

**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:  | BNP Paribas  |        |
| Disclosure of comments:   | EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.<br><br>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. | Public |
| <p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ <u>Do not 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 Word Format, 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> |  |        |
| <b>Reference</b>  | <b>Comment</b>   |        |
| 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.   |        |
| Question 1  | It is too early for us to be able to respond to the question of costs and benefits given the numerous issues that have yet to be clarified.  |        |

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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.

**1. General observations**

- 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.
- 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 products leveraging on new technologies (digital, blockchain...) and new lifestyles and behaviours.
- Product oversight and governance arrangements must be proportionate to the nature, complexity and / or the risk inherent to each product or type of product. 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

Question 2

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have repercussions on costs for clients, among others.

**2. Role of Management**

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.

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). In addition BNP Paribas Cardif has developed its own programmes such as the Customer Centric Programme (see description below).

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.

**Examples of actions developed in a large number of countries:**

*Raising customer's awareness on insurance products*

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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").

*Collecting customer's feedback through satisfaction surveys*

BNP Paribas Cardif listens to the voice of customers by regularly conducting surveys.

It is important to underline that the profession is increasingly consumer friendly and very aware of the fact that a satisfied 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.

**3. Target Market**

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):

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.

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

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aimed at a large group of customers.  
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).

**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****

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.

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.

**5. Skill, knowledge and expertise of personnel involved in designing products**

The Insurance Distribution Directive does not provide a basis for these proposals. They are already applied under Solvency 2.

**6. Selection and monitoring of distribution channels**

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

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|   | 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.   |  |
| 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.   |  |
| Question 4  | See response to question 1  |  |
| 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>  |  |
| 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> |  |
| 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"> <li>- 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</li> </ul>  |  |

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|   | <p>case of motor insurance in France, Loi Hamon...)</p> <ul style="list-style-type: none"> <li>- Contractual obligation: for insurance products covering contractual obligations, the terms of the contract will dictate target, interest, etc</li> <li>- 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)</li> </ul>  |  |
| 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>   |  |
| 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".<br/>No other elements are necessary in our view</p>  |  |
| Question 10   | <p>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.</p>  |  |
| 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"> <li>• The duty of advice for which the distributor is held accountable, is the best</li> </ul> |  |

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|   | <p>firewall to prevent abuses</p> <ul style="list-style-type: none"> <li>• 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</li> </ul> <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>  |  |
| Question 12   |   |  |
| Question 13   |   |  |
| Question 14   |   |  |
| 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> |  |
| Question 16   |   |  |
| Question 17   | <p>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.</p> <p>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.</p>  |  |

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| Question 18   | Given the French legal framework and in certain other Member States (see answer to question 17), we do not consider that it would be necessary to have additional specifications or guidelines on this matter.   |  |
| 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.  |  |
| Question 20   |  |  |
| Question 21   |  |  |
| Question 22   | The requirements for retention of records related to the suitability test for the distributor are already effective in France where advice is mandatory.   |  |
| 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.  |  |
| 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 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> |  |
| Question 25   |  |  |
| Question 26   | 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  |  |

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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.

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.