

**Comments Template on
Consultation Paper on the proposal for Guidelines under the Insurance
Distribution Directive on insurance-based investment products that
incorporate a structure which makes it difficult for the customer to
understand the risks involved**

**Deadline
28 April 2017
18:00 CET**

Name of Company:	Insurance Europe	
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 Word Format, to CP-17-001@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 the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved</p>		
Reference	Comment	
General Comments	Insurance Europe welcomes the opportunity to comment on EIOPA's consultation paper on the proposal for guidelines on insurance-based investment products (IBIPs)	

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that incorporate a structure which makes it difficult for the customer to understand the risks involved.

Insurance Europe sees a real danger that the whole of the IBIPs market will be considered to be complex if the proposed criteria are not further refined (both through the examples and through the clarifications suggested in the answers below). As they stand now, the criteria would significantly impede *the 'execution only' option*, as in practice very few products on the market would be eligible to benefit from such a sales process. In particular, the principles stated in the consultation paper's guidelines have to be scrutinised thoroughly, to avoid the erroneous classification of such products as complex.

We are concerned with the restrictive approach EIOPA has taken to the sale of IBIPs in both in its consultation paper and on the definition of complex IBIPs in its technical advice. We believe that this could limit consumer's access to insurance products (including annuity insurance) that provide long-term investment instruments with reduced risk exposure by wrongly classifying many IBIPs as complex. Such a measure would also put insurance products at a disadvantage with competing financial instruments.

Our main concerns are as follows:

Criteria should be high level in line with minimum harmonisation aim of IDD

- Insurance Europe agrees that complex products should not be sold without the appropriateness test required by Article 30(2) IDD. We would like to point out that some product features might be uncommon in one Member State but they can be typical and well-known to customers in another market instead. Thus, we support high-level criteria for non-complex products so that products that are well-known for consumers in some markets are not wrongly deemed complex. We also welcome the fact that EIOPA acknowledges the minimum harmonisation aim of IDD.

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National rules should be recognised

- Furthermore, it should be acknowledged that rules imposed by the (national) regulator that are in the best interest of consumers (eg with regard to the height of certain costs) do not need to be taken into account when assessing the criteria and do not make a product complex.

The delegated act should take into account changes in the guidelines

- Insurance Europe strongly supports that EIOPA will take into account any differences between the delegated acts which are currently being finalised by the European Commission and EIOPA's Guidelines. In our view, it is of utmost importance that a consistent approach between Level 2 and Level 3 is taken so that products that are readily understood by consumers are not wrongly deemed complex. As it currently stands it is very difficult to understand both the coherence between, and the content of the proposed criteria under the EIOPA technical advice for possible delegated acts under the IDD (p. 77 EIOPA-17/048), and the proposed guidelines under consultation. Moreover, although we understand that the division between products that fall under Article 30(3)(a)(i) and those that fall under Article 30(3)(a)(ii) stems from the IDD Level 1 text, we support that EIOPA is taking a generalised approach to capture the properties of all insurance-based investment products (IBIPs). The generic examples in the appendix of the consultation document could clarify how the criteria of the guidelines are to be understood. However, as it now stands some of the examples present a wrong picture or create confusion (see our answer to question 8).

Broader relevance of complexity should be taken into account

- Moreover, the question of complexity of IBIPs is of a great relevance. Not only does it play a role in a so-called "execution-only" distribution of IBIPs, but it is also relevant in other fields. For example, according to the newly amended PRIIPs RTS complex products will also receive a comprehension alert and will

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be labelled publically as difficult to understand. Moreover, also the POG rules newly introduced in the IDD currently depend on the complexity of an IBIP.

Level playing field should be ensured

- Competing product lines should be governed by comparable regulatory provisions to ensure a level playing field. Both the definition of complex IBIPs of the EIOPA technical advice and the proposed guidelines in fail to achieve this aim. In the current set up, MiFID II would provide pooled investment vehicles, such as investments in UCITS funds, with a favourable regulatory treatment compared to the provisions of the IDD for IBIPs. It should be recognised that IBIPs such as standard unit linked investment options and products with profit participation provide exposure to diversified investment pools, similarly to UCITS funds. IBIPs aim to smoothen returns and reduce exposure to market volatility, and should therefore have comparable regulatory status as investment vehicles caught by MiFID II.
- We would like to stress that Article 30(3)(a)(i) is supposed to address products which provide **only direct** investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. Products where the investment is done by the insurer who is subject to a very strong prudent person principle should, therefore, fall into the scope of Guideline 1. Otherwise UCITS funds would receive a preferential treatment compared to insurance products. Furthermore, the current provisions would also influence the investment of insurers, e.g. impede the investment in alternative investments such as infrastructure. This would go beyond the scope of a Directive on distribution of insurance products.
- Thus, absolute care has to be taken in order to avoid postulating principles (by

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means of Level 3 guidelines) which may leave products that are well-established in the relevant European insurance markets – such as life insurance products with profit participation – as being deemed complex under IDD.

- We fear that parts of guideline 2 on a “structure making it difficult for a consumer to understand the risks involved” fail to meet the objectives of the IDD in terms of their focus. This puts insurance products at a considerable disadvantage compared to other financial instruments. Guideline 2 as currently drafted, could actually restrict consumer choice and access to such products. Insurers should instead be able to clearly disclose the insurance-specific product conditions to the customer, for example if conditions are attached to guarantees.
- A level-playing field should always be guaranteed regarding the possibility of selling products via execution-only. It should be stressed therefore that, compared with execution-only sales under MiFID, there is an additional layer of protection for consumers subject to the IDD as there is also a “demands and needs” requirement that always needs to be fulfilled.

Growing importance of execution-only sales should be taken into account

- The focus of the consultation paper on execution only sales could hinder innovation in the market, by introducing too rigid provisions for insurance products. Products should be available through various different channels, and it should be considered that digital distribution of retail financial services plays an important role in this. Buying products on-line should not be made unnecessarily burdensome.

Existing regulation should be taken into account

- Insurers are heavily regulated entities. Solvency II, national regulations and existing product oversight and governance requirements ensure safeguarding of consumer’s interests and investments. The extensive disclosure

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requirements in place ensure that consumers are provided with documents such as the PRIIPs KID and additional pre-contractual information, which disclosure information about products.

Do you have any comments on the Impact Assessment?

Insurance Europe does not share EIOPA's assessment that IBIPs are "often complicated and difficult to understand for consumers". Most IBIPs invest either in a collective pool with profit participation or in units of funds.

Insurance Europe welcomes that a consistent approach should be applied across different financial sectors so that a level playing field is achieved. However, Insurance Europe fears that EIOPA's comparison is not always correct. For example, the investment in non-structured UCITS funds is deemed non-complex under MiFID II (see example 1 on page 32) even if the respective UCITS funds invest in derivatives. In the case of IBIPs, where the customer does not make an investment selection and the insurer invests in some derivatives (as in example 9 on page 33), such a product will be automatically regarded as complex, unless the sum of paid-in contributions (minus costs) is guaranteed at surrender and maturity (as in example 11 on page 33).

This is due to the fact that EIOPA in our view wrongly assesses the scope of Article 30(3)(a)(i): it is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is therefore not absorbed by the expertise of a professional investor who is subject to supervisory regulation. Products where the investment is done by the insurer who is subject to a very strong prudent person principle should therefore fall into the scope of Guideline 1: insurance undertakings are obliged under the Solvency II regime to invest all their assets in accordance with the prudent person principle, for which there are a number of

Question 1

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qualitative requirements. Under the prudent person principle insurers may only invest in assets the risks of which they can properly identify, measure, monitor, manage and control. They have to ensure that their corresponding obligations can be fulfilled at all times. Thus, they have to carefully choose the type, scope and quality of the coverage, and act in the best interests of the policyholders.

To ensure a proper level playing field, it is necessary that **investments made and managed by insurers are not deemed complex** per se (currently, this is only provided for products that guarantee the sum of paid in contributions minus legitimate costs at all times, as in criterion (a) on page 77). Otherwise, this would inevitably lead to investment restriction on insurers: in order to offer non-complex products insurers would refrain from investing in eg long-term investments such as infrastructure and other alternative investments which do not fall within non-complex MiFID instruments. Such a restriction of the investment horizon in turn would make it more difficult to ensure the security, quality, liquidity and profitability of the portfolio as a whole. Thus, such own investments of insurers should also be addressed in investments according to Article 30(3)(a)(i).

Furthermore, we fear that EIOPA fails to acknowledge the adverse effects that these restrictive measures could have on the market. By making sales of IBIPs more restrictive, EIOPA risks to limit access to such products for consumers, and that insurers may be forced to change their product design and investment strategies.

Question 2

What role do you consider that execution-only sales will have in the distribution of insurance-based investment products in view of the restrictions in Article 30(3)(a) of the IDD, the fact that the provisions in Article 20(1) of the IDD still need to be satisfied regarding the specification of the customer's demands and needs, and the potentially higher risks of the product not being suitable or appropriate for the customer?

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As EIOPA acknowledges in the consultation paper, certain types of customers are interested in receiving execution-only services and are neither willing to pay for additional services they do not consider necessary, nor to answer questions regarding their financial knowledge and experience.

The possibility to apply 'execution-only' in the sales process (both when underwriting and executing transactions) will make the sales process more convenient for the customer concerned. In addition, execution-only may contribute to foster the development of internet sales, as this distribution channel typically may benefit from a simplified sales process.

Insurance Europe would also urge EIOPA to treat complexity in a much broader context than the mere question of execution-only sales. Further, possibly more far-reaching, consequences should be taken into consideration. For example, complex IBIPs will automatically be labelled with a comprehension alert under the PRIIPs Regulation. However, the PRIIPs Regulation originally had a much narrower scope for the comprehension alert (see the criteria under recital (18)). Furthermore, the complexity of products is a key factor with regard to the extent of the obligations proposed by the provisions on product oversight and governance in EIOPA's technical advice on the IDD delegated acts.

Consumers increasingly turn to digital channels to purchase goods and services across the EU. The execution-only sales journey plays an important part in ensuring that consumers can purchase products through the digital channel. Thus, it is not simply a question of the current status quo but it is also important to give sufficient consideration to the general trend towards more online sales in the future. This development, as well as the element of choice for consumers, should not be damaged by putting in place overly restrictive measures that would significantly impede the execution-only option.

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What types of insurance-based investment products do you think could fall within the scope of Article 30(3)(a)(i) and which within the scope of Article 30(3)(a)(ii) of the IDD?

In principle, Article 30(3)(a) of the IDD excludes only a part of the IBIPs market from 'execution-only' sales by labelling them as complex, unless level 2 (delegated acts) and level 3 (guidelines) impose a very restrictive interpretation of this article.

We believe that products where the customer does not make an investment selection with regard to individual financial instruments, but where the investment is done by the insurer who is subject to a very strong prudent person principle, fall into the scope Article 30(3)(a)(i). This article is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. In such cases, the financial instruments invested into by the insurer should not be taken into account if the overall investment ensures that there are no hidden risks for consumers. This is also the case for UCITS, which on the one hand may invest in complex instruments such as derivatives, but on the other hand are still regarded as non-complex due to the overarching structure. Otherwise, investment products covered by MiFID would receive a preferential treatment compared to insurance products which are not covered under MiFID II.

This would inevitably lead to investment restriction on insurers: in order to offer non-complex products insurers would refrain from investing in eg long-term investments such as infrastructure and other alternative investments which do not fall within non-complex MiFID instruments. Such a restriction of the investment horizon in turn would make it more difficult to ensure the security, quality, liquidity and profitability of the portfolio as a whole. Thus, such own investments of insurers should per se not be deemed complex.

Question 3

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Do you have any comments on Guideline 1 and its explanatory text?

Insurance Europe does not agree with EIOPA’s assessment in the explanatory text to guideline 1 (paragraph 2.14). Article 30(3)(a)(i) is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. Products where the customer does not make an investment selection with regard to individual financial instruments, but where the investment is done by the insurer who is subject to a very strong prudent person principle should, therefore, fall into the scope of guideline 1. In such cases, the financial instruments invested into by the insurer should not be taken into account if the overall investment ensures that there are no hidden risks for consumers. This is also the case for UCITS, which on the one hand may invest in complex instruments such as derivatives, but on the other hand are still regarded as non-complex due to the overarching structure. Therefore, the statement in paragraph 2.14 of the explanatory text should be restricted to those cases where the provider is not subject to the prudent person principle under Solvency II. Otherwise, investment products covered by MiFID would receive a preferential treatment compared to insurance products which are not covered under MiFID II. Furthermore, the current provisions would also influence the investment of insurers, eg impede investment in alternative investments such as infrastructure. This would go beyond the scope of a Directive on the distribution of insurance products.

Furthermore, EIOPA notes itself that products with profit participation benefit consumers. Gabriel Bernardino noted in his speech at the 9 March 2017 Finanstilsynet Conference that “the development of collective profit sharing products could allow the pooling of investments with the smoothing of returns across members of the pool, so

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that all members benefit from average long-term returns of the fund and are protected from extremely negative outcomes in stressed market situations”¹. We fear that the restrictive approach taken, however, will limit consumer’s access to insurance products, including products with profit participation, and puts such instruments at a clear disadvantage to comparable financial instruments without any insurance elements.

We suggest that criterion (c) should specify the ESMA Guidelines in question (guidelines dated 4 February 2016, ESMA/2015/1787). A dynamic reference to any future guidelines which ESMA may adopt on this issue would risk introducing rules which are not in line with insurance-specific characteristics or regulation.

EIOPA should also acknowledge and reflect in its final guidelines that the use of derivatives can facilitate efficient portfolio management and reduce risks. Therefore, the use of derivatives should not automatically make the product complex, and guideline 1 should be amended to reflect this. We propose that a further point is added, stating the following:

“(d) derivative instruments that contribute to a reduction of risks, or facilitate efficient portfolio management.”

Question 5

Do you have any comments on Guideline 2 and its explanatory text?

We support that EIOPA thoroughly investigates different features of IBIPs that might lead to unexpected hidden risks for consumers. However, it should be acknowledged that some Member States have implemented rules that protect consumers’ interests.

¹ <https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/09.03.%20Private%20Pension%20Savings%20in%20a%20Low-Interest%20Rate%20Environment%20%E2%80%93%20From%20Guarantees%20to%20Protection.pdf>

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Therefore, EIOPA should clarify in its guidelines that any rules imposed by national regulators that are in the best interests of consumers and ensure a high level of consumer protection should not lead to products being deemed complex, and therefore do not need to be taken into account when assessing the criteria.

Paragraph 2.24 explains that in case an IBIP offers the customer a range of underlying investment options, the insurance distributor needs to ensure that the customer can only select the investment options that are non-complex in the case of 'execution-only' sales of this product. This means that in the case of a unit-linked product, the assessment of the criteria should be done at the level of the underlying fund. We would suggest that this be specified directly in guidelines 2.2 and 2.3(a) to (c).

Moreover, it should be clear that a contractual clause that offers a customer the possibility to switch between underlying funds is not covered by guideline 2(a), as it does not allow the insurer to materially alter the nature of the IBIP, but only gives the customer the possibility to invest in another underlying fund of the same IBIP.

Paragraph 2.19 of the explanatory text states that fiscal penalties could also be considered as unreasonable exit charges. However, this interpretation is not justified, as neither the insurer nor the customer can exercise any influence upon the fiscal treatment of an IBIP. Moreover, the fiscal treatment of a product can change throughout the lifetime of the product. It is unclear what the practical consequences would be if this should happen.

With regard to 2(c) of guideline 2 it should be clarified that where national laws allow for surrender fees which are suitable and which are agreed in the insurance contract, they should not be taken into account for the complexity assessment of a product.

Large parts of this guideline focus on the mechanisms insurers use to provide consumers with instruments which diversify risks and smoothen returns, and place an unfair regulatory burden on insurers compared with providers of other financial

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instruments which only fall within the scope of MiFID II. Complexity under MiFID II means a high degree of opacity of the connection between the consumer's investment and the possible risks and returns, for example involving investment strategies with complex derivative instruments to leverage risks, non-transparent exposure to several market risks and/or credit risks. For insurance products, the actual mechanisms of the smoothing may be difficult for the customer to understand, but the concept is not, including what this means for how risky a product is.

Insurance Europe would also like to make the following remarks on specific paragraphs of guideline 2:

- **Paragraph 3 (a) to (c):** We strongly suggest that the respective subcriteria (i) to (iii) of criteria (a) to (c) in point 3 of guideline 2 should be conclusive and not only conceived as examples of other possible cases of complexity. With a view to the very broad wording of criteria (a), (b) and (c) (without regard to the respective subcriteria), the aim of achieving legal certainty for manufacturers, distributors and consumers alike will otherwise not be achieved. For example, the material content of point 3 (a) of guideline 2 is limited to the tautology that a product is complex if there are complex mechanisms that determine its pay-out value. EIOPA should bear in mind that the guidelines can be amended at any time in the future, should the criteria prove not to be sufficient.
- **Paragraph 3(a) and paragraph 3(a)(i):** Focusing on the provisions of "complex mechanisms that determine the maturity or surrender value on death", or "the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking, the effects of which are difficult for the customer to understand", could be interpreted as implying that any traditional insurance products that may pay discretionary bonuses would be deemed complex. We believe that the focus should be on the outcome for the customer and the actual risks involved, and not on the mechanisms which

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insurers use. We therefore suggest that these points are deleted.

- **Paragraph 3(a)(i):** We would like to draw EIOPA’s attention to the fact that products which offer guarantees almost always provide for a surplus participation of the policyholders. We strongly support EIOPA’s view, as expressed in the technical advice under the IDD and reaffirmed in the consultation paper, that guarantees are valuable for the customer and should therefore not automatically be penalised by the label of complexity. To ensure high levels of consumer protection, profit participation is strongly regulated and follows prescribed legal rules in some Member States (under German law for example Section 153 Insurance Contract Act (VVG); Sections 139 and 140 Insurance Supervision Act (VAG); Sections 6, 7 and 8 Minimum Allocation Regulation (MindZV)). Some rules set by the legislator may in some cases appear complex, but they solely serve the best possible consumer protection and should not lead to products being deemed complex.

The following change is necessary in Guideline 2, paragraph 3 (a)(i):

(i) the maturity or surrender value or pay out upon death is dependent on **profit participation which is not subject to supervisory regulation or policyholder protection regulation (such as information requirements);**

- **Paragraph 3(a)(ii):** We do not understand why this criterion is relevant for insurers. We assume that the criterion is not aimed at the mechanisms which form the basis of any collective investment: see our remarks under Q.4 regarding Mr. Bernardino’s comments. Neither are unit-linked products captured by this criterion. Thus, the wording of the criterion should be restricted to capture only products that are indeed complex. The provision could also be interpreted as meaning that if insurance investment contained different shares and bonds and the value was derived from the different exposures, the product would be deemed complex. However, this would not be

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different in nature from a pooled UCITS fund which would qualify as non-complex under MiFID II. We feel that this would put insurance products at a clear disadvantage with comparable financial instruments.

→ This criterion should therefore be deleted.

- **Paragraph 3 (a) (iii):** The point that “the maturity or surrender value or pay out upon death may vary frequently or markedly at different points of time over the duration of the contract either because certain pre-determined threshold conditions are met or because certain time-points are reached” could be interpreted as deeming with-profit type products complex, when they for example guarantee to pay a final bonus on maturity. If contractual dates are clear to the customer at outset this would not seem to be a feature that would be difficult to understand. Therefore, we believe this point should be deleted.
- **Paragraph 3 (b):** We do not understand why this criterion is necessary. All IBIPs will fall in the scope of the PRIIPs Regulation and, therefore, will provide a KID that describes all the costs included in the product through the disclosure of total costs and the Reduction in Yield (RIY). In particular, the RIY is a new concept that was thoroughly investigated in the consumer testing and is able to present the cost impact in a clear and comprehensive way.
→ This criterion should be deleted.
- **Paragraph 3 (c):** We understand that EIOPA wishes to keep the surrender fees as simple as possible. However, a too simplistic reference value would not be always fair towards consumers. For example, a processing fee of surrendering a contract would result in a fixed monetary sum. However, the loss of liquidity premium is fairly measured as a percentage of the investment. Rules on surrender values should be flexible, so that national authorities can adjust them to reflect national conditions.

Furthermore, we would welcome a clarification concerning paragraph 2(a) and EIOPA’s

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	<p>understanding of “materially altering the pay-out profile” of a product. Typically, a product’s pay-out profile might be “materially altered” when clients eg at some point in time received an asset they originally had not purchased instead of a monetary cashflow the product was originally equipped with (eg compare the possible pay-out profile of a convertible bond). In contrast, regarding products where clients “just” receive more or less (monetary) return due to ordinary capital market fluctuations and hence potentially lower surplus participation rates, should not qualify as “materially altering the pay-out profile”. Hence, we would be grateful if EIOPA clarified its understanding of “materially altering the pay-out profile” in the guidelines’ explanatory text, eg by providing some further examples.</p>	
<p>Question 6</p>	<p>Do you have any comments on the interaction between the requirements in EIOPA's technical advice on 'other non-complex insurance based investments' and the requirements proposed in these Guidelines?</p> <p>Insurance Europe wishes to highlight that it is difficult to understand the interaction between the two sets of criteria at two different legislative levels, and that it would have been preferable to have only one set of criteria in one legislative document.</p> <p>It is unclear, for example, how the criterion in the technical advice could apply to an IBIP that is composed of both a guaranteed savings part and a unit-linked part.</p> <p>In our view, there is little reason why eg a non-structured UCITS fund (which is deemed non-complex under MiFID II) shall be deemed non-complex whereas a participating life insurance product – a product family offered in many European countries – shall be deemed complex only due to the presumably lacking but required investment guarantee at maturity and surrender and because the respective general (cover) assets were not held in a UCITS wrapper although the insurer’s general assets aim at (collectively) protecting retail customers in a very similar way as required for UCITS funds.</p>	

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	<p>We believe that products where the customer does not make an investment selection with regard to individual financial instruments, but where the investment is done by the insurer who is subject to a very strong prudent person principle fall into the scope Article 30(3)(a)(i). This article is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. In such cases, the financial instruments invested into by the insurer should not be taken into account if the overall investment ensures that there are no hidden risks for consumers. This is also the case for UCITS which on the one hand may invest in complex instruments such as derivatives, but on the other hand are still regarded as non-complex due to the overarching structure. Otherwise, investment products covered by MiFID would receive a preferential treatment compared to insurance products which are not covered under MiFID II.</p>	
Question 7	<p>If you currently distribute insurance-based investment products via execution-only, which of the proposed criteria regarding structures which make it difficult for the customer to understand the risks involved, would exclude those products from being distributed via execution-only under IDD?</p>	
Question 8	<p>Do you have any comments on the distribution processes outlined in the decision trees and the generic examples of complex and non-complex insurance based investment products?</p> <p>The <i>generic examples</i> in the appendix are helpful as they clarify how the criteria should be understood in practice. However, it is of the utmost importance that the criteria from the IDD delegated acts, the guidelines and these generic examples are</p>	

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coherent. As it now stands, some of the examples present a wrong picture or create confusion:

Example 9: In our view, the product described in example 9 should not be considered to be complex due to extensive regulation, in particular the prudent person principle. Otherwise, this would inevitably lead to investment restriction on insurers: in order to offer non-complex products, insurers would refrain from investing in eg long-term investments such as infrastructure and other alternative investments which do not fall within non-complex MiFID instruments. Such a restriction of the investment horizon in turn would make it more difficult to ensure the security, quality, liquidity and profitability of the portfolio as a whole. Thus, such own investments of insurers should not be deemed complex per se.

Examples 10 and 11: We do not understand why a product with profit participation (which grants consumers higher returns) might be seen as complex, while the same product which includes a guarantee without any profit participation would be considered as non-complex. It should be avoided that through too restrictive criteria the incentive might arise to exclude profit participation.

Example 4: It is not clear why it would be difficult for a customer to understand that below 500 euros investment value the annual management charge is 25 euros. This could be clearly disclosed to the customer.

Examples 9 and 10: The only fundamental difference is the existence of a guarantee, which seemingly mitigates the holding of derivatives. UCITS are technically able to hold derivatives, yet they are being classed as non-complex.

Do you have any other comments on this Consultation Paper?

Question 9

Insurance Europe would welcome an added clarification that the guidelines are

**Comments Template on
 Consultation Paper on the proposal for Guidelines under the Insurance
 Distribution Directive on insurance-based investment products that
 incorporate a structure which makes it difficult for the customer to
 understand the risks involved**

**Deadline
 28 April 2017
 18:00 CET**

applicable only for the distribution of new products, and are not intended to apply to closed-book business and contracts concluded before the IDD comes into force on 23 February 2018, including when contractual options are exercised by the customer. The IDD concerns the distribution of products, and therefore any products distributed before the Directive comes into force should not be covered by its provisions.

In our view, there is no reason why an insurance company's general (cover) assets in which the retail investor does not invest directly should be regarded as generally more complex than their UCITS funds counterpart. According to the currently suggested criteria, this is due to the fact that insurers also invest in assets that, for example, do not fall under MiFID II, such as many long-term investments. The current text creates an uneven playing field between fund managers and insurers.

Insurance Europe strongly supports that EIOPA will take into account any differences between the delegated acts which are currently being finalised by the European Commission and EIOPA's technical advice, prior to finalising these guidelines. In our view, it is of utmost importance that a consistent approach between Level 2 and Level 3 is taken so that products that are readily understood by consumers are not wrongly deemed complex.

Furthermore, the question of complexity of IBIPs is of great relevance. Not only does it play a role in the execution-only distribution of IBIPs, but it is also relevant in other fields. For example, according to the newly amended PRIIPs RTS, complex products will also receive a comprehension alert.