

**Comments Template on
the Consultation Paper on
Product Intervention Powers under the Regulation on Key Information Documents for
Packaged Retail and Insurance-Based Investment Products (PRIIPs)**

**Deadline
27 February 2015
17:00 CET**

Name of Company:

German Insurance Association, Wilhelmstr. 43G, 10117 Berlin
(ID Number 6437280268-55)

Disclosure of comments:

Please indicate if your comments should be treated as confidential:

Public

Please follow the following instructions for filling in the template:

- ⇒ Please insert a name in the box next to “Name of Company”;
- ⇒ **Do not** change the numbering in the column “reference”;
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- ⇒ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty;
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Q1: Do you agree with the criteria and factors proposed?

Q2: Are there any additional criteria and/or factors that you would suggest adding?

Q3: Is there evidence that certain criteria do not apply under any circumstances to insurance-based investment products? Please elaborate.

Q4: What would you estimate as the costs and benefits of the possible changes outlined in this Consultation?

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The questions listed here are those in the Consultation Paper on Product Intervention Powers under the Regulation on Key Information Documents for PRIIPs.

Reference	Comment
General Comment	<p>The basic idea of European System of Financial Supervision (ESFS) is that the European Supervisory Authorities (ESAs) ensure a consistent application of common supervisory provisions and coordinate supervisory action while national competent authorities (NCAs) execute the direct supervision (day-to-day business) over their respective markets. The intervention powers in Article 16 and Article 17 PRIIPs Regulation reflect this distribution of roles between EIOPA and the NCAs: In Article 16 (2) PRIIPs Regulation, the European legislator sets out conditions that have to be met by EIOPA to adopt the specific measures, inter alia, that EIOPA only takes action if the respective NCA fails to act adequately. This legislative threshold seems to be in line with the ruling of the European Court of Justice (ECJ) that regards intervention powers of European agencies only as legally admissible, if they are appropriately limited (see ECJ C-270 /12 from 02.01.2014, No. 45 et seq.).</p> <p>However, in accordance with the ECJ judgement the legal conditions in Article 16 need to be interpreted strictly in order to effectively limit the powers in practice. This particularly applies to legal requirements in Article 16 (2)a PRIIPs Regulation (“significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union”). Furthermore, recital 25 of the PRIIPs Regulation clarifies that there must be “serious concerns” and that the intervention requires a “public interest”, i.e. a collective concernment in order to assume a “significant investor protection concern”. This said, the technical advice should be very clear about the fact that the specific criteria and factors serve only as a tool for assessment (“to be taken into account”). Moreover, they can neither replace careful examination by EIOPA nor define the legal terms in</p>

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	<p>Article 16 (2) PRIIPs Regulation. It should be a common understanding and clarified in the delegated acts that even if certain criteria or factors in the delegated acts apply, there is no automatism that the intervention powers are available to EIOPA. Moreover, a single criterion should never be sufficient for making use of product intervention powers, since the supervisors should only take a decision under the PRIIPs Regulation in exceptional cases. Furthermore, any intervention should be based on clear factual evidence.</p> <p>Moreover, the criteria and factors listed cannot be understood as a general request to anticipate new legislation. There are already legislative acts that refer to specific criteria. For example, the PRIIPs Regulation should set standards for the transparency of cost, risk and reward with its key information document. It would not be acceptable that independently new standards were established while the political discussion is still ongoing. Moreover, product design and pricing should always remain within the responsibility of the manufacturers. The intervention powers should also not anticipate the implementation of the Insurance Mediation Directive (IMD2) which is still under discussion. The Member States' options under IMD2 must not be circumvented.</p> <p>The limits of the intervention powers, which stem from the scope of the Regulation, must be taken into account when determining the criteria. Article 2 (2) PRIIPs Regulation lists products to which the Regulation and, therefore, the intervention powers are not applicable. In addition, the rules currently discussed for pension products should not be prejudged.</p>	
Q1	<p>Q1: Do you agree with the criteria and factors proposed?</p> <p>It is important that the clarifications mentioned in the general comments are made in the delegated acts. Due to the amount of the criteria/factors a detailed assessment is not possible. But we would like to address at least the following points (in order of importance):</p>	

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1.16.1. Degree of complexity

First of all, it should be noted that the factor/criterion “complexity” is not per se detrimental or could imply unsuitability of products for the retail investors. Many insurance-based investment products require a certain degree of complexity in order to reduce the investor’s risk, for example by providing certain guarantees, which offer a greater level of protection to retail investors, cushioning them from the volatility of the market. These guarantees are one of the main reasons for retail investors to purchase insurance-based investment products: they want additional protection against risks. However, the concrete construction of these features is neither detrimental nor does it correlate with higher risk for the investor. Therefore, EIOPA should clarify that products that require a certain degree of complexity in order to e.g. produce certain guaranteed benefits to the retail investors are not captured by the criteria mentioned in 1.16.1.

As regards 1.16.1.(d), it is questionable whether the criterion “nature and scale of any risks” is meaningful for the assessment of a need for possible product interventions. Different retail investors have different risk preferences. It is, therefore, important that the different risk and the corresponding reward profiles of insurance-based investment products are transparent and understandable for retail investors and enable comparability between different products. The risk indicator and the corresponding performance scenarios which were introduced in the PRIIPs Regulation are currently being developed at Level 2. Therefore, sufficient information that ensure that retail investors purchase insurance-based investment products that suit their risk appetite will be provided by through the PRIIPs KID requirements.

As regards 1.16.1.(b), the full transparency of costs is also provided through the PRIIPs Regulation: the cost indicator and the corresponding performance scenarios which are also currently being developed at Level 2, should include *all* costs and represent these in a comparable and transparent manner. Therefore, it is unclear, why EIOPA is concerned about a possible intransparency of costs.

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As regards 1.16.1.(e), it should be taken into account that the provisions on bundling of products with other services or products are being currently discussed within the IMD2. Thus, the recast and the implementation of this Directive should not be pre-empted.

For these reasons, the GDV suggests that the proposed factors set out in sections 1.16.1.(b), (d) and (e) should be abandoned and not included in any future technical advice.

1.16.9 The degree of innovation of an insurance-based investment product, an activity or practice

The GDV welcomes the fact that EIOPA is emphasising that the concept of innovation per se should not be the sole reason for making use of product intervention powers. Indeed, innovation is a driving force and indispensable for a continuous development of new products that increasingly reflect the changing needs of retail investors.

In our view, one must be careful when considering innovation as detrimental to retail investors or to financial stability. Moreover, the potential detriment is very limited for insurance-based investment products since Solvency II provisions ensure that the risks that arise from the sale of a new product are appropriately taken into account in order to ensure the financial soundness of an insurance undertaking. Therefore, innovations do not represent a threat to the orderly functioning and integrity of financial markets or to the stability of the financial system.

1.16.2. The size of the potential problem or detriment

It should be clarified that the criteria „volume and notional value of the insurance-based investment product” concern the potential threat to the stability of the financial system and not investor protection. We assume that it is an editorial error, that unlike Article 17(7)(d), this is not

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explicitly clarified in Article 16(8)(b) of the PRIIPs Regulation.

1.16.3. The type of investors involved in an activity or practice or to whom an insurance-based investment product is marketed and sold

First, we would like to point out two specific and necessary changes:

- The only example in (d) is “pension saving”. This should be deleted since nationally recognised pension products and occupational pensions are excluded from the scope (Article 2 (c) and (f)).
- Point (e) should be deleted for the reasons outlined below.

Under the heading of intervention powers, EIOPA proposes to introduce various criteria for product design. It should, however, be clarified that product design is first and foremost the responsibility of the manufacturers. Regulation on product design should not be introduced on the basis of intervention powers but requires a decision in principle by the legislator. For general concerns regarding product oversight and governance, please see also the GDV’s position paper on the currently discussed regulation on product governance in IMD2 and EIOPA’s draft guidelines. Insofar, sales outside the identified target market or its insufficient identification are not appropriate criteria for intervention powers. The PRIIPs Regulation does not mention the term “target market”, therefore it should be avoided also on Level 2. The term used in the PRIIPs Regulation is “type of retail investor to whom the PRIIP is intended to be marketed”. Its relevant characteristics are already contained in EIOPA’s criteria (b and c). In contrast, the term “target market” is currently being discussed and defined in the context of the development of rules on product governance. The introduction of this term on the basis of the PRIIPs Regulation could result in obligations for manufacturers which are not foreseen on Level 1. We would like to highlight that individual needs must be identified when adequate advice is provided. Banning the distribution of products to particular investors seriously interferes with the autonomy of the retail

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investors and could not be introduced by the executive alone.

1.16.6. The degree of disparity between expected return or benefit for investors and risk of loss in relation to insurance-based investment product, activity or practice / 1.16.8 The pricing and associated costs

Again, according to the PRIIPs Regulation, retail investors will be thoroughly informed about the risks and the corresponding rewards of a product through the KID. If comparability is sufficiently ensured, retail investors will be able to choose a product that suits their needs.

1.16.6. and 1.16.8 are misleading. It should be noted that the calculation of costs and premiums is primarily the task of the manufacturers and not of the supervisory authorities. It should be clarified explicitly that no general control by supervisory authorities over the pricing and the premium structure is intended.

With respect to 1.16.8(b), it should be borne in mind that there is no legal basis for regulation of product design by EIOPA (see also the comments on No. 1.16.3). The criterion should therefore be deleted.

1.16.4. The degree of transparency of insurance-based investment product or type of activity or practice

Transparency should be ensured through the key information document required by the PRIIPs Regulation and a lack of information should be avoided. Therefore, the political choice made by the legislator about the specific content and the presentation of it should be respected; deficits must be addressed in the ordinary legislative procedure.

The KID for PRIIPs has been developed to provide retail investors with understandable, reliable,

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	<p>robust, stable and comparable information. Regarding (b), the transparency of costs in the PRIIPs Regulation and the extensive Level 2 provisions ensure that the investor is comprehensively informed about the costs and charges . This applies also to 1.16.8(a). Regarding(c), the format and the structure of the information in the KID will ensure that the insurance-based investment product is suitable for the retail investor. Regarding (d), the risk indicator is developed in a way, that retail investors clearly understand the risk exposure connected to the insurance-based investment product.</p> <p>Therefore, it is unclear and in our view superfluous to consider the degree of transparency as a possible criterion for product intervention, since the possible detriment to retail investors should be generally avoided through the extensive KID provisions.</p> <p>1.16.10 The selling practices associated with the insurance based investment product The intervention powers should not prejudge the outcome of the review of IMD2.</p>	
Q2	Q2: Are there any additional criteria and/or factors that you would suggest adding?	
Q3	<p>Q3: Is there evidence that certain criteria do not apply under any circumstances to insurance-based investment products? Please elaborate.</p> <p>The criterion mentioned in 1.16.3.(d) cites „pension saving“ as an example for investor objectives . This reference should be deleted since occupational pensions and pension products that are recognised under the national law are not within the scope of the PRIIPs Regulation.</p> <p>As mentioned in our reply to question 1, it is questionable whether the criteria/factors for the degree of complexity/innovation are applicable to insurance-based investment products. Furthermore, a sufficient degree of transparency is already ensured within the KID for PRIIPs.</p>	
Q4	Q4: What would you estimate as the costs and benefits of the possible changes outlined in this	

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	<p>Consultation? Where possible, please provide estimates of one-off and ongoing costs of change, in Euros and relative to your turnover as relevant. If you have evidence on potential benefits of the possible changes, please consider both the short and longer term. As far as possible, please link the costs and benefits you identify to the possible changes that would drive these.</p> <p>The costs will largely depend on the fact whether it is made sufficiently clear in the delegated acts that the intervention of the supervisory authorities only applies in exceptional situations – as is made clear by the cumulative application of Article 16(2) (a), (b) and (c) as well as Article 16(3). Another important factor is the responsible handling of the powers by the supervisory authorities.</p>	
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