	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:	German Banking Industry Committee (**GBIC**)	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
	Please follow the following instructions for filling in the template: ⇨ Do **not** change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-16-006@eiopa.europa.eu.** **Our IT tool does not allow processing of any other formats.** The numbering of the questions refers to the Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive	
Reference	**Comment**	
General Comment	The German Banking Industry Committee (**GBIC**) is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband deutscher Banken, for the private commercial banks, the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken, for the cooperative banks, the Bundesverband Öffentlicher Banken Deutschlands, for the public banks, the Deutscher Sparkassen- und Giroverband, for the savings banks finance group, and the	

	Verband deutscher Pfandbriefbanken, for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks. GBIC warmly welcomes the opportunity to comment on EIOPA's consultation paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive (**IDD**). GBIC represents a wide range of banks which distribute insurance products additionally to the financial products on sale. Therefore, EIOPA's Technical Advice on delegated acts concerning the IDD is highly relevant to banks regarding all aspects of the distribution of insurance products. Since there are terms used in the IDD that can also be found in legislation regarding financial regulation, most notably the MiFID II, there is a clear need for an aligned definition and application in order to guarantee fair competition across sectors. Furthermore, the German banking industry has the interest to act in the best interest of the customers. However, the competent European authorities should pay attention that rules in different European regulations follow the same principles. For example, the "*Target Market*" is a crucial point in MiFID II, PRIIPs Regulation as well as in IDD. For the financial institutions it is of utter importance to have the same interpretation of the Target Market, where possible. We would also appreciate if the ESAs, where possible and bearing in mind the differences in Level I, would establish the same rules and/or interpretations regarding MiFID II and IDD to avoid any misinterpretations between both Directives and to facilitate the application in the banks. We would therefore really appreciate if the ESAs would find a coherent interpretation of all the provisions in the relevant rules (MiFID II, PRIIPs Regulation and IDD). Especially with regard to the needs of customers - transparency, honesty and fairness - the European authorities and the Member States should guarantee the consistence of the content of the different regulations as mentioned.	
Question 1		
Question 2	GBIC understands EIOPA's intention to implement Product Oversight and Governance	

	(**POG**) arrangements in order to establish a safeguard for products on sale for retail customers. The duty to establish POG arrangements as described in the Draft Technical Advice (**Draft TA**) can, however, be interpreted as the need to establish rules that would result in the implementation of a supervisory board responsible exclusively for the supervision of sold products and their review (see No. 31 Draft TA). This would constitute an unbearable burden on small and medium distributors that may consist of 3-4 involved employees only. A similar burden could occur due to EIOPA's advice regarding the distribution strategy (see No. 34 Draft TA) and the Provision of sale information to the manufacturer (No. 36 Draft TA). This advice might result in additional bureaucracy and costs for small distributors, which may be difficult to implement with limited manpower. We therefore highlight the need to apply the principle of proportionality mentioned under No. 2 Draft TA. If EIOPA's intention is to construct such a board with a duty to supervise, the possibility to implement such a board into already existing structures should remain. The issue of defining a target market is of specific importance for GBIC, since this is an ongoing discussion in the context of MiFID II. We share EIOPA's view that the core of the definition should be the potential customer. However, defining a clear distinction between classes of potential customers remains to be a highly challenging exercise. Therefore, it is of upmost importance that the distribution of products outside the target market remains possible without punitive measures since there may be good reasons to distribute products outside the forseen target market on an individual basis (as mentioned correctly under Draft TA p. 21 No. 53)	
Question 3		
Question 4		
Question 5	We agree that distributors can be considered as a manufacturer if, and only if, the distributor exceptionally plays a key role in designing and developing an insurance product for the market.	
Question 6		
Question 7	We share EIOPA's view that it is difficult to develop a common standard of a target market in view of the multitude of different products. We agree that needs, characteristics and demands of customers need to be taken into account when	

	developing a target market. In this context, it is necessary to define the criterion of "*objectives*" that is mentioned additionally in the Draft TA (p. 33 No. 3). Here, too, we stress the need that the distribution of products outside the target market needs to remain possible without punitive measures since there may be good reasons to distribute products outside the forseen target market on an individual basis (as mentioned correctly under Draft TA p. 21 No. 53). There should be no negative list as laid out in the Draft TA p. 34, No. 4, since this is not foreseen in the IDD. Related to the unclear definition of demands and needs according Art. 20 IDD (see comment to question 18) and also to the Suitability-Assessment the synchronization between demands and needs of the customer and the defintion of the relevant Target Market increases the unclarity regarding the Target Market definitions at all (e.g. Art. 9 (9) of the draft Commission Delegated Directive under MiFID II defining only the "*needs*" and not the "*whishes*"). It is unclear whether the definition of "*needs*" shall only be used for the definition of the Target Market in Art. 9 (9) of the draft Commission Delegated Directive under MiFID II and how this should be taken into account to define the needs according to Art. 20 (1) IDD. A standardized "*Target Market Definition*", that is consistent with the Level III measures under MiFID II that are currently drafted by ESMA, would be appreciated.	
Question 8	**I. Product Governance obligations** GBIC agrees that it is necessary to review products on a regular basis. It is, however, not necessary to do this on a fixed date predetermined by policy makers. The manufacturer that is responsible for the production and any change in the product's design is best suited to take on that task. Hence, GBIC agrees with EIOPA's view that a certain degree of flexibility is needed for manufacturers and distributors to decide what steps they need to take based on the circumstances of the case due to the wide range of products. (p. 37 No. 6). EIOPA mentions in the Draft TA on page 38 (No. 2, Sentence 4) that manufacturers and distributors shall have appropriate written agreements in place in order to coordinate their reviews. A duty to coordinate beyond this statement is in our view neither necessary nor practicable. GBIC therefore suggests to delete any additional	

	duties that are mentioned or, as a consequence, a distributor would need not only to have multiple agreements with manufacturers in place, but also to be prepared to provide feedback at different points of time throughout the year. This would result in an unsurmountable effort for small and medium sized distributors. **II. Obtaining appropriate information of the product** Regarding EIOPA's Draft TA on page 41, GBIC would like to highlight possible difficulties deriving from the provision of "*information to assess whether the product offers added value*". It remains unclear what EIOPA means or intends since there is no clear definition about what information needs to be provided. The same is true regarding the provision of information about the "*structure*" of the products. In GBIC's view the need to provide the relevant information in a written agreement is not necessary. Such a written agreement would produce additional costs and the success of any criteria connected to Product Oversight and Governance is related to its efficiency and the lack of unnecessary bureaucracy.	
Question 9	GBIC agrees with the notion of Art. 27 IDD that conflicts of interest should not harm the interest of the consumer. What constitutes a conflict of interest, however, is still subject to interpretation. The payment of inducements of a manufacturer to the distributor is not *per se* a conflict of interest. This fact can also be drawn from the Level I text of the IDD (see Art. 18 a) and v), Art. 19 (1) e) IDD). The European co-legislator agreed that inducements in relation to the provision of insurance advice are admitted. The distribution of products is based on trust between the customer and the distributor. The payment of inducements allows for everyone to have access to insurance advice, services and products without paying a lump sum in advance. Especially customers from a lower income group can thus profit from high quality advice regarding their personal needs without any obligation to purchase a product or having to pay a fee for the consultation. A recent study (March 2016) by the Financial Advice Market Review (UK) focused on the provision of financial services showed that a prohibition of the payment of inducements would lead to a gap of advice in this segment.	
Question 10	The payment of fees or commissions in connection with the distribution of insurance-based investment products - as well as in connection with the distribution of other	

	insurance products - is and has been consistent with commercial custom in the Federal Republic of Germany as well as in other Member States of the European Union for a considerable period of time. The German Federal Supreme Court has even pointed out based on such commercial custom that insurance intermediaries are not obliged to disclose details regarding any fees or commissions paid to them by insurers since the public / customers are aware of this fact as part of an established commercial custom. Taking this into consideration as well as the decision of the European legislator not to establish a general prohibition of the payment of fees or commissions for the distribution of insurance-based investment products to insurance intermediaries by other parties than the customer we would like to emphasize that the proposed high-level principle to determine whether an inducement has a detrimental impact on the relevant service to the customer should be handled with great care and in line with the principle of proportionality.	
Question 11	The payment of inducements does not justify the assumption of higher risk for the customer. Please see also the answers to question 9, 10 and 13. Referring to "*Inducements that have a detrimental impact"* it is not clear why upfront payments (*„the inducement is entirely or mainly paid upfront when the product is sold*") should have a high risk or a detrimental impact on the quality of the relevant service to the customer. We would further recommend to delete the non-exhaustive list in the Draft TA (p. 54). Even if the list is not exhaustive it could be seen as a 'black list' that leads to a prohibition of certain inducements. This result would contradict the decision taken on Level I and therefore raise the question, whether Level II is in line with Level I. We further suggest to insert the word "*may*" between "*impact"* and "*occur"* in No. 3 of the Draft TA (P. 54) and to delete the word "*high"* relating to risk of leading to a detrimental impact in No. 4 of the Draft TA (p. 54). In Germany distributors already may only receive an inducement payement in full if the insurance contract sold is held up during a five year remuneration period. A lapsed contract will result in an obligatory repayment of the inducement in parts. This	

	procedure helps to establish a long-term relationship between the distributor and the customer. This, however, is not the case in contractual advice where a lump sum is paid upfront. Here, the salesman can keep the payment regardless of the quality of advice or a later lapsing of a contract.	
Question 12	As a general rule, GBIC argues that the use of a negative list only draws attention to single points and is therefore not suitable for a more complex and diverse general interpretation of the situation. In a fast changing environment such a list would need to be updated on a regular basis and would hence not be useful for the purpose of keeping the high level principle of the best interest of the customer. Therefore, instead of using a negative list, we suggest that EIOPA uses a more principle based approach to develop standards as required on Level I. GBIC considers the negative list, which is not mandated on Level I, as a potential source of a breach of competence by EIOPA without the necessary democratic legitimation. This may result in a *de facto* prohibition of inducements which is not intended by the legislator and may harm competition in some Member States as a consequence.	
Question 13	Upfront commissions are a main feature of the existing commercial custom. To include upfront commissions in the list of inducements that are generally considered to have a high risk of leading to a detrimental impact on the quality of the relevant service to the customer does not sufficiantly reflect the principle of proportionality since the form of the payment (upfront instead of partial payments) does not imply that the distributed insurance product is not in line with the best interests of the customer. As a minimum approach we, therefore, propose to delete at least paragraph 4 d of the Draft TA (although we would still like to recommend to delete the non-exclusive list in the Draft TA (p. 54) in its entirety - please see also the answers to questions 11 and 12) and to further emphazise in the Draft TA that the principle of proportionality is also of importance in connection with the determination of types of inducements which might have a detrimental impact on the relevant service to the customer.	
Question 14		
Question 15	GBIC agrees with the high level principle of suitability and appropriateness. Generally, every counseling interview regarding the sale of financial or insurance products requires an individual review of the customer’s specific needs. Here, one needs to take	

	into account the financial situation, the investment goals and the knowledge and experience of each individual. The use of predetermined questions for general application would potentially harm the consumer and should thus not be considered as an option. High-Level-Criteria should take into account the cases for special treatments within the responsibility of manufacturer or distributor in case of switching embedded investments. They might be changed from distributor to manufacturer and vice versa. For example, there might be insurance-based investment products under which the customer has the right to change, for instance, the investment funds from time to time. We understand that the distributor does not have the obligation to conduct a full suitability assessment but to consider all the information the distributor obtains from the customer.	
Question 16		
Question 17		
Question 18	According Art. 20 (1) IDD the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and needs. The relevant paragraph does not provide any definition for the demands and needs. We would highly appreciate a high level definition or at least details regarding demands and needs. Art. 20 IDD applies for all insurances in context to IDD, so that the relevant information from the customer to specify the relevant demands and needs depends on the specific insurance product. For example a customer asks for an insurance product that might be less complex (e.g. homeowner's insurance). The insurance distributor shall only obtain information from the customer with regard to his home, e.g. the kind and value of furniture, etc. As a result, the information is limited to the specific insurance product. In context to the non IBIPs we would appreciate if the definition of 'demands' and 'needs' was specified further. With regard to the suitability/appropriateness assessment and between the "*demands*" and "*needs*" test we need more specification to avoid uncertainties. Especially, with respect to civil law the "*demands*" and "*needs*" test could be understood as advice according to civil law. Furthermore, we understand that the "*demands*" and "*needs*"	

	test has to be done in context to Art. 30 (3) IDD. It is unclear how it is possible to distribute an insurance product on a non-advice basis "*execution-only"* if the insurance distributor shall obtain information from the customer to perform the "*demands*" and "*needs"* test. According to Art. 30 (3) IDD the distribution must also be carried out at the initiative of the customer or potential customer. In general there should be as little legislation as possible on Level II and III. Hence, the national legislator should define all areas of regulation as clearly as possible in order to avoid too much legislation without democratic legitimation.	
Question 19		
Question 20		
Question 21		
Question 22		
Question 23		
Question 24	An IDD-recommended frequency for a recurrent Suitability- and/or Appropriateness-Assessment shall be proportionate to the nature of an insurance product with a minimum duration of 20 or 30 years. The customers decision, to spend money on a retirement provision product, shall not be put into question each year, but shall support the long-running nature of this kind of product. Additionally as EIOPA pointed out in No. 16 and No. 17 of "*Periodic communications to customer*" a report on relevant information is feasible but not a "*complete*" Suitability and Appropriateness Assessment. A recurrent Suitability and Appropriateness Assessment shall accommodate these circumstances (e.g. 5 years for insurance products with constant and long-lasting investment focus).	
Question 25		
Question 26	Everyone involved in the process (customers, distributors and manufacturers) need legal certainty regarding the distribution of insurance products as soon as possible. Level III measures should therefore be reduced to an absolute minimum.	

Template comments