

# Product intervention under the PRIIPs Regulation

IRSG meeting  
Frankfurt, 1 October 2014

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# Art. 9(5) is basis for EIOPA's product banning powers



## “Emergency situation”

(Art. 9(5) + Art. 18, EIOPA Regulation)

- EIOPA may temporarily ban “certain financial activities” if:
  - There is an “emergency situation” +
  - Threat to:
    - Financial markets; or
    - Financial stability
- N.B. “Financial activity” is not defined

▶ **Emergency banning powers relate to all financial activities**

## Enabling sectoral legislation

(Art. 9(5) + Art. 1(2) EIOPA Regulation + Arts. 16, 17 PRIIPs Regulation)

- EIOPA may temporarily ban an insurance-based investment product, **even on a precautionary basis i.e. no need for an emergency situation**:
- BUT three significant hurdles:
  1. **Significant investor protection concern or threat to financial markets/stability**
  2. **EU regulation does not address threat**
  3. **Competent authorities have not taken adequate action**
- N.B. PRIIPs Regulation should come into force in Nov/Dec 2014

▶ **PRIIPs Regulation is first “enabling legislation” for EIOPA**

▶ **Banning powers relate only to investment-based insurance products**

# What is an insurance-based investment product?



- Certain types of **life insurance contract**:
  - ✓ **Unit-linked and index-linked contracts and with-profits contracts**
  - × 'Pure protection' contracts, such as term life insurance
  - × Life insurance contracts that are pensions

# National authority can ban as well....if certain conditions are fulfilled



## Discrimination?

- No **discriminatory effect** on services provided from another Member State

## Consultation?

- **Proper consultation** of competent authorities in other Member States

## Regulation?

- EU Regulation **does not sufficiently address the risks already**

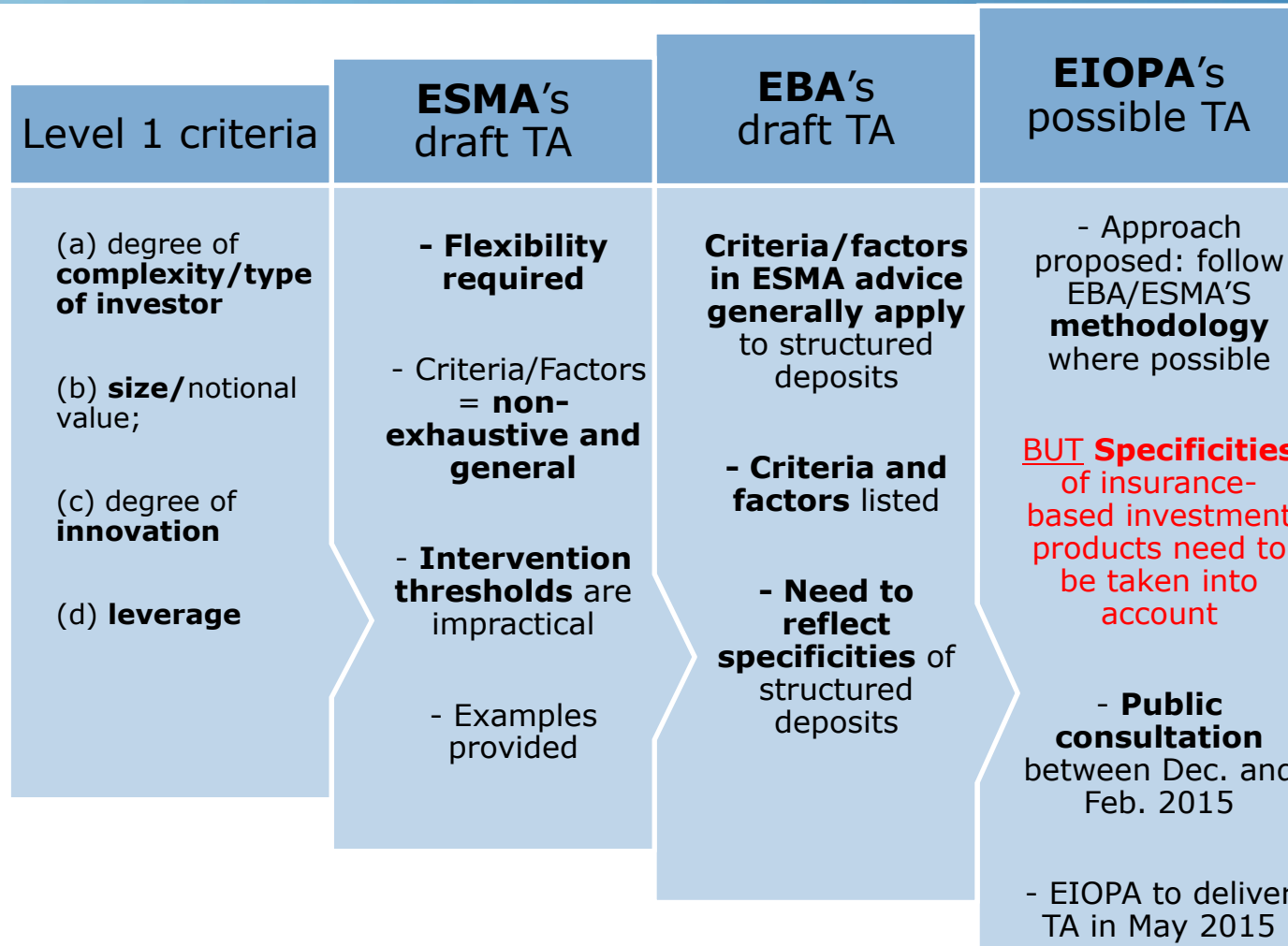
## Proportionality?

- Action is **proportionate** – no “sledgehammer to crack a peanut!”

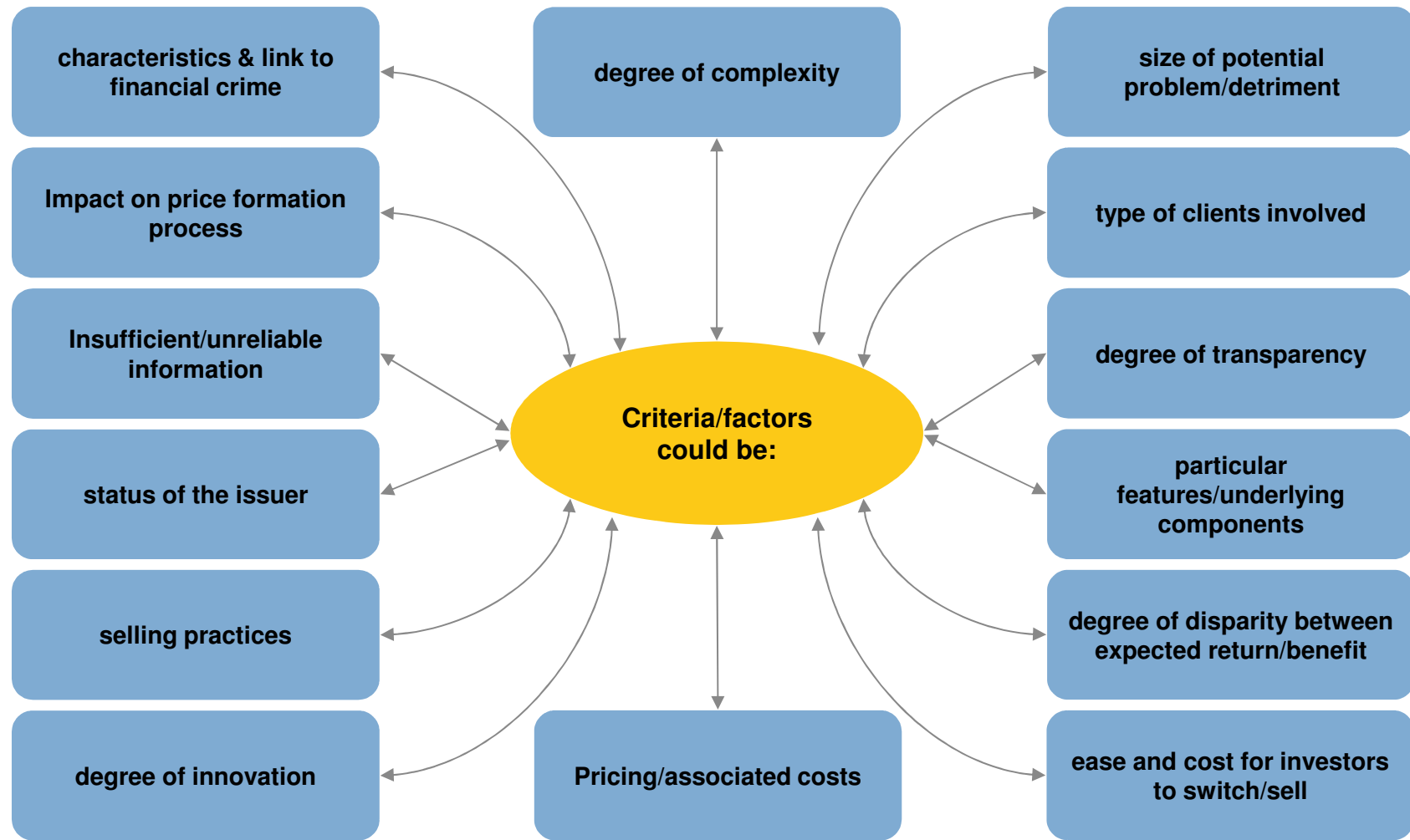
## Threat?

- Significant **investor protection concern** or **threat to orderly functioning of markets / stability of EU financial system**

# ESMA and EBA use same methodology in their Level 2



# Possible examples of criteria/ factors for intervention



# How might the ban work in practice?

## A Case study (High-Risk Unit-Linked Product)



**Situation in Member State requires action by EIOPA**

▪ **Non-transparent, complex and high-risk unit-linked product:**

- Designed to ensure that retail clients cannot benefit,
- BUT sold systematically to risk averse clients on a massive scale
- Regulator publishes highly technical article about product, but publication does not achieve any public reaction

**Investor protection concern/  
Threat to financial stability**

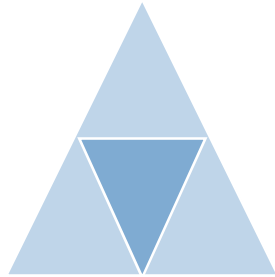
▪ Possibly factors/criteria for **investor protection concerns** apply and possibly further factors/criteria **due to massive scale:**

- Therefore: this activity raises investor protection concerns and/or threat to markets or financial stability

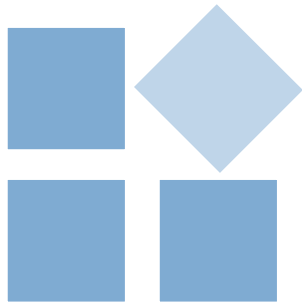
**EU law does not address the threat**

▪ **EU regulation does not address the threat**

**EIOPA temporarily prohibits marketing/distribution**



1. Any **questions** on the request for advice?



2. Which **characteristics** of insurance-based investment products should be **addressed**?



3. Are any of the **non-exhaustive criteria examples** provided, **not applicable** for insurance-based investment products?





# Questions?

Jan Wagner  
Consumer Protection and Financial Innovation  
EIOPA

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