	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:	IRSG - EIOPA Insurance and Reinsurance Stakeholder Group	Ref.: IRSG-2017-06
Disclosure of comments:		Public

Reference	**Comment**	
General Comments	The IRSG welcomes EIOPA's initiative to consult on Guidelines on complex IBIP. The challenge of the exercise is that it maybe difficult to characterize a complex IBIP. These guidelines cannot be discussed in isolation without also discussing the EIOPA technical advice on the Delegated Acts which are under development by the Commission. Based on the combination of Delegated Acts currently under discussion and these draft guidelines there is a real risk that almost all traditional insurance type savings products and even new products designed specificially to meet good standards of risk and transparency could be deemed complex. This outcome must be avoided and we believe that a relatively small proportion of current sales involve complex products. In particular the current EIOPA advice on the Delegated Act text which automatically defines a product as complex if the surrender value is different from the maturity value must be changed and these guidelines should clarify that such a product is not complex unless the detail surrounding the charges, surrender value, maturity value are complex. Clearly there are people for whom the point at which the complexity of a product makes it difficult to understand is very different from others. It relates, among others, to the capacity of the person to be able to manage their finances and to their level of financial literacy. Additionally, a certain feature might be uncommon in one Member State but it can be typical and well-known to costumers in another Member State. We therefore recommend that policy option 2.3 would be more appropriate than the one	

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	proposed by EIOPA because it is advisable to establish more high-level criteria for assessing complex products. This would allow Competent Authorities within a Member State to take into account not only the characteristics of the product but also the client profile and the features that are common or uncommon in that Member State. Secondly the designer of a complex IBIP is the producer (namely an insurer or a bank or a portfolio management company). The first rule should be to prevent these producers from designing a product which has a high probability of being detrimental to the investor's interest. This should be covered by the POG rules. Then the responsibility on which we must concentrate in the scope of this consultation, is that of the distributor. These guidelines being related to the IDD, this consultation meets well the above concerns. Nevertheless one can wonder about the lack of reference to the capacities of understanding of each individual. Would it had not been more appropriate or efficient to take the problem of complexity from the point of view of the client rather than from the characteristics of the product ? Finally, a level-playing field should always be guaranteed regarding the possibility of selling products via execution-only in MiFID and IDD. It should also be highlighted that, regarding execution-only sales, and compared to MiFID, there is an additional layer of protection for consumers subject to the IDD because the « demands and needs test » always applies (this kind of « demands and needs test » does not exist in MiFID). In this regard, we would like to highlight the importance of providing advice, which contributes towards ensuring that the customer is well informed prior to taking a decision.	
Question 1	The impact assessment seems to be very complete. On the basis of the analysis carried out and of the references made to MIFID 2 and the PRIIP's regulation we can understand and approve the choices made among the policy options. However, we caution about the use of the wording « difficult to understand » which can not be	

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<tr><td></td><td>precisely defined. Additionally, the statement in which EIOPA says that most IBIPs products are complicated and difficult to understand for customers can be questioned too. Most IBIPs products sold today (e.g.traditional guaranteed insurance products) are not complex for the consumer. Also, the reasons why EIOPA should retain the ESMA Guidelines on debt instruments as a starting point are not convincing and there is a big difference between debt instruments and shares or UCITS. We are surprised that EIOPA does not seek to develop its own product complexity criteria. There could be a case for a fourth option: Policy option 2.4 : Criteria developed by EIOPA.</td><td></td></tr>
<tr><td>Question 2</td><td>Execution-only sales should continue to have a role in the distribution of IBIPs. There is no reason to prevent an investor from making his or her own choice among different financial products and investing in that choice, as long as he or she has the capacity to understand its features. The warnings provided in Art 30 (2) and (3) (c) are sufficient to allow this.</td><td></td></tr>
<tr><td>Question 3</td><td>There are certain features of insurance savings products that are not complex and should not be discriminated against.
1) Products where the surrender value and maturity value are different should not be automatically complex as is currently defined in the draft Delegated Acts. Firstly because this is not at all complex for a customer. For example customers are already very used to the concept that a train tickets may be fully flexible or may be changeable only before the specific journey date. Likewise it is a very simple concept to understand that a guarantee may apply only on the agreed maturity date and before that an early surrender will have a different (simple) value such as the value of the underlying assets. Secondly because forcing companies to have identical early surrender and maturity valuation rules goes against good risk and asset liability management and will make it more difficult for insurers to invest in long-term illiquid investments such as infrastructure.
2) Products which invest in derivatives to mitigate risk (rather than create</td><td></td></tr>
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	leverage and unpredictable outcomes) should not be defined as complex. Any product with guarantees may need to invest in derivatives which are therefore a fundamental feature of many insurance based savings products especially where those products provide risk mitigation features to customers. This does not of itself make the product complex. Again, the difficulty lies in the understanding of "a structure which makes it difficult for the customer to understand the risks involved". In any case, it is essential that a level playing field is maintained with distributors of MiFID products, by sticking as much as possible to the MiFID interpretation of complex and non-complex products.	
Question 4	In addition to the comments formulated above and concerning the reference to ESMA guidelines, it should also be noted that in the case of guaranteed products, many insurance undertakings make use of hedging derivatives (e.g. swaps) in order to ensure an adequate matching of assets cash-flows and liabilities cash-flows (asset-liability management). The IBIP product does not expose the client to these investments, because a guarantee at maturity is provided by the insurance undertaking. It should be clarified that these products, very similar to Government and corporate bonds, are not complex products.	
Question 5	See response to Q4 as the points are relevant here too. It should be advisable to establish more high-level criteria, not only depending on the contractual features, for assessing whether or not a product incorporates a structure which makes it difficult for the customer to understand the risks involved. The extensive cumulative list of criteria in Guideline 2 should not lead to a situation in which most IBIPs are classified as complex IBIPs. It should also be highlighted that, regarding execution-only sales, and compared to MiFID, there is an additional layer of protection for consumers in the IDD because the « demands and needs test » always	

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	applies (this kind of demands and needs test does not exist in MiFID). In particular text in 1.15 paragraphs (a) and (b) need to be changed to properly identify complex products.	
Question 6	These guidelines cannot be discussed in isolation without also discussing the EIOPA technical advice on the Delegated Acts which are under development by the Commission. Based on the combination of Delegated Acts currently under discussion and these draft guidelines there is a real risk that almost all traditional insurance type savings products and even new products designed specificially to meet good standards of risk and transparency could be deemed complex. This outcome must be avoided and we believe that a relatively small proportion of current sales involve complex products. In particular, the current EIOPA advice on the Delegated Act text which automatically defines a product as complex if the surrender value is different from the maturity value must be changed and these guidelines should clarify that such a product is not complex unless the detail surrounding the charges, surrender value, maturity value are complex.	
Question 7		
Question 8	A list of examples is very helpful to clarify the practical impact intended by the guidelines. We note that some examples are unrealistic and in other ways the list of illustrative examples of complex and non-complex IBIP is not comprehensive. The distribution process shows well the complexity of the legislation that will apply and is the living example of too much regulation as opposed to better regulation. On the generic example, the number 4 describes a product which is nothing but a robbery, because the management fee is rocketing to 5% from 1% when the value of	

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	the investment is going down below 500 ! (?) Example 9 should not be complex only because it invests in derivatives.The nature of the derivatives and the impact they have on the ability of an investor to understand likely outcomes should be considered before concluding. Among the non-complex products it should be added : • An example where the surrender value and maturity value are different but the product is still simple as well as one where it is complex • Existing products which are not complex should be included to avoid doubt – eg the most common IBIP sold in Spain, very demanded by conservative retail investors, where the customer does not make an investment selection and which provides a guarantee at maturity but in case of surrender the client receives the market value of the assigned Government and corporate bonds backing the liabilities (an essential feature required by Solvency II to qualify for the matching adjustment).	
Question 9	It should be made clear that the guidelines only apply to products where new sales are made and not to closed-book business	