

<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:	BVI Bundesverband Investment und Asset Management e.V.	
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 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>		
Reference	Comment	
General Comment	<p>As representatives of the German fund and asset management industry, BVI has been following the IDD negotiations from the onset for reasons of level playing field. We are convinced that equal standards for conduct of business at the point of sale are indispensable in order to achieve effective investor protection and create a fair competitive environment for all investment products marketed to retail investors. BVI therefore welcomes the opportunity to comment on EIOPA's draft suggestions for the</p>	

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3 October 2016  
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	<p>technical implementation of the Insurance Distribution Directive.</p> <p>Against this background, we fully agree with the approach described in the Commission’s mandate that alignment with the MiFID II regime should be sought in every area in which there is no fundamental difference in the wording of the provisions in the IDD and MiFID II respectively. In our view, the draft technical advice presented by EIOPA strikes the right balance between accounting for peculiarities of insurance products and distribution models on the one hand and striving for consistency with MiFID II in specific wording, or at least in the quality of regulation, on the other. We highly appreciate the efforts dedicated to this challenging exercise and would like to strongly support and encourage EIOPA to remain committed to this general approach.</p> <p>Delegated acts are, however, not foreseen for every relevant aspect of the IDD regime. As regards information about costs, for instance, the Level 1 framework does not explicitly mandate specification of further requirements at Level 2. Nonetheless, since the wording of the relevant Article 29(1)(c) and second subparagraph of IDD on cost disclosure is nearly identical with the wording of Article 24(4)(c) and second subparagraph of MiFID II, we would welcome an initiative by EIOPA to work towards further alignment in detail by appropriate Level 3 measures.</p> <p>As regards the policy proposals for IDD implementation, we would like to comment on the following selected aspects of the consultation paper:</p>	
Question 1		
Question 2	<p>While not being concerned about the level of detail, we are worried that the proposed approach to distribution strategy might hinder insurance distributors to fully account for the specific needs and individual characteristics of their clients when advising on, or selling, insurance products. In particular, we would like to challenge the interpretation that the distribution strategy shall generally not allow for distribution to customers outside the target market as defined by the manufacturers.</p> <p>We are aware that EIOPA takes a view which is slightly different from MiFID II as regards allocation of responsibilities for product governance and target market</p>	

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definition between product manufacturers and distributors. In particular, according to the consulted policy proposals, insurance distributors shall not be required (or allowed) to make their own assessment of the target market. This difference is understandable in principle given the divergences in regulation of distribution channels under MiFID II and IDD and its respective linkage to product manufacturers. Effectively, however, it means that insurance distributors will need to rely on the target market definition specified by the product manufacturer, even though the distributor is the one in contact with the individual client and able to assess the suitability of the specific product.

Specification of the target market by the manufacturer will by definition be made in abstract terms and without knowing, or being able to account for, the needs and characteristics of individual clients at the point of sale, but based on categories of clients. In these circumstances, it must be anticipated that the target market definition will not cover each and every situation in which a product might be of reasonable use for an individual. Furthermore, the regulatory aim of the target market concept is to ensure that manufacturers design products according to customers needs in order to strengthen their responsibility. This concept should, however, not limit the responsibility of the distributor in assessing whether a product fits a specific customer. Rather, the distributor should understand the target market and be able to assess individually whether a product in specific circumstances is suitable for an individual client despite the fact that the client might not be within the target market. In addition, should the distributor not be allowed to sell outside the target market, the manufacturer is deprived of the chance to adjust the target market according to distributors' experience. Therefore, it appears important that insurance distributors are granted appropriate leeway for proper performance of suitability or appropriateness tests for individual clients without being restricted by the abstract target market definition. At the very least, insurance distributors should be able to allow for sales outside the target market in their distribution strategies based on the assessment of the overall individual situation and existing investments and obligations of a customer and a positive outcome of suitability testing for a product.

We note some considerations in this respect in the analysis supplementing the draft

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	<p>technical advice (para. 52 and 53 on page 20-21). However, given the legal risks corresponding with the distribution outside the specified target market, it would be helpful if a respective clarification could be provided in the text of the technical advice itself, specifically by an addition to para. 34 on page 26.</p>	
Question 3	<p>The interrelation between target market definitions under IDD and MiFID II is not addressed in the consultation paper at hand. As regards insurance-based investment products, however, we consider it of utmost relevance that the target market criteria applicable under IDD are at least compatible with the MiFID II concept of a target market. Optimally, insurance undertakings offering e.g. unit-linked insurance contracts should be able to rely on the target market description provided under MiFID II rules in order to determine whether a fund complies with the target market defined at the level of the insurance product.</p> <p>Therefore, while appreciating that the draft technical advice is confined to general principles concerning target market identification, we would like to encourage EIOPA to work towards consistency in language with the relevant MiFID II and PRIIPs provisions. In particular, the criterion of "literacy" of the target market foreseen in para. 9 on page 22 should be replaced with "knowledge and experience" relevant under MiFID II. Similarly, the "degree of financial capability" could be reworded in "ability to bear losses" which applies to the description of the target investor according to PRIIPs.</p> <p>In this context, it should be noted that ESMA is currently working on a set of criteria relevant to the target market specification under MiFID II which shall be communicated by way of Level 3 guidelines. A public consultation on ESMA's approach to this topic is expected to be launched in the coming weeks. We believe it important for EIOPA to closely monitor these developments and to liaise with ESMA in order to develop a common understanding of regulatory principles underlying the target market definition under both EU frameworks.</p>	
Question 4		
Question 5		
Question 6		

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Question 7		
Question 8		
Question 9		
Question 10		
Question 11		
Question 12		
Question 13		
Question 14	EIOPA did not include specific rules on the disclosure of inducements to clients, while this has been done under MiFID II. However, receipt of inducements in relation to a distribution service has been recognised by EIOPA as a potential source of conflicts of interest. Therefore, it could potentially be derived from the provisions governing conflict of interest disclosure in Article 28(2) IDD that insurance intermediaries and insurance undertakings are under the obligation to specifically inform clients about inducements.	
Question 15		
Question 16		
Question 17		
Question 18		
Question 19	We think that the relation between the scope of non-complex products under MiFID II and the non-complexity test provided in the draft technical advice should be made more clear: According to Article 30(3)(a)(i) of IDD, insurance contracts which only provide investment exposure to financial instruments deemed non-complex under MiFID II and do not incorporate a structure which makes it difficult to understand the risk involved shall be deemed non-complex without further testing. This privileged treatment applies not only to financial instruments which are explicitly classified as non-complex in Article 25(4)(a) of MiFID II, but also to instruments which pass the non-complexity test provided for in Article 57 of Delegated Regulation to MiFID II. Consequently, any insurance product which offers investment exposure to any non-complex financial instrument shall itself be deemed non-complex provided that it complies with the second criterion foreseen in Article 30(3)(a)(i) of IDD.	

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	<p>This understanding of the underlying Level 1 provision is insufficiently reflected in the draft technical advice which speaks only about "investments embedded that are not explicitly specified in Article 25(4)(a) [as being non-complex]". This wording seems not to include underlying investments which pass the complexity text according to MiFID II Level 2 and therefore, does not adequately take into account the relevant IDD provision. In our view, it should be supplemented as follows:</p> <p>1. An insurance-based investment product with investments embedded that are not explicitly specified in Article 25(4)(a) of Directive 2014/65/EU or do not fulfill the requirements of Article 57 of Delegated Regulation [No. to be inserted] shall be considered as non-complex [...]</p>	
Question 20		
Question 21	<p>We think that the relation between the scope of non-complex products under MiFID II and the non-complexity test provided in the draft technical advice should be made more clear: According to Article 30(3)(a)(i) of IDD, insurance contracts which only provide investment exposure to financial instruments deemed non-complex under MiFID II and do not incorporate a structure which makes it difficult to understand the risk involved shall be deemed non-complex without further testing. This privileged treatment applies not only to financial instruments which are explicitly classified as non-complex in Article 25(4)(a) of MiFID II, but also to instruments which pass the non-complexity test provided for in Article 57 of Delegated Regulation to MiFID II. Consequently, any insurance product which offers investment exposure to any non-complex financial instrument shall itself be deemed non-complex provided that it complies with the second criterion foreseen in Article 30(3)(a)(i) of IDD.</p> <p>This understanding of the underlying Level 1 provision is insufficiently reflected in the draft technical advice which speaks only about "investments embedded that are not explicitly specified in Article 25(4)(a) [as being non-complex]". This wording seems not to include underlying investments which pass the complexity text according to MiFID II Level 2 and therefore, does not adequately take into account the relevant IDD provision. In our view, it should be supplemented as follows:</p>	

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Question 22		
Question 23		
Question 24		
Question 25		
Question 26		