassing both EU Member States and third countries). We do <u>not</u> believe that Example 10 refers to a non-complex product: despite the guarantee, there is actually a structure which makes it difficult for the customer to understand the performance of the product, inasmuch as « the insurer also invests in	

	some derivatives ». Finally, we consider that also Example 11 should refer to a complex product: in order to avoid regulatory loopholes, all products with profit participation mechanisms should be deemed complex.	
Question 9	The Consultation Paper misses one important aspect which was conversely considered in the “Survey on the empowerment for EIOPA to develop Guidelines in Article 30(7) of the Insurance Distribution Directive”: the relationship between IBIPs and tax regulations may lead an IBIP to incorporate a structure which makes it difficult for the customer to understand the risks involved. Let’s consider, for instance, tax regulations subject to frequent changes which make it difficult, particularly in the case of long term investments, to monitor the impact of taxation on investment returns: this is the case of Italy, where tax rates for financial income have been reformed and increased twice (in 2011 and 2014) in a short time span.	