	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:	Liechtenstein Insurance Association (LVV)	
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 Liechtenstein Insurance Association supports the statement of the German Isnurance Association. The most relevant points have been stated in this paper. However, the Liechtenstein Insurance Association has high doubts in the practicability of the Insurance Distribution Directive. Especially smaller insurance companies and intermediaries will have problems with the implementation. And there will be substantial costs for the undertakings.	

Question 1	The costs produced by the changes would be substantial. It is not possible to give estimations on these costs. However, 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. Additional administrative burdens would result in further consolidation regarding intermediaries, thus in intermediaries disappearing from the market.	
Question 2	The policy proposals 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 bu-reaucracy 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.	
Question 3	No further arrangements are required.	
Question 4	The costs entailed by the proposed changes would be substantial. It isn't possible to give exact numbers.	
Question 5	We agree with the proposed principles.	
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 termin «objectives» (p. 33 no. 3) and «knowledge mmb experience» (p. 33 no.2)shall be. We also recommend explicitly clarifying directly in the DTA that selling out-side 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 ob-served). We therefore suggest explicitly stating in the DTA that the justification for selling outside the target market only needs to cover aspects that the dis-tributor is (or has to be) aware of. The Liechtenstein 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 in-clude a clear definition, either. If the criterion of "negative target markets" is to be maintained, it should be clarified that individual, striking examples are suffi-cient. 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.	

Question 8	The Liechtesnstein Insurance Assocaition believes 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).	
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 pos-sible 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 Liechtenstein 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 Liechtenstein Insurance Association believes that it would be appropriate for EIOPA to put a stronger focus on the differences be-tween the investment industry and the insurance industry. The products offered by investment product distributors are directly linked to the markets and therefore poten-tially 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 Liechtenstein 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 ex-pense 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. The Liechtenstein Insurance Association would like to initiate some modifications here. As in any other sector in the industry, divergent in-terests 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. custom-er/intermediary/insurer, as in the commission-based model) are involved. The Liechtenstein 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 [Arti-cles 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 ena-bles 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 mod-el 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. With regard to DTA p. 45 no. 2 c., the Liechtenstein Insurance Association would al-so 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 Liechtenstein Insurance Association would welcome a clarification under DTA p. 45 no. 2 d., stipulating that the detailed POG rules also apply to the in-volvement 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 Liechtenstein 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 con-tracts between insurers and intermediaries, - Raising company-wide awareness of conflicts of interest through train-ing/education measures. The Liechtenstein Insurance Association welcomes the explicit call for proportionality un-der 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 Liechtenstein Insurance Association recommends taking into account that the provi-sions 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 op-tions 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 Liechtenstein 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 fur-ther work on Level 3 would result in inacceptable additional burdens, making imple-mentation even more complicated. Therefore, the Liechtenstein 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 Liechtenstein 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 respect-ing the compromise the European co-legislator agreed upon in the IDD. In its man-date, 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 Liechtenstein 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 Liechtenstein Insurance Association is opposed to the proposed list of risk types (DTA p. 54 no. 4). As an alternative, we suggest introducing the fol-lowing principles, which should be used by insurers and intermediaries in the devel-opment and negotiation of inducement schemes: - Distributors should place the interests of their customers over remunera-tion 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 satisfaction 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 insur-ance companies. Examples: Liability for commissions, documentation of decisions and their jus-tification, 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 inter-vening where necessary following specific events. Examples: Contract redemption rates, lapse rates, share of contract conclu-sions 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), docu-mentation, 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 per-formance of the service provider, in order to verify whether the entire service is flawed. However, it should not be assumed automatically that the service quali-ty 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 pro-motion 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.	

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 fac-to 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 in-surance-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 fac-to 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 legiti-mizing inducements or inducement schemes which are detrimental for the cus-tomer 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. prohib-ited. 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 cus-tomers. 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 Liechtenstein 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 Liechtenstein Insurance Association recommends abandoning the list of risk types in favour of a holistic approach, based on the principles for re-muneration 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 prohibi-tions. The Liechtenstein Insurance Assocaition supports the general statement that certain factors can lead to a risk reduc-tion. 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 spe-cifically requests a collection of circumstances under which payments by third parties and benefits are generally acceptable (p. 8 of the mandate). Unfortu-nately, EIOPA does not comply with this requirement, listing four insufficient risk-mitigating circumstances instead (analysis p. 52 no. 17).	
Question 14	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 Liechtenstein Insurance Association recommends clarifying this aspect in the wording of DTA p. 55 no. 8.	
Question 15	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.	
Question 16		
Question 17		
Question 18	There is no need for further EIOPA guidelines.	
Question 19		
Question 20	The Liechtenstein 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 Liechtenstein Insurance Association	

	considers products that reduce the investment risk borne by the customer to be non-complex, such as prod-ucts 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 Liechtenstein 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 Liechtenstein, 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	The Liechtenstein 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.	
Question 23		
Question 24	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 cus-tomers 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. Where additional information requirements are introduced, they should only apply to	

	new business.	
Question 25		
Question 26		