	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:	MALTA INSURANCE ASSOCIATION **These comments have been formulated after consultation with insurers members of the MALTA INSURANCE ASSOCIATION, after taking into account deliberations at INSURANCE EUROPE level**. Submissions made by Insurance Europe may be repeated here if they have been considered relevant by the Malta Insurance Association	
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	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	

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Reference	**Comment**	
General Comment	No comment	
Question 1	1 The consultation document provides that the principle of proportionality should be applied in product oversight. However there does not appear to be provision for the different levels of testing which is to be applied depending on the different types of products manufactured. We feel that a clear distinction should be made between the requirements which are particularly applicable for the purpose of the identification of the target market and product testing, depending on the complexity of the product manufactured. This comment is being submitted particularly in view of the fact that most general insurance business products do not involve the complexity and underlying risk which investment and long-term business products involve, and therefore the customer risk is much lower.	
Question 2	1 Article 25(1)(2) of IDD provides for the product approval process to be proportionate and appropriate to the nature of the insurance product. It is important to bear in mind the diversity and wide range of insurance products, as a result of which the POG requirements would not be expected to apply in the same way to all products. These differences need to be respected, in order to avoid introducing requirements for all insurance products that are more suited to the investment world. Product risk is minor for simple insurance policies sold on a mass-market basis, and many of these products have proven beneficial in the market for years. Moreover, the majority of simple products (including non-life products such as home and motor insurance) are developed for the purpose of covering a particular risk. The persons affected by the risk thus form the natural target group. Undertakings should therefore have sufficient discretion to define the target market. In any case, the target market definition should not restrict the customer's choice when a product is proving to be suitable for him, irrespective of the complexity of the insurance product. 2 The new arrangements should not apply retrospectively to existing products. They should be brought into effect when new products are introduced or existing products are substantially	

	changed. A retrospective introduction risks introducing administrative and documentation requirements which insurers will not be able to handle leading to an inability to respond to customer demand. 3 The TA should state clearly that sales outside the target market should be allowed in exceptional cases. We explain the purpose of this in our answer to question 3. 4 The definition of the target market may not be necessary where products are designed for specific clients or specific projects. We explain the purpose of this in our answer to question 3. 5 EIOPA's final advice stipulates that the manufacturer is to duly document all the relevant arrangements and actions in relation to the Product governance and oversight arrangement for audit purposes. Furthermore, such documents are to be made available to the competent authorities upon request. In this regard, EIOPA should clarify that even though such documentation will be made available to the competent authorities upon request, the design and pricing of products will fall out of the supervisory authorities' oversight responsibilities.	
Question 3	1 In the case of certain lines of business such as commercial business, an insurer may come across these exceptional projects for which an existing, off-the-shelf product to cover such risks may not be readily available. The product, which may be designed by the re-insurers themselves and targeted at a specific client / project rather than to a target market. The inference is that any kind of product, even if it is targeted at one specific client, may need to go through some formal, product-approval process. Since this is considered to be an exceptional circumstance where the product is designed according to the specific needs of the customer, it should be exempted from a formal product approval process. The technical advice itself covers the whole spectrum of products and does not distinguish between any products. The only factor which may be applied is the 'proportionality' principle, otherwise these rules apply to all. In addition there is also a situation where a sophisticated client, normally assisted by a broker, who designs or specifies the	

	requirements of a product himself. These are exceptional circumstances where the rules as provided should not apply. 2 Although sales outside the target market would be rare in case of a broader and more abstractly defined target group, EIOPA should explicitly state in the technical advice that it remains possible generally to sell products outside of the intended target market, provided that they are justified in that particular situation (for instance when the distributor involved decides on the basis of the demands and needs analysis that the product fits that specific customer's needs). A rigid determination of a target market at the level of product design would lead to the exclusion of numerous customers from suitable insurance coverage, if – for different reasons – they do not form part of the target group, despite the fact that the product still meets their individual need for protection. The distributor has to be able to deviate from the pre-set target group if this is reasonable in a particular case. Furthermore, we feel that such new requirements could hinder product innovation and customer-centricity. Consumers should be able to choose from several product options. This choice should not be narrowed execissively by regulatory intervention. In this regard, EIOPA should recognise the fact that in insurance context, there are numerous possibilities to tailor insurance cover according to the needs of consumers via terms and conditions, sub-limits, risk exclusions or inclusions etc. These conditions are not detrimental to consumers, but are essential in order to be able to provide affordable insurance cover which matches the needs of as many consumers as possible. 3 It is normal practice in Malta, that independent brokers acting on behalf of sophisticated clients, design or specify the requirements of a product themselves. In this case, would they be regarded as manufacturers? If so, will it be the responsibility of the independent brokers to ensure that their relevant personnel involved in designing such products, possess the necessary skills,knowledge and expertise?	

	4 EIOPA's advice runs the risk of becoming too detailed, as there are already many processes that need to be met before taking a product to the market. This will particular be the case if there is a long testing period, hindering innovation and work against the interests of consumers. It will also have a detrimental effect on competition in the marketplace, as the fulfilment of a lengthy product testing requirement will hinder competitors from putting a similar product on the market. In this regard, we would like to ask EIOPA to reconsider its position. 5 We do not believe that it is necessary to include provisions on the 'negative' target market (ie identifying groups of customers for whom the product is typically not compatible). For many products, trying to clearly define the negative target group or specifying it in an exhaustive way might prove extremely difficult. 6 We do not believe it necessary to define a negative list of customers in respect of whom a product is not appropriate. 7 EIOPA is stating that a manufacturer shall select distribution channels that are appropriate for the identified target market. In this regard, we wish to point out that manufacturers do not necessarily know, at the time of designing the product, which distribution channel will ultimately be selected by consumers. We urge EIOPA to reconsider its position so as not to prevent consumers from having the freedom to choose the distribution channel they deem most appropriate for their needs, which is particularly important given the wide variety of distribution models available in today's world. 8 We would also like to understand how such POG requirements are to be applied if an authorised insurance undertaking sells its products through an insurance agent and such agent in turn sells such insurance products via independent intermediaries and tied insurance intermediaries. In this regard, is the authorised insurance undertaking responsibile to monitor that all the distribution channels act in compliance with the objectives of its product oversight and governance arrangements?	

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Question 4	1 Although we have not to date quantified the costs which manufacturers will incur in order to meet the requirements outlined in the consultation document, we envisage that significant costs will be incurred in connection with the following arrangements:- a. Enhancements to the IT system for the purpose of the required monitoring of intermediaries. This is being considered also in the light of the technical requirements of the Insurance Product Information Document, which are addressed in a separate consultation document issued by EIOPA; b. Outsourcing of product testing if required; c. Increased Audit requirements and internal controls; d. Regular training to be provided to all customer facing staff. We believe that, in complying with such POG requirements, insurers' and intermediaries' costs will increase significantly. In this regard, any proposed product oversight and governance provisions should be applied on more demanding, sophisticated insurance products and not on simple products (including non-life products such as home and motor insurance) which are developed for the purpose of covering a particular risk.	
Question 5	1. We agree that there are situations when intermediaries may be regarded as manufacturers. In fact, it is considered as normal practice in Malta that independent brokers (when acting on behalf of sophisticated clients) may actually design or specify the requirements of a product themselves. In this regard, further clarity is needed from EIOPA whether such Independent Brokers are to be regarded as manufacturers and whether it will be in their responsibility to ensure that their relevant personnel (involved in the design of such products) possess the necessary skills, knowledge and expertise. Paragraph 9(1)(b) under section 4.2.1 of the consultation document provides that an insurance intermediary describing a certain kind of coverage not already existing in the market for a	

	particular type of customer and requesting the insurer to provide the cover, is considered to be a manufacturer. We believe that in such case, the intermediary would simply be updating the insurer with the needs of a particular class of customers but the product would ultimately be designed and placed on the market by the insurer. Therefore the intermediary should not be considered to be a manufacturer. Paragraph 11 then provides that the occurrence of any of the circumstances outlined in paragraph 9 does not automatically render the intermediary a manufacturer and that an overall analysis of the specific activity of the intermediary should be carried out on a case-by-case basis for each product designed for the purpose of determining whether the intermediary is a manufacturer or otherwise. In particular reference is made to whether the product will be sold under the brand name of the intermediary and whether the intermediary owns intellectual property rights in the brand name of the product. Without prejudice to our observations as detailed in the above paragraph, we believe that, unless the product is specifically designed and branded for sale by a particular intermediary, the mere request by that intermediary for the issue of a particular product should not render the intermediary a manufacturer and therefore a situation of co-manufacturing should not arise.	
Question 6	1 EIOPA's final advice should clarify that a manufacturer is not required to share its entire product approval process with a distributor, as this could include a manufacturer's decision with regard to the use or non-use of competing distributors, but only the relevant information on the product and identified target market. 2 The monitoring requirements imposed on an insurer, where the product is sold by brokers (independent intermediaries representing the customer) require review. Indeed in the case of brokers, insurers have less or no control over how or to whom their products are sold and so cannot monitor whether the broker is compliant. Such proposal will therefore create a problem in the insurance market as it is generally not possible for manufacturers to interfere in the business of independent intermediaries. To make such monitoring requirements plausible, we	

	suggest that EIOPA distinguishes between tied intermediaries and independent intermediaries (excluding where there is an undeerwriting agreement in place). 3 Although the collaboration between an intermediary and the insurance undertaking should be clearly defined by means of a written agreement, exceptional circumstances for ad-hoc arrangements between the two should be excluded from such agreements especially where an independent intermediary (broker) is involved (with designing a specific product based on the needs of the customer). This agreement should not, though, be considered as a separate agreement to any other terms agreed to between the two parties (e.g. binding cover). Incompatibility arises in the main with brokers, but not with tied intermediaries. Having such agreements for such one-off, exceptional circumstances becomes an administrative burden for both entities. Furthermore, insurance undertakings may be dealing with an extensive intermediary network. The proposed, high-level principle can be burdensome for such insurance undertakings as they need to involve and onitor all the intermediaries used to distribute their insurance products. In this regard, we suggest that EIOPA allows insurance undertakings to score the intermediaries and have agreements with the primary distributors having a substantial market share.	
Question 7	We fear that the rigid definition of the target market would lead in practice to the exclusion of many customers despite the fact that the product would still meet their needs for insurance protection. Therefore the distributor should be able to deviate from the pre set target group if this is reasonable in the particular case. There is no need to define a negative target market, because customers not covered by the predefined target market of a product are automatically part of a negative target market.	
Question 8	EIOPA should not prescribe any defined intervals for the review process. The more stable the product, the less need to conduct a review. There are clear differences between simple, non-life and life insurance products on the one hand, and insurance-based investment products on the other hand. These differences need to be respected in order to avoid introducing requirements	

	for all insurance products that are more suited to the investment world. Product risk is minor for simple insurance policies sold on a mass-market basis. Many of these products have proven their added-value in the market for years, without giving rise to any added monitoring and control. Paragraph 54 under section 4.1 of the consultation document provides for exchange of information between manufacturer and distributor for the purpose of facilitating market monitoring by the manufacturer. In particular, it is provided that the distributor should exchange with the manufacturer, relevant information, such as the amount of sales outside the target market, summary information on the customers or a summary of the complaints received with regard to a specific product. The document does not however indicate the expected frequency for the exchange of such information. Manufacturers and intermediaries should inform each other about relevant results of their reviews. However, additional obligations to coordinate such reviews and to make written agreements are neither required nor practicable. Otherwise brokers would be required to make arrangements with a multitude of manufacturers, adapting to very heterogeneous review-timetables. An obligation to coordinate reviews is only appropriate if the intermediary and insurance company are also manufacturers. With regard to the exchange of information between manufacturer and intermediaries, it is unclear which information is required by the reference to "information to assess whether the product offers added value". Moreover it should be clarified that a manufacturer is not required to share its entire product approval process with a distributor, as this could include a manufacturer's decision with regard to the use or non-use of competing distributors, but only the relevant information on the product and identified target market.	
Question 9	The delegated acts should not prescribe the steps to be taken in order to address and manage	

	conflicts of interest in a detailed way, as this needs to be adapted to the characteristics, structure and activity of the entity involved. For example, different products as well as different distribution channels might present different conflict of interest risks. Indeed, the risks of conflicts of interest and their impact on customers in the independent intermediated channel are different to the potential conflicts of interest that might arise in the direct selling or exclusive/tied agent and any proposed requirements must recognise this fact. Furthermore, the payment of commissions from insurers to distributors does not necessarily give rise to a conflict of interests. Additionally, paragraph 2(a) of the draft technical advice should be clarified, stipulating that the remuneration of distributors does not generally qualify as "financial gain at the expense of the customer". Distributors have a right to be properly remunerated for their services. The organisational provisions on the documentation of conflicts of interest under paragraph 9(b) on page 47 require distributors to record an exaggerated amount of detail, resulting in disproportionate efforts. It is possible to use the adopted measures to record existing conflicts of interest running contrary to the interests of the customer. However, requiring distributors to draw up a list of conflicts of interest that might possibly arise in the future, while keeping up their on-going services, seems disproportionate. Distributors are not able to predict all potential conflicts of interest that might arise following the multitude of – often unpredictable – customer decisions, taking into account every conceivable element of their personal situation. Moreover, it is unclear who would benefit from such an individualised list. Customers would not have any advantage from receiving a list of potential conflicts of interest that might possibly arise in the future, but which have no basis so far. Instead, distributors are overly burdened with excessive documentation requirements.	
Question 10	It is important to take more account the principle of proportionality. Many distributors of	

	insurance products are small and medium sized enterprises and in some cases are run by one self-employed individual, who does not have a separate person available to carry out different activities, so any measures developed should not give rise to an onerous regulatory burden for SMEs. Any two person management requirement, as introduced in asset management in order to manage conflicts of interest, would put a heavy burden on the market and force SMEs to cooperate with other SMEs or just stop their business.	
Question 11	With regard to the concept of a third party, the MiFID Implementing Directive does not consider specific persons involved in distribution, like an employee or a tied agent of the firm, as a third party in relation to the investment firm. In other words, an employee or a tied agent acts in the name and on behalf of the firm and substantially constitutes a single entity with the firm. For the same reasons, employees and tied agents of the insurance undertaking cannot be considered as a “third party” for the purposes of inducements and remuneration under IDD. In fact, this would imply, for example in case of distribution through employees of the undertaking, that the employees should be considered as “third parties" in relation to the insurance undertaking, which is legally untenable and fundamentally illogical. It is clear that the framework for inducements mainly refers to the relationship between intermediaries and third parties. In our opinion, therefore, the framework for inducements would apply to insurance companies when they distribute insurance investment products through "third parties", given the fact that not every channel or person involved in the distribution can be qualified as such.	
Question 12	No further inducements need be added.	
Question 13	We disagree with the view that the types of inducements that are listed in paragraph 4(b) to (d) of	

	the draft technical advice have a high risk of leading to a detrimental impact. We fear that this will result in imposing a de facto ban on commissions. The detrimental impact on the quality of service should not be determined solely on the basis of a particular model for calculating benefits or payment methods, but rather a holistic approach that takes into account the context of the overall situation, including the long-term customer relationship.	
Question 14	Insurers monitor and carry out various analysis in order to ensure that inducements have no detrimental effecct on customers. Such regimes vary between insurers, and we disagree that there should be a one size fits all system applicable across the board.	
Question 15	We agree with the high level principle appraoch regarding the specification of suitability and appropriateness. Paragraph 8 of the analysis seems to suggest that the suitability test subsists throughout the customer relationship. It is our view that the suitability test under Art. 30 (1) IDD is not aimed to cover any ongoing advice or administration of ongoing insurance-based investment products, without ongoing suitability tests being announced to the customer by the distributor, (Art. 30(5) IDD). We would appreciate a corresponding clarification in this regard. We also believe that paragraph 12 of the draft advice (p.65) puts too much emphasis on costs. There are other reasons why it could be better for a customer to switch his embedded investments. We would appreciate a corresponding recognition of this in this regard.	
Question 16	We would ask EIOPA to clarify the consequences where the customer is unwilling to share certain information with the distributor, despite the fact that the latter is obliged to request it. Paragraph 10 of the draft technical advice prevents the insurer from recommending the IBIP. Please confirm that in such situation the distributor would be able to sell the insurance-based investment product under the rules of Art. 30 (2) IDD (ie under the appropriateness test after due warning).	

	Unlike the rules under MIFID, EIOPA abstains from making any distinction on account of the retail or professional nature of the customer, as required under Art. 30(6)(c) of the IDD. We would like EIOPA to confirm the relevance of these criteria.	
Question 17	The information which the insurer is required to obtain is contained in Article 30 (1).	
Question 18	It is not necessary to introduce further specifications with regards to the demands and needs test.	
Question 19	We disagree that the criteria in the draft technical advice should be a cumulative test. The cumulative nature of the list will result in a de facto ban on execution-only, as all products are deemed complex besides products with a unit-linked investment element. This would go contrary to the IDD which allows execution only sales on non comples IBIPs. With regard to criterion (e) on page 71, we believe that this is overly broad compared to the corresponding MiFID 2 criterion (point (d) on page 68), which states that "it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment". EIOPA's proposed criterion (e) expands the scope considerably, by wrongly putting switching clauses on the same level as converting rights. This is inaccurate, as switching takes place in the contractual sphere, while converting does not. We do not agree with criterion (h) of the draft technical advice if this would not allow the customer the possibility to change the beneficiary. Beneficiary clauses do not influence the performance or return of the product. This criterion even undermines the right of a customer to alter a product to his particular needs and ignores the fact that modifiable beneficiary clauses are in the interests of customers as they enable them to keep control over the beneficiary of their investments.	
Question 20	We agree that insurance products can be considered non-complex if they do not incorporate a structure which makes it difficult for the customer to understand the risks involved. Thus, products that reduce the risk for consumers should be seen as non-complex, such as products	

	with collective investment, products with guarantees or other security mechanisms (no look-through regarding complexity, only the insurance "wrapper" should be viewed when assessing complexity for consumers) and products with non-significant investments in complex MiFID instruments.	
Question 21	Point (i) of point (a) of paragraph 3 of Article 30 does not capture the vast majority of 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. Products that reduce the risk for consumers should be seen as non-complex, such as products with collective investment, products with guarantees or other security mechanisms (no look-through regarding complexity, only the insurance "wrapper" should be viewed when assessing complexity for consumers) and products with non-significant investment in complex MiFID instruments.	
Question 22	Firstly we believe that cloud services should not be excluded from the kind of instruments that can be considered as durable medium. So we would invite EIOPA to clarify what is meant by "Internet sites"in the first bullet of paragraph 13 of the draft advice (p.76) Secondly, whilst we agree with the proposed high level criteria, we have the following questions: Paragraph 17(a) should be clarified to the effect that any periodic recording of the changes in the suitability assessment is necessary only in cases in which the distributor has explicitly informed the customer that it will carry out such periodic suitability assessment, according to Article 30(5) subparagraph 4 of the IDD. Paragraph 17(b) refers to a customer's risk profile. In insurance, there is no automatic link between a customer's profile and certain products. These practices are more common in the banking sector, but not in the insurance sector. Furthermore, the IDD does not require	

	distributors to draw up investment risk profiles.	
Question 23	We do not think that EIOPA is reflecting insurance specificities when referring to IBIP that fit the customer's risk profiles. These practices are more common in the banking sector, but not in the insurance sector. Furthermore, the IDD does not require distributors to draw up investment risk profiles.	
Question 24	We support that digital platforms are allowed, but regret that distributors need to have evidence that the customer has actually accessed the information at least once during the relevant reporting period. This is not required under the IDD, as the Directive only contains an information obligation for the distributors and does not oblige them to check if their customers read / access the information. Paragraph 2 of the draft technical advice on page 85 requires the insurer to state *whether the recommendation is likely to require the customer to seek a periodic review of their arrangements*". We ask EIOPA to confirm that it is for the insurer to decide whether he provides periodic assessments of suitability or not, and also what should trigger such periodic assessments. We believe that the information set out in paragraph 8 of the draft technical advice on page 86 will result in a duplication of the information that is already required under Article 185(5) of the Solvency II Directive. This duplication can lead to inconsistencies and legal ambiguities.	
Question 25	Paragraph 8(d), (h) and (j) of the draft technical advice are requirements that are only suitable for pure fund concepts. They should not be applied for insurance-based investment products.	
Question 26	There is no need for EIOPA to further specify criteria regarding the periodic communictions to customers.	