

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:	Verbraucherzentrale Bundesverband e.V. Federation of German Consumer Organisations	
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
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ 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 <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-16-006@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 Technical Advice on possible delegated acts concerning the Insurance Distribution Directive</p>		
Reference	Comment	
General Comment	With regard to the cross-sectoral implications concerning IDD we strongly support EIOPA's approach to offer as much compatibility to the MiFID II regime as possible. First of all to avoid any unnecessary burden for market participants and secondly to further pursue the goal of a level playing field across the different financial sectors. We acknowledge the limitations occurring from a mandate restricted to technical advice.	

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	<p>We agree with the necessity to consider peculiarities of risk coverage connected with an investment component. But in our opinion the main decision has to be made at the level of the „demands and needs“ test. The main question is: Do consumers need a risk coverage and is it necessary to combine it with an investment component? Generally vzbv advocates a separation of saving and risk coverage. Only in case of mandatory bundling by national law a connection of these aspects is unavoidable. Only in that case the suitability and appropriateness test in relation to the investment component has to be provided.</p> <p>vzbv in general believes that every commission has a detrimental impact to sales process of insurance-based investment products (IBIPs) and financial instruments as well. Therefore vzbv postulates a ban of commission as introduced in the Netherlands and United Kingdom in 2013.</p> <p>At the same time we assume that a strict regulation of the distribution of IBIPs leads to an evasive movement to the distribution of well commissioned biometric risk products and substitutive private health insurance where administrative burden is lower.</p>	
Question 1	-	
Question 2	Yes, we agree.	
Question 3	-	
Question 4	-	
Question 5	Yes, we agree.	
Question 6	We believe, that it is necessary to disclose risk carrier collaborating with intermediaries.	

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	<p>On one side under the Solvency II - regime the answer to the question, is the risk carrier able to fulfil its obligation over the whole contractual period, is an important information for consumers. On the other side this disclosure will raise pressure to the insurer to market equivalent products to „normal“ customers as well.</p>	
<p>Question 7</p>	<p>Yes, we agree.</p> <p>Regarding the examples of criteria to define target markets for all insurance products we would like to emphasise that the level of risk tolerance and the financial situation of the customers is a common issue for all insurance products. The main question is, which level of risk can a consumer bear himself and what are the priorities in case of financial limitation following the “maximum credible accident principle” by covering the worst potential financial damage first.</p> <p>For health insurance the age of customers is also relevant. In Germany limits exist to switch into the statutory health insurance (SHI), when a consumer is older than 55 years. It is only possible to join in SHI for pensioners, when an applicant had been a member of SHI for at least 9/10th of the second half of their professional life.</p>	
<p>Question 8</p>	<p>We consider that it is important to introduce a minimum frequency of reviews of a product’s oversight and governance arrangements by the product manufacturer. We estimate a period of 3 years as too long. Future changes in legislation may have to be implemented in a far shorter period. E.g. the basis tariff in German private health insurance was introduced by an act published on March 26th, 2007, which entered into force on January 1st, 2008. Therefore we suggest a minimum frequency of 1 year.</p> <p>A change of a product oversight and governance arrangements should need to be communicated to customers, when it has direct or indirect impact on their contracts including an explanation for the change and for the consequences and option for action for consumers.</p>	

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Question 9	We assume that a strict regulation of the distribution of IBIPs may lead to a circumvention to the distribution of well commissioned biometric risk products and substitutive private health insurance where administrative burden is lower. Therefore adequate provisions for these products are needed as well.	
Question 10	<p>vzbv in general beliefs that every commission has a detrimental impact to sales process of insurance-based investment products (IBIPs) and financial instruments as well. Therefore vzbv postulates a ban of commission as introduced in the Netherlands and United Kingdom in 2013.</p> <p>By recognising EIOPA´s task to draft a Technical Advice we support the suggested high level principle. Especially number 6 of the Draft Technical Advice is very important. It has to maintain in the Technical Advice, because it is the key element to develop a consumer orientated conflict of interest policy.</p> <p>Number 6 lays down legal consequence, when distribution activities are not carried out in accordance with the best interest of the customers and are biased by conflicting interests. Then insurance intermediaries and insurance undertakings must adopt adequate alternative measures and procedures for that purpose. In case of applied commissions insurers would then have to offer commission-free products.</p>	
Question 11	<p>We agree with the high level principle. We strongly support the approach, that an inducement is any fee, commission or non-monetary benefit which is paid or provided in connection with the distribution of an insurance-based investment product or an ancillary service to or by any party except the customer or a person on behalf of the customer, to get a level playing field between insurers working with intermediaries and direct writers.</p> <p>Regarding to number 17 of the analysis we disagree with all proposed alternatives to reduce the risk that inducements have a detrimental impact on the quality of the service to the customers. Only a prompt refunding of any inducements deducted from the customer´s initial investment to the customer can be considered an adequate reaction in case a customer´s interest got violated by inaccurate insurance distribution</p>	

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	activities.	
Question 12	While recognising that upfront commission has a devastating impact on the quality of the service to the customers, sales target agreements can lead to the same bias, when the intermediary is trying to reach the target. Gifts and benefits are a common reward in sales target agreements. That is why a gifts and benefits policy must be mandatory.	
Question 13	-	
Question 14	As EIOPA describes itself, a "positive list" outlining circumstances that are considered generally acceptable entails the high risk of creating loopholes for regulatory arbitrage. This is the case, when the list is recognised as a conclusive enumeration. A positive list can also be used with the phrase "particularly", where the examples have a mere describing character.	
Question 15	<p>We agree with the high level principle. Especially the obligation to demonstrate that the benefits of switching are greater than the costs, is essential to avoid misselling and misleading advice.</p> <p>Regarding collective contracts where more than one person is insured or participating as contractual party it is absolutely necessary, that the suitability assessment is provided for every single consumer by either the insurance intermediary or the insurance undertaking. Only they have the expertise to provide these tests in an adequate way and with reasonable results.</p> <p>We believe that the question, how often a consumer wants to deal with his investment, is also a necessary information to provide with an adequate suitability and appropriateness test. Consumers who do not want to deal with their investment, have to be offered non-complex insurance-based investment products or containing ETF's.</p>	

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Question 16	vzbv's opinion is that the question of risk coverage has to be discussed under the demand and needs test. Additional insurance intermediaries and insurance undertakings have to follow disclosure requirements for cross-selling under Article 24. They have to inform the customer if it is possible to buy the product(s) separately.	
Question 17	In addition to the demands and needs test the following subjects are deemed essential to be asked: income, running expenses, credit commitments, liquid reserves, assets and property, investment objectives, expected time frame of the investment, flexibility and availability, time to spend with the allocation of the investment, ability to bear losses, risk tolerance, nature, volume, frequency and period of transactions already having been carried out, experience with this product category.	
Question 18	As written in the general comment, the main decision has to be made at the level of the „demands and needs“ test. Do the consumers need a risk coverage and is it necessary to combine it with an investment component? Generally vzbv advocates a separation of saving and risk coverage. Only in case of mandatory bundling by national law a connection of these aspects is unavoidable. Only in that case the suitability and appropriateness test in relation to the investment component has to be provided. Therefore it is absolutely necessary to provide a specification and guidance on the relationship between the demands and needs test and the suitability/appropriateness assessment in a separate policy instrument.	
Question 19	We do not believe that the integration of insurance aspects into the definition of non-complex insurance-based investment product is helpful to create a more or less consistent legal framework between MiFID II and IDD. Insurance aspects have to be discussed in the demand and needs test and under cross selling provisions.	
Question 20	See answer above.	

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Question 21	-	
Question 22	Generally, we agree with the high level criteria. Only relating to the language, we would refer to Article 6 of the Regulation 593/2008 on the law applicable to contractual obligations (Rome I). That means, that in relation to consumers an official language of the Member State, where the consumer has his habitual residence, when the insurer pursues his commercial or professional activities in the country where the consumer has his habitual residence, or by any means, directs such activities to that country or to several countries including that country.	
Question 23	-	
Question 24	Yes, we agree.	
Question 25	Yes, we agree.	
Question 26	Yes, there is need for information about the actual premium and the totalised premium paid by the consumer until now. These information are necessary to make informed decision: surrender, exemption from payment or continuation of the contract.	