Survey on the empowerment for EIOPA to develop Guidelines in Article 30(7) of the Insurance Distribution Directive

Fields marked with * are mandatory.

Introduction

There are 18 questions in total with no word limit on the length of the answers. Please respond to as many questions as you are able to and provide justifications for your responses. * is used to indicate where a field must be completed in order to submit a response, however, none of the main survey questions are mandatory. The **questions highlighted in bold** indicate those that EIOPA considers to be the most important, should it be necessary for you to prioritise your responses.

Contact details

*

Name of company or organisation

EIOPA IRSG

*

Sector

Group encompassing representatives related with the insurance and reinsurance sector, including industry, consumers, users, academics, employees' organisations, actuaries and professional associations

Please enter below the details of the person we should contact in case of any queries regarding the replies in this survey.

*

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Publication of responses

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Contributions received will be published on EIOPA's public website unless you indicate otherwise.
Please state if you agree or disagree to the publication of your answers

- (x) I agree to the publication of my survey responses
- ( ) I do not agree to the publication of my survey responses

Background on the context for the Guidelines

The scope of the Guidelines is limited to only certain transactions for insurance based investment products (IBIPs)[1], which are often referred to as “execution only sales”. As set out in Article 30(3) of the Insurance Distribution Directive (IDD), for these transactions no advice is given and an assessment of appropriateness[2] (under Article 30(2)) is not required. The activity must also be carried out at the initiative of the customer or potential customer. Furthermore, execution-only sales are only permitted if a Member State chooses to exercise the derogation provided for in Article 30(3), IDD and the “demands and needs” test in Article 20(1), IDD must still be fulfilled.

The empowerment for the Guidelines in Article 30(7) refers to Article 30(3)(a)(i) of IDD. This limits the scope of the Guidelines to ‘contracts which only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU’ on Markets in Financial Instruments (“MiFID II”).

This list of non-complex financial instruments includes for example certain types of shares, bonds, UCITS and structured deposits. Under an empowerment in Article 25(10), MiFID II, the European Securities and Markets Authority (ESMA) has also issued Guidelines on complex debt instruments and structured deposits [3] to further specify the types of financial instruments that should be deemed as non-complex. Given the explicit reference to MiFID II in Article 30(3)(a)(i), IDD, and the need to consider the relevance of cross-sectoral consistency, EIOPA has drawn inspiration from ESMA’s Guidelines for the purposes of developing this survey. EIOPA also notes that the empowerment for ESMA in Article 25(10), MiFID II, is similarly worded to the empowerment in Article 30(7), IDD

Where an IBIP does not provide investment exposure to financial instruments deemed non-complex under MiFID II, it may still be possible for that IBIP to be sold via execution-only. This would be the case if it falls within Article 30(3)(a)(ii), IDD, which covers “other non-complex IBIPs”. These “other non-complex IBIPs” will be identified by criteria to be specified in the IDD delegated acts. EIOPA is currently consulting on draft technical advice on this subject (EIOPA-CP-16/006)[4].

EIOPA is aware of the necessary interlinkages between the IDD technical advice and the Guidelines and the fact that the final technical advice submitted to the Commission may influence the content of the Guidelines, but would like to initiate a fact-finding exercise now on the Guidelines to facilitate compliance with the August 2017 deadline for issuing the Guidelines.

[1] Insurance-based investment products (IBIPs) are insurance products which offer a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations. As an example, the following products in the retail market will be IBIPs: unit-linked life insurance or with-profits life insurance policies.

[2] An assessment of appropriateness requires an insurance intermediary or insurance undertaking to ask the customer to provide information regarding that person’s knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or the insurance undertaking to assess whether the insurance service or product envisaged is appropriate for the customer. N.B. The appropriateness assessment is a lighter-touch assessment compared to the suitability assessment (where advice is provided) which requires the insurance intermediary or insurance undertaking to, in addition, consider the customer’s financial situation and investment objectives.

[3] https://www.esma.europa.eu/sites/default/files/library/2015-1783_-_final_report_on_complex_debt_instruments_and_structured_deposits.p

[4] See pages 67-72 of EIOPA’s draft technical advice.

Survey questions

Current execution only sales / market

Q1. What types of IBIPs are you aware of which are currently sold via execution-only transactions? If possible, please specify the Member State(s) in which these IBIPs are sold, or whether they are sold on a cross-border basis.

There are markets where IBIPs are currently sold via execution-only. For these transactions no advice (no personalized recommendation) is given and an assessment of appropriateness is not required. In any case, it is an informed sale because the client receives the pre-contractual information provided by Article 185 of Solvency II Directive (and in the future the KID for PRIIPs). This is coherent with MIFID II where it is possible (not subject to Member State option) to sell an investment fund via execution-only (neither a suitability nor an appropriateness test is requiered, only to provide the client with the KII) if the distribution activity is carried out at the initiative of the customer and the investment fund only provides exposure to financial instruments deemed non-complex (e.g. plain vanilla listed equities, plain vanilla Government and corporate bonds, many types of investment funds, etc) . A level-playing field should be guaranteed regarding the possibility of selling comparable products via execution-only.

Q2. If you have access to relevant data, please provide an indication of the volumes of these execution only sales compared to other types of sales of IBIPs?

We are unable to provide an indication of the volumes of the execution only sales compared to other types of sales at this moment.

Scope of the Guidelines

Q3. What types of IBIPs are within the scope of the Guidelines, for example certain types of unit-linked contracts?

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IBIPs that include a guarantee at maturity should be considered as
non-complex. Annuities where annuity payments are not dependent on fluctuating
market values should also be considered as non-complex. In the same way,
Unit-Linked products that only provide exposure to equities, fixed income or
other plain vanilla assets or to UCITS funds should be considered as
non-complex.
Only certain types of Unit-Linked contracts that provide exposure to
non-hedging derivatives, structured funds or hedge funds might be considered
as complex, but a case-by-case analysis should be made. Only a very limited
number of IBIPs should be considered products that incorporate a structure
which makes it difficult for the customer to understand the risks involved.
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Q4. Do you agree that where the investment return for an IBIP is dependent on other factors besides the performance of financial instruments deemed non-complex under Directive 2014/65/EU, they would not be within the scope of the Guidelines? If no, please explain your answer.

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The wording of the question is very unclear. If it is referred to with-profits
IBIPs, the IRSG agrees that they should be considered non-complex, and
therefore out of the scope of the Guidelines.
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Q5. Specifically, do you agree that the below mentioned product types would not be within the scope of the Guidelines? If no, please explain your answer.

a) Profit participation or with-profits contracts where the return may be dependent on other factors than the investment exposure, such as the overall financial performance of the insurer

b) Contracts which provide exposure to non-financial instruments, such as commodities

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Products that do not incorporate an unexpected loss for consumers and which
are governed by a solid prudential framework (such as the Solvency II
framework) should be considered as non-complex. In this context, not only
with-profits contracts but also other products with guarantees, including
hybrid products and unit-linked products with guarantees should be considered
as non-complex.
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Q6.

a) Regarding multi-option products (MOPs) or products where the customer has the ability to change the underlying investment exposure of the IBIP, in order to fall within Article 30(3)(a)(i), IDD, do you agree that the choice of investment exposure would need to be limited to financial instruments deemed non-complex under Directive 2014/65/EU. If no, please explain your answer.

b) Are there any reasons why this restriction referred to in Q6.a) would be problematic in terms of existing products sold? If yes, please explain your answer.

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There is a variety of products falling within the scope of MOPs. For instance,
there are also products with guarantees where consumers can choose some funds
components. These products are not captured by Article 30(3)(a)(i) but should
still be considered as non-complex. Article 30(3)(a)(i) should only be seen as
one of many criterions for non-complexity.
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Structures which may be difficult for the customer to understand the risks involved – ESMA Guidelines

These questions consider the relevance of the criteria used in ESMA's Guidelines on complex debt instruments and structured deposits.

Complex guarantee mechanisms

Q7. What types of guarantee mechanisms are you aware of which are currently used in IBIPs?

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IBIPs with guarantees are constructed to protect consumers against market
volatility and ensure a predictable amount or a steady income. The guarantee
is provided at specific dates, often at maturity, which is transparently
disclosed to consumers. Article 185(3) of Solvency II provides that an
indication of surrender and paid-up values and the extent to which they are
guaranteed has to be communicated to the customer before the contract is
concluded. Therefore, it is easy for the investor to assess accurately how the
guarantee mechanism affects the risk exposure of the investment.
In any case, if a guarantee at maturity is provided by the insurer, who is
subject to solid prudential requirements (Solvency II), the product should be
considered as non-complex.
If the IBIP transfers all the investment risks to the client (certain types of
Unit-Linked products) a guarantee can be provided by a third party (e.g. a
credit institution) or through a structured asset. A case-by-case analysis
should be made regarding these products, in order to assess if the guarantee
mechanism is difficult or not for the customer to understand.
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Q8. Are there IBIPs where there is not a guarantee of the principal amount or the amount invested, but the customer can still understand the risks involved? Please justify your answer.

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Yes. The customer can still understand the risks involved in a Unit-Linked
product that only provides exposure to equities, fixed income or other plain
vanilla assets or to UCITS funds or in a guaranteed product in which the
insurer only provides a guarantee at maturity of a percentage (e.g. 85%) of
the principal amount or the amount invested or in a guaranteed products that
provides a guarantee at maturity but in which in case of surrender the client
receives the market value of the assets (e.g. plain vanilla government and
corporate bonds) backing the liabilities.
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Q9. Where the guarantee is conditional or has time limitations can the customer still understand the risks involved? Please justify your answer.

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Of course the customer can still understand the risk involved where the
guarantee is conditional o has time limitations if these characteristics are
appropriately explained to the client. There are markets where these kind of
products have been marketed for many years without claims.
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Cost of exiting before term / surrender fees

Q10. ESMA's Guidelines include criteria to identify structured deposits incorporating a structure making it difficult for the client to understand the cost of exiting before term. These criteria are that the exit cost is:

a) neither a fixed sum;
b) nor a fixed sum for each month (or part thereof) remaining until the end of the agreed term;
c) nor a fixed percentage of the amount deposited.

Which of these concepts are applicable to surrender fees for IBIPs in terms of whether the customer can understand the risks involved? Please justify your answer.

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These concepts are not applicable to surrender fees for IBIPs in terms of
whether the customer can understand the risks involved and only make sense for
structured deposits (in order to differentiate them from traditional
deposits). A guaranteed product at maturity that provides exposure to
non-complex assets (e.g. listed equities or plain vanilla government or
corporate bonds) in case of surrender should be considered as non-complex
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Embedded derivative

Q11. Are you aware of any IBIPs in which a derivative is embedded in the IBIP contract itself rather than in the underlying fund or exposure?

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The IRSG is not aware of the existence of such a product.
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Structures which may be difficult for the customer to understand the risks involved – insurance specific product structures

Q12. Are there ongoing management charging structures (i.e. excluding surrender fees), which can make it difficult for the customer to understand the risks involved? For example charging structures which are not a fixed amount or percentage, or which have a non-linear relationship with the investment return. Please explain your answer.

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No
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Q13. Can the insurance coverage and its relationship to the investment return make it difficult for the customer to understand the risks involved? For example, policies where the amount of premiums may change over time. Please explain your answer.

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No. When Article 30(7) refers to products that incorporate a structure which
makes it difficult for the customer to understand the risks involved it is
only referring to investment risk but not to biometric risk.
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Q14. Can the relationship between the IBIP and tax regulations mean that the IBIP incorporates a structure which makes it difficult for the customer to understand the risks involved? Please explain your answer.

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No. The tax regulation applicable to the IBIP should never be considered as an
element to classify a product as a complex product.
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Q15. Can the assignment of the beneficiaries of an IBIP lead to complexities which the customer may not understand? Please explain your answer.

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No. The assignment of the beneficiaries of an IBIP should never be considered
as an element to classify a product as a complex product.
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Q16. Can the relationship between the IBIP and national insurance compensation schemes mean that the IBIP incorporates a structure which makes it difficult for the customer to understand the risks involved? Please explain your answer.

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No. The relationship between the IBIP and national insurance compensation
schemes should never be considered as an element to classify a product as a
complex product.
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Q17. Are there other IBIP contractual or product structures that can make it difficult for the customer to understand the risks involved? Please explain your answer.

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No
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Other comments

Q18. Do you have any other comments on the proposed Guidelines

Background Documents

ESMA Guidelines complex debt instruments and structured deposits (/eusurvey/files/ef59efca-81ab-4fa2-ae94-4be0cf1d3109)

Insurance Distribution Directive (/eusurvey/files/1e3cacb4-4267-48ab-9d10-081e88d172cb)

Markets in Financial Instruments Directive (MiFID II) (/eusurvey/files/64ad1f36-e3af-483d-a55f-f013d5dae001)

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