

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 IRSG		
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Reference	Comment	
General Comment	The Insurance and Reinsurance Stakeholder Group (IRSG) welcomes the opportunity provided by EIOPA to comment on EIOPA consultation paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive.	

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	<p>The IRSG generally welcomes EIOPA's draft technical advice which sets out conditions to ensure that the enhanced consumer protection framework, as coined by the IDD, is being put to practice. More specifically the IRSG supports EIOPA's proposals on POG which should be sufficiently detailed to ensure their effectiveness and consistency with similar cross-sectoral measures.</p> <p>The IRSG recognizes the importance of product oversight and governance arrangements. POG requirements will enhance consumer protection by strengthening the controls before a product is launched at the producer level (insurer or manufacturer) and then minimize the risk of products and services being proposed to the public that could lead to consumer detriment.</p> <p>On page 7 (paragrapgh 3.3) of its Consultation Paper, EIOPA recalls that the IDD seeks to establish the conditions necessary for fair competition between distributors of insurance products and to create more opportunities for cross-border business. The IRSG is fully supportive of the IDD objectives and encourages EIOPA to pursue them.</p> <p>The IRSG welcomes the principle of proportionality that is introduced in EIOPA policy proposal based on previous EIOPA preparatory work that states that POG distribution arrangements shall <i>"be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity"</i>.</p> <p>The IRSG is of the opinion that the delegated acts of the Directive on Insurance Distribution, should take the form of directives. This would allow Member States to apply the rules taking into account their national specificities.</p> <p>Some members of the IRSG are wondering whether the timing of the process is realistic and will guarantee proportionality and high quality regulation.</p>	
Question 1	The IRSG is of the opinion that this cost aspect should have been considered beforehand in a cost benefit analysis by the European Commission.	
Question 2	There are certain elements / wording that need to be further refined.	

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For example:

- it is stated that the manufacturer shall regularly review the product oversight and governance arrangements to ensure that they are still valid and up to date and the manufacturer shall amend them, where appropriate. These arrangements can be revisited at certain minimal intervals, as perbelow.
- when deciding whether a product is aligned with the interests, objectives and characteristics or not of a particular target market, the manufacturer shall consider the level of information available to the target market and the degree of financial capability and literacy of the target market.

There are two elements that need to be clarified: a) how exactly does one exactly define alignment between the interests of manufacturers and a certain target market and b) how does a manufacturer determines these interests when usually the end seller / distributor is the one closer to the customer?

- it is also stated that the manufacturer shall select distributors with appropriate care. A refining of this concept would help make the Delegated Acts achieve their purpose.
- The technical advice should allow the possibility to sell outside of the intended target market (it should remain possible to sell products outside of the intended target market, provided this is justified in that particular situation, such as when the distributor involved decides on the basis of the demands and needs analysis that the product fits that specific customer's needs).

Although the IRSG agrees with the fact that the manufacturer shall only design and bring to the market, products with features, and through identified distribution channels, which are aligned with the interests, objectives and characteristics of the target market, the IRSG is of the opinion that EIOPA should be careful not to prevent consumers from having the freedom to choose the distribution channel of their choice, which is particularly important given the wide variety of distribution models across Europe. Furthermore the IRSG is of the opinion that innovation is key to a market's development and thus indirectly to consumers everywhere.

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- The technical advice should avoid any specification of a ‘negative’ target market (i.e. identifying groups of customers for whom the product is typically *not* aimed, which is not required under IDD).

- The IRSG is concerned by any 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. Such arrangements 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, IRSG suggest that the wording of EIOPA’s policy proposal should be reworded in line with the above.

This clarification was included in EIOPA’s final *Report on Public Consultation on Preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors* (EIOPA-BoS-16-071), but seems to be missing in the draft advice.

“In view of legal uncertainties which could arise if the Guidelines are applied to existing contracts, EIOPA has taken the decision that the scope of the Guidelines should be limited to new insurance products. From EIOPA’s understanding, a product should not only be considered “new” if it is entirely new designed, but should also be assumed if existing products are substantially changed and revised (e.g. redefined insurance coverage or target market, new product features altering the risks to which consumers are exposed to etc.).

Question 3

Many of business/ commercial insurance contracts are business written as bespoke negotiated contracts.

For these business:commercial insurance contracts, the IRSG has in this respect the following concerns:

a)The proposals as set out by EIOPA seem to envisage a very regimented sequential process from product design; through identifying the target market; to production of documentation etc. In a negotiation, this is never going to happen. Often all of that could take place within one meeting between the intermediary, clients and the underwriter;

b) Each contract will be separately negotiated and form a different product in its own right. So

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the idea of overarching principles around the design etc will be unduly onerous especially given the very close role the client and the intermediary will play in the design; the individual client will be “the target market”.

One of the objectives of Article 27 is to mitigate mis-selling of products due to poor product design/target, products such as non-life insurance add-ons (mobile phone insurance linked to the sale of mobile phones, travel insurance sold together with airline tickets - see EIOPA fourth Consumer trend report). The IRSG notes that the IDD Delegated Act on POG will not apply to services or products that are explicitly exempted from the scope of the IDD (Article 1) (where the insurance covers the risk of breakdown, loss of or damage to the goods or non-use of the service or covers damage to or loss of baggage and other risks linked to travel booked with that provider; and where the amount of the premium for the insurance product does not exceed €600. In circumstances where the insurance is complementary to the good or service and the duration of that service is equal to or less than three months, the amount of the premium paid per person should not exceed €200).

As far as product testing is concerned, some members of the IRSG believe that a unified procedure would ensure that consumers all across the EU will benefit from the same rules in this regard. Otherwise there is the risk of certain manufacturers applying different standards for different markets in testing, in example.

Some members of the IRSG also believe that upon request, consumers should be able to be granted access to both the manufacturer’s product oversight and governance written arrangements and also to the insurance distributor’s product distribution arrangements. This could increase consumers’ trust in certain cases.

Question 4

Question 5

Considering the diversity present in the distribution activity throughout the EU, the IRSG is of the opinion that the qualification of the insurance intermediary as a manufacturer should only be made based on a analysis and on a case by case basis.

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	<p>Such qualification should be based on an written agreement between the insurance undertaking and the intermediary that is to be also considered as a manufacturer before in the initiation phase of the product development.</p> <p>Instead of trying to describe or define what a manufacturer is, the IRSG proposes that on every insurance contract it is mentioned who the manufacturer is. The manufacturer is then responsible to meet the requirements which are imposed upon a manufacturer.</p>	
Question 6	<p>The IRSG believes that consumers have to be aware that the product can be jointly developed by an insurance undertaking (manufacurer) and an intermediary (manufacturer), that the insurer always carries the risk and that there can only be one responsible manufacturer, so that they get the full picture. Maybe this should be included in the iPID / KID Regulation.</p>	
Question 7	<p>As the IRSG previously mentioned in the Consultation Paper on the proposal for Guidelines on product oversight & governance arrangements by insurance undertakings, there must be common standards on criteria / steps to be taken for target group definition. Also, these common standards should not be discriminatory and comply with other existing legislation.</p> <p>On the other hand the IRSG considers that the main objective of this particular piece of legislation is the protection of the end consumer. The IRSG is therefore of the opinion that care has to be taken in order not to make the process of identifying the target market too complex, lengthy and costly but instead efficient and meaningful.</p> <p>Sales outside the target market: As EIOPA acknowledges, all products differ and therefore the granularity of the target market can differ depending on the complexity and nature of the product. Although sales outside the target market would be rare in case of a broader and more abstractly defined target group, <u>EIOPA should explicitly state in the technical advice and not only in the analysis (pages 20-21, pars. 52 and 53) that it remains possible generally to sell products outside of the intended target market,</u></p>	

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provided that they are justified in that particular situation (for instance when the distributor involved decides on the basis of the demands and needs analysis that the product fits that specific customer's needs).

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 pre-set target group if this is reasonable in a particular case.

The approach taken by the EBA in its guidelines on POG is to allow distributors to sell products outside of the target market defined by the manufacturer provided they are able to justify doing so. 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.

Furthermore, in EIOPA's final Report on Public Consultation on Preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors (EIOPA-BoS-16-071), EIOPA states as follows:
*"The Guidelines themselves are silent on the question under which circumstances products may be sold to consumers outside of the target market.
Generally, EIOPA believes that the identification of a target market does not generally prevent distributors from selling products to consumers outside of the target market in exceptional cases, but distributors would then need to justify why they offered products to consumers who do not belong to the identified target market."*

Question 8

As previously mentioned, it is stated that the manufacturer shall *regularly* review the product oversight and governance arrangements to ensure that they are still valid and up to date and the manufacturer shall amend them, where appropriate. In the spirit of these Delegated Acts, we are of the opinion that these arrangements have be revisited at certain minimal intervals depending on the complexity of the products (i.e. – at least 3 years for Non-life products; - 1 year for IBIPs

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	<p>etc.). The IRSG welcomes the principle of proportionality that is introduced in EIOPA policy proposal based on previous EIOPA preparatory work that states that POG distribution arrangements shall <i>"be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity"</i>.</p> <p>The IRSG is of the opinion that the issue of granularity of target market illustrates again the importance of making a distinction between product governance in IBIP's and product governance in Non Life/ Pure life insurances. Because of the significant differences that exist in development procedure and characteristics between life with investment element products (IBIPs) and non-life/ pure life products, it is pertinent in EIOPA technical advice to differentiate the activities of IBIPs manufacturers from the ones of non-life/life manufacturers.</p>	
Question 9	<p>The IRSG understands that in general, conflicts of interest occur when an entity has an interest of its own which conflicts with the interest or interests of other customers or entities for whom the entity is also acting in some capacity. Both insurance undertakings and intermediaries should do their utmost in order to prevent conflict of interests, no matter the form in which they arise.</p> <p>IRSG notes that in the consultation paper, EIOPA assumes (p 45) that conflicts of interest shall at least be assumed e.g when <i>"the insurance intermediary, insurance undertaking or linked person receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer."</i></p> <p>The choice of this wording : « <i>conflicts of interest shall at least be assumed</i> » in the four specified instances is too strong as the situations are taken as fact without any proof necessary and without possibility of rebuttal.</p>	
Question 10	The IRSG is of the opinion that the principle of proportionality is a very important	

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	<p>principle. It is welcomed that the Draft Technical Advice explicitly refers to this principle in stating that procedures and measures should be appropriate to the size and activities of the insurance intermediaries or insurance undertaking and to the materiality of damage to the interests of the customers.</p> <p>The proportionality principle should be an overall concept applicable to all measures. Further specification in general and in a separate policy instrument does not seem appropriate at this moment of the development of level 2 measures.</p> <p>In order to allow for proportionality and legal consistency, the IRSG believes that the Delegated Act of the Directive on Insurance Distribution, should be a <u>Directive</u> as well. Such a Directive can be quite detailed but would allow to take into account national specificities.</p> <p>The IRSG recognizes the operational challenges which need to be overcome by the sector in order to comply with the new rules.</p>	
Question 11	<p>IRSG agrees with the use of a high level principle on detrimental impact.</p> <p>With regard to the list of types of inducements considered to have a high risk of leading to a detrimental impact (p 54) , IRSG notes that in this respect Recital 57 of IDD states that in order to ensure that any inducement does not have a detrimental impact on the quality of the relevant service to the customer, the insurance distributor should put in place appropriate and proportionate arrangements, and develop, adopt and regularly review policies and procedures relating to conflicts of interest. IRSG fully support the establishment of a clear link between inducements and the management of conflicts of interest under Articles 27 and 28 of the IDD, as well as the general principle contained in Article 17 requiring distributors to always act honestly, fairly and professionally in accordance with the best interests of their customers. In other words, where the relevant procedures to properly identify, prevent and manage conflicts of interest are in place, it should be presumed that any monetary or non-monetary benefit that is</p>	

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provided does not have a detrimental impact on the quality of the service.

Member States have been given the possibility to go beyond the IDD.

Specific comments

Organisational requirements

The IRSG is of the opinion that point 7 of the “organisational requirement” (p 55 - 7. *Insurance undertakings and insurance intermediaries as referred to in paragraph 6 shall ensure that any inducement scheme is approved by the insurance undertaking or insurance intermediary’s senior management*) does not fit the situation of intermediaries . The draft wording jeopardises the independence (not in the meaning of MIFID II) of intermediaries and, by referring to “approval”, seems to imply a hierarchical link between an insurance company and an intermediary. This could be clarified with the following wording: *“Insurance undertakings and insurance intermediaries as referred to in paragraph 6 shall ensure that any inducement scheme is approved by the insurance undertaking’s senior management or by the insurance intermediary’s senior management.*

Detrimental Impact

The IRSG has concerns with the proposed list of examples on p 54.

a) The inducement encourages the insurance intermediary or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when from the outset a different product or service exists which would better meet the customer’s needs;

In order to clarify that the judgment of whether a “different product or service exists which would better meet the customer’s needs” has to be made at the moment of the provision of the service by the intermediary (or distributor) and that this is not judged a posteriori, the wording of the example could be changed into: “The inducement encourages the insurance intermediary or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when from the outset a different product or service exists which would have better met the customer’s needs”.

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b) The inducement is solely or predominantly based on quantitative commercial criteria and does not take into account appropriate qualitative criteria, reflecting compliance with the applicable regulations, fair treatment of customers and the quality of services provided to customers;

The IRSG can agree with the principle that this may be a point of attention (but there should be room for explanation) but then also the remuneration of personnel of direct writers should be looked at (which EIOPA has however excluded from its advice), and what with Internet / Social media players where different remuneration models / systems exist?

c) The value of the inducement is disproportionate or excessive when considered against the value of the product and the services provided in relation to the product;

The IRSG can agree with the principle that this may be a point of attention but there should be room for explanation. IRSG is wondering who is going to judge about this ? What is the value of the services provided in relation to the product?

d) The inducement is entirely or mainly paid upfront when the product is sold;

Commission can be paid upfront. The wording should be clarified so it is clear that multi-annual contracts are intended.

The context always has to be taken into account to see if there is detrimental impact.

e) The inducement scheme does not provide for the refunding of any inducements deducted from the customer's initial investment to the customer if the product lapses or is surrendered at an early stage;

The IRSG is of the opinion that the above is not very clear. Does early stage mean in the 29th year when it is a 30 year contract? the IRSG is of the opinion that it is the insurer's responsibility to clarify the refunding policy of all costs and not only the distribution costs.

f) if the inducement scheme entails any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a sales target based on volume or value of sales.

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	The IRSG can agree with the principle that this may be a point of attention	
Question 12	<p>According to the IRSG this question is not within the mandate of level I.</p> <p>The IRSG is in favour of case-by-case assessments of detrimental impact. The overall impact of the benefits needs to be assessed. Adding further examples to the list will not necessarily bring more clarity or certainty of when detriment occurs.</p> <p>As mentioned above, IRSG notes that the proposal does not deal with remuneration of staff, which raises a question of level playing field.</p>	
Question 13		
Question 14	As is the case for further work regarding proportionality (Q 10), IRSG believes it is too early to look at further specific monitoring in this area.	
Question 15	<p>Yes we do agree with the high level criteria.</p> <p>The high level criteria is the minimum required to ensure adequate consumer protection is in place when recommending or selling insurance-based investment products, given that the purchase of an unsuitable product can have dire consequences for consumers.</p> <p>Consumers <i>'don't know what they don't know'</i> and are often over confident when taking out investment-linked products, underestimating the true risk involved. It is therefore essential that the insurance intermediary or insurance undertaking hold the responsibility for ensuring the customer is aware of all the relevant facts, including risks, and has had the opportunity to consider the potential disadvantages as well as advantages of the purchase.</p> <p>In sales of investment-linked products, the benefits of the purchase should not be over promoted. This criteria ensures that the insurance intermediary/insurance undertaking will take more responsibility when assessing the risks and proving the product is suitable.</p> <p>We also strongly agree with the proposal that <i>"when advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system, the responsibility to undertake the suitability assessment shall lie with the insurance intermediary or</i></p>	

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	<p><i>insurance undertaking providing the service and shall not be reduced by the use of an electronic system in making the personal recommendation". This will ensure that in with the increasing onset of financial technology, full responsibility still lies in the correct quarter.</i></p>	
Question 16	<p>We agree that insurance specificities should be reflected in the policy proposals however, note that the preferred option is Option 2 which states: <i>"This Option consists in ensuring consistency with the provisions in the draft MiFID II Delegated Regulation pertaining to the information to be obtained from the customer under the suitability and appropriateness assessments, but adapting some key elements of the substance and terminology used in those provisions further to reflect insurance specificities.</i></p> <p>This Option seems to offer a reasonable 'middle ground', consistent with MiFID II but also with some adaptations to reflect insurance specificities.</p> <p>However, some members of the IRSG are concerned that Option 2 may not capture all the elements required to assess whether an insurance-based investment is a suitable product for a consumer. Other members of the IRSG are of the opinion that the demands and needs test is offering the guarantee that consumers know what they buy and that intermediaries and insurers will offer an IBIP only where it is demanded and needed. In this respect it was also considered that for MIFID products this demands and needs test is not applicable and that extra requirements under the suitability or appropriateness test could lead to a unlevel playing field and to less comparability or confusion by consumers.</p> <p>IBIPs are a unique product, essentially serving two needs – one for protection and one for investment – and this specificity has to be taken fully into account . Bundling these two very different requirements together may not always be the most efficient method of providing. It is essential that the insurance intermediary/insurance undertaking fully reflects why an IBIP is the most suitable product reflecting both the investment and the protection need which cannot be replicated elsewhere through two separate products.</p>	
Question 17	The consultation document provides good guidance on the information that would be required in	

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order for suitability and appropriateness to be fully assessed. This would include:

- Details of the customer’s current income and expenditure and any expectations of future changes
- Breakdown of customer’s assets and other financial products, including protection products and employment benefits, if applicable
- Family circumstances, including any dependencies
- The customer’s risk profile. Their appetite for risk, but more importantly their capacity for loss. So how much can they realistically afford to lose?
- The customer’s knowledge and experience of investing in this type of product
- The customer’s savings and investment objectives, including how long the investment will be held and their retirement

It is essential that crucial information is collected so that suitability and appropriateness can be adequately assessed and then applied against the established demands and needs of the customer, however there is likely to be overlap in the collection of information and data to comply with these two statutory requirements.

Some insurance intermediaries or undertakings may be better equipped than others to collect this data in a streamlined fashion which won’t over burden the customer and encourage them to give less than full answers. Others may be over compliant, concerned with the regulatory consequences of ‘getting it wrong’. All too often we have seen consumers deluged with information which they don’t read in order to satisfy regulations. Nor should the collection of data be reduced to a tick-box exercise. Some members of the IRSG feel that guidance and some prescription is needed here to help intermediaries and firms get this right. Other members of the the IRSG would not agree with EIOPA’s suggestion to introduce further specification and guidance in a separate policy instrument on the relationship between the demands and needs test and the suitability/appropriateness assessment, as this would go beyond the provisions of IDD and the relevant EC mandate for technical advice, transforming what should be understood as a general

Question 18

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	<p>principle into prescriptive and potentially restrictive requirements. EIOPA already notes in paragraph 12 on page 63 that its technical advice should be limited to the information to obtain under the suitability/appropriateness assessment only, and not the demands and needs test.</p> <p>The process for collecting data to satisfy both the suitability and appropriateness requirements and the demands and needs test should be personal and on a one-to-one basis with the customer. It is essential that the customer understands why these questions are being asked and the importance of answering them fully and honestly – and the consequences of providing inadequate answers or ‘guessing’.</p>	
Question 19	<p>Broadly we do agree with the high level and cumulative list of criteria used to define other non-complex products.</p> <p>However the IRSG is concerned that the cumulative list of high-level criteria to assess non-complex insurance-based investment products could result in a de facto ban on execution-only, as all products are deemed complex besides products with a unit-linked investment element. Such an approach would undermine the explicit member state option in the IDD to allow for the execution-only sale of non-complex IBIPs.</p> <p>The IRSG also has concerns that the perception of what is, in truth, a non-complex product or a complex product, depends very much on the knowledge and experience of the purchaser. Our concern is that even relatively simple investment-based products might appear complex to the inexperienced investor, but if sold without advice, there may be no requirement to establish suitability or appropriateness. It should however be ensured that in practice IBIP’s are not discriminated against MIFID products. There is always a demand and needs test for IBIPS products.</p>	
Question 20		
Question 21		
Question 22	We agree with the high level criteria used.	

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Question 23	Yes.	
Question 24	<p>We do agree with the high level criteria used with the suitability statement and periodic communications to customers.</p> <p>The information set out in paragraph 8 of the draft technical advice on page 86 will result in a duplication of the information that is already required under Article 185(5) of the Solvency II Directive. In addition, many of the newly added requirements seem to be copied across from fund concepts, A careful adaption to the features of insurance-based investment products is needed.</p>	
Question 25	Yes	
Question 26	For regular premium policies the total cost paid into the policy is a crucial piece of information and should be published alongside the current surrender value, so the customer can easily identify the actual performance of the investment to date. Too often only premiums paid in the last year are shown which does not provide a complete picture.	