	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:	German Insurance Association (GDV)	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
	Please follow the following instructions for filling in the template: ⇨ Do **not** change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-16-006@eiopa.europa.eu.** **Our IT tool does not allow processing of any other formats.** The numbering of the questions refers to the Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive	
Reference	**Comment**	
General Comment	The German Insurance Association holds the view that the Insurance Distribution Directive (IDD) can serve as a solid foundation for a European insurance market. The IDD's objective of improving the general level of consumer protection is expressly welcomed. Moreover, a fair balance of interests between all market participants has been achieved.	

The Delegated Acts to be developed by the EU Commission will have to respect the framework set by the European co-legislator's Level 1 provisions. EIOPA's technical advice on Product Oversight & Governance (POG) and special rules for insurance-based investment products can effectively improve consumer protection if the rules for distribution by insurance companies and intermediaries are designed with a sense of proportion and practicability.

For the most part, this goal has been achieved. However, it would be highly appreciated if some points could be amended in the final version of the technical advice:

- Article 29 (3) IDD expressly leaves the decision on a **ban on commissions** to the Member States. For this reason, the German Insurance Association has concerns about the list of risk types for the assessment of the effects of inducements proposed by EIOPA and about the related remarks on its application. In its current design, the list will result in a factual ban on commissions – despite the fact that such ban is explicitly not intended, including by EIOPA.

- The rules on **conflicts of interest** have to take the insurance-specific particularities of insurance-based investment products more carefully into account.

- **Provisions on Product Oversight and Governance (POG)** should be better targeted to their objectives: It should be clarified that the POG are not intended to introduce external price controls. It should also be made clear that the POG do not require manufacturers to terminate existing contracts because national contract law continues to apply in this field. While flexible provisions are needed for the target market, the current proposals are still in need of modification. Unnecessary bureaucracy should be avoided.

- Proportional distribution provisions regarding the fields of **advice, documentation and reporting** can help increasing acceptance by the stakeholders dealing with them in day-to-day business. However, some of the EIOPA proposals are overly bureaucratic, thereby placing a disproportionate burden on insurers and intermediaries.

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Question 1	The costs entailed by the proposed changes would be considerable. However, it is impossible to give exact numbers. The costs will have to be borne by the collective of insureds. The insurance companies are doing their best to cut costs by streamlining processes and promoting digitalization. Such efforts are undermined where insurers are required to introduce and document new processes. The additional cost burden will result in intermediaries disappearing from the market. Market consolidation is a normal phenomenon, but additional administrative burdens increase this phenomenon to the detriment of consumers. Commission-based distribution enables consumers to access free advice and hear several opinions – the proposed changes would restrict this option.	
Question 2	The German Insurance Association is in favour of reflected product design and distribution strategies taking due account of the needs of customers. The policy proposals address the relevant aspects of product oversight and governance. However, they are too far-reaching in some respects and should be optimized further and be better targeted, focusing on the objective of POG. It is of vital importance for the success of the provisions that the underlying processes can be designed efficiently. Unnecessary bureaucracy should be avoided and there should be enough leeway for a company-specific approach. The limitations of external controls need to be clearly indicated in the provisions. It should be made clear that the provisions should not result in price controls or detailed rules on product design. Moreover, it would be sensible to clarify that the POG do not require manufacturers to terminate or modify existing contracts. Our positions in detail: • **No external price control or detailed provisions on product design** In its analysis, EIOPA estimates that undertakings should assess the price (e.g. p. 17 no. 31 "Is the price of the policy in balance with the worth of the underlying?", no. 32 "How is the risk reward profile balanced, taking into account the cost structure of the product?") and the benefits of the product, taking into account e.g. the claims ratio (typically relation of claims expenses to earned pre-	

miums, c.f. p. 18 no. 34, 36). We recommend explicitly clarifying in the draft technical advice (in the following: DTA) as well as the analysis that it is not intended to introduce an external **price control** and supervisory requirements on product design (compare EIOPA's clarification that a general price control is not intended in its final report on the consultation of POG guidelines of 18 March 2016, p. 65). Such far-reaching regulation – which is not provided for under IDD – would hamper product innovation and competition, finally resulting in reduced product diversity to the detriment of customers.

Moreover, the objectives of the arrangements are in need of further specification (DTA p. 22 no. 4 and p. 25 no. 30).

- One of the objectives proposed by EIOPA is to prevent/mitigate **customer detriment**. Several further provisions make reference to customer detriment also (cf. DTA p. 23 no. 14 and no. 16, p. 25 no. 30, p. 26 no. 36). However, the IDD neither includes a definition of "detriment" nor does it use the term in the context of POG. In its final report on POG guidelines, EIOPA takes the view that it would not be appropriate to limit the wording to unfair detriment, stating that "any detriment to the customer should be considered as unfair". We therefore recommend to clarify in the DTA that the term "detriment" requires an unfair result at the expense of the customer. We believe that the definition proposed by EIOPA in its report of 18 March 2016 (p. 8), according to which a detriment occurs "if the manufacturer or distributor does not act in accordance with the best interests of its customers", is not suitable to create further clarity.

- In addition to that, it would be important to clarify that the objective to "support a proper management of **conflicts of interests**" is required by legal provisions on conflicts of interests (cf. DTA p. 22 no. 4, p. 25 no. 30). Essential elements can only be stipulated by the legislator.

	• **Appropriate remedial actions** Manufacturers review their products. The new provisions require them to "take appropriate action" (cf. DTA p. 23 no. 16) based on the results of their review. We recommend clarifying in the DTA that the POG do not require manufacturers to terminate **existing contracts**, but that in this regard, only national contract law applies. The national legal framework is mentioned in the analysis (p. 19 no. 40); however, we believe it would be appropriate to further clarify its role and importance. Under contract law, the agreed distribution of risks must be respected – changes may only be required where exceptionally provided for under contract law. The question whether individual customers are to be informed about new tariffs is also answered in the relevant advisory provisions of national contract law. The IDD does not require on-going advice (without cause). Insurers are free to choose whether or not they wish to go beyond their contractual obligations in offering existing customers new contracts. In any case, it is vital that the collective of insureds remains big enough to allow for appopriate balancing of risks. We recommend deleting the additional separate duty to inform, if relevant, customers about the remedial actions (DTA p. 23 no. 17). It is not necessary, given that there is already a requirement to "take appropriate action", and might even be misleading. It needs to be critically assessed by insurance undertakings whether such notification of customers is appropriate under insurance law, in particular with regards to the collective of insureds. Policyholders might be incited to terminate their policies, which would be detrimental to the collective of insureds as a whole. In addition, informing customers about short-term negative developments of long-term investments might have rather disadvantageous effects on individual policyholders, too. It could also be running contrary to EIOPA's intentions of preventing customers from changing their long-term (old age provision) insurance products with an irrational frequency (cf. EIOPA final advice on PEPP, p. 70).	

For our extensive comments on EIOPA's analysis regarding product review (p. 35 to 37), please see our answer to question 8.

- **Temporal scope of application**

  We believe that the POG should focus on products that are still being distributed. The DTA should explicitly stipulate that products that are no longer being distributed do not require POG arrangements. This would set the appropriate priorities and also respect the preventive character of POG. In parts of its analysis (p. 19 no. 38, p. 14 no. 16 sentence 1), EIOPA refers to the "product lifetime", which ends only when "the last product has been withdrawn from the market". From our point of view, this concept is too far-reaching for POG – given the large number of different contract and tariff generations, disproportionate efforts would follow. The new tariff generations will already include numerous modifications. The supervisory provisions on complaints management sufficiently ensure that important findings on existing contracts will continue to be evaluated and taken into account in the development of new products.

- **Definition of target market and distribution outside of target market**

  The **definition of the target market** is of key importance for the entire process. We included our extensive comments on the new, additional proposals regarding the target market under question 7. We agree with EIOPA that a flexible approach is needed and the definition should focus on the needs of potential customers. The concrete proposals should be adapted accordingly.

  We also suggest reconsidering the requirement to define a negative target market, given that a clear negative delimitation will most likely be impossible in many cases and most insurance products are designed for a broad range of customers. The IDD itself does not call for the definition of a negative target market. Should the concept of a negative target market be maintained, the limiting phrase "where relevant" is appropriate. However, for reasons of practicality it should be clarified that a few significant examples are sufficient (see answer to

question 7).

It would be welcomed if it could be explicitly clarified in the **DTA** that the distributor may continue to distribute to customers outside of the target market as long as he/she can present an appropriate justification (cf. p. 21 no. 53 of the analysis).

- **Efficiency and extensive provisions for pure distributors**

  POG provisions must be proportionate in order to take into account the large number of highly heterogeneous insurance products and avoid unnecessary efforts. Hence, the clarification in the DTA (p. 21 no. 2 and p. 25 no. 28) is to be welcomed.

  As an addition, we recommend further clarifying that differentiating according to the **nature of distributors** (as also intended under IDD) allows taking into account the status of the intermediary and the different kind of relationship with the insurance undertaking (broker, tied agent), respectively.

  Moreover, it should be noted that the **requirements proposed for pure distributors** including duties of documentation are considerably more far-reaching than the provision under Art. 25 (1) subparagraph 6 IDD, which only requires pure distributors to have in place adequate arrangements to obtain appropriate information on the insurance product and the POG procedure and to understand the characteristics and identified target market of each insurance product. This objective is expressly welcomed. However, the German Insurance Association takes a critical view on the following requirements regarding an **efficient and practice-oriented design of the provisions:** the proposed obligations to coordinate the frequency of reviews and to document the relevant information in written agreements (cf. DTA p. 38 no. 2, 6) and the introduction of several vague information requirements, e.g. regarding an "added value" (DTA p.41 no. 1, cf. our detailed answer to question 8 II.). Requiring the distributor to have detailed knowledge about the product approval process (in each individual

	case), as demanded in the analysis on p. 20 no. 50, is too far-reaching and not appropriate. It is of key importance that the distributor knows the product, its target market and is aware that the manufacturer of the product has performed the product approval process. • **Additional optimisation and clarification needs** - We recommend clarifying the scope of application, especially the exemption of large risks and certain ancillary intermediaries, directly in the DTA (cf. analysis, p. 14 no. 14). - In addition, it should be clarified that **product testing in case of changes** to an existing product is only required if the changes are essential (cf. DTA p. 23 no. 12 und p. 17 no. 30). Accordingly, the documentation requirements (DTA p. 24 no. 26, p. 26 no. 37, analysis p. 19 no. 44, p. 21 no. 55) should be clearly limited to "essential" measures. - We agree that the interests of the **collective of insureds** should be taken into account in the design of insurance products (cf. analysis p.15 no. 18).This important principle should also be included in the DTA. However, we recommend removing the term "principles of solidarity" from the text: Despite the fact that it is probably intended to describe the right concept (admissibility of "risk pooling" measures), it might be misleading.	
Question 3	No further arrangements are required, with the exception of the clarifications recommended in the answer to question 2.	
Question 4	The costs entailed by the proposed changes would be considerable. However, it is impossible to give exact numbers. The costs will have to be borne by the collective of insureds. The insurance companies are doing their best to cut costs by streamlining processes and promoting digitalization. Such efforts are undermined where insurers are required to introduce and document new processes. The additional costs will in-	

	crease the number of intermediaries that are forced out of the market.	
Question 5	We agree with the proposed principles. Assuming that intermediaries can be regarded as manufacturers where they are playing a key role in product design and development is the right approach.	
Question 6	This issue has been sufficiently clarified by EIOPA.	
Question 7	The "target market" is of key importance for POG processes. We share the view that, given the variety of products on the insurance market, no single standard for the granularity of the target market definition can be set (cf. analysis p.31 no. 2, p. 32 no. 7, p. 33 no. 14, in principle also DTA p. 33 no. 3). The difficulty lies in capturing essential elements while avoiding that the definition becomes overly complex and therefore useless for day-to-day business. Against this background, we recommend further modifying the provisions. • We agree that the definition should take potential "**demands and needs**" of customers into consideration (DTA p. 33 no. 2). Further criteria should only be considered **if they are relevant**. It is not clear what meaning the term „objectives" (p. 33 no. 3) shall have in this context: The term is partly used as a possible addition to "demands and needs", partly given the same relevance (cf. analysis p. 32 no. 3, 8, DTA p. 33 no. 1, 3). Equally unclear are the criteria "interests", "risks" and "coverage", which are mentioned in the analysis (p.32 no. 3, p. 33 no. 11). "Knowledge and experience" (DTA p. 33 No. 2, analysis p. 32 no. 8) is usually not a defining element of a target group for insurance products, but a characteristic that must be considered in product design and in the context of the distribution strategy. It would be helpful if this could be clarified in the draft or taken into account when consolidating the different proposals on the definition of target markets (e.g. DTA p. 22 no. 9 on the "degree of financial capability and literacy"). • We also recommend explicitly clarifying directly in the DTA that **selling outside of the target market** remains possible, but requires a justification (cf.	

	p. 21 no. 53). It should also be ensured that the intermediary is not required to obtain information it would normally not need to obtain in case of sales where no advice is given (the option to sell without advice provided for under IDD and the option of selling insurance-based investment products without assessing their appropriateness, explicitly approved under IDD Art. 30 (2) should be observed). We therefore suggest explicitly stating in the DTA that the justification for selling outside the target market only needs to cover aspects that the distributor is (or has to be) aware of. • The German Insurance Association recommends deleting the provisions on the **negative** target market (identifying groups of customers for whom the product is typically not compatible, DTA p. 34 no. 4). The IDD itself does not provide for the definition of a negative target market. In case of many products, clearly defining the negative target group or even allocating all groups of potential customers might prove hardly possible. Thus, the example on p. 33 no. 13 (life insurance policy running for 30 years for a 97-year-old woman) does not include a clear definition, either. If the criterion of "negative target markets" is to be maintained, it should be clarified that individual, striking examples are sufficient. It should not be assumed that customers not covered by the pre-defined target market of a specific product are automatically part of a negative target market. In any case, additional examples clarifying expectations would be highly welcome. • From our point of view, the draft proposals under DTA p. 33 no. 1 and DTA p. 34 no. 4 are not necessary. The clarification "where relevant" could also be included under DTA p. 33 no. 3. As described under question 2, there is also room for improvements regarding the proposals based on the EIOPA Guidelines.	
Question 8	**I. Review obligations (p. 36, 37, 38)** The regular review of a product is important. The legal definition of a **minimum in-**	

	terval for reviewing the product is **not required**. We agree that the minimum interval should be determined by the manufacturer itself (DTA p. 38 no. 2 sentence 2, p. 39 no. 10 and analysis p. 37, no. 3, 4). We agree in principle with the proposed **review obligations**. However, some aspects still require modifications. It is to be welcomed that manufacturers are granted leeway and flexibility regarding the **appropriate action** that might prove necessary due to the review obligations (cf. p. 37 no. 6 sentence 1). As mentioned above under question 2, we believe that it would be helpful to clarify directly in the draft that POG creates no obligation of the manufacturer to resolve or amend **existing contracts** or to give any information to individual customers about new products, but that in this field, national contract law applies. The distribution of investment risks agreed upon by the parties needs to be respected. Obviously, guarantees given need to be met (see p. 37 no. 6). Where no guarantee has been given, the risk of a negative development of the investment is borne by the customer (remarks on "return expectations" in DTA p. 38 no. 4 are therefore misleading). It is not clear to us in in how far EIOPA identifies a difference between **product monitoring** (DTA p. 23 no. 15, analysis p. 18, 19 no. 36-38) and product review (p. 35-37). We propose consolidating these concepts and instead differentiating between reviews triggered by specific events and regular reviews. Manufacturers and intermediaries should inform each other about relevant results of their reviews. However, additional **obligations to coordinate such reviews** (DTA p. 38 no. 2 sentence 4 and no. 6 sentence 2, analysis p. 37 no. 4) and to make according written agreements are in our opinion neither required nor practicable. We therefore recommend deleting them. They would require brokers to make arrangements with a multitude of manufacturers, adapting to very heterogeneous review timetables. We believe that an obligation to coordinate reviews is only appropriate if intermediary and insurance company are also manufacturers.	

	II. Additional remarks on the exchange of information (p. 40-42) We would also like to comment on the analysis of the **exchange of information** between manufacturer and intermediary (p. 40-42), given that no specific question refers to this issue. The "information to assess whether the product offers added value" (DTA p. 41 no. 1) should be deleted. It remains unclear which information is to be specified here. There is no such information required under the IDD or the Solvency II Directive. Moreover, it is also unclear what is meant by information on "structure". It is equally unclear what "product risks" are in case of non-life insurance products (DTA p. 41 no. 1). For these reasons, we advise against defining such information as a minimum information (p. 40 no. 9), i.e. information to be provided for every single product. From our view, it is neither necessary nor feasible to specify the relevant information in a **written agreement.** Unnecessary bureaucracy should be avoided.	
Question 9	The EIOPA proposal [Draft Technical Advice (DTA) p. 45 no. 2 c.] **narrows down the focus on the commission system.** However, this is not intended under IDD Articles 27 and 28. **Conflicts of interests, as described under DTA p. 45 no. 1, are possible in each scenario** and need to be identified, prevented, managed or disclosed. In insurance distribution, the interests of the contracting parties can differ from each other. However, this does not necessarily result in a detriment to the customer. Moreover, it is irrelevant in this regard whether two or three parties are involved (e.g. customer/intermediary/insurer, as in the commission-based model). The German Insurance Association expressly welcomes Article 27 IDD, according to which conflicts of interest may not adversely affect the interests of customers. This can be ensured through certain arrangements in distribution. It should be noted that Article 27 IDD expressly limits the required steps to **proportionate arrangements.** The EU Commission's mandate explicitly takes up this provision. We believe that the current EIOPA draft should take this into account.	

The conflicts of interest faced by investment product distributors are **not identical** to the ones faced by insurance distributors. The German Insurance Association believes that it would be appropriate for EIOPA to put a stronger focus on the differences between the investment industry and the insurance industry. The products offered by investment product distributors are directly linked to the markets and therefore potentially influenced by the behaviour of other groups of customers. By contrast, insurance distributors offer long-term products for old-age provision. The included guarantees are an advantage for their customers.

The product features and purchase conditions of insurance-based investment products do not depend on the behaviour of other customers. Their purchase behaviour is particularly irrelevant. Hence, it is unclear why EIOPA assumes that there are horizontal conflicts of interest between different customers, as is the case with transaction deals in direct capital markets. High demand for an insurance-based investment product (as in the example of a conflict of interest cited by EIOPA on p. 44 no. 6 of its analysis) neither affects the price nor the type of products offered. The customer obtains the identical product without suffering any disadvantages due to the high demand.

Identification of conflicts of interests (DTA p. 45 no. 1 and 2)

- **DTA p. 45 no. 2 a.**
  The German Insurance Association recommends clarifying under DTA p. 45 no. 2 a. that the remuneration of distributors for services provided (e.g. advice and intermediation) does not generally qualify as "financial gain at the expense of the customer". This wording suggests that the distributor puts its own advantage ahead of the wishes and needs of the customer.

- **DTA p. 45 no. 2 b.**
  We do not believe there are any realistic examples of a distributor favouring the interests of a specific group of customers over the interests of other groups of customers.

- **DTA S. 45 Nr. 2 c.**

As mentioned above, the German Insurance Association would like to initiate some modifications here. As in any other sector in the industry, divergent interests meet in insurance distribution as well. However, this does **neither necessarily result in a detriment to the customer** nor does it depend on whether two (fee-based advice) or three parties (e.g. customer/intermediary/insurer, as in the commission-based model) are involved. The German Insurance Association recommends treating fee-based advice and commission-based advice equally under the rules on conflicts of interest. **The IDD explicitly allows for commission-based distribution models** [Articles 18 (a) (v), 19 (1) (e)]. Where conflicts of interests are not identified and managed, they may have a detrimental effect on customers, both in fee-based distribution paid for by the customer directly and in commission-based distribution.

The advantages of the commission-based model should be considered: It enables **broad-scale access to high-quality advice**, taking a holistic view on the interests of customers. Free advice enables customers to seek a second opinion, where necessary. Different studies – such as the Financial Advice Market Review in UK of March 2016 – show that people with a low income lose access to advice following a ban on commissions. The commission-based model contributes to a more socially equitable distribution of costs. Considering the enormous **importance of private old-age provision**, this factor cannot be taken too seriously.

In addition to that, the commission-based model supports distributors in **actively approaching their customers**. Without such active approach, there is a risk of consumers not assessing their insurance needs correctly, leading to a lack of protection against existential risks.

Existing national provisions on liability, such as the German lapse liability period of five years for intermediaries, make sure that intermediaries seek to build up a **long-term business relationship with their customers**. This system requires intermediaries to make a pro rata reimbursement of their commission

if the customer terminates the contract at an early stage. Under the fee-based system, this is not the case: The intermediary may keep the full fee even when the contract is terminated prematurely, irrespective of the cause.

With regard to DTA p. 45 no. 2 c., the German Insurance Association would also like to point out that **non-monetary benefits, such as professional training events**, should not be qualified as conflicts of interest per se, either. On the contrary, they increase the quality of service provided to the customer.

The customer protection measures under IDD Art. 20 (1) and Art. 30 (1) to (3) have to be respected by all actors pursuing insurance distribution activities, regardless of the nature of their remuneration. In order to comply with the IDD, we recommend modifying DTA no. 2 c. so that a **level-playing field is ensured. Otherwise, it should be deleted**. From a consumer protection perspective, the unilateral focus on actors receiving their remuneration from a third party is too narrow.

- **DTA S. 45 Nr. 2 d.**
  The German Insurance Association would welcome a clarification under DTA p. 45 no. 2 d., stipulating that the detailed POG rules also apply to the involvement of intermediaries. Intermediaries involved in product development can bring their knowledge about customer needs to bear in the process. This does not constitute a conflict of interests as described under IDD Art. 28.

Conflicts of interest policy (DTA p. 45- 47 no. 3 to 10)

The German insurance industry agrees that all appropriate steps must be taken to manage conflicts of interest [IDD Art. 28 (1)]. Such precautionary measures should match the individual business model and processes. Experience shows that the following measures are feasible:

- Review of remuneration and incentive systems according to the company's

guidelines on compliance,

- Assessment of the complaints about conflicts of interest, based on an internal complaint management system,
- Development of escalation processes for cases where customers, intermediaries or employees of an insurance company report conflicts of interest,
- Explicitly including compliance with provisions on conflicts of interest in contracts between insurers and intermediaries,
- Raising company-wide awareness of conflicts of interest through training/education measures.

The German Insurance Association welcomes the explicit call for **proportionality** under DTA p. 46 no. 4 (b). The required proportionality should also be respected with regards to DTA p. 46 no. 5 (a) to (e). It is vital that the procedural provisions for the different types of distributors are proportionate to their size, type of activities and the extent of potential damage to the interests of their customers.

The processes proposed under DTA p. 46 no. 5 (a) to (e) are closely linked to the Delegated Regulation on MiFID II. There are concerns that this might lead to **costly changes to management processes** of small entrepreneurs distributing insurance policies. There is a risk that they will be driven out of the market, adversely affecting customers due to a reduced offer of insurance products. This makes it all the more important to focus on proportionality. In particular, DTA p. 46 no. 5 (b) (separate supervision of relevant persons) is impossible to comply with for small entrepreneurs.

The German Insurance Association recommends taking into account that the provisions under DTA p. 46 no. 6 are not sufficiently linked to the other provisions: Where the remuneration provisions under Chapter 6 DTA (inducements, p. 48-55) are met, the alleged conflict of interests arising from benefits received from third parties as described in DTA p. 45 no. 2 c. is also to be regarded as successfully managed. The introduction and implementation of measures aiming at **assessing inducements are part of the conflicts of interest policy.**

The organisational provisions on the documentation of conflicts of interest under DTA

	p. 47 no. 9 (b) entail disproportionate efforts for distributors. While it is possible to use the adopted measures to record **existing** conflicts of interest running contrary to the interests of the customer, it seems **disproportionate** to **require distributors to draw up a list of conflicts of interest that might possibly arise in the future, while keeping up their on-going services.** Individual customers have various options at their disposal to adapt their insurance-based investment product over the course of the years. Considering the multitude of unpredictable scenarios, no one would be able to draw up a realistic list of potential conflicts of interests. It is also hardly conceivable how customers might benefit from such a list.	
Question 10	The German Insurance Association does not believe that EIOPA needs additional instruments to elaborate the principle of proportionality in the field of conflicts of interest. All stakeholders involved (customers, distributors and product providers) will soon need a final clarification on the rules to be followed in insurance distribution. Any further work on Level 3 would result in inacceptable additional burdens, making implementation even more complicated. Therefore, the German Insurance Association is opposed to a multi-level regulation system and would like to point out that the EU Commission's mandate (p. 6) expressly requires a particular focus on proportionality and practicability.	
Question 11	The German Insurance Association welcomes EIOPA's intention to take a high-level principle-based regulation approach towards the criteria under IDD Art. 29 (4) (a) and (b). Insurance distribution needs comprehensible and practice-oriented rules respecting the compromise the European co-legislator agreed upon in the IDD. In its mandate, the EU Commission expressly asks EIOPA **not to go beyond the provisions that are necessary to meet the objective of the Delegated Acts.** IDD Article 29 (4) (a) and (b) require the development of suitable measures and criteria based on the principle of proportionality. Against this background, the German Insurance Association also agrees with EIOPA's	

conclusion on p. 50 no. 4 of the analysis, according to which **internal payments to employees should generally not be taken into account**. To further clarify this issue, EIOPA's statement should also be included in DTA no. 1 on p. 54.

Commission-based distribution is taking up the challenges posed by changing customer demands in times of digital evolution. This requires a great amount of flexibility, which cannot be achieved in a tight system of precise provisions for every conceivable detail of remuneration, but only through a **principle-based holistic approach**.

This holistic approach needs to take into account the **whole relationship to the customer** (advisory process, contract conclusion, advisory and general customer services during the contract period, support by the distributor after a claims event). In order to reflect the complex reality of insurance distribution, the focus of regulation should not be on the individual moment of contract conclusion alone. As Article 29 (5) IDD rightly claims, the Delegated Act should take into account the various different types of services, the frequency of transactions and the type of product.

Providing high-quality services is of fundamental importance to the distributor's business. In order to ensure high-quality services systematically, it would be necessary to introduce principles for inducement systems aiming at the protection of customers. For this reason, **the German Insurance Association is opposed to the proposed list of risk types (DTA p. 54 no. 4).** As an alternative, we suggest introducing the following principles, which should be used by insurers and intermediaries **in the development and negotiation of inducement schemes:**

- Distributors should place the **interests of their customers over remuneration interests.**
  The advisory process should enable the customer to influence the course of the discussion.
  Examples: IT-supported advice and check lists
- When agreeing on an inducement scheme, **qualitative aspects** should play a crucial role.
  Examples: Portfolio consistency, in case of tied agents also customer satisfac-

	tion and use of the advisory tools of the product provider, taking into account of lapse rates, complaints or other indicators of customer satisfaction, as well as sustainability level of customer support. • **Remuneration and benefits should be objectively comprehensible and justifiable.** This should be ensured by the mechanisms adopted by the insurance companies. Examples: Liability for commissions, documentation of decisions and their justification, avoiding dependencies, reliability checks following trigger events. • Insurers should ensure high quality of customer advice by **setting indicators for advisory quality,** monitoring compliance with these standards and intervening where necessary following specific events. Examples: Contract redemption rates, lapse rates, share of contract conclusions where customer refrained from taking advice. • **All aspects of a specific customer service** should be taken into account when assessing the quality of the service, not only the final recommendation given for a certain product. Examples: Analysis, comparison of products, advice (recommendation), documentation, support in contract conclusion, customer service during the duration of the contract, further advice due to changed circumstances, support during the period of payout. • A **single negative indicator** should trigger a general review of the entire performance of the service provider, in order to verify whether the entire service is flawed. However, it should not be assumed automatically that the service quality is flawed. Instead, all aspects of the service should be taken into account, including positive effects of granting commissions / benefits. Example: Professional training measures improve service quality and the promotion of young talents in the distribution sector. The existence of training-related benefits such as catering and training material should not put these advantages at risk.	
Question 12	No further inducements need to be added to the types of inducements listed under Draft Technical Advice (DTA) p. 54 no. 4. After all, the **existing list already undermines the commission-based distribution model allowed under the IDD.**	

Therefore, the German insurance industry recommends replacing the list by the list of principles for the process of developing and negotiating inducements schemes presented in our answer to question 11.

The criteria of the list of risk types under DTA p. 54 no. 4 differentiate between individual inducements (pursuant to the definition under DTA p. 54 no. 1) and inducement schemes (pursuant to the definition under DTA p. 54 no. 2). The German Insurance Association holds the view that provisions **focussing on the inducement scheme alone** are better suited to ensure a systematic protection of consumers. This could serve as a basis for a feasible and proportionate regulatory approach for EIOPA's high-level principle.

EIOPA states on p. 51 no. 15 that it does not intend to introduce a *de facto* prohibition on the receipt/payment of inducements. However, it also claims in the analysis on p. 53 no. 18 that there are no appropriate measures legitimizing inducements or inducement schemes which are detrimental to the customer from the outset, such as the types of inducements listed under DTA p. 54 no. 4 – thereby, EIOPA **is introducing a de facto ban on inducements**, since the listed types of inducements are considered illegitimate, i.e. prohibited. It should be urgently clarified that inducement schemes that include the types of inducements listed under DTA no. 4 are not prohibited, but that measures must be taken to reduce the risk of a detrimental impact for customers.

Please see our detailed positions on DTA p. 54 no. 4:

- **DTA p. 54 no. 4 a)**
  The German Insurance Association recommends taking into account the limited product range offered by tied intermediaries in the wording of DTA p. 54 no. 4 a). It would not be appropriate to require individual tied intermediaries to recommend insurance-based investment products from a competitor's portfolio, since it would undermine Art. 19 (1) (c) IDD, according to which the distributor shall inform the customer whether or not it is under a contractual obligation to conduct insurance business exclusively with one or more insurance undertak-

ings and whether it gives advice on the basis of a fair and personal analysis. Art. 19 (1) (c) IDD implies that an intermediary's product portfolio can and may be limited.

The German Insurance Association would like to suggest amending DTA p. 54 no. 4 a) by making reference to available – not: existing – products and the inducement scheme.

- **DTA p. 54 no. 4 b)**
  As stated explicitly in the list of principles mentioned under question 11, inducement schemes must include qualitative criteria. Hence, the German Insurance Association explicitly welcomes the intention of DTA p. 54 no. 4 b).

  However, it is of vital importance that **inducement schemes systematically consider qualitative criteria.** For example, individual commission payments are typically based on a percentage of the premium, determined with quantitative criteria. The level of the commission is based on qualitative provisions and is being determined in the commission contract between insurer and intermediary. The quantitative assessment of processes based on quantitative data helps optimising processes and quality assurance, which is in the bests interests of the customer. The German Insurance Association recommends clarifying under DTA p. 54 no. 4 b) that it is not the use of quantitative criteria, but rather the **complete lack of qualitative criteria in the inducement scheme** that entails a high level of risk.

- **DTA p. 54 no. 4 c)**
  It remains unclear how exactly the value of the product or service is to be determined. Thus, it is also unclear when to **consider the remuneration to be disproportionate.** The underlying objective – protecting customers from having to bear excessive distribution costs – is shared by the German Insurance Association.

  However, in commission-based distribution there is **no direct link between**

	the value of the individual commission and the value of the service, i.e. the efforts undertaken by the intermediary. Intermediaries working on a commission-basis perform a service to the customer that is only being remunerated if the customer actually concludes a contract. If the customer does not conclude a contract, the intermediary is not remunerated for its efforts. The cost-benefit-ratio of an insurance-based investment product does not directly depend on the specific level of remuneration received by the distributor, either. This is a **core element of commission-based distribution** and should not be included in this list of risky – and therefore ***de facto* prohibited** – inducements or inducement schemes. The commission-based model enables broad-scale access to high-quality advice, taking a holistic view on the interests of customers. Free advice enables customers to seek a second opinion, where necessary. Different studies – such as the Financial Advice Market Review in UK of March 2016 – show that people with a low income lose access to advice following a ban on commissions. The commission-based model contributes to a more socially equitable distribution of costs. Considering the enormous **importance of private old-age provision**, this factor cannot be taken too seriously. The commission-based model also has the advantage of rewarding distributors for **actively approaching** their customers. Without such active approach, it cannot be ensured that consumers adequately assess their own insurance needs in order to protect themselves against existential risks. If DTA p. 54 no. 4 c) in its current wording is not removed from the list, commissions will be *de facto* prohibited. Therefore, the German Insurance Association expressly recommends **deleting DTA p. 54 no. 4 c).** • **DTA S. 54 Nr. 4 d)** The **major part of an intermediary's service** is provided before the conclusion of the contract (initial contact, information, advise, documentation, prepa-	

	ration of contract signing, conclusion of the contract). Services must be remunerated in a timely manner: After all, intermediaries are usually self-employed and must be able to rely on being paid to fund their livelihood and on-going business activities. Hence, it should be possible to **remunerate intermediaries in a timely manner**, based on commissions for contract acquisition, paid mainly upfront. The servicing of existing contracts is usually remunerated on a regular basis. Distributors are subject to the IDD's requirements regarding information and behaviour in advice, in particular Art. 20 (1) and 30 (1) IDD. The payment of an inducement does not release the distributor from compliance with any of these requirements. **Thus, the interests of customers remain unaffected by the time of payment.** Moreover, some countries (e.g. Germany) have successfully tested protection schemes requiring distributors to assume liability for a quota of their remuneration for a specific minimum period (in Germany: "lapse liability"): If the customer is not satisfied with his or her acquisition in the long run, the distributor has to make pro rata refunds on remuneration received. This is an advantage of commission-based models as compared to fee-based models. Intermediaries have a vital interest in long-term customer relations. The business relationship may involve much more direct customer contact than one might assume based on the one-time commission payment. Hence, the commission's impact on service quality cannot be determined based on the date of its payment alone. Instead, an extensive overall assessment is required. It is vital that the **inducement scheme sets an incentive for long-term customer support.** Therefore, the German Insurance Association holds the view that **only inducement schemes that are exclusively based on upfront payments should be included unter DTA p. 54 no. 4 d).**	

- **DTA p. 54 no. 4 e)**
  The German insurance industry agrees that if a product is surrendered by the customer at an early stage, there should be a pro rata refund of the inducement received. It also agrees with the intention of DTA p. 54 no. 4 e): Inducement schemes are intended to prevent intermediaries from providing non-satisfactory services. This objective can be achieved by requiring distributors to make pro rata refunds if the product is surrendered at an early stage (in Germany: liability of the intermediary for a part of the commission received, "lapse liability"). **It should be ensured, however, that the payments are refunded to the same party that made them.** In the commission-based model, the insurer pays the intermediary, so it is the insurer who needs to be refunded.

  Where national legislation provides for such refunding systems, it is not necessary to introduce additional arrangements for a direct refund from the intermediary to the customer.

  In Germany, the system described above has proven to be **risk-mitigating and practice-oriented.** Therefore, the German insurance industry recommends amending DTA p. 54 no. 4 e) by clarifying that it only applies to contractual arrangements that do not provide for a pro rata refund in case of an early surrender.

In addition to the objections to DTA p. 54 no. 4, the German insurance industry would like to point out that the definition of inducements in DTA p. 54 no. 1 also includes benefits that have the potential of significantly increasing the quality of customer service. As long as benefits for the distributor have a positive effect on professional advice, long-term customer support and the general recognition of customer demands and needs, they should not be included in the list of risk types. In particular, this holds true for:

- Benefits aiming at a holistic advisory approach addressing all customer needs,
- Professional training and development focussing on advisory quality (including

	related benefits such as catering or training material), • Support in the fields of IT and promotion of young talents	
Question 13	The risk types proposed under Draft Technical Advice (DTA) p. 54 no.4 b) to d) affect the core of the commission-based sales of insurance products and can act as a *de facto* ban on commissions (see also question 12). • **List of risk types introduces *de facto* ban on commissions** Art. 29 (3) IDD explicitly leaves the decision on a ban on commissions for insurance-based investment products to the Member States. The European co-legislator has thus clearly decided against an explicit ban on commissions in IDD and its delegated acts. This result of the political trialogue may not be changed into a *de facto* ban on commissions on Level 2. EIOPA states in DTA p. 51 no. 15 that it does not intend to introduce a *de facto* prohibition on the receipt/payment of inducements. However, it also claims in the analysis on p. 53 no. 18 that there are no appropriate measures legitimizing inducements or inducement schemes which are detrimental for the customer from the outset, such as the types of inducements listed under DTA p. 54 no. 4 – thereby, EIOPA is introducing a *de facto* ban on inducements, since **the listed types of inducements are considered illegitimate, i.e. prohibited**. It should be urgently clarified that inducement schemes that include the types of inducements listed under DTA p. 54 no. 4 are not prohibited, but that measures must be taken to reduce the risk of a detrimental impact for customers. Otherwise, insurance intermediaries working on a commission basis would lose the financial basis of their intermediation activities. In commission-based distribution, the measures to be taken are contractually agreed upon between insurer and intermediary. Therefore, the list should refer to the overall inducement scheme laying down the rules of inducements, and not to individual inducements as suggested under DTA p. 54 no. a) to d). The German insurance industry would very much welcome a **clear limitation of**	

	DTA p. 54 no. 4 on the "inducement scheme". • **Balanced assessment of the effects of inducements** The German Insurance Association recommends **abandoning the list of risk types in favour of a holistic approach, based on the principles for remuneration models** described under question 11. In case EIOPA intends not to consider this approach, acceptable risk reducing factors should be included into the wording of the draft technical advice. It must at least be made clear that the list of risk types under DTA p. 54 no. 4 does not include any prohibitions. We support the general statement that certain factors can lead to a risk reduction. With this in mind, it remains unclear why EIOPA presents a list of risks but no list of risk-mitigating factors, even though a balanced assessment of all effects of inducements had been intended. The EU Commission's mandate specifically requests a collection of circumstances under which payments by third parties and benefits are generally acceptable (p. 8 of the mandate). Unfortunately, EIOPA does not comply with this requirement, listing four insufficient risk-mitigating circumstances instead (analysis p. 52 no. 17).	
Question 14	No, the organizational specifications under Draft Technical Advice (DTA) p. 55 no. 6 and no. 8 already constitute a disproportionate burden for distributors, without offering any added value for the customer. The list of principles presented under question 11 can contribute to a more successful introduction of procedures for assessing inducements and the structure of inducement schemes, as required under DTA p. 55 no. 6. It is vital that such assessment procedures do not focus on individual inducements, but rather on the overall inducement scheme that regulates questions of payments and benefits. In particular, DTA p. 55 no. 8 requires an excessive amount of documentation, asking insurers to **assess each single inducement.** It is unclear in what way this requirement might benefit customers.	

	The documentation requirements included in the consultation paper are generally very extensive (conflicts of interests, documentation of advice including assessment of suitability, appropriateness test, written arrangements on review requirements, arrangements on the exchange of information between intermediary and insurer). Intermediaries are simply not able to fulfil yet more documentation requirements on the effects of each payment / each single benefit. Ultimately, the additional burdens placed on intermediaries reduce the time they have for their original task: providing high-quality advice and long-term customer support. Documentation requirements should have a positive impact on consumer protection. For instance, consumer protection could benefit from a **documentation of the agreement and assessment of inducement schemes.** Such documentation would satisfy the requirement to inform about the implementation of the high-level principle without overburdening insurers and intermediaries. The German Insurance Association recommends clarifying this aspect in the wording of DTA p. 55 no. 8.	
Question 15	The German insurance industry agrees with the high-level principle approach regarding the specification of the suitability and appropriateness test. The customer's investment objectives, financial situation, knowledge and experience cannot be captured by abstract, stereotype questions, intruding into every last detail of his/her life. Instead, distributors need sufficient flexibility to meet the requirements of the individual intermediation process and the specific needs of the individual customer. To achieve such flexibility, the draft technical advice should consider the **relevance of the information to be assessed** in suitability and appropriateness tests. Thus, the limitations intended in the EIOPA draft are of vital importance and much welcomed by the German insurance industry.	
Question 16	EIOPA prohibits insurers to give recommendations to clients who did not provide sufficient information to undertake a suitability assessment. The German insurance industry would appreciate a clarification that the rules of the appropriateness test (sale	

	permitted after documented warning to the customer) apply in case of customers who are willing to take advice but not ready to provide all the information. A ban on recommendations **should not automatically result in a ban on sales**. We recommend avoiding any unclarity, especially in Member States where sales without advice is inadmissible under national law). The customer should be free to choose to what extent he or she wishes to disclose detailed personal information, particularly with regards to his or her financial situation. However, the customer should be aware of the **implications of providing – or not providing – such information** [DTA p. 65 no. 9 (a)]. To that end, the distributor should be able to document a respective notification/warning as well as the following decision of the customer to provide or not provide the information under DTA p. 64 no. 6 and 7. To take into account the **particularities of collective contracts**, the German Insurance Association would like to recommend amending DTA p. 64 no. 8: The required policy should stipulate that the basis of information and suitability assessments is always the collective of insureds, not the individual. When it comes to suitability assessments in occupational old-age provision, it is the collective that matters, not the assessment of individual employees.	
Question 17	The information required under Art. 30 (1) IDD must take into account the individual circumstances in each individual case. Consequently, any list of information expected in practice can only have an exemplary character.	
Question 18	All stakeholders involved (consumers, distributors and manufacturers) require timely and final clarity on the rules which have to be followed by insurance distributors in the future. Further work on Level 3 would unreasonably complicate the implementation process. In particular, there is no need for further EIOPA guidelines on the relationship between Art. 20 (1) IDD (demands and needs test) and Art. 30 (1), (2) IDD (suitability and	

	appropriateness assessment). The legal system of the IDD already offers sufficient guidance regarding their relationship. Art. 30 (1) IDD is part of Chapter VI, which includes special rules for the distribution of insurance-based investment products, complementing the demands and needs test. Hence, Art. 20 (1) IDD is to be considered the basic rule for all insurance products, whereas insurance-based investment products are subject to the cumulative rules under Chapter VI.	
Question 19	Complex products in the sense of MIFID II include factors that make it difficult for the customer to understand the risks involved. Examples for such products are investments in derivatives, contracts of difference, structured notes or asset backed securities (ABS). They involve investment strategies with complex derivative instruments, non-transparent exposure to several market risks and / or credit risks. The German insurance industry agrees that the assessment of the complexity of insurance-based investment products should focus on factors that make it difficult for the customer to understand the risks involved, as EIOPA rightly points out in its analysis on p. 68 no. 3. We also agree that in any case the insurance products can be considered non-complex if their structure does not make it difficult for the customer to understand the risks involved. Furthermore, the German Insurance Association agrees that the European level should merely develop suitable, abstract and universally applicable high-level criteria and leave it to the Member States to further specify them according to their national legal framework. Insurance-based investment products reduce the risk exposure of consumers, e.g. by providing certain guarantees cushioning them from market volatility or even covering this risk entirely. Thus, such products are non-complex in the sense of p. 68 no. 3. It is much welcomed that EIOPA acknowledges this fact on p. 69 no. 8. The German Insurance Association also agrees that whole of life insurance with attached additional benefits (for example waiver of premium or contribution or separate pay-out for critical illness diagnosis) or an Over 50's Life plan with a guaranteed pay-out within the first year of premiums are considered to be non-complex.	

However, DTA p. 71 no. 1 partly contradicts this EIOPA analysis; as a consequence, various insurance-based investment products are classified as complex nonetheless.

Customers investing in insurance-based investment products primarily purchase insurance, i.e. (biometric) risk cover or guarantees on investment. From the consumer's perspective, the focus should therefore be on the **insurance product itself and not on underlying investment aspects.**

Please see our detailed positions on DTA p. 71 (1):

- **DTA p. 71 no. 1 (a)**
  Insurance-based investment products do not qualify as complex if they provide investment exposure e.g. to a derivative, which holds true for most UCITS funds. Traditional life insurance products that minimise risk to consumers through guarantees and smoothing mechanisms would wrongly fall within the scope of this provision, since it is an integral part of insurers' day-to-day business to invest in all available asset classes, without causing harm to their customers. Therefore, it is vital to remember the statement of EIOPA, according to which complexity must be **assessed from the customer's perspective** and **based on the existence of unpredictable risks.**

  The criterion under point a) is not in line with this EIOPA statement and would wrongly apply to insurance-based investment products with guarantees, such as unit-linked or hybrid products. Any potential risks arising from these investments are reduced to an absolute minimum by the extensive regulation on this subject, e. g. under Solvency II. Moreover, the German insurance industry holds the view that investments in derivatives or other securities should also be qualified as non-complex if the corresponding investment is non-significant. The German Insurance Association strongly recommends clarifying the exact meaning of "giving rise to a cash settlement".

- **DTA p. 71 no. 1 (d)**
  Due to the **PRIIP Regulation**, consumers purchasing insurance-based investment products receive **Key Information Documents (KIDs)** enabling them to make an informed decision. In fact, this has been the main objective of the Regulation. For this reason, we recommend deleting point (d).

- **DTA p. 71 no. 1 (e)**
  The German insurance industry recommends clarifying that an **alteration of the pay-out profile may not be detrimental for consumers.** For example, consumers can choose between a lump sum pay-out and an annuity. This choice makes a product more flexible for consumers and therefore reduces their risks in case their life situation changes during the course of the contract. It would be very helpful to clarify that this provision does not apply to trustee clauses or clauses relating to annuity factors.

- **DTA p. 71 no. 1 (h)**
  Since insurance-based investment products often have a term of more than 30 years, it is not uncommon for the consumer to change e.g. the beneficiary of payments in case of death (e.g. after divorce). Most of the consumers will understand the ramification of such change. In fact, under German insurance contract law, the possibility of the consumer to change the beneficiary of his/her life insurance is the legal rule from which the contract can only deviate by explicit determination (§ 159 German Insurance Contract Act). From the German Insurance Association's point of view, the product should rather qualify as complex **if the consumer were not allowed to change the beneficiary**. We therefore recommend clarifying that only complex non-standard beneficiary clauses should be taken into account when assessing the complexity of an insurance-based investment product.

The German insurance industry would also like to point out that the remarks made by

	EIOPA in its impact assessment (p. 161 to 165) regarding the policy options for complex products are difficult to follow. The IDD does not contain any restrictions on the sale of complex insurance-based investment products. Complex products are merely not subject to the members states' option stipulated in Art. 30 (3) IDD. Moreover, the German Insurance Association would also like to stress that the reference in DTA p. 71 no. 1 should be to Art. 30 (3) (a) (ii) of Directive 2016/97/EU instead of Directive 2014/65/EU (MiFID II).	
Question 20	The German insurance industry agrees that insurance products can be considered non-complex if their structure does not make it difficult for the customer to understand the risks involved. Therefore, the German Insurance Association considers products that reduce the investment risk borne by the customer to be non-complex, such as products with collective investment, products with capital guarantees or other security mechanisms as well as products with non-significant investments in complex MiFID instruments.	
Question 21	The German Insurance Association holds the view that Article 30 (3) (a) (i) IDD links MiFID II to IDD and captures insurance products that are closely related to funds, such as unit-linked insurance products. Hence, Article 30 (3) (a) (i) IDD does not capture insurance products that primarily reduce consumers' risk exposure, for example by providing certain guarantees which offer a greater level of protection to consumers, cushioning them from the volatility of the market. In Germany, the vast majority of products would clearly fall under Article 30 (3) (a) (ii) IDD. Therefore, we do not understand why EIOPA assumes that Article 30 (3) (a) (i) IDD is intended to capture the majority of non-complex products. We hold the view that products reducing the risk for consumers are not complex from the consumers' perspective. This holds true for products with collective investment, products with focus on capital guarantees or with other security mechanisms as well as products with non-significant investments in complex MiFID instruments. We recommend expressly clarifying that no new criteria going beyond the MiFID II	

	provisions are being introduced.	
Question 22	We generally agree with a high level approach regarding the regulation of recording. Agreements on rights and obligations of the parties are subject to national contract law. With a view to the objective of minimum harmonisation, EIOPA's technical advice should not contradict the respective regulations. The German Insurance Association strongly supports the position set out on p.76 no. 9 of the analysis: Record-keeping requirements overloading the customer with additional information and creating administrative burdens for distributors should be avoided. We recommend clarifiying DTA p. 77 no. 17 (a) to the effect that a subsequent recording of changes in the suitability assessment is only required where a periodic assessment of the suitability of the insurance-based investment product has been agreed upon between the customer and the distributor in accordance with IDD Art. 29 (1) (a) and IDD Art. 30 (5) subparagraph 4. The internal record-keeping requirement under DTA p. 77 no. 17 (b) reflects the documentation of the suitability test for the customer under Art. 30 (5) IDD. As such, it should not go beyond the latter's obligation. The suitability statement includes a recommendation for a product. As a consequence, DTA p. 77 no. 17 (b) **should not require recording various types of insurance-based investment products.** Requiring distributors to record any changes to a wide range of product types would be disproportionate. The objective in the analysis on p. 76 no. 9 can only be met by reducing the requirements under DTA p. 77 no. 17 (b) accordingly. The German Insurance Association recommends clarifying that archiving the suitability statement can be sufficient for the distributor to comply with the requirements under DTA p. 77 no. 17.	
Question 23	The German Insurance Association welcomes EIOPA's efforts to recognize the particularities of insurance-based investment products. The situation of investment product distributors is not identical to the situation of insurance distributors. The products offered by investment product distributors are directly linked to the markets and therefore potentially influenced by the behaviour of other groups of customers. By contrast,	

	insurance distributors offer long-term products for old-age provision. The included guarantees reduce market risks and benefit customers.	
Question 24	The German Insurance Association agrees with EIOPA that the empowerment under Art. 30 (6) IDD may not result in a mandatory introduction of a "demands and needs statement". The German Insurance Association agrees with the high level criteria, provided that "high level" refers to Draft Technical Advice (DTA) p. 86 no. 7 and the introductory sentence of DTA p. 86 no. 8 („shall provide a fair and balanced review of the services provided to and transactions undertaken on behalf of that customer"). However, we believe that the specific proposals under DTA p. 86 no. 8 (a) to (l) should be reconsidered. To begin with, it is unclear why Art. 185 (5) of Solvency II should already be complemented directly after the new supervisory system entered into force. Looking at the current information requirements, in our opinion already very extensive, any newly added information requirements should be checked for a potential "**information overload**". This holds true for both customers and companies. Overburdening customers with a multitude of – potentially redundant – information should be avoided. There is a serious risk of relevant information not being sufficiently taken into account due to the sheer mass of information. DTA p. 86, no. 8 (b), (c), (d), (h), (j) and (k) (6 out of 12 requirements) **potentially** go beyond the Solvency II requirements, even though some of them might also be interpreted in a narrower sense (cf. our detailed comments on the individual points below). The newly added points seem to be transferred from fund concepts – hence, it would be inappropriate to apply them in an insurance context (see our answer to Question 25). For instance, in some cases it remains unclear whether the text refers to the reporting period or to the period after entry in force of the contract. The German Insurance Association strongly believes that the points that are similar to	

	Solvency II requirements should be transferred to the DTA as they stand. Any other approach would lead to great legal uncertainty and further ambiguities. To give an example: Throughout the term of the contract, Solvency II only requires insurers to provide new information on the surrender value and the extent to which it is guaranteed where the values have changed due to changes in policy conditions or amendments of the law applicable to the contract [Art. 185 (5) (d) in conjunction with Art. 185 (3) (f)]. However, the wording of DTA p. 86 no. 8 (e) could be interpreted as a mandatory periodic information requirement on surrender value, regardless of whether or not the value has changed. Where additional information requirements are introduced, they should only apply to new business. Determining some of the values for existing contracts would prove impossible or entail disproportionate efforts. Our positions in detail: • **DTA p. 86 no. 8 (b)** We understand the wording "other cost" as including only optional costs arising due to additional services not recognized in the product's cost calculation. • **DTA p. 86 no. 8 (c)** We believe this point deals with a specific separate information requirement that applies where the actual development of the contract deviates (unfavourably) from the initial data provided. However, this clause could be disregarded since the relevant information requirement already applies under Solvency II, Art. 185 (5). • **DTA p. 86 no. 8 (f), (g)** Provided that these points refer to an **additional** information requirement on the performance of a fund, such requirement can be disregarded, given that it already applies under Solvency II, Art. 185 (3) (h) in conjunction with Art. 185 (5) (c).	

	• **DTA p. 86 no. 8 (h)** This point is interpreted as an annual return figure, which does not have to be provided so far. However, the German Insurance Association does not see any potential added value in this requirement and therefore recommends deleting it. Information on insurance contracts is never meaningful where it focusses on investment aspects alone. An isolated view on one-year-returns can prove very misleading for customers, given that insurance contracts usually have durations of several decades. • **DTA p. 86 no. 8 (j)** We recommend limiting this information requirement to the investment elements whose risks are borne by the customer. Providing on-going information on each investment in the premium reserve fund would be absolutely unfeasible. • **DTA p. 86 no. 8 (k)** We do not see the benefits of informing customers annually on possible contractual arrangements. Should this requirement be maintained, one might consider also including information on increasing insurance cover.	
Question 25	We welcome EIOPA's efforts to take account of the specific nature of insurance-based investment products. However, DTA p. 86 no. 8 (h) and (j) are requirements only suitable for pure fund concepts. They should not be applied for insurance-based investment products.	
Question 26	All stakeholders (consumers, distributors and product providers alike) require a clear understanding in due time of what rules are to be observed in distribution of insurance products in the future. Further work on Level 3 would complicate the implementation of rules unreasonably.	