

**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:	<p>Fachverband der Versicherungsmakler und Berater in Versicherungsangelegenheiten (Wirtschaftskammer Österreich)</p> <p>Professional Association of Insurance Brokers and Insurance Consultants in the Austrian Federal Economic Chamber</p>	
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"> ⇒ <u>Do not change the numbering</u> in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ 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>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in <u>Word Format</u>, to CP-16-006@eiopa.europa.eu.</p> <p>Our IT tool does not allow processing of any other formats.</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>		

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Reference	Comment
General Comment	<p>The <i>Professional Association of Insurance Brokers and Insurance Consultants in the Austrian Federal Economic Chamber</i> is the Federation of <u>all</u> (about 4.000) Austrian Insurance Brokers.</p> <p>Most of the Austrian Insurance Brokers are small or micro enterprises (SME), established near to the consumer in the High Street of each and every city and village. They render personalised services to mostly local private clients and smaller businesses. They are confronted with growing competition from alternative forms of distribution. Many intermediaries are SME type enterprises servicing SME's in all sectors of the economy at regional or national level. These brokers follow increasingly their clients abroad when they export or import or set up branches or subsidiaries outside their national borders.</p> <p>The <i>Professional Association of Insurance Brokers and Insurance Consultants in the Austrian Federal Economic Chamber</i> welcomes the opportunity provided by EIOPA to comment on EIOPA consultation paper on technical advice on possible delegated acts concerning the insurance distribution directive.</p> <p>As referred to by EIOPA in its consultation paper (paragraph 3.3), the IDD seeks to establish the conditions necessary for fair competition between distributors of insurance products and to create more opportunities for cross-border business. We believe however that the excessive nature of some of the proposals will act as a deterrent to these key objectives.</p> <p>We believe that the IDD delegated acts should take the form of Directive. This would give some flexibility to the Member States to apply the level 2 rules taking into consideration their national specificities.</p> <p>We welcome the principle of proportionality that is introduced in EIOPA policy proposals. However it fails to understand how the so many detail requirements</p>

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	<p>proposed by EIOPA will be complied with small or micro enterprises intermediaries.</p> <p>For the sake of legal clarity, we believe that it should be made clearer in EIOPA proposals that bespoke insurance contracts are not covered by EIOPA policy proposals on POG.</p> <p>We believe that it is crucial that EIOPA policy proposals on POG do not lead to a loss of independence for insurance intermediaries.</p>	
Question 1	<p>The cost aspect should have been considered beforehand in a cost benefit analysis by the European Commission. Economic entities active in sectors which are regulated face a number of on-going or recurring costs as a result of such regulations.</p> <p>A distinction is often made between recurring direct and indirect regulatory costs. It is impossible to calculate the costs because these will be different for each firm. But below we describe what such direct and indirect regulatory costs are in insurance intermediation.</p> <p>Recurring direct regulatory costs Direct regulatory costs include all the fees and levies insurance intermediaries have to pay to their regulator(s)/ supervisor(s) on a regular basis (typically on annual basis) as a condition to be authorised to undertake insurance intermediation activities (There are also other costs for other supervisors and regulators for example in relation to data protection). One-off fees and levies to be paid for obtaining for the first time an authorisation to undertake insurance intermediation activities are not included in recurring direct regulatory costs as, by definition, such fees and levies are only paid once and are not recurring. In many cases the recurring fees and levies are used to fund the regulator. In some countries the funding of the regulator consists entirely of fees and levies imposed on regulated entities while, in other cases, the regulator may be funded entirely by the central government or a mix of central government contributions and fees and levies.</p>	

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Moreover, in some cases, both the insurance-intermediation firm (a legal person) and the owners and employees (i.e. the natural persons owning the intermediation firm and/or employed by the firm) are also subject to compulsory fees and levies.

Recurring indirect regulatory costs

Recurring indirect regulatory costs include all the expenses incurred by insurance intermediaries in complying with the regulations and other requirements of the relevant authorities.

Such recurring indirect regulatory costs include, among others, the costs of internal and external resources dedicated by the insurance intermediary to

- Complying with the relevant legislative and regulatory framework. This may include additional costs (in terms information provision, recording, etc.) at the point of sales (front office) and / or in the back office, and the costs of any such activities which are outsourced; part of the costs of a compliance department.
- Managing client funds in segregated accounts.
- Meeting the various regulatory reporting requirements. Again, this cost item includes the cost both in-house and outsourced activities.
- Verifying that the intermediary is compliant with the legislation, regulations and reporting requirements. Such verification costs include part of the costs of a compliance department, the costs of compliance audits by internal and/or external resources; time and resources spent on preparing visits from the regulator.
- Dealing with ad-hoc and /or regular inspection visits from the regulator and other such meetings with regulator.

Although it is difficult or impossible to calculate the exact amounts, it is clear that, considering the many changes that IDD will bring the costs for the sector (and afterwards for the consumer and the economy) will be very high. Also the costs for the governments and the supervisors will increase drastically because of the imposed (sometimes purely administrative) checks and controls.

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As we will explain within our responses to the other questions below, the proposals contained within the EIOPA proposed technical advice in respect of obligations on intermediaries that do not manufacture products will result in costs to the sector that will far outweigh any potential benefit to customers.

We would like to remind EIOPA of the Regulatory Fitness and Performance (“REFIT”) Programme, which aims to make EU law simpler and to reduce regulatory costs. The excessive weight of proposals put forward within this consultation will achieve the exact opposite and are likely to force a reduction in options for the consumer.

Question 2

In a necessarily innovative industry like insurance entrepreneurial spirit needs to be incentivised. This concentration of rules on product oversight and governance does not achieve that.

We believe that EIOPA's policy proposals based on EIOPA's policy work on preparatory Guidelines go well beyond Article 25 of the IDD and that EIOPA technical advice should not be built entirely upon it, in particular regarding the requirements for non-manufacturing insurance distributors.

Although the European Commission requests that EIOPA's technical advice, with regard to insurance distributors, should deal *"with the arrangements for selecting insurance products for distribution to customers as well as for obtaining all the relevant information on the insurance product from the manufacturer"*, it is important to recall that IDD Article 25 rightly places product governance and oversight requirements mostly on “insurance undertakings, as well as intermediaries which manufacture any insurance product” - and not on intermediaries that do not manufacture products. Non-manufacturing intermediaries are very clearly and very specifically required to obtain information and to understand that information - nothing more.

Regarding product testing (page 18, point 34), EIOPA explains that in the case of non-life insurance, the assessment could imply considering what the expected claims

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ratio and the claims payment policy is, what if it is higher or lower than expected, whether the expected claims ratio and claims payment policy suggest that the product is of benefit to customers.

In this context it is interesting to note for example that the UK FCA believes that it is not a good measure – e.g. legal expenses insurance – claims ratio does not pick up customers’ use of helplines that come as part of the product (<https://www.fca.org.uk/news/fs16-01-general-insurance-value-measures> and <https://www.fca.org.uk/static/fca/documents/feedback-statements/fs16-01.pdf>).

Regarding product monitoring (point 40, page 19), EIOPA explains that as a general principle, and, in accordance with national legal framework, the manufacturer can only make changes to the product that are consistent with the interests, objectives and characteristics of the already existing target market and these changes do not have an adverse impact on the customer to which the product has been sold already. We wonder whether this means that an insurer can never amend a policy's term to offset a loss ration of 150% for example?

Regarding documentation (point 44, page 19), for SME's this can represent an important administrative burden and a disproportionate compliance requirements.

Regarding obtaining all necessary information from the manufacturer (point 50, page20), EIOPA explains that an important prerequisite to setting up a distribution strategy is that the insurance distributor has detailed knowledge about the approval process of the manufacturer, in particular the target market of the individual insurance product, as well as about all other necessary information on the product from the manufacturer in order to fulfil its regulatory obligations towards the customer. This information helps the insurance distributor to select the insurance products the insurance distributor intends to distribute and to assess to which customers the insurance distributor may advertise and promote the individual insurance products.

We wonder what value to intermediary or customer does knowing that an insurer takes new products to a committee before they launch them, have. Does that mean

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that any insurance intermediary – wishing to operate on a whole of market basis - will have to have detailed knowledge of the product approval process of every single insurer with whom they could possible place a customer’s insurance risk?

Besides setting the obligation on intermediaries to obtain ‘all other necessary information’ on the product from the manufacturer is not workable. How is an intermediary ever going to be really sure that they have obtained it all?

Specific comments on EIOPA draft technical advice re policy proposals for insurance undertakings and insurance intermediaries which manufacture insurance products for sale to customer:

- Regarding the policy proposal on "*Objectives of the product oversight and governance arrangements*", we wonder what positive outcomes for customers these regulations will deliver that the market would not have managed without this level of intervention.
- Regarding the policy proposal on "remedial action", We wonder how this proposal will be or can be put into practice. It is not the function of a manufacturer to act as a regulator and as such the use of the word ‘remedial’ is not appropriate. The manufacturer typically has neither the information rights nor any policing power to enforce such obligation.
The title should read "*Appropriate action*" and the last line of point17 should therefore be amended to read "*the manufacturer should notify any relevant appropriate action (...)*".
- Regarding the policy proposal on "*distribution channels*", we are worried that this could be read as manufacturers having the right to oversight what a distributor does (including access to records on which insurers the intermediary is placing what business with). Placing business with a number of insurers could result in the intermediary being audited constantly.

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We wonder whether these requirements are appropriate and justified. This is an unnecessary and disproportionate intervention in contractual relationships between commercial parties.

Points 22, 23 and 24 should be deleted.

Should point 24 remain, and for reasons explained above, the last line of point 24 should be amended to read "*the manufacturer shall take appropriate action towards the distribution channel*".

Specific comments on EIOPA draft technical advice re policy proposals for insurance distributors which advise on or propose insurance products which they do not manufacture :

- Regarding the policy proposals on "Objectives of the product distribution arrangements", we do not understand the point of having this proposal included in the technical advice and later on in a Level 2 text. The objectives of POG arrangements are clearly stated in the IDD. We suggest to delete that proposal.
- Regarding the policy proposals on "*Obtaining all necessary information on the target market from the manufacturer*", we believe that this section must make specific reference back to the information requirements placed on the manufacturer in para 21. The distributor cannot be expected to source any information that the manufacturer is not obliged to produce and make available. It is essential that distributors receive complete information on the product to be sold and on the target market that the product has been designed for. In this respect EIOPA policy proposals that apply to product manufacturers- require manufacturers to provide sufficient information to distributors. We do not understand why EIOPA mirrored this obligation in its policy proposals that apply to non-manufacturing distributors. EIOPA even set a more onerous requirement: non manufacturing distributors must obtain all necessary information from manufacturers.

The value in providing information on the insurance undertaking's product approval

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process is highly questionable. That process will no doubt include a challenge mechanism, such as taking all products before a committee to demonstrate their value to customers. It is highly questionable that the distributor knowing this fact about the manufacturer's product approval process, will add any value to distributor's or their customers' understanding of how the product is suitable for their demands and needs).

This adds an extra layer of administrative burden to the process and creates confusion in terms of responsibility of the different parties in the process. How could a distributor be able to be absolutely sure that they have obtained all the necessary information?

The policy proposal (Point 32) should be deleted or redrafted as follows:

"Obtaining all necessary sufficient information on the target market from the manufacturer

The product distribution arrangements shall aim to ensure that the insurance distributor obtains all necessary sufficient information from the manufacturer on the insurance product, the product approval process, the target market in order to understand the customers for which the product is designed for, as well as the groups(s) of customers for which the product is not designed for".

The policy proposal (Point 33) deals with information on insurance products. It is redundant with point 32 and should be deleted. In any case the wording "*all necessary information*" should be deleted.

- Regarding the policy proposal on "*distribution strategy*", we wonder what if an intermediary - using his specific skills - identifies an alternative suitable market that the manufacturer had not considered or understood. Distributors should be given the possibility to sell products outside of the target market defined by the manufacturer provided they are able to justify doing so. This would leave flexibility to the distributor and insurer where the product is suitable or appropriate for the customer.

This principle was recognised by ESMA in its technical advice to the EC on MiFID 2.

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	<p>In order to ensure a consistent and coherent approach, the same principle should apply here. This possibility is referred to on page 20, point 53 of EIOPA consultation paper but is not reflected in EIOPA draft technical advice.</p> <ul style="list-style-type: none"> ▪ Regarding the policy proposal on "<i>Provision of sale information to the manufacturer</i>", this places a legal responsibility on the distributor that is not appropriate. The manufacturer is responsible for his products and not the distributor. 	
Question 3	<p>As explained in EIOPA consultation paper on page 14 point14, EIOPA policy proposals do not apply to insurance products which consists of the insurance of large risks as stated in IDD Article 25(4). However, we believe that as the market evolves, it is more and more unclear that this will exempt for example the totality of business written as bespoke negotiated contracts in the subscription market. Where it does, we would have the following concerns:</p> <ul style="list-style-type: none"> ▪ The proposals as set out by EIOPA seem to envisage a very regimented sequential process from product design; through identifying the target market; to production of documentation etc. In a negotiation, this is never going to happen. Often all of that could take place within one meeting between the intermediary and the underwriter; ▪ The process of negotiating any contract may well involve meetings including intermediary, underwriter, the client, sometime the underwriter's reinsurer. Many of the elements of the EIOPA proposals could be covered in such a meeting. For instance, identification of the target market could be achieved by pointing at the client and saying "it's him"; ▪ Each contract will be separately negotiated and form a different product in its own right. So the idea of overarching principles around the design etc will be unduly onerous especially given the very close role the client and the broker will play in the design. 	

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One of the objectives of Article 27 is to mitigate mis-selling of products due to poor product design/target, products such as non-life insurance adds-ons (mobile phone insurance linked to the sale of mobile phones, travel insurance sold together with airline tickets - see EIOPA fourth Consumer trend report). However IDD Delegated Act on POG will not apply to services or products that are explicitly exempted from the scope of the IDD (where the insurance covers the risk of breakdown, loss of or damage to the goods or non-use of the service or covers damage to or loss of baggage and other risks linked to travel booked with that provider; and where the amount of the premium for the insurance product does not exceed € 600. In circumstances where the insurance is complementary to the good or service and the duration of that service is equal to or less than three months, the amount of the premium paid per person should not exceed € 200). This is quite a wide exemption. It could exclude most of the insurance distribution activities of the travel or car rental industry. For consumers protection reasons, we strongly regret that situation.

We believe that **more clarity could be introduced on the scope** of EIOPA policy proposals on POG arrangements.
As mentioned above, it should be clearly stated that bespoke insurance contracts are excluded from the scope of the proposals.
Besides, regarding for example multi risks insurance product or for packaged products, it is not clear whether POG arrangements would have to be complied with for each of the products included in the package or only for the packaged product.

Question 4

It is worth noting that no study or impact assessment has indicated a particular need for detailed POG requirements for non-life insurance products (e.g. motor, home) or certain pure risk life insurance products.
The cost question should have been part of the level I impact assessment. The costs are potentially enormous if one considers the above mentioned legal uncertainty that is created for the entire market.

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Question 5

We agree with EIOPA (page 28/29), that given the diversity present in the distribution activities throughout the EU, the qualification of the insurance intermediary as a manufacturer should only be made based on a case by case basis for each product designed. We particularly agree that a relevant criterion is "whether the product is sold under the brand name of the insurance intermediary". We regret that this is not clearly reflected in the EIOPA draft Technical advice on the issue.

Specific comments on EIOPA draft technical advice regarding "acting as manufacturer"

Points 1 and 2 will lead to too much legal uncertainty. They are too broad and general. We also believe that it is crucial that EIOPA policy proposals are clear enough to avoid situations where an intermediary would unwillingly or unknowingly be considered as a manufacturer.

Points 1 and 2 should be deleted and building on proposed point 4, points 1, 2 and 4 could be redrafted as follows:

In principle the insurance undertaking is the manufacturer of insurance products. In situations where the insurance intermediary is de facto involved in the design and development of an insurance product, the insurance intermediary and the insurance undertaking issuing the insurance product, shall, through a necessary and proportionate collaboration, define their respective roles in a written agreement. The insurance undertaking remains fully responsible to the customer for the coverage provided.

Point 3

- We believe that the use of the wording "to individual customer" would seem to specifically and rightly rule out bespoke negotiated contracts but this could be more clearly stated for legal clarity sake.

- We believe that it would be worth adding to point 3, as an example of not

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	<p>manufacturing, examples such as intermediaries bringing together a number of existing products into a package to meet a customer's needs.</p> <p>Point 3 should be redrafted as follows: <i>-Activities which relate to the personalisation and adaptation of existing insurance products in the course of insurance distribution activities to the individual customer (bespoke negotiated contracts) shall not be considered as activities of manufacturing, in particular cases such as bringing together a number of existing products into a package to meet a customer's needs, the mere opportunity to choose between different lines of products, contractual causes and options, individual premium discounts, recommendation of asset, with regard to a product already designed by the insurance undertaking.</i></p>	
Question 6	<p>For our members, it is still unclear how a bespoke negotiated open market subscription risk that fell outside the definition of large risk would be treated. If it would had to follow the very linear process set out in EIOPA policy proposal, we believe that this will be unworkable.</p> <p>We welcome the clarification that the insurance undertaking providing the coverage remains fully responsible to the customer for the contractual obligations resulting from the insurance product.</p> <p>We would like to remind EIOPA that in practice, whenever an insurance intermediary has a proposal for a product which it puts to an insurance undertaking for consideration, the design work will (subject to any amendments agreed between the parties) have already been completed, so any written (contractual) agreement will logically cover the activities post product design.</p>	
Question 7	<p>We welcome the principle of proportionality that is introduced in EIOPA policy proposal based on previous EIOPA preparatory work that states that POG distribution arrangements shall "be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of</p>	

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the regulated entity".
However we believe that EIOPA should have gone further and differentiate between insurance business classes within its policy proposals. It is hard to see what high lever EIOPA proposed principle can add beyond a few very obvious statements.

Because of the significant differences that exist between life with investment element products (IBIPs) and non-life/ pure life products, it is pertinent in EIOPA technical advice to differentiate the activities of IBIPs manufacturers from the ones of non-life/life manufacturers. Strict product oversight and governance provisions for non-life insurance products will be burdensome with no added value for consumer protection. Most product governance rules should be limited to products which target the private consumer IBIPs market (excluding all kind of business clients).

Regarding third bullet of point 9 on page 32 on examples for IBIPS, we believe that the level of risk tolerance will be personal to an individual, it is not homogenous to a group of people with similar characteristics (such as age, occupation or socio economic group).

We would also suggest that point 4 of the draft technical guidance on granularity negates the need for the text in point 3 from: 'avoiding groups of customers/consumers...". Additionally, using the term 'avoiding' would add confusion to the intent of the requirement.

Question 8

It is important to recall that IDD Article 25 rightly places product governance and oversight requirements on "insurance undertakings, as well as intermediaries which **manufacture** any insurance product" -and not on intermediaries that do not manufacture products. Non-manufacturing intermediaries are very clearly and very specifically required to obtain information and to understand that information - nothing more.

We therefore believe that the review obligations for distributors who are not manufacturing are beyond the mandate. This being said, it is common sense that a distributor can assist an insurer or manufacturer in doing the activities as described in

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point 8 and 9 (p39). All other points – for distributors who are not manufacturing the product are useless and pure administrative burden as it is the task and responsibility of the manufacturer and/ or insurer to do that work and take sole responsibility for it. These requirements do not meet the proportionality requirement and are not in line with the Commission mandate given to EIOPA. We propose to delete most of the chapter on review obligations for distributors.

Regarding point 7 on page 37, and in particular the bullet 7 re "contacting the distributor to discuss a modification of the distribution process", we believe that the drafting used seems to give a manufacturer an implicit right to tell a distributor how to distribute the products. The language used is critical to its interpretation.

At least, some specific comments on EIOPA draft technical advice regarding review obligations for insurance undertakings and insurance intermediaries which manufacture insurance products for sale to consumers (page 38 and 39) :

- Regarding point 2, we suggest that the text is amended so that coordinating of reviews only applies where the insurer and intermediary are deemed co-manufacturers.
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- Regarding points 6, 7, 10, 11 and 12, we believe that the proposed requirements are too far-reaching and need to be deleted.
- Regarding point 9, we believe the way it is worded does not align with what EIOPA is saying in point 53 on page 21, that is to say that on exceptional basis, an intermediary is permitted to distribute the products to customer outside the target market.

Question 9

It should be very clear and mentioned explicitly for all delegated acts that are part of chapter VI on IBIPs that the delegated acts are indeed only applicable to IBIPs.

We believe that the draft advice already goes in too much detail as it stands.

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Some specific comments on EIOPA draft technical advice re the identification of conflicts of interests (page 45):

- We strongly question the wording of paragraph 2 (page 45) that states that "conflicts of interest shall at least be assumed" in four specific situations. The four situations are presented as a priori conflicts of interest, without the necessity for their existence to be proven. This goes beyond the mandate given to EIOPA by the European Commission.
- We believe that this first sentence of paragraph 1 should be deleted and that the following wording for paragraph 1 and 2 would be more appropriate (based on MiFID II Commission delegated regulation): "For the purposes of identifying the types of conflict of interest potentially detrimental to a client, insurance intermediaries and insurance undertakings shall take into account, by way of minimum criteria, whether, they are in any of the following situations:"
- Under point 2a), it is stated that a conflict of interest shall at least be assumed in situations where "the intermediary (...) is likely to make a financial gain, or avoid a financial loss at the expense of the customer".
We believe that point 2a is too broad a description: even charging the customer a fee – which the customer may/will have agreed in advance – could come under such a broad description.

We believe that it would be wrong to characterize an intermediary's remuneration as being a financial gain, as the term "gain" can suggest that the intermediary is taking advantage of the customer when in fact he is simply remunerated for the services rendered. In a market economy, any insurance intermediary, like any other economic operator, needs to be remunerated for the services provided to a client for her/his businesses to be viable. Obviously, it is in the interest of the intermediary to be remunerated for services rendered. The use of the words "financial gain" is "pejorative" as it can be interpreted as the intermediary always

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benefiting at the expense of a client when earning a commission or a fee from a third party.
The point is taken from MiFID. In the investment world this means that you may not bet against your customer. We want to stress that this does not have anything to do with the remuneration of the intermediary. The MiFID intent was to prohibit advice that (by buying or selling a stock) would gain the firm – in addition to the remuneration- an extended advantage or disadvantage in its own shares value. We would therefore ask to either delete this point, rephrase it or at least make clear that this is intended for situations where insurance-based investment products are meant in a way that there is a likelihood of the intermediary being able to “bet” against his customer.

- We note that on p 6 of the consultation paper, EIOPA states that “inducements have the potential to cause a conflict of interest between the interests of distributors and their customers”. This is repeated in slightly different wording on p 50, point 7 where the payment of inducements has been identified as a situation where a conflict of interest is likely to arise which can lead to detrimental impact if it is not managed in accordance with a stringent conflict of interest policy. In point 2.c, the draft technical advice states that conflicts of interest shall at least be assumed in situations including the following “c. the insurance intermediary, insurance undertaking or linked person receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer;”
- **We strongly question the wording of paragraph 2.c) and request it to be deleted.**
It is fundamentally inconsistent with economic theory to assume that any insurance intermediary, insurance undertaking or linked person who receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer has always a conflict of interest. Conflict of interest situations only occur potentially in cases where a customer is guided, steered or advised to buy a

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particular product by the insurance intermediary, insurance undertaking or linked person.
From a legal point of view, assuming that a conflict of interest exists in a given situation reverses the burden of proof and this is not in line with IDD level 1 that has been adopted by the European legislators.

- Under point 2d), the draft advice also assumes the involvement in the management or development of the IBIPs to be a conflict of interest. In its technical advice on IMD 1.5 , EIOPA explained that entities involved in the development or management of IBIPs should assess if their involvement gives rise to COI with customers, and if so, how to address it. We believe this should be reflected in the IDD technical advice.

At least, some specific comments on EIOPA draft technical advice re conflicts of interests policy:

- Point 4(b): It must be noted that in the practice, procedures documents are normally separate from the policy, with the policy being more high level.
- As was the case for IMD 1.5, we still believe that the list of procedures under point 5 is not necessarily suitable for IBIPs (e.g. point 5.a)
- We also note that in point 5. c. the words "payments, including" has been added, compared to the IMD 1.5 advice. For IMD 1.5 the advice stated there should not be a direct link between "*remuneration*" of relevant persons and the current IDD advice, states "*payments, including remuneration*". This would imply that so-called "inducements" would also fall under this rule.
- 9a) : Regarding the yearly review of the policy, we want to stress that this should definitely not be more than once per year since small and medium firms would struggle to do more.

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➤ 9b): In general, we fear that the prescribed separations of functions and responsibilities and recording duties will lead to practical issues when translated to the mainly SME size of intermediaries that we represent. We fail to understand how in the case of ongoing service or activity, records of situations in which a conflict of interest may arise can be provided.

Question 10

The principle of proportionality is a very important principle. As mentioned before, we believe that the IDD delegated acts should be a Directive as well. This gives some flexibility to the MS to apply the rules according to their national specificities. The proportionality principle should be an overall concept applicable to all measures. This is the approach chosen by most of the EU Member States in their policy on conflicts of interest for insurance intermediaries. At this stage, the *Professional Association of Insurance Brokers and Insurance Consultants in the Austrian Federal Economic Chamber* is not convinced about the usefulness re further specification and guidance in a separate policy instrument.

In order to ensure the the required proportionality we propose to postpone the application date of some of the planned level 2 rules.
We are fully supportive of the IDD objectives of consumer protection, more open markets and level playing field. We acknowledge the challenges faced by EIOPA but also by the European Commission in defining the details of the 4 Delegated Acts, notably in light of the variety of market players the IDD covers. However, we are extremely concerned that, in the best case scenario, the final Delegated Acts will only be officially published in the first half of 2017, leaving only more or less half a year for distributors and intermediaries (but also regulators and supervisors) to meet the deadline. This timeline is simply unrealistic considering the structural changes it will trigger. Using the format of a Regulation rather than a Directive for level 2 (in order to shorten the implementation timetable) would not solve the problem- on the contrary it would make it worse since this would not allow for the necessary national fine-tuning to reflect national markets' specificities.

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We cannot stress enough the considerable operational challenges which need to be overcome by the sector in order to comply with the new rules which will be imposed by the 4 Delegated Acts. In particular, considering the level of detail in the draft advice that is currently under consultation. More specifically, the changes will require the development of all necessary processes to ensure that the IT and other systems and procedures are accurate. These changes come at the same time as a whole series of other effects caused by new rules (PRIIPs KID, Solvency II, Mortgage Credit Directive, Data Protection Regulation to name but a few).

We would also like to point to the fact that MiFID firms had 5 years to adapt gradually to a system whereas IBIP providers and distributors will have only (more or less) 6 months. It is also worrying that a number of highly complex and structural matters feature in the draft advice on the Delegated Acts but have never been subject of a democratic discussion nor impact assessment (or consultation) under level I (black list, commission as a priori conflict of interest, definition of manufacturer, ... this are issues which we believe should not be introduced by a level 2 text but should have been dealt with at level 1 or be left to the Member States).

We take this as an opportunity to point out that the development of the level 2 delegated acts illustrates again the shortcomings of the IDD as a text. The Single Market integration as an objective of IDD is completely ignored. Instead of using level 2 or level 3 measures to clarify the triggering elements of a cross border activity which will encourage cross border activity by creating legal certainty, the regulator seems to opt to develop and work out micro-management style of technically detailed rules many of which are superfluous or even contradictory for the objectives defined. We believe that in economic difficult times European legislation should encourage export and new initiatives by smaller local entrepreneurs rather than imposing administrative burden upon local SME players who create local employment.

Question 11

It should be very clear and mentioned explicitly for all delegated acts that are part of chapter VI on IBIPs that the delegated acts are indeed only applicable to IBIPs.

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The *Professional Association of Insurance Brokers and Insurance Consultants in the Austrian Federal Economic Chamber* is in principle not in agreement that in a highly competitive market, remuneration is supervised and regulated at such a level of detail. Under the IDD, insurance distributors have the duty to act honestly, fairly and professionally in accordance with the best interests of their customers (art 17) and the intermediary will take this into account before accepting any benefit. The fact that an intermediary receives fees, commissions, benefits from third parties may mean that an intermediary is able to charge less for the service that they provide to that customer. This is of significant benefit in that it makes insurance markets accessible to as wide a cross section of the public as possible.

We are of the opinion that every intermediary has the right to be fairly remunerated for his or her services. This is also to the benefit of the consumer. A pure fee-based market, for example, would exclude many people from access to any level of advice or assistance in their search for an appropriate insurance product, as has been the practical experience in Member States that have prohibited commission payment approaches. The prohibition of payment and remuneration by insurers would be an obstacle to free market principles of fair remuneration for services rendered. Indeed, it would become impossible for intermediaries to require insurers to pay intermediaries for the work they do on their behalf (and which is work that is done also in the interest of the customer).

It is interesting to note that the Investment Management Association (IMA)'s 11th annual Asset Management Survey which was published in August 2013 outlined a number of pitfalls since the RDR was implemented in the UK:

- Less access to advice: Many consumers could be priced out of receiving advice.
- Multiple share classes: The creation of multiple share classes to accommodate different charging structures could emerge as an issue. Large fund distributors have tried to provide 'super clean' share price deals with fund groups, to sell funds at a discounted rate compared to competitors.
- 'Dumbed down' funds: RDR could lead to too many "plain vanilla" outcome

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orientated products, which do not generate significant levels of alpha, and further cause excessive conservatism, due to investors having insufficient experience in taking calculated risks.

- Advice gap: The survey expressed concerns that an 'advice gap' will result due to changing charging structures, creating greater numbers of unadvised, low-to-middle net-worth retail investors. Unadvised investors might favour execution-only platforms or go direct as a consequence of the new pricing structures. The concern is not unfounded, seeing as several providers of advice have culled their financial adviser workforces, including HSBC, RBS and Barclays.
- Consolidation: Finally, one of the unintended consequences of RDR could be a more polarised fund management industry.

The report indicated that a lot of consumers will most likely exit the market for financial advice entirely, based on the discrepancy between willingness to pay and cost of advice: 91% of UK consumers will not pay more than £25 for an hour of financial advice (survey conducted by Rostrum Research in 2012).

It cannot be stressed enough that consumers and SMEs are much less likely to shop around for the insurance or investment product which best meets their needs in a fee-only based environment as they will have to pay a fee each time they interact with an intermediary – whether or not they decide to follow the advice or buy the product.

The remuneration of intermediaries being in principle commission-based with the possibility to agree fees has been and continues to be a major contributing factor in the successful development of insurance markets all over the world. Any other situation would ignore the fact that the insurance intermediary typically renders services to both sides of the contract, the customer and the insurance company: as with any commercial relationship both kinds of services have to be remunerated by the beneficiary. It would also deprive consumers of the choice between business models.

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It is always in the best interest of consumers to be provided with adequate information so that they can make an informed decision. This is the "raison d'être" of insurance intermediaries. This goes to the very heart of the intermediaries' role.

Insurance intermediaries are mostly SME-style operations, employing many thousands of people locally. It is important to ensure that any future European policy on conflict of interests for intermediaries mediating IBIPs does not have any unintended side effects, does not result in less choice for consumers and does not jeopardize intermediaries' activities and business models.

In the IDD, the EU legislators made the unambiguous democratic choice to leave freedom of models for remuneration and not to introduce any bans on any forms of remuneration. The concept of independent advice and a linked ban on commission for IBIPs was rejected.

Member States have been given the possibility to go beyond in art 29.3: "3. *Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may additionally prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice (...)*"

This illustrates that the decision to judge on these remuneration matters lies with the Member States and level 2 rules should not directly or indirectly circumvent this democratic decision.

Also, one has to look at the overall services that intermediaries offer. Indeed, the quality of an intermediary's services is intrinsically linked with the quality of a specific service provided to a particular customer. In fact, without a high overall level of quality, it is not possible to provide a high quality individual service.

A comprehensive, proportional approach has to be taken by EIOPA in its advice. The total effects of the compensation provided should be assessed in a comprehensive manner.

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Specific comments on EIOPA draft technical advice re inducement :

- Regarding the definition of "inducement and inducement scheme", we do not believe it is up to level 2 of a Directive to provide such definitions. Moreover, contrary to the definition of "inducement", the definition of "inducement scheme" fails to indicate that it is limited to IBIPs. As mentioned above, it should not be forgotten that for many intermediaries, commissions are THE remuneration that they receive for their professional activities. Defining the remuneration that they receive for their professional activities by the (pejorative) terminology of "inducements" and connecting strict rules to the reception of these, is a far-going interference in their professional activity.

- Regarding "Detrimental impact", we welcome the high level principle introduced in point 3. However it proposes to slightly redraft point 3 as follows in order to avoid introducing factual statements or a non-necessary assumption:
*3. ~~Detrimental impact occurs~~ **may occur** when an inducement or structure of an inducement schemes (...)"..*

As indicated by EIOPA in point 16, p 52, we wish to stress the importance of an «overall assessment». We believe the assessment of detrimental impact always has to be made on a case by case basis. There is need for proportionality and we believe one has to look at the specific situation.

We would also like to point out that apart from looking at whether benefits / remuneration are having a detrimental impact, one should keep in mind that benefits / remuneration should not be so low as to drive intermediaries out of the market, to the detriment of consumers. These issues also should not only be looked at from a supervisory perspective but also from a liability perspective. How will a court in future read and interpret such lists?

We suggest to slightly amend the first sentence of paragraph 4 as follows:
*"The following types of inducements are considered to have a **high** risk of leading*

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to a detrimental impact on the quality of the relevant service to the customer”:

- Regarding the examples under point 4 of the draft technical advice, we have the following remarks:
 - a) It will have to be made very clear that the judgment of whether a “different product or service exists which would better meet the customer’s needs” has to be made at the moment of the provision of the service by the intermediary (or distributor) and that this is not judged a posteriori.
Also the question has to be raised what if the consumer demands a specific other product?
 - b) We can agree with the principle that this may be a point of attention (but there should be room for explanation) but then also the remuneration of personnel of direct writers should be looked at (which EIOPA has however excluded from its advice), and what with Internet / Social media players where different remuneration systems exist?
 - c) The description of the type of « inducement » under c) is too vague and subjective and should be deleted.
 - d) Type of « inducement » under d). In its current wording, this would cover too many cases where there is no detrimental impact at all and it would lead to a de facto ban on commission. This would be against IDD Level 1 that has been adopted by the EU legislators.
The wording should be changed so it is clear that multi-annual contracts are intended.
 - e) Type of « inducement » under e) – we believe that e) has to be redrafted as the unclear wording could lead to legal uncertainty.
 - f) There should also be no white list or practices that “may be considered to

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	<p>reduce the risk that inducements have a detrimental impact on the quality of the service to the customer" as mentioned in point 17, since there is no legal basis for such a form of "white list" in the level 1 Directive.</p> <p>In this respect, we also do not support point 9 of the "organisational requirements" on p 55, which stipulates "intermediaries and insurance undertakings should set up a gifts and benefits policy that stipulates what benefits are acceptable and what should happen where limits are breached".</p> <p>Re. the "organisational requirements" (p 55), point 7 (7. Insurance undertakings and insurance intermediaries as referred to in paragraph 6 shall ensure that any inducement scheme is approved by the insurance undertaking or insurance intermediary's senior management) does not fit the situation of general agents as they exist in France. The draft wording jeopardises the independence of agents and, by referring to "approval", seems to imply a hierarchical link between an insurance company and an agent.</p>	
Question 12	See above	
Question 13	As explained under Q 11, most commissions are paid upfront. Unless the example is rephrased, this leads to a de facto ban on commission. This would be against IDD Level 1 that has been adopted by the EU legislators.	
Question 14	No, we believe it is much too early in the process to start discussing monitoring or taking any further organizational measures or procedural arrangements.	
Question 15	<p>It should be clearly mentioned that the Delegated Acts based on IDD articles 27, 28, 29 and 30 (chapter VI) only apply to IBIPs.</p> <p>We believe that Article 30 is clear as it already lists the criteria that need to be considered and we believe that the demands and needs test in the general part of the Directive, which has been very efficient so far, should be used as a basis (but there should not be a cumul of both tests).</p> <p>Specific comments on EIOPA draft technical advice regarding the assessment of suitability :</p>	

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	<ul style="list-style-type: none"> ▪ We stress the need of a level playing field between distributors for these requirements and support in this respect the reference in point 5 (p 64) for (semi-) automated systems to follow the same rules regarding the suitability assessment. We believe that also in the part of requirements for the appropriateness assessment, for non-advised sales, this level playing field should be explicitly reflected. ▪ Regarding point 7 of the suitability assessment, we wonder if this is not too much copy paste of MiFID. Point 7 looks at the investment objectives from a strictly investment angle. It should be remembered that the purpose for taking out an IBIP is not solely the investment element (otherwise an investment-only product would be purchased) but that some form of insurance cover is required. This suggests that the insurance element may actually be more dominant in the customer's thinking when making the decision to seek out an IBIP. The name/reputation of the insurance undertaking for meeting claims under the insurance/assurance element of the product e.g. is therefore equally as important as the investment performance of the contracts available. ▪ Regarding points 10 and 11 "...shall not recommend...": We wonder whether this mean that in this situation an intermediary is not permitted to make a recommendation. Does this include a recommendation not to purchase a particular product? The current 'blanket' wording would suggest that even a recommendation not to buy is prohibited and this could be against the customer's interests. This would seemingly also run contrary to paragraph 2 of Article 30(2) that allows the offering of products on a non-advised basis but with a warning '<i>...provided in a standardised format</i>'. ▪ Regarding point 14 (page 66), we wonder when and why would an intermediary discourage a client from giving information 	
Question 16	See above	
Question 17	Article 30(1) is clear as it already lists the criteria that need to be considered and we	

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	believe that the demands and needs test in the general part of the Directive, which has been very efficient so far, should be used as a basis (but there should not be a cumul of both tests).	
Question 18	As mentioned above, we believe that the demands and needs test should be used as a basis for appropriateness and suitability tests and that there should not be a cumul of the demands and needs vs. appropriateness/suitability tests.	
Question 19	<p>It should be clearly mentioned that the Delegated Acts based on IDD articles 27, 28, 29 and 30 (chapter VI) only apply to IBIPs</p> <p>We are concerned that the cumulative list of high-level criteria to assess non-complex insurance-based investment products could result in a de facto ban on execution-only, as all products are deemed complex besides products with a unit-linked investment element. This would not be in line with the explicit possibility given to Member States in the IDD to allow for the execution-only sale of non-complex IBIPs.</p>	
Question 20		
Question 21		
Question 22	<p>It should be clearly mentioned that the Delegated Acts based on IDD articles 27, 28, 29 and 30 (chapter VI) only apply to IBIPs</p> <p>We wish to recall that intermediaries are mainly micro to small entrepreneurs and that reporting requirements have to be proportionate. The proportionality also has to apply with regard to the type of product and type of customer.</p> <p>All these reporting and record-keeping requirements have to be seen in the context of in how far the product is already documented. It is important that the customer receives relevant information (which may depend on the type of product / situation). One should avoid the duplication of information/ provision of unnecessary information as this leads to confusion of the customer and legal uncertainty.</p> <p>EIOPA recognizes that contrary to MiFID II, in IDD there is no concept of a written basic agreement with the customer for the provision of services. However, EIOPA</p>	

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	<p>states that it could be interpreted as the contractual terms and conditions and that the content of the written basic agreement does not appear inconsistent with the IDD framework (p 75, point 5-7):</p> <p>We believe that the concept of a written agreement should not be introduced at level 2 of IDD.</p> <p>It also is to be noted that the MiFID II delegated Regulation (art 58) specifies re. written agreement: <i>Investment firms providing investment advice shall comply with this obligation only where a periodic assessment of the suitability of the financial instruments or services recommended is performed</i> . Member States may consider using such a concept but it should not be introduced at level 2 of IDD.</p> <p>EIOPA states that the MiFID II framework only covers record-keeping in an appropriateness scenario. EIOPA has looked at the 2012 ESMA MiFID suitability guidelines to build its advice re suitability record keeping for IDD.</p>	
Question 23	<p>The EIOPA technical advice is largely a copy-paste of the MiFID wording (2012 Guidelines and the draft MiFID II delegated Regulation). EIOPA has deleted some of the references and specificities of MiFID, but this can hardly be interpreted as “reflecting insurance specificities”.</p>	
Question 24	<p>It should be very clear and mentioned explicitly for all delegated acts that are part of chapter VI on IBIPs that the delegated acts are indeed only applicable to IBIPs.</p> <p>With regard to the periodic suitability assessment/report, we believe that the draft advice is not sufficiently clear that this is a voluntary extra service to the customer, to be decided between the parties (intermediary or undertaking and the customer).</p> <p>For instance, in point 2, EIOPA states that: “ 2. <i>The insurance intermediary or insurance undertaking shall draw the customer’s attention to, and shall include in the suitability statement, information on whether the recommendation is likely to require the customer to seek a periodic review of their arrangements.</i>”</p> <p>Also point 3 states “3. <i>Where an insurance intermediary or insurance undertaking has</i></p>	

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	<p><i>informed the customer that it will carry out a periodic assessment of suitability, the subsequent reports after the initial service is established, may only cover changes in the services or investments embedded in the insurance-based investment product and/or the circumstances of the customer and may not need to repeat all the details of the first report."</i></p> <p>The additional service of providing periodic suitability assessments is not to be decided unilaterally by the intermediary / undertaking as could be understood from point 3, but is something to be agreed between the parties.</p> <p>Regarding point 8(b) (page 86), we wonder whether the disclosure of costs incurred by transactions occurs after the customer has incurred a liability to pay them if reporting is periodic.</p>	
Question 25	The proposed (non-exhaustive) list focuses mainly on costs. Should there not be periodic information on the insurance benefits as well?	
Question 26	<p>We note that this concept of an online reporting system is taken from art 60, point 3 of the MiFID II draft delegated Regulation on reporting requirements in case of portfolio management:</p> <p><i>3. The periodic statement referred to in paragraph 1 shall be provided once every three months, except in the following cases: (a) where the investment firm provides its clients with access to an online system, which qualifies as a durable medium, where up-to-date valuations of the client's portfolio can be accessed and where the client can easily access the information required by Article 63(2) and the firm has evidence that the client has accessed a valuation of their portfolio at least once during the relevant quarter.</i></p>	