

Comments Template on Consultation Paper on the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved		Deadline 28 April 2017 18:00 CET
Name of Company:	Intesa Sanpaolo	
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Reference	Comment	
General Comments	The Intesa Sanpaolo Group agrees with the need to issue guidelines for the definition of criteria to identify complex IBIPs. Stemming from the existing MiFID framework,	

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	<p>this exercise would allow striking a balance between the interests of insurance undertakings and those of consumers. Notably, we support the identification of the criteria and characteristics of IBIPs that can be sold on an execution-only basis - thus guaranteeing flexibility for undertakings in the manufacturing and sale of products, while on the other hand, ensuring sufficient freedom to consumers in choosing their products.</p> <p>Against this background, our comments to this consultation aim at backing these two objectives, also outlined in the consultation paper.</p>	
Question 1	<p>Whereas it is necessary to clarify how the criteria for the classification of complex products will be applied (i.e. whether a product is deemed complex solely on the basis of one of the criteria or whether it's possible to assess the product as a whole and not through the evaluation of a single clause), we think that a strict application of the criteria would eventually reduce the sale of those products on execution only basis – thus distorting the principle of having a 'level playing field' against other types of investment products.</p>	
Question 2	<p>It seems to us that there is need for more clarity around the interplay of the definition of complexity for IBIPs – for the purpose of execution only sales – and the requirements for suitability and appropriateness under MiFID II. This regulatory uncertainty causes difficulties in the application of the appropriateness and suitability regime for IBIPs.</p> <p>MiFID II requirements for suitability and appropriateness ask to test the possible sale of a product against the customer's knowledge and experience. According to MiFID's requirements, complex products can be sold only to customers with an adequate knowledge and experience.</p> <p>That said, for IBIPs, the following circumstances can occur:</p> <ul style="list-style-type: none"> - The product is not deemed as complex according to its financial profile – as it does not invest in financial products considered as complex according to MiFID II; 	

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- The product is considered as complex according to IDD as it involves clauses or costs that are difficult for the customer to understand (e.g. management cost structure).

In these cases, it is not clear whether the assessment of knowledge and experience on investment product should only consider the complexity according to its financial profile or whether it should be considered the complexity of the product under a broader perspective also including its insurance profile.

In particular:

- The first option would allow a level playing field vis-à-vis other financial products;
- The second option may cause regulatory arbitrage in favour of non-insurance investment products.

We think that the first option should be supported.

In particular, given that – in these cases - it is not possible to pursue the sale under execution only:

- The intermediary – which has also assessed the demands and needs - can explain to the customer all the aspects which stem from contractual options/clauses that may be difficult to understand;
- Suitability and appropriateness’ test allows for the assessment of the level of knowledge and experience under MiFID – which is generally in line with what defined for non-insurance investment products with similar financial profile.

Question 3

It would important to clarify whether Multi Options Products (MOPs) shall be covered by art. 30 (3) a) when they do not include underlying investment options considered as „non-complex“ according to MiFID II requirements.

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Question 4	<p>Firstly, we would like to stress what already mentioned in our previous reply with regard to MOPs whose underlying are investment options deemed as non -complex according to MiFID II.</p> <p>Secondly, we would welcome further clarifications on para 2.14 of the Explanatory text accompanying guideline 1 where it says „<i>For other types of insurance-based investment products, [...] the maturity or surrender value is at least partly exposed, directly or indirectly, to these financial instruments</i> » . We assume this intends to include IBIPs which are guaranteed by the insurance undertaking or that are partially/fully guaranteed by a third party (e.g. composite MOPs with a guarantee on investment), among the « non-complex products », as long as such guarantee does not match what covered by ESMA’s guidelines on complex products. These guidelines include "debt instruments with complex guarantee mechanisms", defined as "debt instruments guaranteed by a third party and structured in a way that makes it complex for the investor to assess accurately how the guarantee mechanism affects the risk exposure of the investment".</p> <p>In its guidelines, ESMA asks that third party’s guarantees shall be « structured in a way that makes it complex for the investor to assess accurately how the guarantee mechanism affects the risk exposure of the investment », whereas para 2.20 deems complex a product which is "guaranteed by a third party". This seems to us not in line with what described under ESMA’s guidelines.</p>	
Question 5	<p>Para 1.15 and 1.16 of Guideline 2 lists a number of characteristics that basically qualify almost all IBIPs as complex products according to art. 30.3 a).</p> <p>Therefore, in addition to what already outlined in our responses to Q3 and Q4, we would like to ask clarifications on whether any of the characteristics listed in para 1.15 and 1.16 would suffice to qualify a product as complex according to art.30.3 a).</p> <p>Should this be the case, the vast majority of IBIPs currently marketed (most notably MOPs) would be excluded from art. 30.3 a). Such prescriptive application of the requirements would end-up in hampering the creation of a level playing field vis-à-vis other investment products (see reply to Q1)</p>	

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Also, it should be clarified whether para 1.16 refers to art. 30 (3) (a) (ii), since the text only refers to the whole art. 30 (3) (a).

More specifically :

With regard to letter a) of para 1.15 we ask to clarify whether the requirement asking that « *it incorporates a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk or pay out profile of the insurance-based investment product* »:

- Should be considered as a material alteration of the risk of the whole MOP or rather of a single underlying investment option, and to which extent is the alteration
- Whether the alteration is relevant both when it increases as well as when it decreases the overall risk.

In particular more clarity is needed on:

- Clauses that automatically switch funds at a certain date or when some conditions are fulfilled in order to increase consumer protection, or reduce consumer's exposure to risks ;
- Clauses that automatically rebalance investments exposures by re-establishing the original quota chose by the client, which have been altered by market fluctuations.

As per letter b) of para 1.15 we ask to provide further clarifications on the exact meaning of '*at a value that is available to the customer*' considering that our national law does not require a periodic publication of quotations for most IBIPs – but only for internal funds that are linked to IBIPs.

In this case, the definition of « available » should allow for the disclosure to the client of a quotation/cash value upon request.

With regard to para 1.16 a) ii) , the requirement seems to forbid the sale of composite

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	<p>MOPs under execution-only regime, where these products combine both investment options on funds guaranteed by the undertaking and funds unit-linked – although this does not imply that a product may be difficult to understand. Therefore, we think that the circumstances that qualify a product as difficult to understand shall be better described.</p> <p>Whereas, with regard to requirements under letter b) and c) of para 1.16. we ask to clarify whether a product structure that combines different criteria may imply that a product is outside the scope of art. 30 (3) (a) even if the result is a better condition for the client (e.g. calculation of over-performance commission on the basis of a high watermark mechanism, or redemption fees calculated in a way that they decrease over time).</p> <p>It is worth stressing that sales under execution only procedure are due to continuously gain importance in the near future, in light of the increasingly wide use of digital platforms for collection of orders for those clients that use digital channels for the purchase and management of insurance and financial products.</p>	
Question 6	<p>EIOPA's technical advice on possible delegated acts concerning the IDD, lists in chapter 8 (Execution-only sales – criteria to assess "other non-complex insurance-based investment products) a definition of non complex product that seems contradicting the guidelines subject to consultation. The definition, indeed, requires that 5 conditions need to be met simultaneously – one of them being that 'the contractually guaranteed minimum surrender and maturity value is at least the amount of premiums paid by the customer minus legitimate costs levied'. Against this background, we question which of the two texts shall prevail.</p>	
Question 7		
Question 8	<p>We think that example 5 may be in contrast with what mandated by point 1.16 ii) ; since a product where « the customer can select from different underlying investment options including various non-structured UCITS and various shares traded on a regulated market » would fit the definition of « combined effect of these exposures is</p>	

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	<p>difficult for the customers to understand ». Therefore, we ask to confirm whether example 5 then supports our proposal outlined in our answer to Q5 – i.e. that combined MOP products which combine investment options on different funds do not qualify as complex products. This would support our understanding that different investment options do not necessarily lead to a situation which is difficult to understand for the customer.</p>	
Question 9		