	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:	**FRENCH BANKING FEDERATION**	
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	As general comments, the French banking industry would like to highlight that EIOPA'advice is only drafted for Member States where there is a non-mandatory advice service. Although IDD leaves the Member States free to introduce a duty to advise into their national law, EIOPA does not take such an option into account. Furthermore, some recommendations go far beyond the mandate given by IDD to the	

	Commission. In particular, regarding the definition of a negative target market which is not required by the level 1 text, or the determination of a fixed frequency for the produc review. Finally, the FBF would like to stress that EIOPA's advice should not weaken th existing national distribution scheme which already ensure a high level of consumer protection.	
Question 1		
Question 2	***Point 1 p-21*** All POG rules shall apply to any new product before it's been marketed and in case of a subtantial change of the product still offered to customers. ***Point 9 p-22*** This recommendation relies on guideline 5 point 3 from the EIOPA « Final preparatory guideline on POG arrangements by insurance undertakings and insurance distributors ». However, we don't understand how such a recommandation could apply to non-life insurance products, when it refers to « the degree of financial capability and literacy of the target market ». ***Point 10 p-22*** This recommendation is not based on IDD provisions. It is very crucial to maintain a positive approach of the target market. Therefore, this recommendation should be deleted. ***Point 15 p-23*** The terms « on-going basis » are too ambiguous. It is impossible to monitor that the product is still in line with the target market on a daily basis. Moreover, such a monitoring would be confusing for the customer and very costly. Therefore, we suggest to replace it by « on a regular basis », which appears to be more realistic.	

Point 19 p- 23

This recommendation is not based on IDD provisions which only provides for appropriate distribution channels.

It is our understanding that the professional requirements as well as the conduct of business rules provided for by IDD are sufficiaet enough to lead the manufacturer's choice of distributors.

Therefore, this recommendation should be deleted.

Point 21 p-23

The notion of a negative target market does not exist in IDD. It is clearly imported from MIFID 2 regulation.

Therefore, EIOPA should only focus on a positive definition of the target market and this recommendation should be deleted.

Points 22- 24 p-23-24

These recommendations go far beyond IDD provisions which do not require such a monitoring/control from the manufacturer on the distributor. This recommendation is based on an assumption that distributor would be under the governance of the insurer which is not the case in the French market.

Furthermore, such monitoring could even disrupt the contractual balance between the manufacturer and the distributor as it could lead to an unacceptable interference in the distribution management and strategy of the distributor.

This recommendation should be deleted.

Point 32 p-25

As no negative definition of the target market is required by IDD, the reference to « the group(s) of customers for which the product is not designed for » should be deleted. [See our comments on point 21p -23].

Point 33 p-25

By taking into consideration the "risks and costs" of the products "as well as circumstances which may cause conflict of interests at the detriment of customer", EIOPA is overruling

	article 25 (1) §5 and 6 IDD and exceeding its mandate. In addition, these information are not relevant for all insurance product especially non-life insurance products.. The information on the « circumstances which may cause a conflict of interests at the detriment of the customer » should not be included into POG requirements as it concerns the conflict of interests.	
Question 3	No.	
Question 4		
Question 5	No. These recommendations should be clarified. Indeed, all the POG requirements should not be applied by the sole insurance intermediary where he only takes part in the product manufacturing and the needs definition. It is our understanding that EIOPA is misunderstanding the usual participation of the distributor to the manufacturing of a product by providing the manufacturer with detailed information on the demands and needs of clients of which he has a better knowledge, in order for the manufacturer to design an insurance product for a said target market. This involvement which may be substantial as mentioned in recommendation 2, does not mean that a distributor is then acting as a manufacturer nor as a co-manufacturer with the insurer. The criteria laid down in recommendation 2 are not relevant enough or too vague to define the manufacturing work. Worse, they may lead to a co-manufacturer concept which may give rise to additional difficulties of defining the role and liabilities of each co-manufacturers. In addition, art 25 IDD does not provide for such co-manufacturing concept.	
Question 6	No. The principle of co-manufacturing of a product is very hard to apply and could create conflicts between manufacturers and distributors. The simple collaboration between the manufacturer and the distributor should not be treated as co-manufacturing as it is a very usual practice.	

Question 7	These recommendations only consider the Member States where the advice is not mandatory. They cannot apply in Member States (such as France) where there is a duty to advise the customer for any insurance product. Such an option to provide for a duty to advise is permitted by IDD and EIOPA must take it into consideration. Thus, by making references to suitability criteria and demands and needs test made at consumer level in these recommendations, EIOPA introducess a confusion between the definition of the target market (which is based on high level principles at product level) and the personalised recommandation given to the investor where advice is provided which is at clients level (see for example the consideration of the "financial situation of a customer"). Furthermore, the criteria should also be appropriate to non-life products. It is our understanding that the definition of the target market should be as broad as possible at product level in order not to undermine the possibilities for customers to be offered/ advised relevant/ suitable products. Moreover, if the target market is defined in a too narrow manner it may generate frequent review which we don't believe it is the intention of the European legislator when mentioning the principle of proportionality.	
Question 8	• Yes in general. However, regarding point 8 p-39, the term « promptly » should be replaced by « without undue delay », used in point 36 p-26. Finally, regarding point 4.2.4 p-40 of the consultation, some information should not be given by the manufacturer, in particular the added value of the product to the customer, or the distribution strategy. Such information can only be disclosed by the distributor. Moreover, IDD does not require the manufacturer to conclude a written agreement with the distributor on the information on the product. • Once more, EIOPA goes far beyond the mandate given to the Commission by the IDD, while determining a minimum frequency to review the products marketed.	

	Article 25.1 IDD only provides for a regular review. Therefore, in accordance with the principle of proportionality, the frequency of the product review should be determined by the manufacturer or the distributor. No specific frequency should be fixed by EIOPA .	
Question 9	No. Regarding point 9, the precision « at least annually » should be deleted. The professionnal should be free to determine the frequency of the review. EIOPA should only provide that such a review should be done « regularly » in accordance with the principle of proportionality.	
Question 10	No.	
Question 11	Article 29.4 IDD empowers the Commission to specify « the criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the customer ». The French banking industry supports the inclusion of inducements paid by third parties in the policy assessment of the service quality. However, we would like to highlight the following points : • EIOPA should not consider that inducements have systematically, in theirselves, a detrimental impact on the quality of the service to the customer. EIOPA recommendations must take into account that some Member States have introduce in their national law a duty to advise for the distribution of any insurance product, in order to make such an advise available to all customers without extra charge for this mandatory advice. In such scheme distributors are remunerated by commissions rather than by fees for a service which allows to share the cost of the advise giving any client access to it whatever its means Such a scheme is very costly for insurance undertakings and intermediaries to implement. Indeed it implies a specific training for all staff in contact with the customers, and a distribution process as close to the customers as possible… The payment of inducements contributes to finance the whole scheme as it ensures that any customer will benefit from a personalised recommendation, regardless of the distribution channel used by the customer. We are of the view that distributor should receive proper remuneration for their work and the greater quality of service to the customer to be provided in accordance with IDD and the duty of advise requirement already in force in French law.	

	In addition, even if we welcome EIOPA intention to be consistent with MiFID regulations, we would like to emphasize that unlike MIFID, IDD objective and scope is not to rule the services of insurance products but to organize the distribution of insurance products as an activity. As such, the concept of "service" has not the same importance and relevance, especially when advice is mandatorily included in the distributors obligations. Therefore, as requested by the Commission, EIOPA should better take into consideration the insurance distribution specificities in its technical advice on inducements. • EIOPA does not fully comply with the mandate given by IDD (article 29.5) which provides that : « The delegated acts referred to in paragraph 4 shall take into account: (a) the nature of the services offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions; (b) the nature of the products being offered or considered, including different types of insurance-based investment products. ». In particular, it is to clear where and how EIOPA takes into account the differences between IDD and MIFID in the terminology used in level 1 acts and the approach favored by European legislator with regards to inducements concerning insurance-based investment products (see points 9-10 of the analysis), when the technical advice leads to a *de facto* ban on inducement or else seriously jeopardizes inducement schemes in use in the French distribution of insurance market by banks. According to article 29 (3) IDD, Member States only are allowed to "*additionally prohibit or further restrict inducements.* • On the specific points : - ***Point 1*** : Regarding the definition of inducements, it should be clearly mentionned that only fees paid by or to third parties are targetted, as mentionned by EIOPA in point 4 of its analysis p-50. Therefore, the definition should be modified as follows : « *an inducement is any fee, commission or non-monetary benefit which is paid or provided in connection with the distribution of an insurance-based investment product or an ancillary service to or by any* ***third*** *party except the customer or a person on behalf the customer.* », excluding internal payment made to employees or expenses such as administrative costs paid by customers. Moreover, the term « ancillary service » which we understand aims at securing consistency	

with MiFD II should be simply removed since the concept is not relevant for insurance products and furthermore not defined in level 1 act unlike MIFID

- Point 4: It is our understanding that the mandate given to EIOPA (p.48) is not limited to giving a non –exhaustive list of five types on inducement presenting high risk but rather to provide the distributors with "conditions" or "circumstances and situations" where an inducement could, in a positive way, not give rise to non-compliance with art 29(2) of IDD as well as a methodology to ascertain the possible detrimental impact of inducement on the quality of service. In accordance with the principle of proportionality, these "conditions" and or "circumstances and situations" should be assessed in a general context of the distribution scheme and the overall value of the service to customers.
- ***Point 4 a)*** :.
- ***Point 4 c)*** : the amount of the remuneration should be freely determined by the different actors. Competition rules are sufficient to regulate the prices. Such a recommendation could ruin the innovation and reduce the offer to the customer. Therefore it should be deleted.
- ***Point 4 d)*** : We don't understand why a condition of payment such as an inducement paid upfront should be p*er se* considered as "high risk". It remunerates an advice/service rendered at the time of the subscription of the product which is usually more important at that time than during the life time of the contract and/or is consistent with the subscription of closed end (unit linked) products,
- ***Point 5***: we are concerned by the risk implied by the non-exhaustive nature of the list of inducement in offering an incentive to Member States to adopt stricter provisions disrupting the level playing field intended to be created by IDD, in particular in view of the fact that IDD is of minimum harmonization unlike MiFID
- ***Point 8*** : such a documentation is not required by IDD. In our view, this documentation should rather be part of the organisational measure provided in the POG. If it should be maintained, it should thus be modified as follows : « shall document the assessment of each **type of** inducement. » in order to be in accordance with point 20 of the analysis which refers to the inducement scheme. Moreover, EIOPA should specify the type of document

	required as well as to whom such a document should be addressed to.	
Question 12	No.	
Question 13	No.	
Question 14		
Question 15	The industry thanks EIOPA for the major work undertaken for this consultation. However, it stresses that EIOPA's approach does not take into account particular cases where Member States have opted to introduce a duty of advice for the distribution of insurance products, as expressly permitted by the directive (Articles 20.1 and 30.1). It would be desirable for such cases to be subject to special treatment insofar as the duty of advice affectively addresses many of the proposed provisions put forward within this consultation. The level 2 texts derived from this consultation should not obstruct or undermine good sales practices already in place and which already address these recommendations. While the policy proposals on the whole do not call for any particular comment, some require clarification or development. As such, the notion of "collective contracts" used in point 8 is not clear and requires clarification. Indeed, this notion is not cited anywhere in IDD, which refers solely, in recital 49, to "group insurance", a notion that clearly covers a different scenario to that to which EIOPA refers. Similarly, the directive mandates EIOPA to specify the information to be provided to customers to give them a clearer understanding of the products offered. By importing provisions derived from level 2 work conducted as part of MiFID, EIOPA goes beyond its mandate, since IDD does not impose a duty to analyse the costs and related charges of the product. EIOPA goes beyond the mandate given to the European Commission by Article 30 of the Directive, which merely requires distributors to conduct periodic assessments of a product's suitability in regard to the customer's profile. In addition, EIOPA, in this case, ignores the specificities of insurance products (unlike the point dealt with in question 16). Indeed, some contracts allow the introduction of different underlying funds, which, depending on the purpose of the contract, can be numerous, thereby virtually precluding an accurate analysis, comprehensible by the customer, of all the underlying funds in question. Such an approach may lead to a reduction in the offer available to customers, and may	

	also restrict the offer covering their goals and needs.	
Question 16	EIOPA does not address the directive's demand concerning the category of customers to be considered (Article 30 point 6 c). In pursuit of consistency with the level 2 MIFID texts, EIOPA does not seem to have truly factored in the specificities of the insurance industry. In addition, it creates confusion in the interpretation of the directive by separating advice and recommendation to the customer, bearing in mind that the directive's articles 2.15, 20.1 and 30.1 state that the provision of advice implies the provision of a personalised recommendation to the customer by the insurance undertaking or insurance intermediary. Moreover, EIOPA fails to address the case where a Member State has opted to introduce a duty of advice, mandatory before the sale of any insurance product (open option in articles 20.1 and 30.1 IDD). The proposal that an investment firm "shall not recommend" requires clarification: does the absence of recommendation mean a ban on allowing the customer to subscribe? If this is the case, EIOPA's policy proposals go too far, and do not take into account the existence of a duty of advice. They put insurance professionals at the legal risk of being accused of a refusal to sell by the consumer. Similarly, they do not match the customer experience, which closely links advice to questioning aimed at gathering information to make sense of the questioning conducted. As such, we feel that EIOPA should distinguish two cases: - the case where, for the provision of advice, the customer refuses to provide the information necessary for the insurance intermediary to issue a recommendation: the professional may in such cases leave the customer free to purchase the relevant product once it has issued a disclaimer as to the impossibility of making a recommendation and stressing that the customer acknowledges that he or she is purchasing the product in question under their sole responsibility. The insurance intermediary must ensure traceability of the delivery of this disclaimer to the customer. - the case where, following the provision of advice, the customer refuses to follow the recommendation given by the insurance professional: the insurance professional will again leave the customer free to purchase the relevant product, and the customer will make the purchase under his or her sole responsibility.	

	Lastly, proposal 9 provides that the insurance intermediary or insurance undertaking shall take reasonable steps to ensure that the information collected about the customer is reliable. As customer knowledge is already subject to many regulations imposed on insurance undertakings and insurance intermediaries, it seems important not to create new provisions further burdening existing organisations and complicating or introducing confusion on action already taken in this respect by the professionals concerned by imposing further regulations. In many cases, especially when the bank is an insurance intermediary, it is already subject to extensive know-your-customer obligations in the fight against money laundering and the financing of terrorism. Existing regulations should be taken into account. The removal of the idea that an insurance intermediary or insurance undertaking "ought to be aware" is requested so as to confine the obligations of the relevant distributors to updating information to the context of know-your-customer obligations. This recommendation should not lead the distributor to infringe the privacy of its customers through the use of information available to or brought to its attention through channels other than voluntary statements or customer information obtained lawfully in compliance with professional requirements in respect of know-your-customer obligations.	
Question 17	As customers are, under the regulations currently governing the insurance industry, already subject to numerous demands from advisors, which is not without causing some tension on their part, as well as being flooded with pre-contractual information, it is not desirable to seek additional information.	
Question 18	At this point, it would seem appropriate for EIOPA to limit its action to the mandate given to it by the Commission.	
Question 19		
Question 20		
Question 21		
Question 22		
Question 23		

Question 24	EIOPA's recommendations on the criteria to be taken into account in preparing the suitability/appropriateness assessment are based on the provisions of the directive and do not require specific comments. By contrast, EIOPA has gone beyond its mandate by imposing new obligations on insurance intermediaries in terms of information to be given to customers, namely the need for a periodic review of choices made and the fixing of a minimum frequency for such reviews (point 4 of the policy proposals). Indeed, Article 29.4 IDD does not give the European Commission a mandate to lay down the frequency of suitability/appropriateness assessments. It states solely that delegated acts shall clarify the criteria used to determine the content of such assessments. The consultation opens up the possibility of using online channels to provide periodic communications to customers. As regards the transmission of the periodic assessment, obligations imposed on providers preparing the information cannot differ, on the ground of the use of an online channel, from those imposed when the information is distributed in paper form. Such obligations must remain obligations of means, it being up to the provider to prove that it has established a process to make information relating to the contract available to the customer, or to inform the customer that such information is available on its website. Both points should be deleted.	
Question 25	In point 19 on page 78, EIOPA seems to imply that a service contract is always concluded between the customer and the intermediary. It requires that the contract be formalised and presented to the client on a durable medium. However, the role of an insurance intermediary is simply to sell an insurance policy drawn up by an insurance undertaking. The intermediary does not provide the customer with a distribution service. Rather, it sells an insurance contract under the conditions governed by the relevant laws. As such, the intermediary's obligations in regard to the customer are regulatory rather than contractual in nature. We therefore deem proposal 19 to be inappropriate and ask that it be removed. Furthermore, as regards point 8 on page 86, it is important for the customer that there be no overlap of information between that provided by the insurance undertaking and that provided by the insurance intermediary.	

	EIOPA should therefore clarify: - the scope of the information to be provided to the customer by the various stakeholders (insurance undertakings and insurance intermediaries) - the provider of such information. Indeed, as all customers currently benefit from annual statements containing all information relating to the contract defined by the insurance undertaking, it must be ensured that prospective regulatory changes do not make the information less comprehensible for the customer by resulting in a multiplicity of sources. In this regard, as the insurance undertaking already has an obligation to disclose items relating to the contract, it should be possible for it to continue to centralise information to be passed on to the customer. The intermediary, in turn, should only be required to provide the customer with information regarding the service it provides.	
Question 26	In its consultation, EIOPA should bear in mind that regulators in certain Member States have already implemented customer information procedures, simply fine-tuning them so as not to jeopardise systems already in place. EIOPA should confine its action to its mandate, and as such define the items to be disclosed to the customer. Determining what processes should be established should be left to the discretion of Member States so that they can define, adapt or develop, in consultation with professionals, the provisions already in place to meet the recommendations of European directives while limiting impacts in terms of the comprehensibility, transparency and clarity of information provided to customers.	