	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:	**CSCA French broker Association, 91, rue Saint Lazare Paris 75009**	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. 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
	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	The Chambre Syndicale des Courtiers d'assurance (CSCA) is the sole employers' organisation representative of insurance and reinsurance broking in France. It has around 900 members representative of 22,000 employees and over 70% of the sales realised by the profession. It participates actively in the work of BIPAR and associates itself fully with research being conducted by the latter as part of the EIOPA consultation on delegated acts. Nevertheless the CSCA wishes to highlight here certain specific features of the French market and also the way broking is carried on in France. The CSCA stresses that the French market for the distribution of insurance has the following features: - an extremely open architecture that allows all forms of distribution (direct, general agents and brokers, representative agents);	

	- a dense network across the whole country; - strong competition between the different forms of distribution; - a wide variety of products; - a general duty of advice set down in writing imposed on the different categories of insurance mediation vis a vis private and corporate clients in distribution accessible to all clients; - remuneration, for most players, charged in the form of recurring commissions which guarantees, at the same time, the recurrence of advice to the insureds at a cost necessarily less than a billing in fees for each time advice is given throughout the life of the contract. As regard broking, all company sizes are catered for from very small SMEs to large accounts even though the there is a very high proportion of SMEs (88%) resulting in strong proximity to customers. It is absolutely essential that equivalent conditions of competition in the various forms of distribution are guaranteed and which are also respectful of the status of those insurance intermediaries and of the characteristics of the national market so as not to penalize any particular form of insurance distribution or impede client access to a free choice of market player. It would be particularly interesting to see how compatible the demands advanced by EIOPA are with a market consisting, for the very large majority, in small companies. It is also fundamental that the conditions for the exercise of the profession favour the customer's interests particularly when it comes to advice and support throughout the life of the contract. A factor also giving structure to the market, if put into effect, is the principle of proportionality stated in the Directive taking into account therefore the business carried on, the nature of the insurance products sold and the type of distributor. As regards POG, we will come back to this below. The approach (1) must take into account the fundamentally different forms of administrative licensing to which insurance undertakings and distributors are subject, (2) the fact that some EU member countries are characterised by non-advisory selling which means that there should not be monolithic application which does not take account the types of national requirements relating to regulated distribution professions. Furthermore, remuneration in the form of a commission should not be stigmatized out of principle since it is remuneration for the provision of a service. In addition, it should also be seen here in the context of national legislation that already provides for an imperative obligation of advice-giving. The CSCA confirms that French domestic legislation has already introduced a legal arrangement - soft law - that is particularly binding as regard the written obligations falling on the distributor (insurance intermediary) and which fully	

	justifies the charging of a commission which when revealed to the customer, whatever form it takes (proportional remuneration in the form of a commission or fee) crystallizes sufficiently the necessary counterparty to work carrying a high liability risk for the distributor and cancels any risk of conflict of interest. The CSCA would, finally, remind you that a delegated act relates solely to a non-essential act which is not a characteristic of the subjects which EIOPA has been called upon to comment. The CSCA supports the view that these acts should follow the legal regime of the Directive leaving the Member State all the latitude and flexibility to transpose the resultant provisions into their own national legislation.	
Question 1	The implementation of the demands for changing the exercising of distribution, structuring of procedures and the monitoring of products especially proposed by EIOPA will entail significant costs which will be far away from those set out in the IDD impact study from July 2012. *(You will recall that the estimate of the administrative burden carried out on the basis of the PWC study and industry statistics, adjusted by the Commission's departments, was approximately EUR 617,000,000 for the first year of application of IDD2, which translates as 0.06 % of total gross written premiums in 2009). In view of the large number of companies concerned (approximately a million), the average cost per firm would be relatively moderate (around EUR 730). Nevertheless, these costs would not be equally distributed between all firms: the burden would be greater for firms selling insurance in the form of PRIR than for those selling insurance products in general).* In fact the Commission's assertion is contradicted by the latest studies. In France, compliance with the provisions of IDD has been estimated at EUR 365m (source Sia Partners – MEDI). This assessment does not include the specific overheads of intermediary organisations (general agents, brokers) It should also be noted that these measures will have structural effects on the supply side of the market inasmuch as many players will not be able nor have the resources to comply with the new obligations. Initially there would be a consolidation phase reinforced by the constraints of compliance that would weigh on insurance undertakings and increase network management costs, which would certainly have an effect on distributor staffing. The costs of implementation of the provisions recommended by EIOPA, in their present state, would unavoidably impact significantly the French distribution system.	
Question 2	Implementation of a policy of product governance and monitoring instituted by article 25 of the directive strengthens consumer protection by requiring to adjust product offerings as much as possible to the customer's real needs. Then there are a large number of stipulations made by EIOPA that raise various substantive issues, in particular when the sale comes with advice. Indeed, the aim of the European bodies in reinforcing consumer protection was to strengthen the issuance of personalized advice. On 3 July 2012 the commissioner Michel Barnier had deplored the fact that more than 70% of insurance sold in Europe came without any relevant advice. The Directive has therefore strengthened significantly the obligations relating to advice and makes distributors and in particular intermediaries, comply with an	

approach that ensures this. Naturally this also increases liabilities accordingly.

Whereas the governance provisions, relating to sales with advice, do in fact rightly strengthen the provisions of Article 20 1 § 1 and 2, the provisions do however clash with the providing of advice which requires "customised recommendation"; This clash is even more abrupt when it comes to advice based on an objective and personalised study of the needs and interests of the customer. So, in order to avoid useless confrontation between advice given to a customer who has their own particular motivations and the appraisal of the needs of a target with clearly less personalised needs, we propose that **customised advice be deemed to rank above the technical provisions proposed by EIOPA.** We propose introducing an article 34B to read as follows:
When advice is provided prior to the conclusion of a specific contract and the distributor or intermediary provides the customer with a customised recommendation, then this shall be deemed to rank above those recommendations aimed at a target market. The distributor or the intermediary has no other obligation than to justify their recommendation.

We feel this point particularly is structuring for insurance brokers who are the customer's agents and owners of their portfolio and data, who cannot be held to certain evident requirements as to disclosure of inappropriate information at the same time as they are held, elsewhere, to the consequences of the advice given in course of service rendered to customers.

There are points to be vigilant of with respect to the obligations of reporting or exclusive selling to a target market, which the appear to transform distributor into a "counter clerk" and which are incompatible with the status of a Broker acting on behalf of their customer looking for the solutions that are most appropriate to meet their requirements.

So, if the principle of proportionality is put into the POG, there is no language there to apportion its application to brokers in the absence of any reference to the status of the distributor (especially ownership of the data and information communicated by the customer to their agent).

We consider in addition that the content of producer and distributor agreements should not be pre-empted by level 2 provisions that are formatted and not applicable uniformly to all distribution channels.

In view of this we propose to introduce an article 24B:
The checks to be carried out by the designers of products should not mean interference of such a nature as to restrict, alter or impinge on an intermediary's freedom. Intermediaries remain fully accountable to their customers for the recommendations they make and the cover proposals that result from these.

As regards the issues relating to the use of data: The EIOPA proposals oblige distributors and intermediaries to provide the product designer, on request, information relating to marketing and if necessary information relating to changes in how the product is distributed, in order to enable the designer to undertake changes in the product. This approach is

	part of an intelligent partnership relationship. It should, nevertheless, be ensured that this relationship is based on confidence and is enhanced by the sharing of knowledge between the intermediaries and the product designers. We propose adding this to article 11 of Chapter IV:: The designer may not make use of the data collected for purposes other than those for which they have been collected. The designer shall provide proof of this. In addition, there are a number of real questions that arise as to the application of POG rules as they are currently defined, when it comes to group insurance policies where membership is compulsory (a French phenomenon), compulsory insurance policies and other contracts where requirements are not laid down by the distributor nor the customer but by a third party (for example, a lessor, an insurance policy covering a loan, etc.) Finally the accumulation of POG requirements does not appear to favour innovation and reactivity of the insurance markets to changes in insurable subject matter, something which is paradoxically contrary to the objectives sought by the directive, i.e. ensuring better customer service.	
Question 3	No We think, as already pointed out, that the draft standards are already excessive, complex and costly. The standards should simplified and their obligation limited to a few specific deliverables. The projects put forward by EIOPA should demonstrably be good efficiency for money. The financial consequences of a rise in the cost of business production cannot be neutral in terms of rating and their cost to the customer.	
Question 4	We are not in a position to determine this. They will clearly be variable depending on the organisational structure used but will certainly have an impact on the French distribution scene in view of the fixed and variable costs conferred by formalism.	
Question 5	No. The insurance intermediary is not authorized to bear the responsibility for the design of a product. It can work with an insurance company, it can suggest the creation of insurance products based on its own expertise, but it is imperative that the insurance company, which has official authorization, bears full responsibility for product governance. As a reminder, European regulations clearly distinguish two types of providers which European legislature considers in extremely different ways: (1) The risk bearer: an insurance company that has specific approval from the supervisory authorities, operating under permanent supervision for risk management operations and the prudential environment related to risk management; (2) The distributor: an insurance intermediary operating without official authorization and only allowed to market and manage on behalf of Companies when expressly empowered, subject to mandatory registration and carrying on business under specific control by the authorities. The insurance intermediary or product distributor can contribute or suggest creation of an insurance product, but necessarily in consultation and under the full responsibility of the insurance company.	

	The technical standards concerned must reflect this fundamental difference. There can be no question of burdening the distributor with responsibility for the design of insurance products, even if its expertise has enabled contribution or collaboration with a risk carrier. Given that Article 25 (1) of the Directive provides that: "Insurance undertakings, as well as intermediaries which manufacture any insurance product for sale to customers, shall maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers". It therefore applies exclusively and solely to the intermediary creating (directly and independently) an insurance product. This situation has no legal character in French law. Nor does it correspond to economic market reality. It is the insurers that reference intermediaries (distributors) and not the contrary. It is therefore for the insurance providers to make the choice of intermediary insurance agencies and to point out their obligations in respect of the target market and related to product governance as defined by the manufacturer (insurance agency) in the agreements delegating subscriptions and management to insurance intermediaries. Article 9(1) of the draft Directive varies considerably from this task : "Member States shall require investment firms to comply with this Article when manufacturing financial instruments, which encompasses the creation, development, issuance and/or design of financial instruments". Such a position is questionable: It enlarges the field of application of this obligation to intermediaries insofar as it applies to actors who have not only created a product, but played a role in its fabrication, which is far from the same thing. This extension is unacceptable: -It constitutes a substantial modification to the text of the directive ; -It is substantially ill-conceived because it displaces the responsibility of the designer or producer to an actor that does not have the appropriate characteristics. - It violates public policy rules concerning administrative approvals The principle itself of defining an insurance intermediary as "a designer" is very debatable. It introduces confusion between the actor authorized to supply and produce an insurance product who must therefore assume the entire responsibility, and the intermediary, who does not have this role (absence of authorization to do so).	

	The idea of placing responsibility on the intermediary simply because he is involved in the design of a product is a misinterpretation (see § 2, p. 27 "IDD acknowledge that, in certain circumstances, insurance intermediaries can be involved in the manufacturing of insurance products"). The concept of "Key role" is very ill-defined. For the insurance intermediary to play a key role in the design is certainly possible from the point of view of intellectual property in the idea for a type of product, and from the general point of view of creativity; but it is not comprehensible as regards the respective functions of the actors and the responsibility that falls on the "designer" in the legal meaning of the term.	
Question 6	See above	
Question 7	See answer 2 above It should be specified that intermediaries are not "producers" and that such collaboration, while possible, does not oblige them as regards finalisation and responsibility for the document as regards information about the product. Care must be taken not to displace responsibility for information about the product to the intermediary, thus defining the latter's collaboration simply as a practice, excluding all obligation of result as regards the product. However, it is important that the distribution agreement linking the insurer with the distributor shall precisely detail the distributor's obligations as regards information about the product and the target market.	
Question 8	We do not support the deliberate mention of a periodic frequency of re-examination proposed for distributors, which has no meaning in itself. Certain ranges of contracts must evolve far more rapidly than others, and an imposed rhythm could lead to inappropriate administrative over-bidding. We consider that the requirements laid at the door of the distributor must themselves be reviewed, because they take no account of the status of the distributor.	
Question 9 .	It should be clearly recalled that delegated acts regarding conflicts of interest exclusively concern distribution of IBIP's (Chapter VI of Directive Articles 28, 38 and 39). Furthermore there is already too much detail and we do not consider it useful to add extra elements to define the regulatory requirements in terms of conflicts of interest. We note with some surprise the mention of the fact that payment of the distributor after ommissioning can in itself be considered to create a conflict of interest, and we observe an editorial bias (e.g. page 52 footnote) or even developments and formulations that need to be reviewed (in particular 2a on the notion of financial gain with reference to remuneration for provision of service, p 45, p50 point 7). We may add that these formulations are congtradictory to the fact that the directive mentions that member States have the possibility of preventing payment in the form of commissions which means that there is therefore no ban in principle. Furthermore the general requirement of an obligatory duty to advise on the part of the distributor on behalf of the	

	client's best interests, which exists in France, cannot be interpreted as confirmation that remuneration in the form of commission is a source of conflicts of interest. Affirming the contrary would have significant effects on the overall architecture of distribution in France. This is to say that general principles cannot be drawn up independently from the requirements of local legislation, nor can postulates be established for a list of situations that are imagined to generate conflicts of interest. It would certainly be more effective to leave member States to specify to clients the links between producers and distributors. Additionally, we should remember that Article 27 of the directive, indicating that IBIP distributors must establish administrative structures with a view to taking all reasonable measures to prevent conflicts of interest that could harm the client's interests, also indicates that these systems must be proportional to the activities concerned, the insurance products sold and the type of distributor. We can only emphasize that the standardization requirements envisaged by EIOPA appear disproportionated in relation to reality. This is illustrated by the degree of detail in 9b p. 47, to cite one among others, which seems emblematic of an inappropriate level of administration without visible operational benefit for the client.	
Question 10	The principle of proportionality mentioned above is an essential and structural element of the Directive and of the delegated acts entrusted by the Commission to EIOPA. It is also part and parcel of the mission entrusted by the Commission to take account of this fundamental principle in its projected requirements rather than to consider defining a specific concept when establishing a delegated act concerning conflicts of interests. It is the moment to stress once more that there should be no elaboration of detailed rules but rather the setting out of principles that must refer back to national characteristics to ensure greater suitability in the field. Furthermore the CSCA wishes to underline that the period for application of the delegated acts does not appear realistic. Effectively, it is proposed that they should be published in February 2017 which supposes that Parliament and the Council will have examined them, discussed them and pronounced on an agreed version between then and now. Apart from the fact that this schedule is very tight given the democratic examination expected by the bodies concerned, it would seem that the period for the players to take the results into account would be less than a year which is incompatible with the national specifics that are indispensable to meet fully the objectives sought, given the level of detail in EIOPA's requirements if they are maintained in their current state. We should remember that these modifications will take effect in a schedule that is very packed given the new rules applicable to the market (S2, PRIIPs, data protection) and other effective or announced provisions of internal law (at national level: reform of contract law, legal liability, etc.).	
Question 11	It should be borne in mind that the delegated acts relating to costs and charges, including any payment made by third parties, relate exclusively to the area of IIP distribution (Chapter VI of the Directive, articles 29, 38 and 39). To ensure an equivalent level of cover between the various distribution methods, we need to clarify what is meant by the notion of third parties in terms of the various distribution channels. This is a key point for the consistency of the distribution system and to avoid any discrepancy that could also have a knock-on effect on freedom of choice in	

	distribution to customers. Moreover, the CSCA reiterates that insurance distribution is a highly competitive industry, and where brokers have been appointed by their customers they must act in an honest, loyal and professional manner in the customer's best interests. Third party payment of all or part of the service contributes to the open architecture in France that results from the combination of the generally adopted advisory obligation and commission payments, which facilitates access to insurance in the customer's own interests. In countries that have banned commission payments, the insurance market has contracted and become less competitive, and prices have risen, boosting non-advisory selling, which goes against the grain of the Directive, which seeks to provide consumers with better protection. The CSCA must therefore inevitably object persistently to any presentation that associates commission-based remuneration for the service provided with the hypothetical notion of a detrimental impact. Note also that article 29.2 of the Directive implies that any fee, commission or monetary inducement relating to a sale by an IIP could have a negative impact on the quality of the service provided, which appears unacceptable, as here again it is remuneration paid for an advisory service that is worth paying for, and that the procedures put in place in terms of conflicts of interest by the distributors should moreover, as a matter of principle, rule out the premise of inherently harmful remuneration. Lastly, we think that it is not EIOPA's role to advertise remuneration tables, in the form of blacklists, that do not in any case factor in national specifics, and in particular the fact that the commission system constitutes the means of remuneration of the distributor's activity. It considers that only the core principles can be set out.	
Question 12		
Question 13		
Question 14	We are not looking to up the stakes at all in terms of a prudential, developed, specific and controlled national law.	
Question 15	In the case of IIP, the French regulations impose specific rules that largely meet expectations.	
Question 16	The CSCA stresses the paramount importance of simplifying matters and avoiding excessive administrative complexity.	

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Question 17	The national approach corresponds to certain EU countries that practice non-advisory selling, rather than to EIOPA's approach. This notion will not catch on in France on as the advisory duty has been generally adopted by IIP.	
Question 18	The CSCA regards EIOPA's involvement in this matter as unnecessary.	
Question 19	See answer 15 as regards both the legislation and the regulations. Also, the regulators have put in place very strict KYC requirements in terms of customers' proven financial capacity. We would stress that in practice, requests for further details of their wealth come up against the reticence of customers who deem such requests intrusive.	
Question 20		
Question 21		
Question 22	We need to remain vigilant on this point to ensure that the information collected does not conflict with national or European personal data protection and processing requirements.	
Question 23		
Question 24	The agreement between the producer and the distributor will be the reference document for the parties' rights and duties, so that the distributor has information to give the customer.	
Question 25		
Question 26	See above	