	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:	The Danish Insurance Association	
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 Danish Insurance Association welcomes the opportunity to comment on EIOPA's draft technical advice on possible delegated acts under the Insurance Distribution Directive. It should, however, be noted that our comments only concern the questions related to Product Oversight & Governance (1-8). In general, the DIA supports effective product oversight and governance (POG)	

	arrangements and recognizes that with the transposition of the Insurance Distribution Directive (IDD) as of early 2018 such arrangements will apply to insurance undertakings and distributors in all member states. It is in the interest of both costumers and the industry that insurance undertakings bring appropriate insurance products to the market - i.e. that customers are in focus and that their needs and interests have been considered prior to the introduction of the products to the market. This is why even today, insurance undertakings have established internal procedures and processes to ensure that the products they market meet the needs of the costumers. The alternative is that either the product is not sold or the company suffers a reputational risk. Besides that, in Denmark, POG is not an unregulated area; there is already legislation in place that prevents poor quality products to enter the market. Furthermore, the Danish Financial Supervisory Authority has the option to intervene in the event of the introduction of a product which should not have been placed on the market. With this in mind the DIA would like to highlight some of our main concers of a more general nature as to the technical advice on POG. First of all we believe that it is crucial that the delegated acts to be adopted by the European Commission are **fully consistent with the IDD Level 1 text** – i.e. does not go beyond the framework of the IDD - and that the proposed provisions lead to an effective improvement of consumer protection in insurance distribution and result in a **proportionate and pragmatic approach** in their application to avoid unnecessary costs and burdens. Secondly it is crucial that the industry and member states have a **sufficient time period for implementation** of the delegated acts. Once the level 2 legislation has been adoptend by the Commission member states would need to transpose the requirements into national law and the industry would need time to make changes to current business models and organisational structures. Hence the DIA encourages EIOPA to comply with the scheduled implemention period for the technical advice. This	

	will to enable the Commission to provide member states and the industry with the final requirements as soon as possible. As to the **POG requirements** EIOPA should ensure that they can be **implemented at national level as efficiently as possible**. Hence, existing national rules that pursue the same objectives and reflect the principles in the technical advice should not be adapted for the sake of formality only. Furthermore the DIA believes that **the scope of the policy proposals is very broad**, as they apply to both life and non-life insurance products. 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. In this respect the DIA welcomes the fact that **the principle of proportionality** has been introduced in the policy proposals (e.g. paragraph 2, page 21 and paragraph 28, page 25). This requirement is enshrined in Article 25(1)(2) of IDD that provides for the product approval process to be proportionate and appropriate to the nature of the insurance product. However, in EIOPA's final report on Public Consultation on POG of 6 April 2016 this principle was further elaborated on in paragraph 1.4 and 1.40 of the explanatory text. We would like these paragraphs to be reintroduced in the technical advice. Moreover the requirements should be better targeted to their objectives. To this end, the **flexible product-specific approach to the determination of the target market** is to be welcomed. However, some of the proposed provisions are still in need of modification. In particular, distributors should be able to to sell outside of the target market and there should be no definition of a negative target market In addition to this it should be explicitly clear that the POG requirements are **not intended to lead to any price controls** or detailed provisions on product design. Besides that the DIA is also concerned about the **potential retroactive application of the proposed POG requirements** as companies would be overstrained if they	

	were obliged to establish new POG arrangements for each of these products. The DIA believes that the requirements should only apply to newly designed products that are brought to market, or products that are 'significantly changed', after the implementation date of such provisions. This also ensures consistency with Article 25 of the IDD. Hence, the wording of EIOPA's policy proposal should be reworded in line with the above. Actually this clarification was included in EIOPA's final report on Public Consultation on POG of 6 April 2016 (paragraph 1.17 on page 17 and last paragraph on page 65), but seems to be missing in the draft advice.	
Question 1	At this point in time the DIA is not able to provide an estimate of the costs and benefits of the possible changes outlined in the consultation paper, since the current policy proposals leave room for interpretation and are not final yet. As long as the current legal uncertainty continues and consequently no definite implementation plans exist yet in insurance companies, the costs manufacturers will face by meeting these requirements can neither be estimated nor quantified. It should be noted that a short preparatory period would come at a certain cost, particulary in the IT area.	
Question 2	First of all the DIA finds that the **high level of detail** in the policy proposals would eventually hamper the introduction of new products and the creation of new trends, thus endangering the freedom of enterprise. As mentioned under the general comments the DIA is concerned that EIOPA refers to the concept of "value of the product" (for instance in the section on "Establishment of distribution arrangements" in paragraph 48 on page 20 and in paragraph 2 of the draft technical advice on page 41). The "value" of the product is something that will be determined by the market. We are concerned that references to such a concept could effectively result in a form of **price control** for insurance products. While we support the development of good products that bring value to customers, EIOPA should not consider interfering with companies' internal pricing mechanisms, as to do so would inevitably hamper competition. It is also in no way representative of the content of Article 25 of the Level 1 IDD text on POG and goes much further than the principle set	

	out in that provision. Moreover, it should be recalled that the aim of the product approval process is to ensure that insurance products meet the needs of the target market (recital 55). Finally, we would like to underline that under Article 21 of the Solvency II Directive, the supervisory authorities are not entitled to introduce price-control mechanisms. 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. It is unclear how the **increased documentation requirements** for both insurance undertakings and distributors in connection with the POG arrangements will benefit the consumer. We are concerned that the introduction of further documentation requirements will trigger price-raising because of increased administrative burdens. Moreover, the lack of flexibility at the level of documentation requirements will most likely affect small companies more than large companies. Finally, increased documentation requirements could slow down production and financial innovation and not be in favor of costumers. Hence, the documentation requirements should be proportionate to the nature, scale and complexity of the business of the distributor. This should be introduced in an explicit way in the policy proposal. With respect to documentation requirements, it is also worth noting that EIOPA in its Final report on the Public Consultation on POG of 6 April 2016 (paragraph 1.1. on page 25) reminded that establishment of POG arrangements does not necessarily mean that new or fully separate arrangements are drafted; it can be sufficient to refer to existing	

	documents where these contain the relevant information and just record additional information if and insofar as this is necessary. We would like to see this explanatory text reintroduced in the technical advice, preferably in the policy proposals. Moreover we believe that the actual **proactive monitoring of compliance** with the POG arrangements by distributors should be carried out by the national supervisory authority and not the manufacturer (insurer) involved. In the case of independent intermediaries, it is not possible for an insurer to monitor actively if the distributor respects the POG arrangements and if the product is sold correctly to the target market. Finally we regret EIOPA's reference to the **claims ratios or claims payment** policies in the accompanying analysis (page 18 of the consultation). Insurers should not be obliged to focus on claims ratios or claims payment policies in the monitoring of their products or during the product testings. These criteria are not always appropriate to estimate if the product is of value to the identified target market.	
Question 3		
Question 4	At this point in time the DIA is not able to provide an estimate of the costs and benefits of the possible changes outlined in the consultation paper, since the current policy proposals leave room for interpretation and are not final yet. As long as the current legal uncertainty continues and consequently no definite implementation plans exist yet in insurance companies, the costs manufacturers will face by meeting these requirements can neither be estimated nor quantified. It should be noted that a short preparatory period would come at a certain cost, particulary in the IT area.	
Question 5	The DIA agrees with the high-level principle proposed by EIOPA in order to assess whether activities of an insurance intermediary should be considered as manufacturing. However, we suggest that the explanatory text in paragraph 11 on page 28-29 is reflected in the policy proposal itself – i.e. the qualification of the	

	insurance intermediary as a manufacturer should be based upon an overall analysis of the specific activity carried out by of the intermediary on a case-by case basis for each product designed. Where insurance undertakings and intermediaries are involved in the design and development of a product, this should be understood as manufacturing. Hence, in some cases intermediaries design the coverage, the target market, the terms and conditions etc. of an insurance product for a customer or a specific group of customers. However, to the extent that the intermediary defines or changes the main elements of an insurance product (including the coverage, the target market, the terms etc.), and asks the insurance undertaking to offer the described product, it seems reasonable and logical that the intermediary is subject to the same product oversight and governance requirements as manufacturers of insurance products (insurance undertakings), the only difference being that the insurance undertaking actually insures the risks and remains responsible to the costumer for the contractual obligations. In such cases the insurance undertaking should not assume administrative responsability vis-à-vis the supervisor for non compliance with the POG-procedures.	
Question 6	As to the proposal to lay down in a written agreement the respective roles and responsibilities of the undertaking and intermediary, the DIA finds that the allocation of responsibilities between the entities and the question of whether it should be established in a written contract must be based on an individual assessment in each case.	
Question 7	In general the DIA finds that the differences between the various products need to be respected when applying POG guidelines. Hence, the DIA agrees that there should be different levels of granularity with regard to the target market enabeling the manufacturer to define the target market in a broad way. In this respect product risk is minor for simple insurance policies sold on a mass-market basis. As to products required by law or based on agreements between social partners they should be subject to no or less stringent requirements. This also applies to insurances that are tailor made in order to cover the special needs of costumers' via terms and conditions, risk exclusions or inclusions etc.	

	In light of the above the DIA supports the fact that the principle of proportionality has been incorporated into the policy proposal on the target market. However, according to paragraph 2 on page 33, when defining the target market EIOPA suggests taking into account factors such as knowledge and experience, financial situation and objectives of the customer. These are detailed personal factors and do not seem to correspond with a broad, abstract group of customers. The DIA welcomes the fact that EIOPA in its analysis on page 20-21 (paragraph 52 and 53) acknowledges that under certain circumstances it remains possible to sell products outside of the intended target market. However, explicit recognition of this principle should be introduced in the actual policy proposal and not only in the analysis. 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 preset target group if this is reasonable in a particular case. In light of the above, there should be no obligation to define a negative target market. Moreover it is a concept that is difficult to understand and that could be one which could prove too exhaustive or even impossible to fulfil in practice. Finally, as regards the distribution of products to the identified target market, the guidelines should not impose any duty on manufacturers to supervise or be held responsible for the actions of distributors who sell outside of the target market (paragraph 22 and 23 on page 23). Distributors would therefore remain responsible for meeting the required standards for distribution and determining whether such sales remain suitable/appropriate.	
Question 8	The DIA supports the approach taken by EIOPA as to the flexibility of the frequency of the reviews of the POG arrangements, products and distribution arrangements and	

	actions to be taken in cases where manufacturers or distributors become aware of an event that could materially affect the potential guarantees of the product etc. The DIA can, however, not support the proposal to have in place written arrangements between manufacturers and distributors in order to coordinate the reviews. While manufacturers and intermediaries should inform each other about relevant results of their reviews, additional obligations to coordinate such reviews and to make written agreements are neither required under the level 1 text nor practicable. Moerover the objects of the reviews are not the same. In this respect it is unclear how the increased administrative burdens for both manufacturers and distributors will benefit the costumer. Moreover, the DIA considers that the obligation for the compliance function/senior management to oversee the development of the POG arrangements and reviews should be deleted as it is already dealt with under Solvency II. Furthermore we would like to stress that any changes to a product which are effected on the basis of a review should only affect the further distribution of the product. The framework for making any amendments to existing contracts is provided by national contract law. As to the information which the distributor should obtain from the manufacturer the DIA supports the introduction of a high-level principle combined with specific information details, which should be understood as the bare minimum. However, the DIA cannot accept that the minimum requirement should concern the fair value of insurance products or lead to any interference in, or requirement to provide information to the distributors about the internal pricing mechanisms of companies or fair value of the product (i.e. price control), as to do so would inevitably hamper competition. In fact, the aim of the product approval process is to ensure that insurance products meet the needs of the target market (recital 55). EIOPA proposes that the manufacturer shall conclude a written agreement with the distributor to specify the relevant information. However, since the main obligation	

	required of distributors under Article 25, IDD, is to have in place adequate arrangements to obtain all the relevant information on the product and the product approval process from the manufacturer, the DIA cannot support that manufacturers should be held responsible for concluding agreements in this respect. Along these lines distributors should assume responsibility for any failure on their part to obtain all necessary information on the product etc.	
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