

**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:	Assuralia, the representative body for mutual, co-operative and joint-stock insurance companies in Belgium (de Meeûsquare 29, 1000 Brussels, European Transparency Register nr. 0026376672-48)	
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
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ <u>Do not change the numbering</u> in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool</li> <li>⇒ Leave the last column <u>empty</u>.</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.</li> </ul> <p><b>Please send the completed template, in Word Format, to <a href="mailto:CP-17-001@eiopa.europa.eu">CP-17-001@eiopa.europa.eu</a>.</b></p> <p><b>Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the questions refers to the 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</p>		
<b>Reference</b>	<b>Comment</b>	

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<p>General Comments</p>	<p>It is very difficult to understand both the <i>coherence between, and the content of</i> (i) the proposed criteria under the EIOPA technical advice for possible delegated acts under the IDD (p. 77 EIOPA-17/048) and (ii) the proposed guidelines under consultation. However, the generic examples in the appendix of the consultation document (EIOPA-CP-17/001) provide guidance and clarification as to how the criteria of the guidelines are to be understood and are thus of utmost importance. Assuralia suggests to include them directly into the criteria to illustrate the interpretation of the different criteria.</p> <p>Assuralia sees a real danger that the whole of the IBIPs market is to be considered complex if the proposed criteria are not framed further (both through the examples and through the precisions suggested in the answers below). As they stand now, the criteria would <i>carve out the 'execution only'-principle</i> as no product on the market would be eligible for such a sales proces.</p>	
<p>Question 1</p>		
<p>Question 2</p>	<p>As EIOPA correctly states certain types of customers are interested in receiving execution-only services and are neither willing to pay for additional services they do not consider necessary, nor to answer questions regarding their financial knowledge and experience.</p> <p>The possiblity to apply 'execution only' in the sales proces (both when underwriting and executing transactions) will alleviate the sales proces for those customers and for the insurance distributor. This will foster the development of internet sales as this distribution channel typically benefits most from a simplified sales proces.</p>	
<p>Question 3</p>	<p>In principle, article 30 (3) (a) itself excludes <u>only a part</u> of the IBIPs market from 'execution only' sales by labeling them as complex, unless level 2 (delegated acts) and level 3 (guidelines) measures impose a very restrictive interpretation of this article.</p> <p>It is important that a level playing field is maintained with distributors of MiFID-</p>	

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	<p>products, by sticking as much as possible to the MiFID-interpretation of complex and non-complex products. Assuralia is of the opinion that ideally <i>only underlying structured funds of a unit-linked life insurance product</i> should be regarded as complex. This seems to be the most coherent approach with regard to the treatment of other comparable financial instruments under MiFID 2.</p>	
Question 4	<p>Assuralia understands that the exposure to an underlying complex product should be evaluated only in case of a <i>direct exposure</i> for the customer (i.e. the customer bears the investment risk of the product). Otherwise the whole Belgian IBIPs market is to be considered complex. Such an interpretation would carve out the 'execution only'-principle as no product on the market would be eligible for such a sales proces.</p> <p>Guaranteed insurance products are bought by customers that do not want to bear any investment risk and do not want to deepen their knowledge of financial instruments or the investment strategy of the insurer. Solvency II guarantees these customers that they can rely on the insurer to provide the contractually agreed guaranteed return. For these products customers only need to understand that a guarantee is given. From their point of view there is no element of complexity. The fact that the guaranteed return can be supplemented by profit sharing does not add any complexity either, if the customer is being well informed about the possibility and mechanism of profit sharing (as recognized by EIOPA under par 2.23).</p> <p>Assuralia suggests to clearly state throughout the text that guideline 1 needs to be assessed at the level of the underlying fund for products where the customer bears the investment risk and not at product level.</p>	
Question 5	<p>Paragraph 2.24 explains that in case an IBIP offers the customer a range of underlying investment options, the insurance distributor needs to ensure that the customer can only select the investment options that are non-complex in case of 'execution only' sales of this product. This means that in case of a unit-linked product the <i>assessment of the criteria</i> should be done at the <i>level of the underlying fund</i>. Assuralia asks to specify this directly in the guidelines 2, 2 and 2,3 (a) to (c).</p>	

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Moreover, it should be clear that a contractual clause that offers a customer the *possibility to switch between underlying funds* is not covered by guideline 2,2 (a) as it does not allow the insurer to materially alter the nature of the IBIP, but only gives the customer the possibility to invest in another underlying fund of the same IBIP.

Guideline 2.3 (c) determines that surrender fees make the product complex if they are not a fixed sum (for each remaining year until maturity), nor a fixed percentage of the premiums paid. However, in certain cases the legislator thought it necessary to determine the formula for calculation of the surrender fee. In these cases the surrender fee is neither a fixed sum nor a fixed percentage. Assuralia advocates that a surrender fee determined on the basis of a legally imposed formula cannot be considered as making the product complex.

Par. 2.19 of the explanatory text states that *fiscal penalties* could also be considered as unreasonable exit charges. In Assuralia's view this interpretation is not justified. Neither the insurer nor the customer can exercise any influence upon the fiscal treatment of an IBIP. Moreover, the fiscal treatment of a product can change throughout the lifetime of this product. It is unclear what the practical consequences would be if this happens.

Question 6

Assuralia understands that the criteria listed in EIOPA's technical advice for possible delegated acts under the IDD (p. 77 EIOPA-17/048) at least partially correspond to, and match with the criteria under guideline 2, 2, (a) to (c). However, Assuralia would like to point out that:

- 1) it is *difficult to understand the interaction* between the two sets of criteria at two different legislative levels. It would be preferable to have only one set of detailed criteria in one legislative document. This could be achieved by setting only general principles in the delegated acts (as opposed to the detailed criteria set forth in EIOPA's advice) and detailing them further in the guidelines;
- 2) there is *an inconsistency between the criteria* in the EIOPA technical advice and in

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	<p>the proposed guidelines:</p> <p>a) the criterion (a) on p. 77 of EIOPA’s technical advice states that an insurance-based investment product can only be considered non-complex if the contractually guaranteed minimum surrender and maturity value is at least the amount of premiums paid by the customer minus legitimate costs levied;</p> <p>b) guideline 1 states that an insurance-based investment product can be considered non-complex if it only provides investment exposure to financial instruments deemed non-complex under MiFID 2.</p> <p>The accompanying text of guideline 1 states that this guideline can be applied to unit-linked insurance products where the underlying is a non-complex financial instrument as defined in the MiFID-legislation. However, in a unit-linked insurance product the surrender and maturity value is never guaranteed to be at least the amount of premiums paid by the customer minus legitimate costs as required under criterion (a) of the technical advice. It’s value depends directly and entirely on the performance of the underlying investment.</p> <p>It is difficult to conciliate both criteria. The criterion from the technical advice could be understood as excluding all unit-linked products from the category of non-complex IBIPs, though guideline 1 seems to only exclude unit-linked insurance products with an exposure to complex financial instruments. Moreover, the generic examples given in the appendix of the guideline clearly illustrate that not all unit-linked products are to be considered complex (examples 1 to 6). Assuralia therefore assumes that criterion (a) of the EIOPA-advice is only relevant for/applicable to guaranteed insurance products. A clarification in that sense would be very welcome.</p> <p>Furthermore Assuralia questions whether criterion (a) of the EIOPA technical advice does not create an unlevel playing field between distributors of IBIPs and distributors of financial instruments that fall under MiFID 2.</p>	
Question 7		
Question 8	The <i>generic examples</i> in the appendix are very helpful as they clarify how the criteria should be understood in practice. However, as stated in our answer to question 6, it is	

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of the utmost importance that the criteria from the technical advise, the guidelines and the examples are coherent. More specifically:

- Assuralia welcomes a clarification that criterion (a) of the EIOPA-advice is only relevant for/applicable to guaranteed insurance products, and not for unit-linked products;
- example 11 should be made completely coherent with criterion (a) of the EIOPA-advice by detailing that the guaranteed surrender and maturity value is at least the premiums paid by the customer *minus legitimate costs levied*;
- Assuralia suggests to include them directly into the criteria to illustrate the interpretation of the different criteria.

Example 3 however lacks relevance, as to our knowledge it is not possible for an insurer to offer a guarantee in a unit-linked IBIP.

Example 9 seems to create an unlevel playing field between financial instruments under MiFID and IBIPs. A plain UCIT is not considered complex, even though it can invest a limited amount of its assets into derivatives<sup>1</sup>, while an IBIP is complex as soon as it invests in some derivatives.

<sup>1</sup> Cfr. art. 52 of directive 2009/65/EC of the European Parliament and of the Council of 13 juli 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

Question 9