Comments Template on Consultation Paper on the proposal for Guidelines on product oversight & governance arrangements by insurance undertakings and insurance distributors		**Deadline 29 January 2016**
Name of Company:		
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Confidential/Public

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The numbering of the questions refers to the Consultation Paper on the proposal for Guidelines on product oversight & governance arrangements by insurance undertakings and insurance distributors.

Reference	**Comment**	
General Comment	The Insurance and Reinsurance Stakeholder Group (IRSG) welcomes this new opportunity provided by EIOPA to comment on the EIOPA consultation paper on the proposal for preparatory guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors.	

	The IRSG recognizes the importance of product oversight and governance (POG) arrangements. The objectives are to enhance consumer protection (CP) by strengthening the controls before a product is launched at the producer level and then minimize the risk of products and services being proposed to the public that could lead to consumer detriment. As insurance products are mostly sold by financial institutions other than insurance companies themselves, therefore the design of the product might not be the only cause of mis-selling. That is why the IRSG asked at the first consultation to introduce guidelines for POG arrangements at the distributors level, and is very pleased that this has been done. Several stakeholders have raised concerns with the development of preparatory guidelines that pre-empt the political discussions on level 2 measures, stating that such guidelines can reduce the scope of discretion for level 2 and that EIOPA Regulation does not provide for such guidelines. These concerns could be addressed if the guidelines would only be formally issued after the EC has finalised its delegated acts on POG, also to avoid the need for duplicate implementation. It is worthy of note, that while it is logical for POG guidelines to also cover distributors, this does not mean there are proven problems to address across all product categories – for example no study or impact assessment has indicated a particular need for detailed POG requirements for non-life insurance products (e.g. motor, home) or certain pure risk insurance products. But, as we said in our response to the first consultation, it should be made clear that the ultimate responsibility to ensure proper advice and needs-based selling rests with the distributor. Under the IDD the term "distributor" also included insurers distributing insurance products directly. The product oversight and governance by insurance undertakings is able to support these efforts by the distributors but can neither substitute for them nor should it be made fully responsible for any distributor (mis-conduct). Such conduct is beyond the scope of POG rules but will be adequately dealt with in IDD. Under the IDD, where advice is provided prior to the conclusion of a contract, distributors must provide customers with a personalised recommendation	

	explaining why a particular product best meets a customer's demands and needs. They can only do this if manufacturers provides them with sufficient information to enable them to understand and place the product properly with the target market (Guideline 10 for manufacturers). Nevertheless, EIOPA should be careful to avoid laying down too prescriptive requirements on POG without paying due attention to the resulting additional costs that could ultimately get passed on to consumers. Guidelines are designed to ensure the common, uniform and consistent application of EU law, they can't add requirements to the EU legal texts they are based upon. We believe that care should be taken that these guidelines are not too stringent, especially since there is already the possiblity for supervisory authorities to intervene if a product would pose a danger to the market. As requested IRSG's comments will focus mainly on Chapter 2 guidelines, though some comments also concern Chapter 1 Guidelines. There is still a concern about the application of the principle of proportionality. Although Policy issue 3 deals with it and the policy option chosen is the option 3.2 (i.e. not to differentiate between insurance business classes, taking account of the applicability of the principle of proportionality in general) there is no reference made of this applicability in the Chapter 1 or Chapter 2 guidelines, contrary to what is mentioned in the ESMA and EBA documents on POG. ESMA technical advice : 1. The requirements set out below apply in a way that is appropriate and proportionate, taking into account the nature of the investment product, the investment service and the target market for the product. **EBA Guideline 1 (manufacturers): 1.5**: Product oversight and governance arrangements should be proportionate to the nature, scale and complexity of the	

relevant business of the manufacturer. The implementation/application of the arrangements should have regard to the level of potential risk for the consumer and complexity of the product.

EBA Guideline 9 (distributors): 9.1: The distributor should establish, implement and review effective product oversight and governance arrangements which are specific and proportionate to its size and to its role of bringing products to the market.

We would recommend that such considerations be also included in the EIOPA guidelines.

In its consultation paper, EIOPA questions whether a differentiation should be made between insurance business classes, and opts not to do so. The IRSG would argue that there are clear differences between certain classes, e.g. non-life products and Insurance Based Investment Products (IBIPs). Overly strict POG provisions for non-life products will be costly and burdensome, and therefore care must be taken so that measures are focused on where they are needed and are applied in a proportionate way to avoid unnecessary burden.

Differentiation should be created between different classes, e.g. IBIPs and non-life/pure life products but also between private consumers and business consumers. Chapter 2 Guidelines make sense for the most part for IBIP's but not for non-life pure life insurances.

The IRSG would propose to add a second paragraph to Guideline 1: "These arrangements shall be specific and proportionate to the size of the distributor and to the risks related to the products".

The wording of some of the guidelines in Chapter 2 is not in line with the explanations that are given in the EIOPA explanatory text and some of the wording of the guidelines can be interpreted in a different way than intended.

One of the less tangible impacts of the Chapter 2 guidelines is the diminution of the

	independence (in its generic meaning) or autonomy of the insurance intermediary vis-à-vis the insurer/manufacturer. Some members believe that in their current form some of these guidelines could be too rigid and might negatively impact both the customer as well as the insurance undertakings. Other members find it necessary to have strict guidelines to protect consumers. Having said that, overly prescriptive guidelines could likely reduce innovation; increase costs; increase prices of products, etc. Finally, despite the fact that EIOPA's guidelines are only intended to be "preparatory" in nature, it still requires national competent authorities to confirm whether they comply, or intend to comply, with the guidelines. It is difficult to understand how preparatory guidelines aimed at supporting competent authorities when implementing the IDD can be subject to a 'comply or explain' procedure, particularly as EIOPA states that no enforcement action should result from practices that are not fully in line with the guidelines. A recognition in the text of the guidelines that no enforcement action is envisaged as part of the preparatory guidelines would therefore be welcomed.	
Question 1	POG arrangements will enhance CP by requiring manufacturers to set out appropriate procedures to prevent customer detriment. On one hand, identification of a target market, pretesting of a new product, product monitoring are essential measures that will ensure that the product designed by a manufacturer is really aligned with the interests, objective and characteristics of the customers or of a group of customers. On the other hand, insurance products are mostly sold by financial institutions other than insurance companies themselves. Therefore, It is essential that distributors receive complete information on the product to be sold, on the target market and on the distribution strategy. In addition, distributors are subject to conduct of business rules under IDD for the sale of all insurance products, which will ensure the effective management of conflicts of interest, and that distributors act honestly, fairly and professionally in accordance with the best interests of their customers. The POG guidelines should not overlap or	

	address aspects related to sales rules.	
Question 2	The main negative consequence of the option taken by EIOPA to develop those preparatory guidelines could be linked to its timing. The IDD has just recently been adopted and delegated acts on POG are still to be developed, which creates the risk of developing guidelines which could be inconsistent with the level 2 implementing measures is not zero. In this case, the rules that will apply before the transposition date of the IDD could be very different from those applicable later, leading to a certain degree of confusion at the manufacturer or the distributor level. Therefore, we would recommend that the proposed rules be general enough not to risk conflict with those issued by other authorities, and those contained in the future directive. A point that should be taken into account is that, unlike the industry, the world of distributors consists of a large number entities, sometimes very small and even reduced to one person. We insist that this fact should be taken into consideration at all levels of regulation.	
Question 3	Yes, we agree, under the previous reservations (see answers to Q1 and Q2). The use in Guideline 2 of undefined/subjective (legal) terms such as "proper magement of conflict of interest" should not be interpreted as an invitation to develop more/additional rules. As stated earlier in responses to Q1 and general comments they are already dealt with in other articles of the IDD.	
Question 4	No comment	
Question 5	In order to ensure that all the relevant information will be provided to the distributor (on the condition for him to spread it to its customers) one could study the feasibility of implementing standard clauses in the distribution agreement. It can be assumed that in many cases the distributor knows the market as well as the manufacturer. Therefore, the flow of information should flow in both directions.	
Question 6	A further element that should be included, and one that follows the approach taken by	

	EBA in its POG guidelines, is to allow distributors the possibility to sell products outside of the target market defined by the manufacturer provided they are able to justify doing so. The same principle was also recognised by ESMA in its technical advice to the EC on MiFID 2. In order to ensure a consistent and coherent approach, the same principle should apply here. This would leave flexibility to the distributor where the product is suitable/appropriate for the customer.	
Question 7	No	
Question 8	This should be part of the normal relationship between a manufacturer and a seller. In the same way, the manufacturer would have to inform its distributors of any action that he would take as a result of product monitoring.	
Question 9	The documentation requirement should focus on « essential actions », not the (potentially very open-ended) « relevant actions ».	