

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:	AMICE	
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Reference	Comment	
General Comment	<p>AMICE, the voice of the mutual and cooperative insurance sector in Europe welcomes the opportunity to respond to EIOPA's Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive (IDD).</p> <p>We are convinced that it is vital to ensure transparency, simplicity, accessibility and</p>	

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

fairness across the internal market for consumers. The mutual and cooperative business model is based on customer trust and accountability. Through their different ownership structure, mutuals have been established to serve their customer-owners rather than shareholders. This means that not only do they have an in-built advantage in not having to run their business in the short-term interests of outside shareholders, but they can concentrate on running the business in a way that best meets the needs of their customers with no conflict of interests between owner and customer. Thus, they have an inherent interest in achieving customer satisfaction and customer needs are already taken into account in the product design process and distribution of insurance products.

In order to ensure an effective improvement of consumer protection in insurance distribution, AMICE considers it be of paramount importance to underline the following general remarks:

- The final delegated acts should be fully consistent with the IDD level 1 text.
- Given the varied complexity and heterogeneity of insurance products, we believe that the policy proposals should remain high-level and flexible.
- It is also important to ensure that the industry is given sufficient time to implement the requirements set out in the delegated acts. In this regard, the industry should be provided with the final requirements as soon as possible and a proportionate and pragmatic approach should be taken in order to avoid unnecessary burden and costs.
- Regarding the product oversight and governance provisions, sufficient flexibility should be allowed in the determination of the target market. Further clarifications are needed with regard to the possibility to sell outside the target market and the requirement for a negative target market definition.
- Commission-based remuneration should not be considered systematically as a

Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive		Deadline 3 October 2016 18:00 CET
	<p>conflict of interests.</p> <ul style="list-style-type: none"> - The types of inducements listed in the technical advice as having a high risk of leading to a detrimental impact on the quality of the relevant service to the customer should not result in imposing a <i>de facto</i> ban on commissions. - When developing any provisions concerning organisational arrangements, documentation and reporting requirements, EIOPA should take into account the principle of proportionality. - The final technical advice should be consistent with the Solvency II Directive and its delegated acts which have increased the requirements in terms of internal control and underwriting policies. 	
Question 1	<p><i>1. What would you estimate as the costs and benefits of the possible changes outlined in this Consultation? Where possible, please provide estimates of one-off and ongoing costs of change, in euros and relative to your turnover as relevant. If you have evidence on potential benefits of the possible changes, please consider both the short and longer term. As far as possible, please link the costs and benefits you identify to the possible changes that would drive these.</i></p> <p>AMICE is not in a position to properly estimate the costs and benefits of the possible changes outlined in the consultation paper at this moment.</p> <p>In general, EIOPA should allow for an efficient implementation of the IDD requirements at national level in order to avoid unnecessary costs. Existing national and European rules that already pursue the same objectives should not be altered for the sake of formality only.</p>	
Question 2	<p><i>2. Do you agree that the policy proposals above provide sufficient detail on product oversight and governance arrangements?</i></p>	

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

We believe that the policy proposals based on EIOPA's preparatory guidelines provide sufficient detail on product oversight and governance arrangements.

As rightly mentioned on page 31, insurance products are quite heterogeneous and their complexity varies. Therefore, we believe that the policy proposals should remain high-level and flexible. EIOPA should ensure that the product oversight and governance arrangements can be implemented at national level as efficiently as possible and take into account existing national and European rules that already pursue the same objectives. This approach would ensure that the POG requirements fit the national distribution practices and products and limit unnecessary costs and burden for the industry and consumers.

With regard to the analysis and concrete proposals contained in the consultation paper, we would like to raise the following comments.

Scope of policy proposals

Article 25(1) of IDD requires the insurance undertakings, as well as intermediaries which manufacture any insurance product to maintain a product approval process for each insurance product, or significant adaptations of an existing product, before it is marketed or distributed to customers. EIOPA should clarify the scope of application of the POG arrangements. The arrangements should only apply to newly designed products that are brought to the market or existing products that are significantly changed after the implementation date of the IDD. Otherwise, the application of these guidelines to existing products would be too burdensome if companies were obliged to develop new POG arrangements for each of these products. This clarification was included in EIOPA's final preparatory guidelines (EIOPA-BoS-16-071 p.17 and p.65), but seems to be missing in the draft technical advice.

Proportionality

Article 25(1)(2) of IDD clearly provides that the product approval process should be

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

proportionate and appropriate to the nature of the insurance product. We believe that the proportionality of the POG requirements is of paramount importance. Sufficient flexibility should be allowed to adapt to the number and diversity of market characteristics and insurance products.

We welcome the fact that EIOPA has introduced the principle of proportionality in the draft policy proposals (i.e. paragraph 2, page 21 and paragraph 28, page 25). The POG requirements should take into account the complexity of the products and the related risks as well as the nature, scale and complexity of the relevant business of the manufacturer/distributor involved.

There should be a proportionate approach when applying the POG requirements for different types of distributors. The difference between tied agents who act under the responsibility of the insurer involved, and independent intermediaries, such as brokers; needs to be acknowledged. In practice, tied agents often follow the distribution strategy set out by the insurer. In such case, the tied agent should be able to simply join the distribution strategy of the manufacturer.

In paragraph 30 (page 17) EIOPA also states that the product testing should be proportionate to the complexity of the product and its risks. The following concrete proposals may help to put this proportionality principle into practice:

- insurance undertakings should be allowed to re-use relevant existing product testings and scenario analyses as a basis when they test similar insurance products;
- when changes are introduced to an existing insurance product that has already been submitted to product testing, only these changes should be subject to a new product testing exercise. This is provided that the changes do not impact the rest of the product that already was tested.
- guarantees and product features required by law should not be subject to product

**Comments Template on
 Consultation Paper on Technical Advice on possible delegated acts
 concerning the Insurance Distribution Directive**

**Deadline
 3 October 2016
 18:00 CET**

testing.

Product innovation

We believe that POG requirements should not hinder product innovation nor result in unnecessary delay in product development. In view of the growing importance of online distribution channels, EIOPA should also ensure that insurers are given sufficient flexibility when distributing products in case of online sales.

Distribution channels

Considering that the distribution channels can differ significantly among Member States, we believe that the POG requirements should be applied in a proportionate manner while taking into account the specificities of the national markets.

The draft technical advice does not clearly emphasize the differences between distribution channels, despite the explicit request in the Commission’s mandate. Tied agents and independent intermediaries (brokers) operate in different frameworks with different levels of cooperation with and supervision by the insurance undertaking involved. These differences are not reflected in the draft technical advice (i.e. paragraphs 22 and 23 on page 23).

Paragraphs 22 and 23 of the draft technical advice state that the manufacturer shall take all reasonable steps to monitor that distribution channels act in compliance with the objectives of the POG arrangements and shall examine whether the product is distributed to the relevant target market. However, in case of independent intermediaries, manufacturers have less control over how or to whom their products are sold. Monitoring whether an independent distributor acts in compliance with the manufacturer’s POG arrangements would be problematic as it is not possible for manufacturers to interfere in the business of independent distributors.

Claims ratio

**Comments Template on
 Consultation Paper on Technical Advice on possible delegated acts
 concerning the Insurance Distribution Directive**

**Deadline
 3 October 2016
 18:00 CET**

We are concerned that EIOPA refers to the claims ratio and claims payment policies in the analysis accompanying the draft technical advice (paragraph 38, page 18). We believe that insurance undertakings should not be obliged to focus on claims ratio and claims payment policies when monitoring or testing their products. This is due to the fact that claims ratio need to be evaluated over time and not always appropriate to estimate whether a product is valuable to the identified target market.

Reference to the concept “value of the product”

We have concerns as regards to EIOPA’s reference to the concept “value of the product”. When talking about conflicts of interest, EIOPA specifies that ‘this might imply that distributors abstain from distributing specific insurance products, for example, in cases where products do not offer any value to the customer, but only a high commission to the distributor’. We are concerned that references to such concepts could result in price control for insurance products. It should be recalled that the price of insurance products does not depend on the nature or complexity of the products but on other factors such as the estimated risks and the guarantees chosen by the customer. Therefore, we urge EIOPA not interfere with the freedom of enterprise and in particular, with companies internal pricing mechanisms.

Documentation requirements

We are concerned that the increased documentation requirements contained in paragraphs 26 and 37 of the draft technical advice will create a significant administrative burden for manufacturers and distributors. The application of these requirements would not benefit the consumer either. A level of flexibility should be introduced in the policy proposals. In this regard, the documentation requirements should be proportionate to the nature, scale and complexity of the business of the distributor.

Question 3

3. Are there any further arrangements, except those outlined below, which you would consider necessary and important?

Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive		Deadline 3 October 2016 18:00 CET
	<p>We do not consider that any further arrangements would be necessary to introduce. The final policy proposals should be in line with the IDD level 1 provisions and the Commission's mandate for technical advice.</p> <p>As mentioned above, the POG arrangements should be applied in a proportionate way while taking into account the existing national and European legal framework. Existing rules that serve the same objective should not be duplicated by POG requirements in order to reduce administrative burden and unnecessary costs.</p>	
Question 4	<p>4. What costs will manufacturers and distributors face to meet these requirements? If possible, please estimate the costs through quantitative data.</p> <p>AMICE is not in a position at this point in time to properly estimate the costs that manufacturers and distributors will face in order to meet the requirements set out in the consultation paper.</p> <p>In general, EIOPA should allow for an efficient implementation of the IDD requirements at national level in order to avoid unnecessary costs.</p>	
Question 5	<p>5. Do you agree with the proposed high-level principle in order to assess whether activities of an insurance intermediary should be considered as manufacturing?</p>	
Question 6	<p>6. Do you consider that there is sufficient clarity regarding the collaboration between insurance undertakings and insurance intermediaries which are involved in the manufacturing of insurance products? If not, please provide details of how the collaboration should be established.</p> <p>In relation to the regular review of product distribution arrangements and the product monitoring, we agree that review and monitoring mechanisms should be in place for responding to any signals received from the market that the product may no longer</p>	

Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive		Deadline 3 October 2016 18:00 CET
	<p>meet the interests, objectives and characteristics of the identified target market. Nevertheless, we have concerns with regard to the requirement for on-going and proactive monitoring of compliance with POG arrangements.</p> <p>In case of independent intermediaries, manufacturers have less control over how or to whom their products are sold. In such cases, it is not possible for an insurance undertaking to monitor actively if the distributor respects the POG arrangements and if the product is sold correctly to the relevant target market. It needs to be acknowledged that the manufacturer is in practice not able to organise a full monitoring and can only monitor on the basis of complaints.</p> <p>Therefore, we believe that the actual proactive monitoring of compliance with the POG arrangements by distributors should be carried out by the national competent authorities. Only the national authorities have the necessary tools at their disposal to actively monitor and enforce compliance with POG arrangements.</p> <p>Manufacturers should not be obliged to disclose their whole distribution strategy to distributors, but only the relevant information on the product and identified target market.</p>	
Question 7	<p><i>7. Do you agree with the proposed high-level principle for the granularity of the target market? If not, please provide details on the level of detail you would prefer.</i></p> <p>We believe that the obligation for the manufacturer to identify the interests, objectives and characteristics of the target market might create many difficulties in practice and notably restrict the access of customers to insurance products within the internal market with a risk of discrimination.</p> <p>We agree with EIOPA that the principle of proportionality should be taken into account when considering the granularity of the target market and that this granularity should depend on the characteristics, risk profile and complexity of the product. As the majority of simple products (for instance home and motor insurance) are developed</p>	

**Comments Template on
 Consultation Paper on Technical Advice on possible delegated acts
 concerning the Insurance Distribution Directive**

**Deadline
 3 October 2016
 18:00 CET**

for the purpose of covering a particular risk and serve a large market, we consider that all persons affected by the risk form the natural target group of those products covering a particular risk. A too narrow definition of the target market could lead to the exclusion of 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 needs.

For life insurance products, not only the product itself should be taken into account but also the portfolio of the customer. A narrowly defined target market would be hard to reconcile with a portfolio approach, where both defensive and more risky investment products can be sold to the same investor in order to achieve a balanced investment portfolio.

Furthermore, the abovementioned arguments are also valid for insurance products required by law or based on agreements between social partners. In these cases, the target market is defined by law. For example, in some Member States firms are required to take out health insurance for all their employees and minimal guarantees are set by law.

We believe that the target market should be defined in a broad sense and sales outside the target market should be allowed. Furthermore, the final policy proposals should be adjusted if necessary to online distribution channels. The development of online sales should not be hampered by the POG requirements.

The rigid determination of the target market could also hinder product innovation and customer choice and create high organisational costs for manufacturers and distributors.

The requirement for a negative target market definition raises a number of questions. The identification of the groups of customers for whom the product is considered likely not to be aligned with their interests, objectives and characteristics is very subjective and would be difficult to implement in practice.

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

With regards to products sold via the internet, it is unclear how the insurance undertakings can prevent consumers from buying insurance products considered unlikely to meet their interests, objectives and characteristics.

Although sales outside the target market would be rare in case of a broader and more abstractly defined target group, EIOPA should clearly state in the technical advice that sales outside the target market are allowed, provided that they are justified in that particular situation

ESMA's technical advice on MiFID 2, as well as EBA's POG guidelines foresee that an instrument or service might be sold to clients outside the intended target market or where the target market has not been adequately identified provided that distributors justify such decisions in a durable medium attesting the advice given. We believe that EIOPA should follow the same approach in its final technical advice.

In order to provide unlimited access to insurance products for the benefit of customers and competition, distribution channels should not be limited to certain products or target groups as long as these channels are properly trained and able to sell one or several categories of products.

Finally, we wonder if it is necessary to take into account the level of information available to the target market, as existing national and European information requirements (for example PID / KID) already regulate in detail which information a customer should have at his disposal.

8. Do you agree with the proposed review obligations for manufacturers and distributors of insurance products? Would you consider it important to introduce a minimum frequency of reviews which should be undertaken by the product manufacturer e.g. every 3 years?

We agree with EIOPA that manufacturers and distributors should take appropriate action when they become aware of an event that could materially affect the potential

Question 8

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

guarantees of the target market.

The technical advice should clearly state that the senior management is ultimately responsible for the POG arrangements and not the compliance function. This is in line with paragraph 5 (page 22) which specifies that the manufacturer’s administrative, management or supervisory body is responsible for the POG arrangements.

Paragraph 2 (page 38) provides that the manufacturer and the distributor must have appropriate written agreements in place in order to coordinate their reviews. EIOPA should clarify whether these written agreements only have to be made between an insurance undertaking and an intermediary which manufactures insurance products for sale to customers.

It is unclear how independent intermediaries, such as brokers, are supposed to coordinate the review of their product distribution arrangements with the review of the manufacturer (paragraph 6 of the draft technical advice, page 38).

We do not believe that EIOPA should prescribe any defined interval for the review process. We consider this as a good example of applied proportionality: reviews should be carried out depending on the market dynamics, complexity of products or other factors and they should not be prescribed when there has been no change. Even the minimum frequency of 3 years would not be desirable since for some insurance products it might take much longer time to evaluate their compatibility to customers’ needs.

9. Are there any other elements which you would consider appropriate in order to specify the regulatory requirements on conflicts of interest as laid down on Article 27 and Article 28 IDD? If possible, please specify in detail.

We do not consider that any additional elements are necessary or appropriate in order to specify the regulatory requirements on conflicts of interest.

Question 9

EIOPA rightly states in paragraph 2 (page 45) that conflicts of interest shall only be

**Comments Template on
 Consultation Paper on Technical Advice on possible delegated acts
 concerning the Insurance Distribution Directive**

**Deadline
 3 October 2016
 18:00 CET**

assumed in the listed cases. This does not mean that the listed practices result per definition in a conflict of interest. This important clarification is currently missing in paragraph 6 (page 44).

There are different types of potential conflicts of interest and not all of them can be dealt with in the same way. Not all conflicts of interest have the potential of causing detriment to consumers and EIOPA should clearly specify only those that are demonstrated as being detrimental to consumers.

We believe that EIOPA should not prescribe in detail the steps to be taken in order to address and manage conflicts of interest as this needs to be adapted to the characteristics, structure and activity of the entity involved.

With regard to paragraph 1, page 45, when identifying conflicts of interest, insurers are required to take into account conflicts of interest arising in relation to "any person directly or indirectly linked to them by control". EIOPA should clarify to which persons/situations this requirement refers.

Additionally, with regard to the broad formulation of paragraph 2(c) (page 45), it should be noted that the payment of commissions from insurers to distributors does not necessarily give rise to conflicts of interest.

It is also very difficult to understand to what type of situations EIOPA refers to in paragraphs 5(a), 5(c) and 6 in the conflicts of interests policy (page 46) and how such situations should be handled. These requirements should be further clarified.

With regard to paragraph 9(b) (page 47), the organisational provisions on the documentation of conflicts of interest require insurance intermediaries and insurance undertakings to keep and regularly update a record of situations in which a conflict of interest entailing a risk of damage to the interests of the one or more customers has arisen or may arise. We believe that it is appropriate to record existing conflicts of interest running contrary to the interests of the customer. But requiring insurers and distributors to draw up a list of conflicts of interest that might arise in the future

Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive		Deadline 3 October 2016 18:00 CET
	seems disproportionate. Therefore, we suggest amending the wording as follows: "keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of the one or more customers has arisen or, in the case of an ongoing service or activity, may arise."	
Question 10	<p>10. Do you agree that the policy proposals do not need further specification of the principle of proportionality and allow sufficient flexibility to market participants to adapt the organisational arrangements to existing business models? If you do not agree, please explain how the principle of proportionality could be elaborated further from your point of view?</p> <p>We support the principle of proportionality mentioned in paragraph 3 of the draft technical advice. National competent authorities are better placed to take account of the different legal forms and corporate governance regimes and practices.</p> <p>We agree that sufficient flexibility should be allowed to market participants in order to adapt the organisational arrangements to existing business models.</p>	
Question 11	<p>11. Do you agree with the proposed high level principle to determine whether an inducement has a detrimental impact on the relevant service to the customer?</p> <p>We welcome EIOPA's high-level principle approach towards the criteria to determine whether an inducement has a detrimental impact on the relevant service to the customer. However, we consider that a holistic approach should be taken in order to evaluate whether or not an inducement can be considered to have a detrimental impact on the quality of the service.</p> <p>We agree with EIOPA that an overall assessment is required but the draft technical advice seems to contain contradictions on this point and a more balanced approach is required.</p> <p>With regard to the concept of "third party", we believe that employees and tied agents</p>	

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

cannot be considered as a "third party" for the purposes of inducements under IDD. This should be appropriately acknowledged in the definition of "inducement" under paragraph 1 (page 54). The present definition is not consistent with the explanations given by EIOPA (paragraph 4, page 50) and the Commission mandate (page 48) as it refers to "any party" rather than "any third party".

The proposed methodology to determine whether inducements have a possible detrimental impact on the quality of the service and whether insurance distributors comply with the duty to act in the best interest of the customer seems to contain contradictions. On the one hand, EIOPA states that inducements should be judged by means of an overall assessment. According to paragraph 17 (page 52), this assessment can take into consideration risk-reducing factors. We support an overall assessment which takes into account risk-reducing factors. On the other hand, paragraph 18 (page 53) states that the risk-reducing practices cannot be used to legitimate practices which are considered to be detrimental from the outset. Paragraph 18 explicitly refers to the inducements listed in paragraph 4 of the draft technical advice ('blacklist'). In this regard, this could mean that none of the inducements listed in paragraph 4 can be countered with risk-reducing factors.

Furthermore, the list of inducements in paragraph 4 of the draft technical advice seems to be extensive and broadly formulated. Due to its broad formulation and general nature (e.g. no distinction between different types of commissions such as a basic commission/management commission etc.) the list encompasses a wide range of inducements paid in the insurance industry. This combination of a broadly formulated list with no proper possibility to take into account risk-reducing factors seems not to be in line with the idea of an overall assessment.

It seems that the characteristics of the insurance sector were not properly taken into account in the list in paragraph 4 of the draft technical advice. Inspired by MiFID 2, the technical advice considers inducements that are predominantly based on quantitative commercial criteria and do not take into account appropriate qualitative criteria to be detrimental (i.e. paragraph 4(b)). The distribution landscape in the banking sector however differs substantially from the insurance sector, where

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

independent intermediaries and brokers play an important role. It is difficult for insurance companies to include qualitative criteria in their inducement agreements with independent intermediaries, as they cannot examine if these criteria are being met in practice. Such kind of 'quality monitoring' by an insurer would conflict with the independent status of the intermediary involved.

We however agree with paragraph 4(a) of the draft technical advice: "*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*". This principle should be the main criterion for the overall assessment of inducements.

With regard to paragraph 4(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*), it is unclear who will determine if an inducement is disproportionate and on the basis of which criteria. And what is to be understood under 'the value of the product'? Both European and national information requirements, such as the PRIIPs KID, already ensure that the customer receives information on the characteristics of the product, premium, costs and type of remuneration, so he/she can decide for himself/herself if the product is of added value or not.

With regard to paragraph 4(d), EIOPA should provide a definition of the term 'up-front inducements'. Otherwise there is a risk that insurers in different Member States will interpret up-front inducements differently.

Paragraph 4(e) requires further clarification. We agree that a refund (from the intermediary who has received the commission to the insurer) has to be foreseen in case a management commission was paid upfront and the product is surrendered early. However, it seems unreasonable to foresee a refund for the basic commission, as this is a compensation for closing the contract. A refund of the basic commission is only justified in case, for example, the distributor involved does not fulfill its duty of

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

	<p>care to the detriment of the customer.</p> <p>We are concerned that in its current form the draft technical advice could introduce a de facto ban on the receipt/payment of inducements due to a lack of risk-reducing factors that can be used to counterbalance the extensive blacklist in paragraph 4.</p> <p>In its current form, the draft advice could introduce a <i>de facto</i> prohibition on the receipt/payment of inducements due to a lack of risk-reducing factors that can be used to counterbalance the extensive blacklist and the oversimplified presentation of inducements. This is not in line with the intention of the European legislators not to introduce a ban on inducements in the IDD.</p> <p>We believe that the principle of an overall assessment should be introduced explicitly in the final technical advice. EIOPA has to ensure that the risk-reducing factors can be taken into account properly in the overall assessment; and make the blacklist more nuanced and more precise.</p> <p>It is crucial that the risk-reducing factors are applicable in practice and appropriate for the insurance sector. The criteria proposed by EIOPA (p. 52-53) are not always easily applicable in the insurance sector, taking into account the role independent intermediaries play. However, the fourth bullet on page 53 (adequate training) is a good example of a risk-reducing factor that is applicable in practice.</p>	
Question 12	<p><i>12. Are there any further inducements which entail the high risk of leading to a detrimental impact and should be added to the list in paragraph 4 of the draft technical advice above?</i></p> <p>We do not believe that further inducements which entail the high risk of leading to a detrimental impact need to be added to the list in paragraph 4 of the draft technical advice.</p>	
Question 13	<p><i>13. To which extent are inducements which are considered bearing a high risk of detrimental impact part of existing business and distribution models?</i></p>	

Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive		Deadline 3 October 2016 18:00 CET
	<p><i>Please specify your answer and describe the potential impact of these proposals (if possible, with quantitative data).</i></p> <p>In its current form, the draft technical advice could introduce a <i>de facto</i> prohibition on the receipt/payment of inducements due to a lack of risk-reducing factors that can be used to counterbalance the extensive blacklist and oversimplified presentation of inducements. We believe that a holistic approach is necessary while taking into account the context of the overall situation. See also our response to question 11.</p>	
Question 14	<p><i>14. Are there any further organisational measures or procedural arrangements which you would consider important to monitor whether and to ensure that inducements have no detrimental impact on the relevant service to the customer and do not prevent the professional from complying with their obligation to act honestly, fairly and in accordance with the best interests of their customers?</i></p> <p>We do not consider any further organisational or procedural measures to be relevant.</p>	
Question 15	<p><i>15. Do you agree with the high level criteria used to specify the assessment of suitability and appropriateness? Are there any criteria you would exclude, and why?</i></p> <p>We agree with the high-level criteria proposed by EIOPA to specify the assessment of suitability and appropriateness. We did not identify any criteria that should be excluded.</p> <p>As a general remark, we believe that the need for collecting information from customers or potential customers might be in contradiction with the General Data Protection Regulation which is currently being implemented. According to the latter only a minimum amount of data should be collected.</p> <p>Paragraph 3 of the draft technical advice rightly points out the possibility that the information to obtain for the suitability assessment is covered already by other</p>	

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

requirements in Chapter V of IDD. We agree that retrieving the same information from the customer through several procedures (i.e. demands and needs test, suitability analysis etc.) should be avoided as much as possible in order to limit the burden on both the industry and the customer. A customer would only be confused if he had to provide the same information multiple times.

Not all transactions require an additional suitability or appropriateness assessment as this would hamper the correct execution of the contract (i.e. execution of contractually agreed options). Furthermore, additional assessments are not always to the benefit of the customer.

We believe that paragraph 3 of the draft technical advice should not result in putting the demands and needs test at the same level as the suitability assessment. The determination of the customer's demands and needs is required before the conclusion of any contract and aims at avoiding mis-selling (cf. recital 44 of IDD), while the suitability assessment is only required when IBIPs are sold with advice and involves a much broader analysis (knowledge, experience, financial situation and investment objectives). The analysis of the demands and needs is thus much narrower and less extensive than the suitability assessment. EIOPA should recognize that the general obligation to analyse the demands and needs can be fulfilled by the suitability assessment. Similarly, a demands and needs test seems unnecessary in case of an appropriateness assessment. Moreover, MiFID 2 does not require an additional/separate demands and needs test on top of the suitability or appropriateness assessment, therefore, we consider that the demands and needs test can be covered by the assessment of suitability or appropriateness.

In paragraph 8 (page 64) EIOPA refers to "collective contracts". We would appreciate if EIOPA provides more guidance on what type of contracts it refers to.

Pursuant to paragraph 12 of the draft technical advice, the benefits of switching embedded investment should be greater than the costs. We believe that this paragraph puts too much emphasis on costs. There are other reasons why it could be better for a customer to switch his/her embedded investments. We therefore suggest

Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive		Deadline 3 October 2016 18:00 CET
	<p>the following amendment: "<i>When providing advice that involves switching embedded investments, either by selling an embedded element and buying another or by exercising a right to make a change in regard to an existing embedded element, the insurance intermediary or insurance undertaking shall collect the necessary information on the customer's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch. such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs.</i>"</p>	
Question 16	<p>16. When EIOPA is reflecting insurance specificities in the policy proposals above, do you agree with them? In particular, with regard to insurance specificities related to the protection elements within an insurance-based investment product (e.g. biometric risk cover), are there aspects regarding the information to obtain (such as the 'risk profile') for the assessment of suitability and appropriateness that would necessitate further and/or more explicit insurance specificities?</p> <p>We believe that the assessment of suitability or appropriateness should only concern the investment part of an IBIP.</p> <p>EIOPA should clarify the consequences for cases in which the customer is not willing to share certain information with the insurance undertaking or the insurance intermediary despite the fact that the latter is required to request it. Paragraph 10 of the draft technical advice only prohibits the insurance intermediary or the insurance undertaking to recommend IBIPs to the customer. It is unclear whether distributors are still allowed to sell IBIPs following the rules under Article 30(2) of IDD (sale after documented warning) when customers withhold information under Article 30(1) of IDD.</p> <p>Despite the provisions of Article 30(6)(c) of IDD, EIOPA fails to specify the type of customer/potential customer (retail or professional customers). We would appreciate a clarification on this point.</p>	

Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive		Deadline 3 October 2016 18:00 CET
Question 17	<p><i>17. In practice, what information do you expect to collect for the assessment of suitability and appropriateness in addition to the demands and needs?</i></p> <p>We believe that Article 30(1) of IDD already indicates the necessary information to obtain for the assessment of suitability and appropriateness in addition to the demands and needs test:</p> <ul style="list-style-type: none"> – information regarding the customer’s or potential customer’s knowledge and experience in the investment field relevant to the specific type of product or service, – that person’s financial situation including that person’s ability to bear losses, and – that person’s investment objectives, including that person’s risk tolerance. 	
Question 18	<p><i>18. Do you think that it could be useful for EIOPA to provide any specification and/or guidance on the relationship between the demands and needs test and the suitability/appropriateness assessment, in a separate policy instrument, given that this point is not addressed in this technical advice?</i></p> <p>AMICE does not consider any further guidance or specification on the relationship between the demands and needs test and the suitability/appropriateness assessment to be useful as this would go beyond the level 1 provisions and the Commission’s mandate for technical advice. EIOPA points out in paragraph 12 (page 63) that its technical advice should be limited to the information to obtain under the suitability/appropriateness assessment, and not the demands and needs test. We also believe that the suitability or appropriateness assessment does not require an additional demands and needs analysis.</p>	
Question 19	<p><i>19. Do you agree with the high level and cumulative list of criteria used to define other non-complex products? Are there any you would make optional or exclude, and why?</i></p>	

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

We do not agree with the cumulative list of high-level criteria in the draft technical advice. This exhaustive list will result in a de facto ban on execution-only, as all products are deemed complex besides products with a unit-linked investment element (cf. paragraphs 5 and 6, page 68-69). Such an approach would seriously undermine Member States' option under the IDD to allow for the execution-only sale of non-complex IBIPs. Furthermore, in light of a level playing field, we call on EIOPA not to introduce criteria under the IDD that are more stringent than MiFID 2.

The MiFID 2 requirements are not adapted to the insurance context and do not fit a considerable part of the life insurance products. Furthermore, we wonder why EIOPA refers to the ESMA final guidelines on complex debt securities and structured products for further guidance.

EIOPA seems to imply in its draft technical advice that insurance products with pooled investments such as with-profits should not be classified as "other non-complex IBIPs" that fall within the scope of Article 30(a)(ii) of IDD (page 68). EIOPA should take into consideration the wide variety of different insurance products that could be classified as "with-profits" among Member States. In some countries, "with-profits life insurance" uses different guarantees (i.e. between 80-100% of the customer's initial investment is guaranteed and the customer is also guaranteed a certain return on the investment). The structure of endowment insurance with traditional asset management is easy to understand for the customer allowing the customer to understand the risks involved. The customer is guaranteed a certain percentage of the investment (up to 100%) and a certain turnover. In addition, the customer is entitled to a share in the return on capital generated by the management of asset. The share is proportional to the investment of the customer. In contrast to unit-linked insurance, the customer does not have to take any investment decisions regarding the management of assets. The customer trusts instead the insurance undertaking to manage the assets carefully and properly. Furthermore, the management of assets is rigorously regulated by Solvency II.

We believe that EIOPA should only prescribe high-level criteria that indicate whether

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

the product is complex or not and should not use terms such as with-profits that can refer to very different products with different levels of protection/structures in different Member States. In addition, EIOPA should allow national supervisory authorities some flexibility to take into consideration the specificities of national products, otherwise there is a risk that IBIPs that are simple for the customer to understand and provide the customer a high level of protection are classified as complex IBIPs, while other IBIPs, such as deposit insurance or unit-linked insurance, are classified as non-complex despite the fact that the level of protection for the customer is much lower.

With regard to the criteria listed in the draft technical advice, we have the following remarks:

- The proposed criteria do not fit guaranteed life insurance products and capital redemption operations. These products are not captured by the criteria; do not pose a high risk to customers and do not have a complex structure. We consider them to be non-complex and suitable for sales on an execution-only basis;
- We agree with EIOPA that unit-linked life products investing in open funds are non-complex (cf. MiFID 2), while structured unit-linked products are complex;
- For unit-linked products the criteria should be assessed at the level of the underlying funds;
- Criterion (b) does not take into account the long-term nature of life insurance products and does not fit guaranteed life insurance products and capital redemption operations. Publically available market prices or independent valuation systems are not relevant for products which contain a guaranteed interest rate;
- The formulation of criterion (c) is very vague and not adapted to the terminology used in the insurance sector. The scope and exact meaning of this criterion is therefore unclear;

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

- We consider criterion (d) to be fulfilled by the obligation to provide a KID to customers, as the latter includes information on the characteristics of the product, costs, risk and performance;
- Criterion (e) is overly broad compared to the corresponding MiFID 2 criterion (point (d) on page 68). MiFID 2 reads as follows: *"it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment"*. Criterion (e) has expanded the scope considerably, by falsely putting switching clauses on the same level as converting rights. This is inaccurate, as switching takes place in the contractual sphere, while converting does not;
- Criterion (f) fails to take into account the existing national and European legal framework and the long-term nature of life insurance products. The KID will provide the customer with information on the costs related to the product. It should also be acknowledged that exit costs are being applied to protect the customers who stay in the products, which are often long-term in case of insurance;
- With regard to criterion (h), EIOPA seems to imply that the use of beneficiary clauses is a strong indication that the product is complex. We do not agree with such an assessment. Beneficiary clauses do not influence the performance or return on the product. The criterion undermines the right of a customer to alter a product to his particular needs and ignores the fact that modifiable beneficiary clauses are in the interest of the customer as they enable them to keep control over the beneficiary to their investments. EIOPA should allow the national authorities to classify the IBIPs taking into consideration the specificities of the national IBIPs based on a high-level principles prescribed by EIOPA.

Question 20

20. Are there any further high level criteria which you would consider necessary and important, and why? In particular, how could insurance

Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive		Deadline 3 October 2016 18:00 CET
	<p><i>specificities be taken into account?</i></p> <p>We believe that the list of criteria in the draft technical advice is already very extensive, so further criteria would not be necessary nor appropriate. We agree that insurance products can be considered non-complex if they do not incorporate a structure which makes it difficult for the customer to understand the risk involved.</p>	
Question 21	<p><i>21. While point (i) of point (a) of paragraph 3 of Article 30 is intended to capture the majority of non-complex products, the above listed criteria should capture equally non-complex products falling outside of point (i). Are there any gaps?</i></p> <p>We do not agree with EIOPA's assumption that Article 30, paragraph (3), point (a)(i) of IDD is intended to capture the majority of non-complex products. We consider that this point only captures insurance products that are closely related to funds such as unit-linked insurance products.</p> <p>In our opinion, products which reduce the risk for customers should be considered as non-complex, such as products with collective investment, products with guarantees or other security mechanisms.</p>	
Question 22	<p><i>22. On retention of records, do you agree with the high level criteria used? Are there any you would exclude, and why?</i></p> <p>We agree in general with the proposed high level criteria, with the exception of paragraphs 16(b) and 17(b) of the draft technical advice (page 77).</p> <p>EIOPA rightly points out in paragraph 9, page 76 that record-keeping obligations could overload the consumer and create administrative burdens for the insurance undertaking or the insurance intermediary.</p> <p>Paragraph 16(b) of the draft technical advice requires insurance intermediaries or insurance undertakings to keep the relevant records in order to enable the competent</p>	

Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive		Deadline 3 October 2016 18:00 CET
	<p>authorities to detect failures regarding the suitability assessment. We believe that the wording of this paragraph is too vague and needs further clarification.</p> <p>Paragraph 17(b) refers to a customer's risk profile. In insurance, there is no automatic link between a customer's profile and certain products. These practices are more common in the banking sector, but not in the insurance sector. Furthermore, the IDD does not require distributors to draw up investment risk profiles.</p> <p>Finally, EIOPA should specify how the data protection principles set out in the General Data Protection Regulation would apply when insurance undertakings or insurance intermediaries comply with the record-keeping and retention obligations listed under the draft technical advice.</p>	
Question 23	<p>23. When EIOPA is reflecting insurance specificities in the policy proposals, do you agree with them?</p> <p>As mentioned above, paragraph 17(b) of the draft technical advice refers to a customer's risk profile. In insurance, there is no automatic link between a customer's profile and certain products. These practices are more common in the banking sector, but not in the insurance sector. Furthermore, the IDD does not require distributors to draw up investment risk profiles.</p>	
Question 24	<p>24. Do you agree with the high level criteria used with regard to the suitability statement and the periodic communications to customers? Are there any criteria you would exclude, and why?</p> <p>We agree with the high level criteria with the exception of paragraph 2 (page 85), paragraph 8 (page 86) and paragraph 9 (page 87).</p> <p>With regard to the obligation to provide a periodic statement, we believe that EIOPA should not prescribe any defined intervals for the review process. The period should depend on the type of product and it should occur only in case of significant changes</p>	

**Comments Template on
Consultation Paper on Technical Advice on possible delegated acts
concerning the Insurance Distribution Directive**

**Deadline
3 October 2016
18:00 CET**

(i.e. market evolution).

Paragraph 2 (page 85) states that “*the insurance intermediary or insurance undertaking shall draw the customer’s attention to, and shall include in the suitability statement, information on whether the recommendation is likely to require the customer to seek a periodic review of their arrangements*”. EIOPA should clarify in the final technical advice that the distributor involved can decide himself if he provides periodic assessments of suitability or not (cf. Article 30(5) of IDD). In case of ongoing advice provided by the distributor, the latter should determine the triggers for such periodic assessments and not the customer.

With regard to paragraph 8 (page 86) of the draft technical advice, we believe that the required information will result in duplication of the information requirements under the Solvency II Directive. Furthermore, some of the requirements are unclear and are only suitable for pure fund concepts. Therefore, they do not properly reflect the specificities of insurance-based investment products.

Pursuant to paragraph 9 (page 87), distributors have to provide customers with a periodic statement on the services provided and transactions undertaken. There is a possibility to provide such a statement by means of an online platform. We support that digital platforms are considered by EIOPA, but regret that insurance undertakings or insurance intermediaries need to have evidence that the customer has accessed the information at least once during the relevant reporting period. This is not in line with the provisions of IDD which only contain an information obligation for the distributors and do not oblige them to check if their customers read/access the information. We do not understand why EIOPA imposes more stringent conditions on online platforms. We also wonder what the consequences would be in case the customer does not access the information in the relevant reporting period. As an alternative, we suggest that the distributor should inform the customer (i.e. by means of an email-alert) that the periodic statement is available on the platform.

Question 25

25. When EIOPA is reflecting insurance specificities in the policy proposals,

Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive		Deadline 3 October 2016 18:00 CET
	<p><i>do you agree with them?</i></p> <p>As mentioned in our response to question 24, some of the requirements under paragraph 8 of the draft technical advice are only suitable for pure fund concepts and do not properly reflect the specificities of insurance-based investment products.</p>	
Question 26	<p><i>26. Should EIOPA specify further criteria with regard to the periodic communication to customers, such as the division of responsibility or more details on the online system?</i></p> <p>AMICE does not consider any further guidance or specification on the criteria with regard to the periodic communication to customers for online systems to be useful. With regard to the division of responsibility, AMICE prefers a practical implementation at national level, taking into account the existing market conditions.</p>	