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**Final Report on 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**

Table of Contents

1. Executive summary3
2. Feedback statement4
3. Annexes7
Annex I: 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 7
 Guidelines7
 Introduction.....7
 Compliance and Reporting Rules 13
 Final Provision on Reviews 13
 Explanatory Text 14
Annex II: Impact assessment 30
Annex III: Resolution of comments..... 38

1. Executive summary

Introduction

On 2 February 2017, EIOPA launched a public consultation on the draft Guidelines under the Insurance Distribution Directive (IDD) on insurance-based investment products (IBIPs) that incorporate a structure which makes it difficult for the customer to understand the risks involved. This Final Report was adopted by the Board of Supervisors on 28 September 2017.

This Final Report sets out the final text of the Guidelines including impact assessment.

Content

The Final Report includes a Feedback Statement with a summary of the main conclusions of the Public Consultation; the final Explanatory Text to the Guidelines; the final Impact Assessment; the Comments and Resolutions Template, and the Opinion of EIOPA's Insurance and Reinsurance Stakeholder Group.

Next steps

The Guidelines will be translated into all EU official languages. Once the translations are published, competent authorities will be required to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.

2. Feedback statement

The public consultation on the draft Guidelines ended on 28 April 2017. EIOPA received 26 responses to the consultation (including from its Insurance and Reinsurance Stakeholder Group (IRSG) and two confidential responses), resulting in around 150 pages of comments. The individual non-confidential consultation responses can be viewed in Annex III of this Final Report.

The following Feedback Statement sets out the main issues raised by external stakeholders during the public consultation, and how EIOPA has addressed these issues in its final Guidelines.

EIOPA's Technical Advice on 'other non-complex IBIPs'

Numerous respondents commented on the statement in EIOPA's Technical Advice that it may be appropriate to review the Technical Advice on the criteria for 'other non-complex IBIPs' in light of the comments received during the public consultation on the Guidelines. In particular, concerns were expressed at the proposed criterion that there would need to be a contractually guaranteed minimum surrender and maturity value of at least the amount of premiums paid by the customer minus the legitimate costs levied.

In view of the input received, EIOPA did not consider that it was necessary to review its Technical Advice on this topic, and therefore focused on finalising the Guidelines.

Structure of the Guidelines

A number of respondents stated that it was difficult to understand the relationship between the proposed criteria in the Technical Advice and the Guidelines and accordingly which requirements applied to the two types of IBIPs set out in points (i) and (ii) of Article 30(3)(a) of the IDD.

As stated in EIOPA's Technical Advice, EIOPA considers that where an insurance based investment product incorporates a structure which makes it difficult for the customer to understand the risks involved, then the product is expected to be complex and not fit for distribution without an assessment of suitability or appropriateness. This means that there is significant overlap in the provisions that apply in the case of Article 30(3)(a)(i) and those that apply in the case of Article 30(3)(a)(ii) of IDD.

However, with a view to improving the clarity, EIOPA has restructured the Guidelines to clearly distinguish between these two cases. The content has also been divided into different individual Guidelines, rather having one single guideline on all types of contractual structures that make it difficult for the customer to understand the risks involved.

Implications for the comprehension alert in the Key Information Document (KID) for Packaged Retail and Insurance-Based Investment Products (PRIIPs)

Many stakeholders argued that the Guidelines needed to be reviewed in the context of the requirement in point (a) of the second subparagraph of Article 1 of Commission Delegated Regulation (EU) 2017/653 that IBIPs shall include a comprehension alert where they are deemed a complex product under IDD. Concerns were raised that a significant number of products would include a comprehension alert and that customers would, as a result, be deterred from investing in long-term savings products, including those that provide protection against investment risk, for example with guarantees.

At the time of developing the draft Guidelines for public consultation, the Commission's Delegated Regulation on PRIIPs had not been adopted. Therefore, the link to the PRIIPs comprehension alert had not been confirmed. EIOPA, therefore, had to develop draft Guidelines on this basis.

Notwithstanding this, both the requirements in Article 30(3)(a) of IDD and the PRIIPs comprehension alert are aimed at identifying products which may be difficult for the customer or investor to understand. Therefore, EIOPA has not fundamentally changed its approach. However, EIOPA has carefully reviewed the Guidelines based on the specific concerns raised by stakeholders and made various drafting changes in order to address these comments, where it was considered that the Guidelines did not appropriately take into account existing products and, in particular, where certain contractual structures may have been inadvertently captured.

Treatment of “traditional” or “pooled” IBIPs

Various respondents expressed concerns over the provisions in paragraph 1.16(a) of the draft Guidelines regarding complex mechanisms that determine the maturity or surrender value or the pay-out upon death, as these were considered by some stakeholders to unfairly capture traditional IBIPs where the investments are made by the insurance undertakings and which have profit-sharing mechanisms.

It was argued that, whilst there may be underlying actuarial complexities in the design and operation of the product, from the perspective of what is being offered to the customer, the outcome of these mechanisms is understood by the customer and is usually designed for their benefit. It was also remarked that, in some Member States, there are prescribed approaches within national law for determining certain benefits of the contract – these are intended to protect the interests of consumers, but can depend on relatively complex calculations.

As stated in the explanatory text to the consultation paper, EIOPA does not consider that mechanisms such as profit-sharing should automatically result in a product being deemed complex. The drafting of the Guidelines was intended to capture cases where the effects of these mechanisms can be difficult for the customer to understand.

Based on the comments received, EIOPA recognises that the drafting may have been too broad in some cases and has made some amendments to both the Guidelines and the explanatory text in order to avoid inadvertently capturing certain contractual structures that are used in traditional life insurance policies,

such as the payment of discretionary benefits. In particular, the overarching provision regarding the existence of 'complex mechanisms that determine the maturity or surrender value or pay-out upon death' has been replaced by the requirement that the effects of these mechanisms need to be assessed. The changes also take into account where specific consumer protection rules are laid down in national law.

Provisions on product charges and surrender fees

A number of arguments were made by respondents regarding the appropriateness of the provisions on product charges and surrender fees. These included that:

- The provisions were not necessary in view of the disclosure requirements in the PRIIPs KID (for example, the disclosure of total costs and the reduction in yield (RIY));
- There are no comparable requirements for Undertakings for Collective Investment in Transferable Securities (UCITS);
- The drafting of the Guidelines could exclude certain charging structures that were considered to be non-complex, such as a tiered approach where there are different charging bands depending on the amount invested, or where the charges are not fixed at the outset of the contract;
- In some Member States, there are prescribed approaches within national law for calculating surrender fees, which are intended to protect the interests of consumers.

EIOPA does not consider that the fact that there is disclosure of charges in the PRIIPs KID is, by itself, sufficient for a product to be deemed non-complex, or the fact that a different approach is taken for UCITS is decisive. This is reflected in the fact that there can be a comprehension alert within the KID, even when charges are properly disclosed.

It can also be noted, as EIOPA took into account during the drafting of the Guidelines, that ESMA introduced requirements regarding the exit costs of structured deposits. In addition, it is important that there are no disproportionate charges for surrendering a product and this provision has not been changed.

Nevertheless, EIOPA has reviewed the approach and made some substantial changes to the drafting of the provisions in Guideline 2 paragraphs 1.16(b) and (c). In particular, EIOPA considers that the provisions drawn from ESMA's Guidelines on complex debt instruments and structured products were overly prescriptive when applied in the context of the distribution of IBIPs, given the range of charging structures that exist for these products. EIOPA also recognises that existing national law provisions should be taken into account. The revised provisions address whether the costs can be readily understood by the customer, in particular based on the conditions under which the costs can change.

3. Annexes

Annex I: 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

Guidelines

Introduction

- 1.1. According to Article 16 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (hereinafter "EIOPA Regulation")¹ and to Article 30(7) and Article 30(8) of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (hereinafter "the IDD")², EIOPA is issuing Guidelines both on the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risk involved as referred to in Article 30(3)(a)(i) of the IDD, and for the assessment of insurance-based investment products being classified as non-complex for the purpose of Article 30(3)(a)(ii) of the IDD considering that this classification is also based on the assessment of whether the product incorporates a structure, which makes it difficult for the customer to understand the risks involved.
- 1.2. In accordance with paragraphs 1 and 2 of Article 30 of the IDD, an assessment of the suitability or appropriateness of an insurance-based investment product for the customer by the insurance intermediary or insurance undertaking is generally required as part of the sale of an insurance-based investment product. Article 30(3) of the IDD allows Member States to derogate from these obligations and not require either a suitability or appropriateness test to be conducted during the distribution of an insurance-based investment product where various conditions are satisfied. This type of sale is often referred to as "execution-only" as a transaction is merely executed without any advice or assessment of the customer's personal situation. However, in accordance with Article 20(1) of the IDD, it is still necessary for the insurance distributor to specify the demands and needs of the customer.
- 1.3. One of the conditions specified in Article 30(3) of the IDD to determine whether an insurance-based investment product can be distributed as an execution-only sale relates to the complexity of the insurance-based investment product. This assessment is based on the nature of the financial instruments to which an insurance-based investment product provides investment exposure, as well as the structure of the insurance contract with the customer (Article 30(3)(a) of the IDD). In accordance with paragraphs 7 and 8 of Article 30 of the IDD, EIOPA is empowered to develop Guidelines concerning both the assessment of complexity and non-complexity.

¹ OJ L 331, 15.12.2010, p. 48-83.

² OJ L 26, 2.2.2016, p. 19.

- 1.4. The complexity of the financial instruments to which the insurance-based investment product provides investment exposure depends on the provisions given by Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast) (hereinafter "MiFID II")³. Under Article 30(3)(a) of the IDD a distinction is made between, on the one hand, those insurance-based investment products which provide investment exposure to financial instruments deemed non-complex under MiFID II and, on the other hand, other non-complex insurance-based investment products.
- 1.5. These Guidelines cover the assessment of all types of insurance-based investment products. Despite the distinction made between points (i) and (ii) of Article 30(3)(a) of the IDD, it is important to ensure that only those insurance-based investment products for which the risks can be readily understood by the customer are able to be sold via execution-only. The Guidelines principally address the issue of the identification of contractual structures or features which can make it difficult for the customer to understand the risks involved in an insurance-based investment product. However, they also concern a number of other issues relevant to the assessment of the complexity of insurance-based investment products.
- 1.6. In view of the minimum harmonisation aim of the IDD, as well as the fact that, for execution-only sales specifically, customers do not benefit from the protection of some of the relevant conduct of business rules, national competent authorities may maintain or introduce more stringent national provisions in this area in order to protect consumers.
- 1.7. During the development of the Guidelines, EIOPA has taken into account other relevant regulatory requirements in the area of conduct of business standards, namely Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)⁴.
- 1.8. In addition, EIOPA has considered the work by ESMA⁵ on the assessment of financial instruments incorporating a structure which makes it difficult for the client to understand the risks involved. This reflects the importance, as stated in recital 56 of the IDD, of avoiding regulatory arbitrage, whilst at the same time also taking into consideration the specific nature of insurance contracts.
- 1.9. These Guidelines are addressed to national competent authorities within a Member State that has chosen to exercise the derogation in the first subparagraph of Article 30(3) of the IDD. Notwithstanding the fact that specific provisions describe obligations to be met by insurance undertakings and intermediaries, this document is not to be read as imposing any direct requirements upon those financial institutions. Financial institutions are required to comply with the supervisory or regulatory framework applied by their national competent authority.
- 1.10. For the purpose of these Guidelines, the following definition has been developed:
 - "Execution-only sale" refers to the distribution of an insurance-based investment products in accordance with Article 30(3) of the IDD.

³ OJ L 173, 12.6.2014, p. 349.

⁴ OJ L 352, 9.12.2014, p. 1.

⁵ See for example the empowerment in Article 25(10) of MiFID II based upon which ESMA has issued [Guidelines](#) on complex debt instruments and structured deposits.

- 1.11. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.
- 1.12. The Guidelines shall apply from the date of publication of the translated versions.

Section 1: Requirements that apply to contracts which only provide investment exposure to financial instruments deemed non-complex under MiFID II (Article 30(3)(a)(i) of the IDD)

Guideline 1 – Investment exposure

1.13. The insurance intermediary or insurance undertaking should ensure that the insurance-based investment product only provides investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. Such non-complex financial instruments include only the following instruments:

- (a) those identified in Article 25(4)(a) of MiFID II;
- (b) those satisfying the criteria in Article 57 of Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;
- (c) those not deemed to be complex in accordance with ESMA Guidelines on complex debt instruments and structured deposits⁶.

Guideline 2 – Contractual features concerning changes to the nature of the contract and the ability to surrender the insurance-based investment product

1.14. Where the contract contains any of the following features, the insurance undertaking or insurance intermediary should deem it as incorporating a structure which makes it difficult to understand the risks involved:

- (a) 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;
- (b) there are not options to surrender or otherwise realise the insurance-based investment product at a value that is available to the customer;
- (c) there are explicit or implicit charges which have the effect that, even though there are, technically, options to surrender the insurance-based investment product, doing so may cause unreasonable detriment to the customer, because the charges are disproportionate to the cost to the insurance undertaking of the surrender.

Guideline 3 – Contractual features concerning the determination of the maturity or surrender value or pay out upon death

1.15. The insurance intermediary or insurance undertaking should assess the effects of the mechanisms that determine the maturity or surrender value or pay out upon death and whether these make it difficult for the customer to understand the risks involved, unless these mechanisms are based directly on national laws aimed specifically at safeguarding the interests of customers.

1.16. As part of the assessment, where the contract contains any of the features listed below, the insurance undertaking or insurance intermediary should deem it as incorporating a structure which makes it difficult for the customer to understand the risks involved:

⁶ Dated 4 February 2016 (ESMA/2015/1787)

- (a) the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking, the effects of which are difficult for the customer to understand;
- (b) the maturity or surrender value or pay out upon death is based on different types of investment exposures or strategies the combined effect of which are difficult for the customer to understand;
- (c) the maturity or surrender value or pay out upon death may vary frequently or markedly at different points of time over the duration of the contract either because certain pre-determined threshold conditions are met or because certain time-points are reached. This does not include changes in the maturity or surrender value or pay out upon death due to the payment of discretionary bonuses;
- (d) there is a guaranteed maturity or surrender value or pay out upon death that is subject to conditions or time limitations the effects of which are difficult for the customer to understand. This does not include changes in the guaranteed maturity or surrender value or pay out upon death due to the payment of discretionary bonuses.

Guideline 4 – Contractual features concerning the costs

- 1.17. As part of the assessment of whether the contract incorporates a structure which makes it difficult for the customer to understand the risks involved, the insurance intermediary or insurance undertaking should assess whether the costs are not likely to be readily understood by the customer, in particular the conditions under which the costs can change significantly during the duration of the contract, including based on the performance of the investment.
- 1.18. Where the costs are based directly on national laws aimed specifically at safeguarding the interests of customers, they should not be deemed as incorporating a structure which makes it difficult for the customer to understand the risks involved.

Guideline 5 – Contractual features concerning the beneficiary of the insurance contract

- 1.19. Where there are contractual provisions allowing the customer to use a non-standard wording to define the person receiving the benefits at the end of the contractual relationship (beneficiary clause) which can lead to difficulties to identify the beneficiary and may result in difficulties for the beneficiary to effectively receive the pay out when the policyholder dies, the insurance intermediary or insurance undertaking should deem it as incorporating a structure which makes it difficult for the customer to understand the risks involved.

Section 2: Requirements that apply to 'other non-complex insurance-based investment products' (Article 30(3)(a)(ii) of the IDD)

Guideline 6 – Contractual features concerning the determination of the maturity or surrender value or pay out upon death

- 1.20. The insurance intermediary or insurance undertaking should assess the effects of the mechanisms that determine the maturity or surrender value or pay out upon death and whether these make it difficult for the customer to understand the risks involved, unless these mechanisms are based directly on national laws aimed specifically at safeguarding the interests of customers.
- 1.21. As part of the assessment, where the contract contains any of the following features, the insurance undertaking or insurance intermediary should deem it as incorporating a structure which makes it difficult for the customer to understand the risks involved:
- (a) the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking, the effects of which are difficult for the customer to understand;
 - (b) the maturity or surrender value or pay out upon death is based on different types of investment exposures or strategies the combined effect of which are difficult for the customer to understand;
 - (c) the maturity or surrender value or pay out upon death may vary frequently or markedly at different points of time over the duration of the contract either because certain pre-determined threshold conditions are met or because certain time-points are reached. This does not include changes in the maturity or surrender value or pay out on death due to the payment of discretionary bonuses;
 - (c) there is a guaranteed maturity or surrender value or pay out upon death that is subject to conditions or time limitations the effects of which are difficult for the customer to understand. This does not include changes in the guaranteed maturity or surrender value or pay out upon death due to the payment of discretionary bonuses.

Guideline 7 – Contractual features concerning the costs

- 1.22. As part of the assessment of whether the contract incorporates a structure which makes it difficult for the customer to understand the risks involved, the insurance intermediary or insurance undertaking should assess whether the costs are not likely to be readily understood by the customer, in particular the conditions under which the costs can change significantly during the duration of the contract, including based on the performance of the investment.
- 1.23. Where the costs are based directly on national laws aimed specifically at safeguarding the interests of customers, they should not be deemed as incorporating a structure which makes it difficult for the customer to understand the risks involved.

Guideline 8 – Contractual features concerning the beneficiary of the insurance contract

- 1.24. Where there are contractual provisions allowing the customer to use a non-standard wording to define the person receiving the benefits at the end of the contractual relationship (beneficiary clause) which can lead to difficulties to identify the beneficiary and may result in difficulties for the beneficiary to effectively receive the pay out when the policyholder dies, the insurance intermediary or insurance undertaking should deem it as incorporating a structure which makes it difficult for the customer to understand the risks involved.

Compliance and Reporting Rules

- 1.25. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions shall make every effort to comply with guidelines and recommendations.
- 1.26. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
- 1.27. Competent authorities shall confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
- 1.28. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.
- 1.29. Competent authorities within a Member State that has not chosen to exercise the derogation in the first sub paragraph of Article 30(3) of the IDD, are not required to report to EIOPA.

Final Provision on Reviews

- 1.30. The present Guidelines shall be subject to a review by EIOPA and updated periodically in accordance with paragraphs 7 and 8 of Article 30 of the IDD.

Explanatory Text

- 1.31. It is relevant to clarify the nature of execution-only sales in the context of IDD and how it compares to distribution of insurance-based investment products (IBIPs) more generally. For this purpose, a decision tree diagram is included as an Appendix to these Guidelines.
- 1.32. First, it is worth mentioning that the term execution-only is also used in the context of investment products within the scope of MiFID II. However, there are both consistencies and differences between the MiFID II and IDD frameworks. MiFID II refers to "investment services which only consist of execution or reception and transmission of client orders" (Article 25(4), MiFID II). IBIPs are not "executed" in the same way, for example they are not traded on secondary markets and are more often longer-term investments. The legislative provisions in IDD, therefore, do not use this terminology of "execution". However, given the broadly similar frameworks in MiFID II and IDD, execution-only is considered to be an appropriate short-hand or term of reference, and is therefore used within these Guidelines.
- 1.33. The main difference between execution-only sales and other sales of IBIPs is the nature of the information that needs to be provided by the customer and the type of assessment that needs to be conducted by the insurance distributor. In short, an execution-only sale can be seen as a more streamlined and therefore less costly process. More specifically, it is a sale where:
- the customer does not need to provide information on their knowledge and experience in the investment field, their financial situation or their investment objectives;
 - the insurance distributor does not need to assess whether an envisaged product is appropriate for the customer or recommend a product that is suitable to them.
- 1.34. The drawback of this approach is that the customer does not benefit from the same level of consumer protection as during other types of sales. Consequently, there are restrictions on when execution-only sales can be carried out in order to minimise the possibility for consumer detriment.
- 1.35. First, Member States do not have to allow execution-only sales of IBIPs. Unlike MiFID II, it is for Member States to decide whether such sales are appropriate in their market, based, for example, on the types of product sold and nature of distribution practices in that Member State. In particular, it is not possible to distribute IBIPs in a Member State that does not allow for execution-only sales via the freedom to provide services.
- 1.36. Second, regarding the process of distribution several elements need to be observed. This includes that the distribution must be at the initiative of the customer or potential customer and therefore cannot be solicited by the insurance distributor. During the process, the customer also needs to be clearly informed or warned that it is an execution-only sale and the implications of this, i.e. that the distributor is not required to assess the appropriateness of the product.
- 1.37. Third, the complexity of the IBIPs needs to be determined. Only non-complex IBIPs are eligible for sale via execution-only. The requirements in the Guidelines address this issue.
- 1.38. Finally, in terms of the distribution process, it is important to be aware that there are various rules that apply to the distribution of all insurance products,

including IBIPs sold via execution-only. This includes the requirement in Article 20(1) of the IDD for the distributor to specify the demands and needs of the customer. This is specific to insurance products and there is no comparative requirement for investment products within the scope of MiFID II.

1.39. IDD indicates that complexity in relation to IBIPs stems from two elements:

(1) the nature of the exposure to market fluctuations or more specifically the nature of the financial instruments to which an IBIP provides exposure; and

(2) the structure or features of the contract with the customer, for example governing the charges to be levied by the insurance undertaking.

1.40. Two types of IBIPs are identified within IDD as potentially eligible for sale via execution-only. These can be summarised as follows:

- contracts which provide investment exposure to financial instruments deemed non-complex under MiFID II and which do not have a complex structure (Article 30(3)(a)(i));
- other non-complex insurance based investments (Article 30(3)(a)(ii)).

1.41. The legal empowerments to develop further technical rules on the assessment of the complexity of these two types of IBIPs are different and, therefore, some of the rules are included in delegated acts and some are included in these Guidelines. The Guidelines are also divided into two Sections to reflect this split. In spite of this, most of the factors which determine whether an IBIP is complex or not apply to both of these two types of products described above. As a result, most of the technical rules for the assessment of complexity proposed by EIOPA apply to both points (i) and (ii) of Article 30(3)(a) of the IDD.

1.42. The Guidelines therefore cover the assessment of all types of IBIPs. This includes IBIPs which offer customers a range of underlying investment options. In this case the insurance undertaking or insurance intermediary will need to ensure that the customer is only able to select non-complex investment options. This does not necessarily mean that the customer is prevented from deciding during the duration of a contract purchased as an execution-only sale, to select an investment option with investment exposure to complex financial instruments under MiFID II or otherwise more complex. However, in this case, the insurance undertaking or insurance intermediary would need to have procedures in place to ensure that they are involved in this decision. More specifically, the insurance undertaking or insurance intermediary would, in this case, need to ensure that the requirements in paragraph 1 or 2 of Article 30 of IDD could be satisfied, either before or when the customer selects such an investment option.

Section 1: Requirements that apply to contracts which only provide investment exposure to financial instruments deemed non-complex under MiFID II (Article 30(3)(a)(i) of the IDD)

Guideline 1 – Investment exposure

The insurance intermediary or insurance undertaking should ensure that the insurance-based investment product only provides investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. Such non-complex financial instruments include only the following instruments:

- (a) those identified in Article 25(4)(a) of MiFID II;
- (b) those satisfying the criteria in Article 57 of Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;
- (c) those not deemed to be complex in accordance with ESMA Guidelines on complex debt instruments and structured deposits.

- 1.43. Guideline 1 addresses the application of the requirement in Article 30(3)(a)(i) of the IDD for an IBIP to only provide investment exposure to financial instruments deemed non-complex under MiFID II.
- 1.44. Where an IBIP does not fall within the scope of Article 30(3)(a)(i) of the IDD, it may still fall within the scope of 'other non-complex insurance-based investments' in accordance with Article 30(3)(a)(ii) of the IDD.

Guideline 2 – Contractual features concerning changes to the nature of the contract and the ability to surrender the insurance-based investment product

Where the contract contains any of the following features, the insurance undertaking or insurance intermediary should deem it as incorporating a structure which makes it difficult to understand the risks involved:

(a) 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;

(b) there are not options to surrender or otherwise realise the insurance-based investment product at a value that is available to the customer;

(c) there are explicit or implicit charges which have the effect that, even though there are, technically, options to surrender the insurance-based investment product, doing so may cause unreasonable detriment to the customer, because the charges are disproportionate to the cost to the insurance undertaking of the surrender.

- 1.45. The requirement that the contract for the IBIP does not incorporate a structure which makes it difficult for the customer to understand the risks involved is stated in Article 30(3)(a)(i) of the IDD. This requirement applies **in addition to** the requirement stated in same paragraph of IDD, and clarified in Guideline 1, that it is a contract, which only provides investment exposure to the financial instruments deemed non-complex under MiFID II. This Guideline and the remaining in this Section (Guidelines 3-5) therefore reflect the empowerment in IDD in Article 30(7) for the assessment of IBIP that incorporate a structure, which makes it difficult for the customer to understand the risks involved as referred to in Article 30(3)(a)(i).
- 1.46. The Guideline is based on the delegated acts adopted by the European Commission on 21 September 2017 under Article 30(6) of the IDD. Those delegated acts only apply to 'other non-complex IBIPs' (Article 30(3)(a)(ii) of the IDD). However, some of the criteria to assess 'other non-complex IBIPs' concern structures which make it difficult for the customer to understand the risks involved. These criteria are, therefore, also relevant to IBIPs within the scope of Article 30(3)(a)(i) of the IDD, which provide investment exposure to financial instruments deemed non-complex under MiFID II.
- 1.47. The criteria in the delegated acts identify features which are necessary for a product to be deemed non-complex pursuant to Article 30(3)(a)(ii) of the IDD. The criteria in this Guideline are drafted from the opposite perspective of identifying complex structures within IBIPs. As a result, there are some minor drafting differences between points (a) to (c) of this Guideline and Article 16 of Commission Delegated Regulation of 21.9.2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products (IDD delegated acts). Nevertheless, the provisions are intended to achieve the same objectives as those in the delegated acts.
- 1.48. The provision in point (a) of the Guideline refers to changes that the *insurance undertaking* can make since it is not intended to capture clauses that allow the

customer to make investment choices or exercise other non-complex options or product features. This would include, for example, switching between different underlying investment options, or deciding on the type of pay-out they wish to receive at the maturity of the contract. EIOPA considers that there is a greater risk of customer misunderstanding in relation to changes that the insurance undertaking can make. This might include, for example, the ability for the insurance undertaking to change the frequency or other terms, under which the customer can access some of their investment or surrender the product.

- 1.49. However, the provision is not intended to capture all types of changes made by the insurance undertaking that affect the surrender or maturity value of the product. Where the IBIP entails profit-sharing, for example, variation in the level or percentage of profit-sharing is already a part of the risk, nature and pay out profile of the overall product. Therefore, the fact that there can be changes in these levels does not automatically mean that such products would be captured by this provision. It would need to be assessed whether the contract incorporates a profit-sharing clause that allows the insurance undertaking to *materially* change the nature, risk or pay out profile.
- 1.50. The provisions in points (b) and (c) of the Guideline are intended to provide that for an IBIP to be deemed as not incorporating a structure which makes it difficult for the customer to understand the risk involved the customer needs to have options to surrender the product before maturity and to not be unfairly penalised for this.
- 1.51. The term in point (b) refers to a value that is 'available' to the customer and therefore does not mean that the value needs to be publicly available. Where this value is not available on a "real-time" basis to the customer, it would be sufficient for this value to be available upon request provided that the value is calculated on the basis of rules that have been clearly specified in the contract and disclosed to the customer. Regarding point (c), given that exit penalties have been a feature of long-term IBIPs that are considered to have led to consumer detriment, this point is intended to exclude products with unreasonable exit charges, which may include fiscal penalties.

Guideline 3 – Contractual features concerning the determination of the maturity or surrender value or pay out upon death

1. The insurance intermediary or insurance undertaking should assess the effects of the mechanisms that determine the maturity or surrender value or pay out upon death and whether these make it difficult for the customer to understand the risks involved, unless these mechanisms are based directly on national laws aimed specifically at safeguarding the interests of customers.

2. As part of the assessment, where the contract contains any of the following features, the insurance undertaking or insurance intermediary should deem it as incorporating a structure which makes it difficult for the customer to understand the risks involved:

(a) the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking, the effects of which are difficult for the customer to understand;

(b) the maturity or surrender value or pay out upon death is based on different types of investment exposures or strategies the combined effect of which are difficult for the customer to understand;

(c) the maturity or surrender value or pay out upon death may vary frequently or markedly at different points of time over the duration of the contract either because certain pre-determined threshold conditions are met or because certain time-points are reached. This does not include changes in the maturity or surrender value or pay out upon death due to the payment of discretionary bonuses;

(d) there is a guaranteed maturity or surrender value or pay out upon death that is subject to conditions or time limitations the effects of which are difficult for the customer to understand. This does not include changes in the guaranteed maturity or surrender value or pay out upon death due to the payment of discretionary bonuses.

- 1.52. One feature of IBIPs which can result in complexity is the way in which the insurance undertaking is able to exercise discretion. EIOPA notes that in ESMA's Guidelines on complex debt instruments and structured deposits 'debt instruments where the issuer enjoys discretion to modify the cash flows of the instruments' are deemed to be complex. IBIPs are considered to be different to debt instruments in this respect, since it is not unusual for the insurance undertaking to exercise some discretion when determining the maturity or surrender value of a product.
- 1.53. One example of such a product is an IBIP, where the insurance undertaking distributes a portion of its profits to the customer. The provision in point (a) of paragraph 2 of the Guideline draws from the criterion in ESMA's Guidelines, however, the drafting intends to recognise that, unlike in ESMA's Guidelines, the existence of discretion on behalf of the insurance undertaking, does not automatically result in the product being deemed complex. It will need to be assessed the overall effect on the maturity or surrender value of the contract of how the insurance undertaking exercises discretion. In some Member States there are national laws specifically aimed at safeguarding policy holders' interests; for example that define the amount of profits to be shared with customers, or how the amount of profits to be shared should be determined. Where profit sharing mechanisms are based directly on such laws, it is not necessary to assess the complexity of these mechanisms.
- 1.54. The provision in paragraph 2(b) is not intended to capture products simply because they provide exposure to different financial instruments. It refers to complexity which may arise from the relationship between the underlying investment exposure and the pay-out profile as determined in the insurance contract. Some examples of products where this is considered to be relevant would be so-called "hybrid" products, products with a range of underlying investment options, products where it is possible to select multiple asset management strategies at different times during the duration of the contract or products, or products which provide a leveraged exposure to underlying investments.
- 1.55. The **existence of a guarantee** regarding the maturity or surrender value can be a valuable product feature for the customer and significantly reduce the risk. However, guarantees can also add complexity if there are, for example,

conditions attached to the guarantee. Therefore, the nature of any guarantee will still need to be considered when assessing whether a product incorporates a structure which makes it difficult for the customer to understand the risks involved. In particular, "guarantee" is a term that creates certain customer expectations, and, therefore, when this term is used, customers may assume there are no conditions attached to its use.

Guideline 4 – Contractual features concerning the costs

1. As part of the assessment of whether the contract incorporates a structure which makes it difficult for the customer to understand the risks involved, the insurance intermediary or insurance undertaking should assess whether the costs are not likely to be readily understood by the customer, and in particular the conditions under which the costs can change significantly during the duration of the contract, including based on the performance of the investment.
2. Where the costs are based directly on national laws aimed specifically at safeguarding the interests of customers, they should not be deemed as incorporating a structure which makes it difficult for the customer to understand the risks involved.

- 1.56. When assessing whether the costs are not likely to be readily understood by the customer, one relevant consideration is whether the amount to be charged can be easily determined by the customer based on the information provided to them. In terms of the conditions under which the costs can change significantly during the duration of the contract, it would need to be considered whether the basis for these changes can be understood by the customer, for example due to pre-determined thresholds conditions being met or certain time points being reached.

Guideline 5 – Contractual features concerning the beneficiary of the insurance contract

Where there are contractual provisions allowing the customer to use a non-standard wording to define the person receiving the benefits at the end of the contractual relationship (beneficiary clause) which can lead to difficulties to identify the beneficiary and may result in difficulties for the beneficiary to effectively receive the pay out when the policyholder dies, the insurance intermediary or insurance undertaking should deem it as incorporating a structure which makes it difficult for the customer to understand the risks involved. .

- 1.57. This provision does not intend to prevent customers from freely choosing a beneficiary or using a non-standard wording to identify the beneficiary. On the contrary, such a provision aims to recognise and alert the insurance distributor to the fact that where the customer is able to define the beneficiary using a non-standard wording, without advice by the distributor on whether the

wording is consistent with the customer's wishes, this can lead to situation where the pay out may not be received by the customer's intended beneficiary.

- 1.58. There have been cases, for example, where customers wishing to remit the pay out to their family, instead of using a standard wording to choose the beneficiary (My husband, or my children, or my inheritors, etc.), decided to describe the beneficiary with the specific wording of "my husband Mr x". In these cases, if the husband had already died when the policy holder died, considering that the children were not mentioned in the beneficiary clause, they could not be considered as legal beneficiaries and did not received the money.

Section 2: Requirements that apply to 'other non-complex insurance-based investment products' (Article 30(3)(a)(ii) of the IDD)

Guideline 6 – Contractual features concerning the determination of the maturity or surrender value or pay out upon death

1. The insurance intermediary or insurance undertaking should assess the effects of the mechanisms that determine the maturity or surrender value or pay out upon death and whether these make it difficult for the customer to understand the risks involved, unless these mechanisms are based directly on national laws aimed specifically at safeguarding the interests of customers.

2. As part of the assessment, where the contract contains any of the following features, the insurance undertaking or insurance intermediary should deem it as incorporating a structure which makes it difficult for the customer to understand the risks involved:

(a) the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking, the effects of which are difficult for the customer to understand;

(b) the maturity or surrender value or pay out upon death is based on different types of investment exposures or strategies the combined effect of which are difficult for the customer to understand;

(c) the maturity or surrender value or pay out upon death may vary frequently or markedly at different points of time over the duration of the contract either because certain pre-determined threshold conditions are met or because certain time-points are reached. This does not include changes in the maturity or surrender value or pay out upon death due to the payment of discretionary bonuses;

(d) there is a guaranteed maturity or surrender value or pay out upon death that is subject to conditions or time limitations the effects of which are difficult for the customer to understand. This does not include changes in the guaranteed maturity or surrender value or pay out upon death due to the payment of discretionary bonuses.

1.59. This Guideline and Guidelines 7-8 cover the assessment of IBIPs that may fall within the scope of Article 30(3)(a)(ii) of the IDD and therefore reflects the empowerment in Article 30(8) of the IDD for the assessment of IBIPs being classified as non-complex for the purpose of Article 30(3)(a)(ii) of the IDD. It also follows Article 16 of the IDD delegated acts adopted by the European Commission under Article 30(6) of the IDD, where it is stated that 'an insurance-based investment product shall be considered as non-complex for the purposes of Article 30(3)(a)(ii) of Directive (EU) 2016/97 where it does not in any other way incorporate a structure which makes it difficult for the customer to understand the risk involved'.

1.60. The explanatory text to Guideline 3 is also applicable to this Guideline.

Guideline 7 – Contractual features concerning the costs

1. As part of the assessment of whether the contract incorporates a structure which makes it difficult for the customer to understand the risks involved, the insurance intermediary or insurance undertaking should assess whether the costs are not likely to be readily understood by the customer, and in particular the conditions under which the costs can change significantly during the duration of the contract, including based on the performance of the investment.
2. Where the costs are based directly on national laws aimed specifically at safeguarding the interests of customers, they should not be deemed as incorporating a structure which makes it difficult for the customer to understand the risks involved.

1.61. The explanatory text to Guideline 4 is also applicable to this Guideline.

Guideline 8 – Contractual features concerning the beneficiary of the insurance contract

Where there are contractual provisions allowing the customer to use a non-standard wording to define the person receiving the benefits at the end of the contractual relationship (beneficiary clause) which can lead to difficulties to identify the beneficiary and may result in difficulties for the beneficiary to effectively receive the pay out when the policyholder dies, the insurance intermediary or insurance undertaking should deem it as incorporating a structure which makes it difficult for the customer to understand the risks involved.

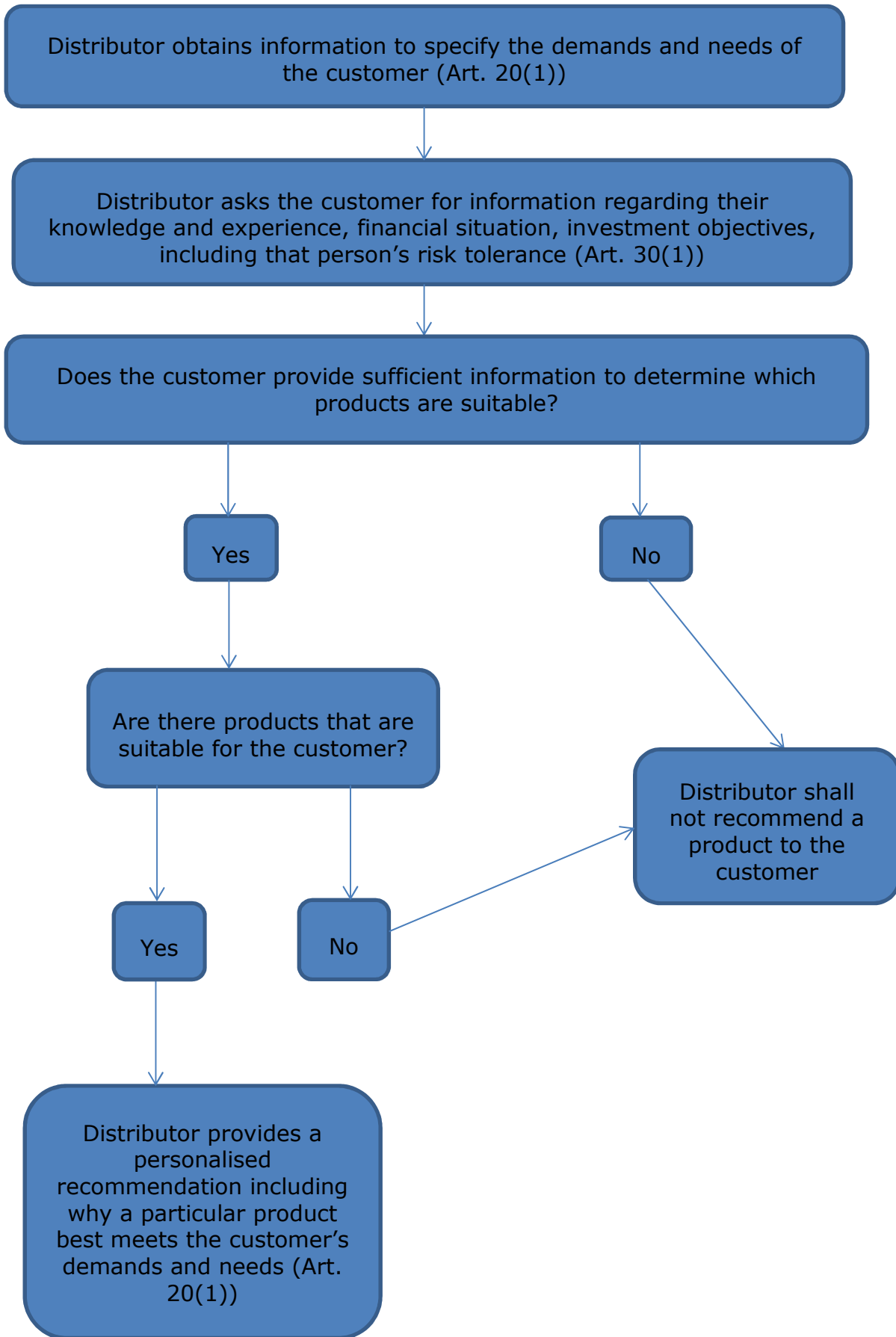
1.62. The explanatory text to Guideline 5 is also applicable to this Guideline.

Appendix

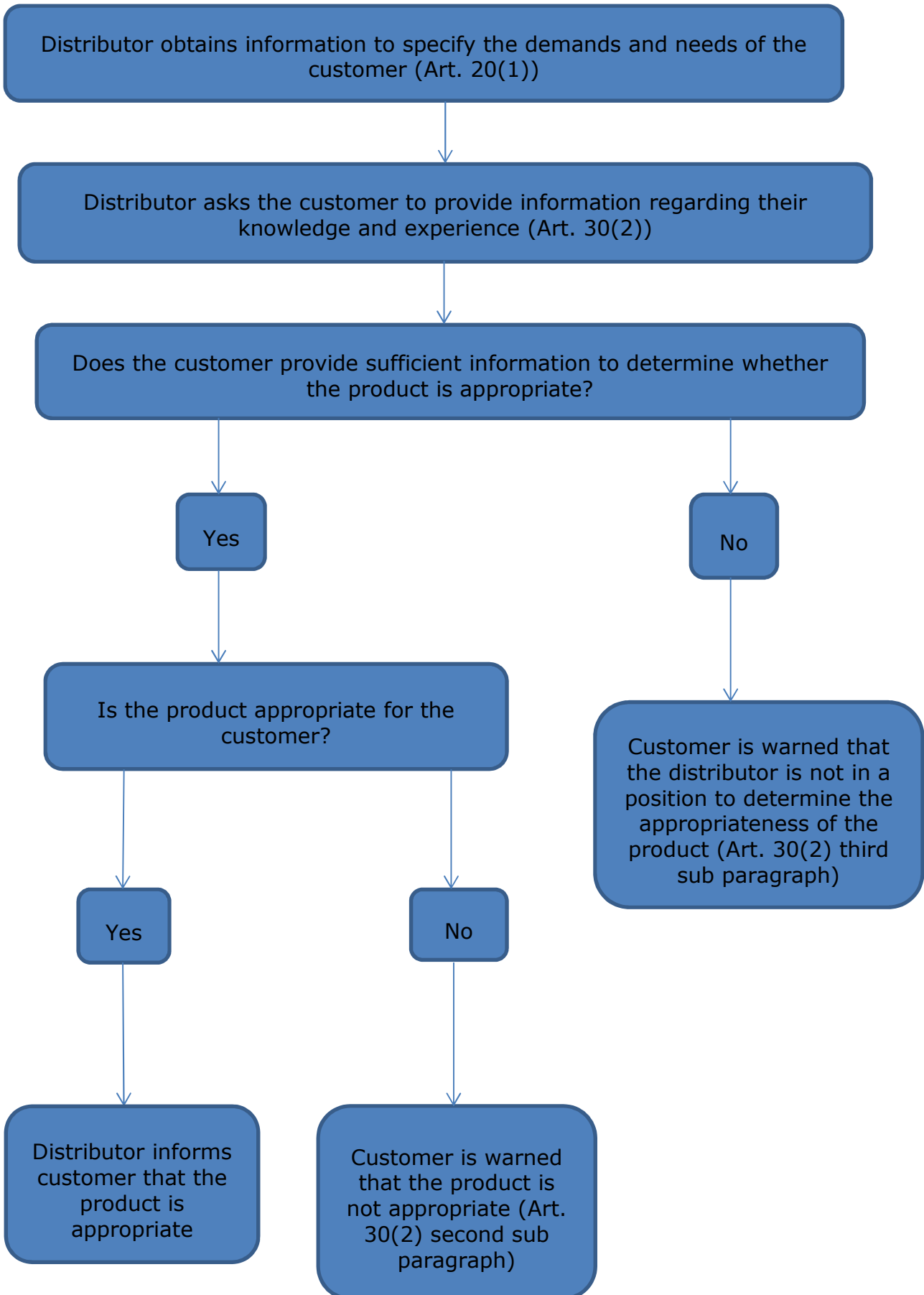
Decision tree on the sale of insurance-based investment products

- 1.63. This decision tree is intended to explain the distribution process for the sale of IBIPs via execution-only in general, and how it compares to the sale of products not via execution-only. It does not detail the specific assessment process for whether an IBIP incorporates a structure which makes it difficult for the customer to understand the risks involved, which is the content of the Guidelines.
- 1.64. It is important to note that, in particular for the sale of IBIPs with advice or with an appropriateness assessment, the process outlined in the decision tree may not correspond directly to the steps that will need to be taken by distributors in different Member States. This will depend on how the different provisions of the Directive are implemented in the Member State, for example the demands and needs test.
- 1.65. It should also be noted that the requirements of IDD have sometimes been paraphrased rather than using the exact text of the Directive in the interests of concise presentation. All article references are to the IDD, unless otherwise stated.

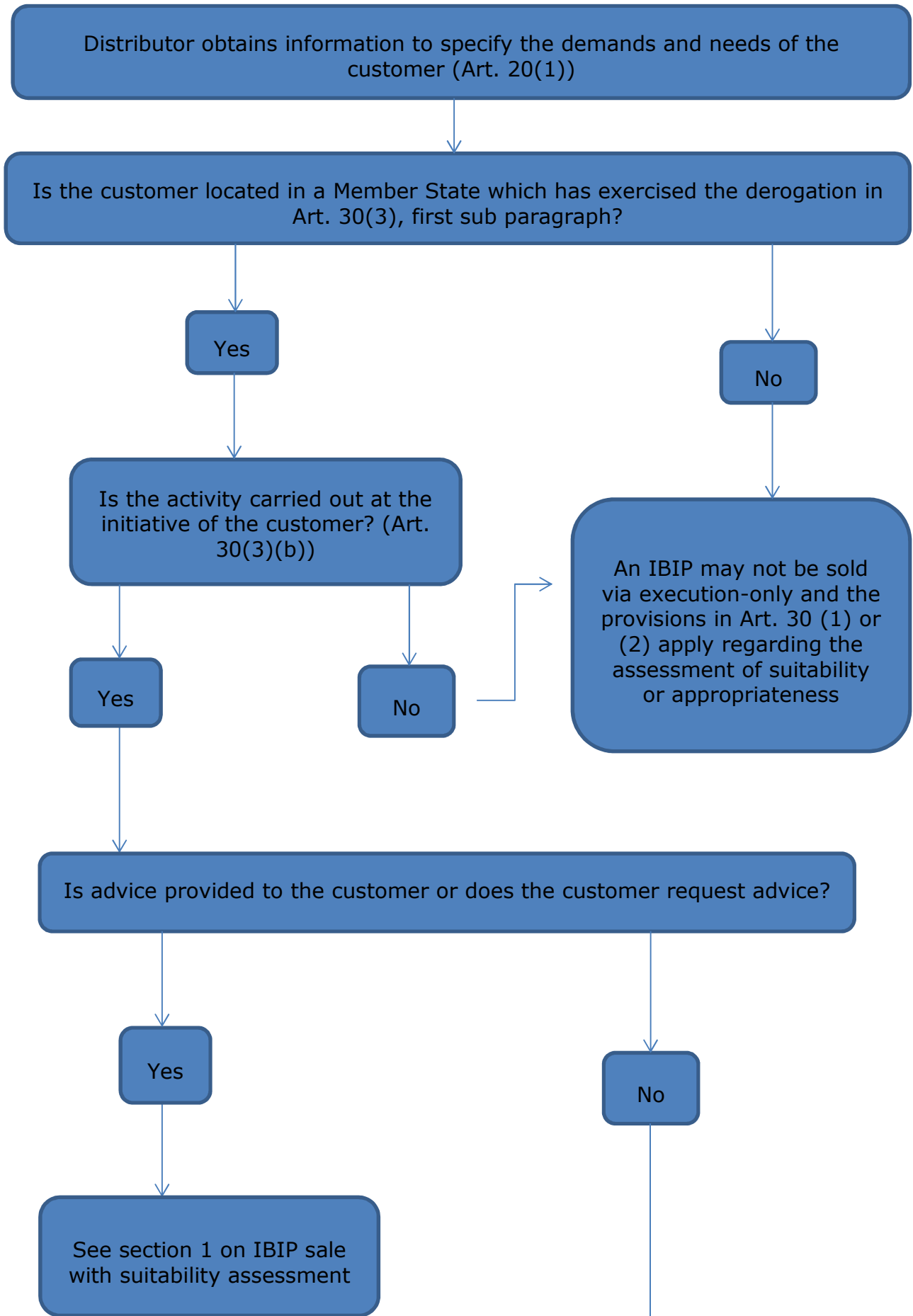
Section 1: Advised sale with a suitability assessment

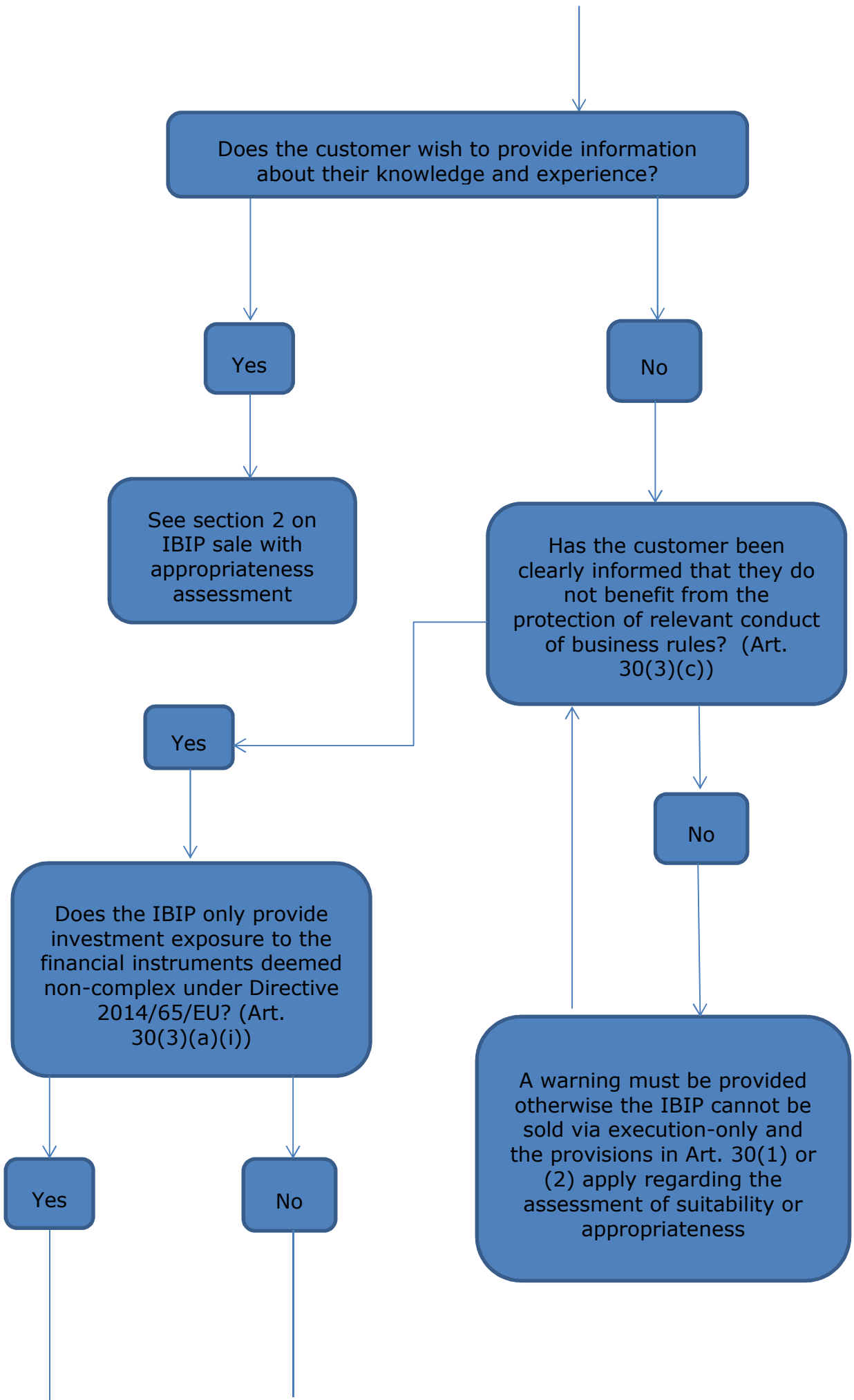


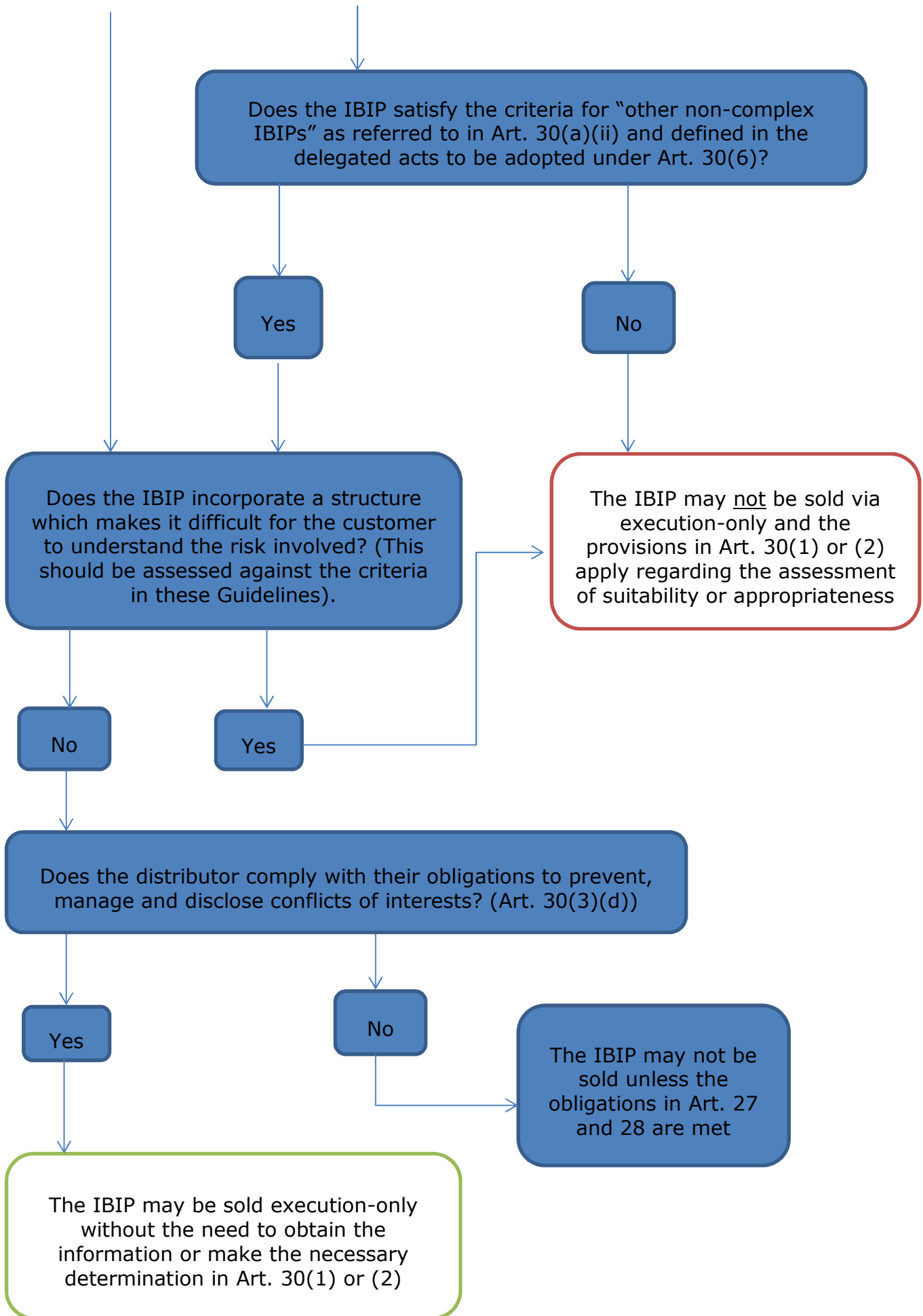
Section 2: Non-advised sale with an appropriateness assessment



Section 3: Execution-only sale (without a suitability or appropriateness assessment)







Annex II: Impact assessment

Section 1 - Procedural issues and consultation of interested parties

Following a request from the European Commission, EIOPA provided Technical Advice on possible delegated acts concerning the IDD by 1 February 2017. This included Technical Advice on the topic of the types of IBIPs that should be classified as non-complex and which may therefore be distributed without an assessment of suitability or appropriateness, i.e. execution-only⁷. More specifically, the Technical Advice addressed the criteria to identify “other non-complex insurance based investments” as referred to in Article 30(3)(a)(ii) of the IDD. In this instance, “other” relates to those IBIPs which do not satisfy the conditions in Article 30(3)(a)(i) of the IDD for the contract to only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU, and to not incorporate a structure which makes it difficult for the customer to understand the risks involved.

Article 30 of the IDD contains two empowerments in paragraphs 7 and 8 respectively for EIOPA to develop Guidelines on the assessment of the complexity of IBIPs. These empowerments address the two types of IBIPs defined in points (i) and (ii) of Article 30(3)(a) respectively.

According to Article 30(7) of the IDD EIOPA is obliged to develop Guidelines by 23 August 2017 on the assessment of IBIPs referred to in point (i) of Article 30(3)(a). According to Article 30(8) of the IDD EIOPA may develop Guidelines on the assessment of IBIPs referred to in point (ii) of Article 30(3)(a).

EIOPA is issuing Guidelines addressing both of these empowerments. The empowerment in Article 30(8) of the IDD states that EIOPA should take into account the delegated acts adopted under Article 30(6). These delegated acts were adopted by the Commission on 21 September 2017 following the submission of EIOPA’s Technical Advice, referred to above, by 1 February 2017.

According to Article 16(2) of the EIOPA Regulation, EIOPA conducts analysis of costs and benefits in the policy development process of Guidelines. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

This Impact Assessment document presents the key policy questions and the associated policy options considered in developing the Guidelines.

Draft Guidelines and its impact assessment were subject to public consultation between 2 February and 28 April 2017. Stakeholders’ responses to the public consultation were duly analysed and served as a valuable input for the revision of the draft Guidelines and its impact assessment. Additionally, the opinion from the Insurance and Reinsurance Stakeholder Group, provided in Article 37 of EIOPA Regulation, has been considered.

Section 2 - Problem definition

Contracts for insurance-based investment products can be complicated and difficult to understand for consumers. Distributors, either insurance undertakings or insurance intermediaries, therefore play an important role in processing information for the consumer and guiding consumers in choosing suitable policies. In view of this, IDD stipulates additional conduct of business rules for the sale of insurance-based investment products.

⁷ This is subject to a Member State derogation in Article 30(3), IDD.

At the same time, it is important to bear in mind that certain types of customers may be interested in receiving execution-only services and may not be willing to pay for additional services they do not consider necessary. This may be the case, for instance, for customers who have a sufficient knowledge of financial markets (a high level of financial literacy) and are able to make their own investment choices.

In the interests of striking an appropriate balance between the competing considerations described in the paragraphs above, IDD provides a differentiation between complex and non-complex insurance-based investment products. Where an insurance-based investment product is considered to be non-complex, Member States may allow insurance distributors to not undertake some of the assessments⁸ during the sales process that are normally necessary for the distribution of insurance-based investment products. Since, in these cases, the consumer does not benefit from the corresponding protection provided by these assessments, it is critical that only those products that are genuinely non-complex are sold in this way.

During the policy development process the potential substitutability of pure investment products within the scope of the MiFID II Directive and insurance-based investment products governed by IDD needed to be borne in mind, as indicated by the Commission's Impact assessment on Packaged Retail Investment Products⁹ and the Commission's call for evidence regarding "substitute" retail investment products, dated 26.10.2007¹⁰.

The baseline scenario

Without Guidelines regarding the assessment of the complexity of insurance-based investment products, there is likely to be different approaches implemented by different Member States. In particular, this creates the risk of an inadequate level of consumer protection and in turn risks resulting in cases of mis-selling of insurance products where consumers are sold products, the risks of which they do not properly understand.

For the analysis of the potential related costs and benefits of the Guidelines, EIOPA has applied as a baseline scenario the effect from the application of the Directive requirements in Article 30(3)(a) of the IDD and the delegated acts adopted in accordance with Article 30(6) of the IDD on the criteria to assess non-complex insurance-based investment products for the purposes of Article 30(3)(a)(ii) of the IDD.

Section 3 - Objectives pursued

The Guidelines aim to:

- facilitate the identification of types of insurance-based investment products, or product features within insurance-based investment products, that incorporate structure which makes it difficult for the customer to understand the risks involved and which are therefore complex and not fit for distribution via execution-only;

⁸ These assessments are of the suitability and appropriateness of an insurance-based investment product for the customer.

⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009SC0556> – Annex 1 – “what are packaged retail investment products?”: “We do not consider all of the products under consideration to be perfect substitutes. Moreover, while they do compete for retail savings, it is not always accurate to treat them as being in direct competition. For example, unit-linked life policies often serve simply as a 'wrapper' for an investment in an underlying fund. In this case the 'competing product' is more accurately described as an alternative channel for the distribution of the investment fund”.

¹⁰ http://ec.europa.eu/finance/finservices-retail/docs/investment_products/feedback_statement_srips_en.pdf

- promote the consistent application of the IDD with respect to the identification insurance-based investment products, that incorporate a structure which makes it difficult for the customer to understand the risks involved; and
- be consistent with the line taken in the delegated acts adopted under Article 25 (8) of MiFID II.

These aims are consistent with the objectives of IDD, which has three general objectives:

- to improve insurance regulation in a manner that will facilitate market integration;
- to establish the conditions necessary for fair competition between distributors of insurance products; and
- to strengthen consumer protection, in particular with regards to insurance-based investment products.

Section 4 - Policy Options

With the intention to meet the objectives set out in the previous section, EIOPA has analysed different policy options throughout the policy development process.

A preliminary issue considered was whether EIOPA should exercise the "may" empowerment for Guidelines in Article 30(8) of the IDD, as well as the "shall" empowerment in Article 30(7) of the IDD. For this the following options were considered:

- **Policy Option 1.1 - Issue Guidelines on "other non-complex insurance-based investments"**: These would be developed alongside the Guidelines to be published in accordance with Article 30(7) of the IDD on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved.
- **Policy Option 1.2 - Do not issue Guidelines on "other non-complex insurance-based investments"**: In this case the requirements for such investments would consist of those within the delegated acts adopted under Article 30(6) of the IDD.

The main issue considered was the approach to assessing whether insurance-based investment products incorporate a structure which makes it difficult for the customer to understand the risks involved. For this the following options were considered:

- **Policy option 2.1 – Very restrictive approach according to which existing product structures would be deemed complex**: In view of the fact that there are a number of different elements which affect the maturity or surrender value of insurance-based investment products, namely the exposure to market fluctuations and the charging structure, one possible option would be to consider that all existing types of insurance-based investment products incorporate a structure which makes it difficult for the customer to understand the risks involved. This would then effectively prevent insurance undertakings and intermediaries from distributing existing insurance-based investment products via an execution-only sale.
- **Policy option 2.2 – Criteria using ESMA Guidelines for MiFID II as a starting point**: Another possibility would be to only prevent insurance undertakings and intermediaries from distributing, via an execution-only sale, insurance-based investment products where they do not meet criteria

related to the complexity of the product features or insurance contract. These criteria would take as a starting point those defined within ESMA Guidelines concerning the assessment of complex debt instruments and structured deposits under MiFID II.

- **Policy option 2.3 – Very general or otherwise limited criteria to assess product structures:** This would be based on the perspective that significant discretion is needed on a national or product level to determine whether a product structure is difficult to understand. It would also reflect the perspective that existing provisions in IDD, such as the “demands and needs test”, already provided adequate safeguards for customers, as well as potentially the fact that additional provisions can be introduced on a Member States level, where they are judged to be necessary.

Where the Guidelines address other issues concerning the sale of insurance-based investment products via execution-only, the proposals are not expected to have a material impact compared to the baseline. In these cases, the Guidelines are proposed for the purpose of clarification and with a view to achieving a common understanding.

Section 5 - Analysis of impacts

Policy option 1.1 – Issue Guidelines on “other non-complex insurance-based investments”

The delegated acts on IDD state that “other non-complex insurance-based investments” referred to in Article 30(3)(a)(ii) of the IDD should not incorporate a structure that makes it difficult for the customer to understand the risks involved. This provision is based on EIOPA's Technical Advice, which intended to achieve consistency in approach for all non-complex insurance-based investment products within Article 30(3)(a), in view of the comparable condition in Article 30(3)(a)(i) of the IDD. The aim thus is that only insurance-based investment products which are readily understood by customers should be deemed non-complex and available for sale via execution-only. The development of Guidelines under the empowerments in both paragraphs 7 and 8 of Article 30 of the IDD therefore supports this aim of providing a consistent approach to all types of insurance-based investment products. In addition, as recognised by the empowerments in Article 30(7) and (8) of the IDD, Guidelines are considered to be an appropriate regulatory tool to address the issue of the complexity of different product structures allowing also for periodic updates to be made based on market developments.

For consumers, the development of Guidelines has the benefit of promoting a consistently high level of protection, irrespective of the type of insurance-based investment product. It also has the benefit to the industry and NCAs of clarifying the application of the delegated acts adopted under Article 30(6) of the IDD.

The cost of this Option for the industry and NCAs is that it reduces the degree of flexibility regarding the assessment of product complexity on a national level. Since the Guidelines would specify the application of the requirements in the delegated acts adopted under Article 30(6) of the IDD, this Option is not considered to result in any addition costs to customers above the baseline, for example in terms of increased product charges.

Policy option 1.2 – Do not issue Guidelines on “other non-complex insurance-based investments”

Depending on the approach taken in the Member State, this Option could have the benefit for the industry and NCAs that there is more flexibility to determine on national level the types of structures within “other insurance-based investments” which make it difficult for the customer to understand the risks involved. This Option is not considered to provide any material benefits to customers.

The main cost of this approach would be that there may be a less consistent application of the delegated acts adopted under Article 30(6) of the IDD, which in turn could reduce the overall level of consumer protection across the EU.

Policy option 2.1 – Very restrictive approach

Benefits:

- **For customers:** The rationale of this Option is that customers may not be able to understand the risks involved in insurance-based investment products. Therefore, the distributor would be required to collect information from the customer to assess whether the insurance product is suitable or appropriate for them. In this way, provided the distributor properly undertakes these assessments, the risk that the customer purchases a product that is not apposite for them, or not in their best interests, should be very small. Therefore, this Option provides the highest level of customer protection.
- **For industry:** A very restrictive approach reduces the risk that insurance products are sold which are not in the best interests of the customer. Therefore, this would reduce the risk of mis-selling products, thereby avoiding negative impacts on the reputation of the industry, or costs to compensate customers.
- **For NCAs:** Option 1 would have the benefit of higher legal certainty for NCAs. This is because they would not need to further assess whether a product’s features are complex given the very restrictive approach in the Guidelines. In turn, they should also not need to assess a distributor’s governance or sales processes relating to execution-only sales. Based on this Option, NCAs would essentially only need to verify that products were not sold via execution-only. The advantage of Option 1 is therefore that it can be relatively easily monitored and enforced.

Costs:

- **For customers:** This Option would limit the customer’s choice and freedom to buy insurance-based investment products as responsible adults without the need to provide information on their knowledge and investment experience.
- **For industry:** A very restrictive approach as proposed under Option 1, may lead to a negative impact on the business model of certain insurance undertakings and intermediaries in those Member States where insurance-based investment products can currently be sold via execution-only, and thus it may act as a restraint of trade. The costs of having to conduct, at a minimum, an appropriateness assessment may render certain lower cost products as less cost-efficient, or, in the extreme case, unviable. Where a distributor predominantly or exclusively sells products via execution-only, this Option is likely to have an impact on their administration costs, since they would need to modify their sales process and associated governance framework.

- **For NCAs:** Where the existing regulatory regime allows for execution-only sales, having to restrict the existing regulatory regime in this way could increase monitoring and enforcement costs for NCAs, in particular at the implementation stage.

Policy Option 2.2 – Criteria using ESMA’s Guidelines for MiFID II as a starting point

Benefits:

- **For customers:** Option 2 aims to provide an appropriate level of customer protection, while, compared to Option 1, enabling greater flexibility regarding the means of distribution of non-complex insurance-based investment products. This Option thereby has the benefit that the overall distribution costs of non-complex insurance-based investments should be lower, and thus in turn these products ought to be less costly for customers.
- **For industry:** If the criteria proposed are effective in excluding complex products from being sold via execution-only, the benefits outlined for Option 1 should also apply for Option 2. In this way the risk of products being mis-sold would be minimised. At the same time, the benefit of Option 2 for the industry is that they should be able to continue to sell some non-complex products, or to design such products for sale via execution-only. This means that it may be more cost efficient for them to sell non-complex products. In addition, distributors may be able to sell such products to customers who would otherwise have been deterred by the need to seek advice, or provide information on their knowledge and investment experience. Therefore, this Option may have a positive impact on the sales or revenues of insurance undertakings and intermediaries.
- **For NCAs:** Option 2 will be of benefit to NCAs which do not already have rules for assessing the complexity of product structures for insurance-based investment products, by establishing common principles for evaluating them.

Costs:

- **For customers:** In contrast to Option 1, Option 2 would enable insurance distributors to offer some, but still a relatively limited range of insurance-based investment products for sale via execution-only. Depending on the current framework within the Member State, based on Option 2, customers would be able to purchase a wider or a narrower range of products via execution-only than they are currently able to. If the criteria proposed by EIOPA result in less insurance-based investment products being available for sale via execution-only then it can be expected that the costs of purchasing those products may increase. On the other hand, if the criteria proposed by EIOPA result in more insurance-based investment products being available, there is in theory a risk that customers may not understand the features of those products, and as a result purchase products that are not in their best interests. However, provided that the criteria are effective in delineating between complex and non-complex product structures, this risk should not be increased by this Option.
- **For industry:** As with the costs for customers, the costs for the industry will depend on the current framework within the Member State. This will determine whether, as a result of the criteria proposed under Option 2, they will be able to sell a wider or a narrower range of products via execution-only than they are

currently able to. If the criteria proposed by EIOPA result in less products being available for sale via execution-only, then it can be expected that the costs of distributing those products may increase. These costs would be similar to those outlined for Option 1, but would be less in their extent. On the other hand, if the criteria proposed by EIOPA result in more products being available for sale via execution-only, there is in theory a higher risk that customers are sold products that are not appropriate for them, with in turn potential negative impacts for the reputation of the industry. However, provided that the criteria are effective in delineating between complex and non-complex product structures, this risk should not be increased by this Option.

- **For NCAs:** Option 2 will result in costs for NCAs to verify that insurance distributors are appropriately applying the criteria. It may also result in costs for NCAs if the criteria are different from any existing rules in that Member State for the evaluation of the complexity of product structures of insurance-based investments.

Option 2.3 – Very general or otherwise limited criteria

Benefits:

- **For customers:** This Option depends on how Member States implement the general criteria. Where a wide range of products are deemed to not incorporate a structure which makes it difficult for the customer to understand the risks involved, and are eligible for sale via execution-only, this approach may positively impact those retail customers who are highly financially literate. These customers should therefore be able to benefit from the ability to purchase a wide range of products at a reduced cost. Where only a limited number of, or no, products are deemed to not incorporate a structure which makes it difficult for the customer to understand the risks involved, the benefits would be similar to Options 1 and 2.
- **For industry:** Option 3 is likely to provide insurance distributors with a high degree of discretion, although it would depend on the approach taken in the Member State. In this case, distributors would have greater flexibility to determine whether a particular product or product feature is understandable, for example based on customer feedback.
- **For NCAs:** Where NCAs have more developed regimes which impose more detailed requirements already (following IMD), they are likely to retain those rules and thus benefits are not envisaged. Where NCAs do not currently have rules in this area, they will have the benefit of greater flexibility to determine the appropriate framework for the particular national market.

Costs:

- **For customers:** As stated, this Option depends on how Member States implement the general criteria. In the absence of a more prescriptive approach on a national level, Option 3 entails the risk that customers are sold products which are not suited to them, or which they do not understand the risks of. This option therefore heightens the risk of products being mis-sold. This is because without reasonably precise restrictions on the types of product structures that are difficult to understand, insurance distributors may consider certain products to be non-complex, when in fact some customers are not able to understand the associated risks.

- **For industry:** In the absence of a more prescriptive approach on a national level Option 3 entails the risk of a lower level of customer protection, and thus that market participants can be expected to continue to face reputational risk due to mis-selling cases.
- **For NCAs:** In the presence of only very general or limited restrictions on what constitutes a complex product structure, it may be more difficult for NCAs to supervise and enforce the requirement that insurance undertakings or intermediaries should only distribute non-complex insurance-based investment products via an execution-only sale. However, where NCAs already have a more detailed framework these costs would not apply.

Section 6 - Comparison of options

Regarding policy Options 1.1 and 1.2 the benefits of facilitating a consistent application of the requirements on structures which make it difficult for the customer to understand the risks involved for all types of insurance-based investment products were considered to outweigh any benefits of greater flexibility on a national level in the absence of Guidelines. Guidelines were also considered to be the appropriate tool to address this issue, in view of the greater flexibility to update them compared to delegated acts. **Therefore, policy Option 1.1 was chosen.**

For policy Options 2.1-2.3 when comparing the costs and benefits of the different policy options, it became apparent that an overly strict approach would not only be disadvantageous for insurance undertakings and insurance intermediaries, but also for customers and potentially for NCAs.

As policy Option 2.1 (very restrictive approach) would contradict the principle of the customer being responsible for their decisions, and limit the customer's flexibility in how they purchase insurance-based investment products, as well as increase regulatory costs, this Option does not seem adequate. Furthermore, it is questionable whether the Directive intends for there to be such a restrictive approach at EU level.

Conversely, policy Option 2.3 (very general criteria) does not seem adequate either. This is because it does not address adequately the risk of insurance-based investment products being mis-sold, due to the customer not understanding the risks involved.

Therefore, policy Option 2.2 (criteria using ESMA's Guidelines for MiFID II as a starting point) is considered to find the appropriate balance between the interests of insurance distributors and those of their customers. It also enables an appropriate degree of flexibility at NCA level, in providing criteria for assessing product structures at EU level which are still consistent with a minimum harmonising approach. From a customer's perspective it seems reasonable to prevent insurance distributors from making products available for sale via execution-only which do not meet the criteria, while enabling customers to execute an order for products where the criteria are met.

Annex III: Resolution of comments

Summary of Comments on CP-17-001 Guidelines on complex IBIPS				
No.	Name	Reference	Comment	Resolution
<p>EIOPA would like to thank Actuarial Association of Europe, Allianz SE, ANASF – Associazione Nazionale Consulenti Finanzia, Association of British Insurers, Association of Financial Mutuals (AFM), Association of International Life Offices AILO, Assuralia, Austrian Insurance Association VVO, Better Finance, BIPAR, Bund der Versicherten BdV, CNCIF, DAV German Actuarial Society, European Federation of Financial Advisers and Financial Intermediaries (FECIF), EUROPEAN FINANCIAL PLANNING ASSOACIATION EFPA, German Insurance Association (GDV), Institute and Faculty of Actuaries, Insurance Europe, Intesa Sanpaolo, Investment and Life Assurance Group (ILAG), IRSG, OP Financial Group, Standard Life UK, and Unipol Gruppo Finanziario S.p.A.</p>				
1.	Actuarial Association of Europe	General Comments	<p>The question of complex products is of a broader scope than the “execution-only” distribution issue. To be deemed as complex may trigger mandatory comprehension alert (PRIIPs), specific distribution arrangements and unduly negative bias towards the product. It is of critical importance with regards to products relying on the general account, which are widespread on many markets, and is equally relevant with regards to the IBIPs with multiple options (MOPs).</p> <p>When dealing with these MOPs products, it is of utmost importance to seek consistency with the MIFID prescriptions. This is necessary to ensure a level playing field without any distortion stemming from the fact that the funds are subscribed through an insurance contract or directly.</p> <p>For these MOPs products, there is often a possible confusion between the level of the contract and the level of the underlying investment options, which is frequently the most relevant level at which the complexity should be assessed.</p> <p>So we urge the regulator to be extremely careful about any criteria which</p>	<p>Please see the Feedback Statement.</p> <p>EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.</p>

			<p>could lead to a requirement to deem complex funds held inside an insurance contract which wouldn't have been deemed complex if they were directly held. Any gap or inconsistency would be detrimental for consumer understanding and sound judgement.</p> <p>No less importantly, in a financial environment of very low interest rates which may require operators to adapt their business model and which may lead consumers to revise their demands and needs, such market transition shouldn't be unduly impeded. That is why it is essential that the regulatory framework gives operators and consumers sufficient flexibility and legal protection to permit the evolution of market practice when this is necessary.</p>	
2.	Allianz SE	General Comments	<p>We agree with the regulatory intent to provide customers with transparent and good to understand product information that enables for taking well informed decisions. In this regard it is consequent to develop criteria to differentiate between non-complex products that are accessible for self informed customers and those products that deserve financial advice to ensure the intended well informed decision making.</p> <p>The guiding principle to assess qualification of non-complex products for execution-only sale and placing the comprehension alert on the KID should therefore be the customer risk perspective: "what does the customer need to understand to take a well informed decision"?.</p> <p>The criteria proposed by EIOPA to define "other non-complex" IBIPs for the purposes of execution-only sales are too wide and risk excluding unintendedly from the scope of "execution only" sales products that, from a customer risk perspective, are not difficult to understand nor expose the customer to higher risk than non-complex products under MiFID II.</p> <p>Significant product features that are necessary to be understood with view to potential risk exposure from customer perspective are often well understandable, namely when it comes to the protective effects of guarantees or potential economic benefit like participation in annual surplus.</p> <p>1. IBIPs in perspective with UCITS investments</p> <p>The criteria proposed suggest that investments in insurance general</p>	<p>EIOPA has aimed to consider whether different product features can be understood by the customer (as per the empowerment in the IDD).</p> <p>The issue of whether a product can be deemed non-</p>

		<p>accounts, in which investors do not invest directly, should be regarded as more complex than UCITS funds. If the investment exposure in general accounts is guaranteed by minimum value at maturity, this should qualify as not difficult to understand from the customer's perspective, irrespective of (complex) underlying target investment strategy. Similarly participation in profit sharing mechanism does not constitute risk exposure for the customer but adds potential customer benefit.</p> <p>Furthermore the surrender risk exposure in IBIPs should be assessed against the same principles as UCITS investments under MiFID II where a potential negative return does not hinder their qualification as non-complex product. Accordingly, an IBIP that ensures a transparent surrender value, including charges, over time should qualify as "non-complex".</p> <p>2. Implications of complexity label</p> <p>The qualification of an IBIP as complex is will not only govern the "execution-only" sale but also trigger the mandatory comprehension alert to be placed on the Key Information Document governed by PRIIPs RTS. Therefore the criteria proposed in the context of IDD must be rigorously assessed in view of the guiding principle of the customer risk perspective. However, as currently drafted, the vast majority of IBIP being marketed by financial advisor (who is mandated and qualified to well explain the products) will show the comprehension alert. This alert will easily be understood by consumers as "risky product" and preventing them from investing in long term savings products with (technically complex) guarantee mechanisms that are providing protection against investment risk that are not available in pure UCITs investments.</p> <p>We note that the wording of the Technical Advice is dependent on the comments received during the public consultation of the Guidelines and on that basis urge an holistic re-assessment of the criteria proposed both in Level 2 and in potential Guidelines.</p>	<p>complex if it has a guaranteed maturity value is addressed in the Commission delegated regulation. As stated in its technical advice, EIOPA considers that a product may still have complex features where there is a guaranteed level of return.</p> <p>Regarding profit-sharing mechanisms, EIOPA has made some amendments to the Guidelines with a view to clarifying how these features should be assessed.</p> <p>Please see the feedback statement.</p>
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3.	Association of British Insurers	General Comments	<p>About the ABI</p> <p>The Association of British Insurers (ABI) is the leading trade association for insurers and providers of long-term savings. Our 250 members include most household names and specialist providers who contribute £12bn in taxes and manage investments of £1.8 trillion.</p> <p>Executive Summary</p> <p>The Association of British Insurers (ABI) is concerned with the restrictive approach EIOPA has taken concerning the sale of insurance based investment products (IBIPs) in Consultation Paper 17/001, and with the definition of complex IBIPs in Technical Advice 17/048. We believe that this could have significant adverse effects on the market and limit consumers' access to insurance products that provide long-term investment instruments with reduced risk exposure, by wrongly classifying many IBIPs as complex.</p> <p>Our main concerns relate to the following:</p> <p>Insurance product structures</p> <p>We consider that parts of the proposed Guideline 2 of CP 17/001 on 'a structure which makes it difficult for the customer to understand the risks involved', fail to meet the objectives of the IDD as they can be interpreted as focussing on the actuarial processes insurance companies have in place to de-risk their products, instead of examining product features that create risks that are difficult to understand. While insurers use complex procedures, these aim to provide customers with medium and long-term instruments that reduce consumers' risk exposure, making them as predictable as possible. For example, the mechanisms of smoothing may be difficult for the customer to understand, but the concept is not, including what this means for how risky a product is.</p> <p>Guideline 2, as currently drafted, could restrict consumer choice and access to such products. If contractual conditions are clearly disclosed to customers, including for execution-only sales, the structure of the product should not be</p>	<p>Please see the Feedback Statement.</p> <p>Please see the Feedback Statement.</p>
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		<p>difficult to understand, and the product should not be classed as complex.</p> <p>Regulatory arbitrage</p> <p>Competing product lines should be governed by comparable regulatory provisions to ensure a level playing field. We fear that both the definition of complex IBIPs within the EIOPA Technical Advice and the proposed guidelines in CP 17/001 would fail to achieve this aim. Pooled investment vehicles, such as investments in UCITS funds, are currently afforded favourable regulatory requirements compared with the provisions of the IDD for IBIPs. It should be recognised that IBIPs, such as standard unit linked investment options and with-profits, provide exposure to diversified investment pools in a similar manner to UCITS funds, and aim to smoothen returns and reduce exposure to market volatility. It is important that such investment vehicles have comparable regulatory status.</p> <p>Focus on execution-only sales</p> <p>The focus of the CP on execution only-sales could restrict innovation in the market, by introducing rigid provisions for insurance product distribution. This goes against the principle of technology neutral regulation. Products should be available through various different channels, and it should be considered that digital distribution of retail financial services plays an important role in this respect. Buying products on-line should not be made unnecessarily burdensome for providers against rapidly increasing demand for such services.</p> <p>We are concerned that under the current proposals, the vast majority of IBIPs are likely to be classed as complex. This means that even consumers with high financial capability who take the initiative to make their own investment decisions will be forced to undergo an appropriateness test. Furthermore, even if a product was classed as non-complex, it could not be sold without an appropriateness test if the sale was not explicitly at the customer's initiative.</p>	<p>EIOPA has aimed for appropriate consistency with the comparable rules for UCITS as well as other MiFID investment products, whilst also reflecting the wide range of different types of IBIPs available in different Member States.</p> <p>Please see the feedback statement. It can also be added that the Guidelines are considered to be technology neutral. They do not address whether products should be sold online or not, but whether or not an appropriateness or suitability assessment should be undertaken.</p>
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			<p>Existing regulation</p> <p>Insurers are heavily regulated entities. Solvency II, the Financial Services Compensation Scheme and existing product oversight and governance requirements ensure the safeguarding of consumers' interests and investments. There are extensive disclosure requirements in place to ensure that consumers are provided with necessary documents, such as the PRIIPs KID, which present information about risks and complexity of products. Furthermore, the recent change to the PRIIPs comprehension alert makes an explicit link to the IDD. We believe that EIOPA has not taken these provisions sufficiently into account when opting for an approach which will significantly change the distribution landscape for IBIPs.</p> <p>Uncertainty for providers</p> <p>Our members lack certainty on a number of issues, and we would welcome clarification from EIOPA that closed business and contracts concluded before the IDD comes into force on 23 February 2018 should not be covered by the Directive, or the proposals of CP17/001. This should extend to instances where contractual options are exercised by the customer. The IDD clearly concerns the distribution of products, and therefore any products distributed before the Directive coming into force should not be covered by its provisions.</p>	<p>Please see the Feedback Statement. It can be also be added that the fact that insurers are subject to prudential and conduct regulations does not automatically mean that all insurance products should be considered to be non-complex.</p> <p>This issue is not within the scope of the Guidelines, but concerns the application of the IDD in general.</p>
4.	Association of Financial Mutuals (AFM)	General Comments	<p>The Association of Financial Mutuals (AFM) represents insurance and healthcare providers that are owned by their customers, or which are established to serve a defined community (on a not for profit basis). Between them, mutual insurers manage the savings, pensions, protection and healthcare needs of over 30 million people in the UK and Ireland, collect annual premium income of £16.4 billion, and employ nearly 30,000 staff.</p> <p>We consider that the guidelines provided in the consultation provide very</p>	<p>Please see the Feedback Statement.</p>

			<p>useful and clear direction, to firms and to national supervisors, in how to interpret EIOPA’s general views on complexity in insurance-based investment products.</p> <p>We believe the proposals set out are generally reasonable and practical, and help ensure products can be distributed in the most appropriate manner, taking account of their relative risk and complexity.</p> <p>We urge national supervisors to adopt a similarly realistic approach. We are concerned that the nature of the language in the consultation leaves a great deal of the meaning open to interpretation, and it is important that national competent bodies recognise the spirit of the proposals, for example by exploring the examples provided in the text in an open-minded way, and in extrapolating to products in their jurisdiction.</p> <p>We recognise the route to implementation of IDD has not been smooth, and are concerned that uncertainty of EIOPA’s final interpretation means that in the UK- and other states- final rules for IDD will not be made until a short time before the currently planned implementation date.</p>	
5.	Assuralia	General Comments	<p>It is very difficult to understand both the coherence between, and the content of (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 carve out the ‘execution only’-principle as no product on the market would be eligible for such a sales proces.</p>	<p>Please see the Feedback Statement. The generic examples were included for illustrative purposes within the Consultation Paper. They are not included in the final Guidelines.</p> <p>EIOPA does not agree with this assessment, but has made some clarifications in the final Guidelines.</p>

6.	Austrian Insurance Association VVO	General Comments	<p>The VVO welcomes the possibility to comment on the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which make it difficult to understand the risks involved. It is of importance, that policyholders are well informed of product features of life insurance contracts and that they understand well the risks to which they are exposed.</p> <p>However, the Austrian insurance industry is very much concerned that the proposed Guidelines would lead to the fact that insurance products which are well established since decades, which are very popular and very well accepted by customers and where the policyholder is not exposed to an investment risk are considered artificially as complex products.</p> <p>This is especially the fact when it comes to traditional life insurance contracts with profit participation. The traditional life insurance is a collective life insurance vehicle which makes it possible that the investment risk is borne by the insurance company which is subject to strict regulation within the prudent person principle of Solvency II. In addition to guarantees, within the legal framework (Austrian supervisory act, FMA-regulation on profit distribution) the insurance company may use tools such as profit distribution which allows for balancing profits collectively over the time to the benefit of the policyholder. The actuarial complexity of a traditional life insurance product is not relevant for customers in terms of a structure which makes it difficult to understand the risks involved. On the contrary, the business modell of traditional life insurance serves as a tool for minimizing and eliminating unforeseen risks for the policyholders.</p> <p>In Austria, profit participation only may increase contractually agreed guarantees and therefore, it does not expose the policy holder to any investment risk. Precontractual information for traditional life insurance in Austria includes tables with annual guaranteed surrender values and guaranteed insurance benefits at the end of the contract which may only be increased by profit participation. The policyholder knows every year the guaranteed part of the insurance contract which is the savings part of his</p>	<p>EIOPA does not agree with this assessment.</p> <p>Please see the Feedback Statement regarding traditional insurance products.</p>

			<p>premium (premium minus insurance tax, minus biometric risk premium for covering the death risk, minus letigimate costs).</p> <p>Therefore, we would not understand if this insurance product which represents the majority of life insurance products in Austria would be considered as complex and put in an unlevel-playing field in comparison to products which are not-complex under the regulation of MiFID II.</p> <p>The Austrian insurance industry sees the danger that the majority of insurance based investment products would be considered as complex if the proposed Guidelines are not further refined. In particular the proposed Guideline 2 needs to be further verified in order to avoid that traditional life insurance products which are well-known for customers and where the policyholder ist not exposed to investment risks are wrongly considered as complex.</p> <p>We are concerned that if life insurance products with collective invesments through the insurance company and with profit participation would be considered as complex this limits the policyholders' access to traditional life and pension insurance products where the policyholder is not exposed to an investment risk in future.</p> <p>The Austrian insurance industry calls for a level-playing field for competing products on the retail market. The proposed Guidelines would not achieve a level playing field. E.g. UCITs funds which are governed under MiFID II would get a preferential treatment compared to insurance products und IDD, although the investment risk to which the customer is exposed is much higher than for e.g. a traditional life insurance products where the insurance company bears the investment risk.</p>	<p>EIOPA has aimed for appropriate consistency with the comparable rules for UCITS as well as other MiFID investment products, whilst also reflecting the wide range of different types of IBIPs available in different Member States.</p> <p>Please see the Feedback Statement.</p>
7.	Better Finance	General	Better Finance, the European Federation of Investors and Financial Services	

		Comments	<p>Users, is the public interest non-governmental organisation solely dedicated to the protection of European citizens as financial services users at European level.</p> <p>Our Federation acts as an independent financial expertise and advocacy centre to the direct benefit of European financial services users, promoting research, information and training on investments, savings and personal finances. Since the Better Finance constituency is made of the organisations representing individual and small shareholders, fund and retail investors, savers, pension fund participants, life insurance policy holders, borrowers, and other financial services users, it has the interests of all European citizens at heart.</p> <p>We welcome EIOPA's draft guidelines on complex insurance-based investment products. Nevertheless, we find that there is a lack of precision comparing them with its Technical Advice on non-complex IBIPs.</p> <p>Better Finance also believes that any type of annuity or life insurances should be considered as insurance-based investment products (IBIPs) because they include an investment part of the premium and risk coverage. Also, the maturity is not often linked to a lump-sum but to long-term pays-out.</p> <p>Furthermore, the maturity or pay-out upon death is dependent on variables established by the insurance undertaking. Thus, consumers find it very complicated to understand the effects and in most of the cases they do not fully comprehend them. Although the complexity of the products cannot be reduced, some improvements should be made to increase transparency.</p> <p>Transparency is crucial for consumer protection. To accomplish a higher degree of transparency it is necessary to make the disclosure of actual risk-</p>	<p>EIOPA does not agree; however, whenever possible additional clarification has been provided in the explanatory text.</p> <p>The scope of IBIPs is defined in Article 2 point 17 of the IDD.</p> <p>EIOPA agrees that transparency is critical, but these Guidelines do not address disclosure requirements.</p>
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			reward relations based on historical returns and/or realistic return probabilities mandatory and a cost structure which should be easy to comprehend.	
8.	BIPAR	General Comments	<p>BIPAR is the European Federation of Insurance and Financial Intermediaries. It groups 53 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance intermediaries (agents and brokers) and financial intermediaries in Europe. More information on BIPAR and on the important role of intermediaries can be found on: www.bipar.eu</p> <p>BIPAR welcomes the opportunity provided by EIOPA to comment on the EIOPA consultation paper on the proposal for Guidelines under the IDD on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved.</p> <p>Regarding the classification of IBIPs as complex / non-complex products for the purpose of execution-only, BIPAR is of the view that in general, and for many customers, insurance-based investment products are more or less difficult products. In any event, the consumer is always complex and his or her situation is always unique. We therefore believe that the scope of "execution-only" for IBIPs should be narrow and that in most cases, consumers will benefit from receiving at least an appropriateness test.</p> <p>In our response to EIOPA's "Survey on the empowerment for EIOPA to develop Guidelines in Article 30(7) of the IDD" (September 2016), we had questioned what the "real definition" of "execution only" was, considering that for IBIPs there is always a demands and needs test in the IBIP context.</p> <p>We note that on p 6, EIOPA defines "execution-only sale" as: "refers to the distribution of an insurance-based investments products in accordance with Article 30(3) of IDD" and that EIOPA gives further explanation to the use of this term in its explanatory text on p 19, point 2.2. However, we still believe that there may be a level playing field issue with "execution-only" under</p>	<p>The definition of "execution-only" sales follows the IDD.</p> <p>This issue concerns the IDD and not these Guidelines.</p>

			<p>MiFID where - for products that may be similar to IBIPs - no demands and needs test is required.</p> <p>We also wonder, as PRIIPs and IDD are currently being implemented at national level, if "IBIPs" is defined or interpreted the same way in every Member State.</p>	<p>This issue is out of scope of the Guidelines.</p>
9.	Bund der Versicherten BdV	General Comments	<p>We welcome that EIOPA has now published draft Guidelines on complex insurance-based investment products, as ESMA published Guidelines on complex debt instruments and structured deposits already in February 2016. These ESMA Guidelines provide for precise criteria and examples and therefore constitute a crucial additional reference for the requirements outlined in the level-2 Delegated Regulation supplementing Directive 2014/65/EU of 25.4.2016 (article 57).</p> <p>However we miss that same precision at least partly when comparing EIOPA's draft guidelines with her Technical Advice on non-complex IBIPs (as part of TA on possible Delegated Acts concerning IDD, 1 February 2017, p. 77). Some crucial provisions of the Technical Advice are only repeated and not specified more deeply by the proposed guidelines, a fact which - from our perspective - reveals a severe lack with regard to EIOPA's mandate deriving from IDD article 30 (7) and (8) (cf. our comment on Question 6).</p> <p>Again we emphasize our comments already submitted in January and in October 2016 to EIOPA that, from our perspective, there are no non-complex insurance based investment products. Any kind of life or annuity insurances are "packaged" products, because they include an investment part of the premium (either in an unit-linked product or in a classical with-profit product) additionally to the risk coverage. The maturity of this investment</p>	<p>EIOPA took the ESMA Guidelines as a starting point and provided some examples in the Consultation Paper. However, it should be noted that there are not harmonised product types for IBIPs, as is generally the case for investment products, such as bonds.</p> <p>The provisions in the technical advice are used in the Guidelines because the intention is to provide for consistency within Article 30(3)(a) of the IDD. Some additional explanatory text has also been added following the public consultation.</p> <p>Please see to the Feedback Statement to the Public Consultation on the Technical Advice and to these Guidelines.</p>

			<p>part is usually not only linked to a lump sum but to ongoing long-term pay-outs as well.</p> <p>Additionally the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking (like mortality tables and participation in benefits - changeable even during contract duration), the effects of which are difficult for the customer to understand. Even if the complexity of the product itself cannot be reduced, efforts must be made in order to enhance the transparency of the product.</p> <p>Transparency is essential and necessary for the customer in order to enable a fully informed investment decision. More transparency can only be achieved by the mandatory disclosures of actual risk-reward relations, of realistic return probabilities and of comprehensive cost structures as foreseen by the forthcoming PRIIPs Key Information Documents (cf. our comment on Q18 for EIOPA Online survey in preparation of the Call for Advice from the European Commission on the delegated acts under the Insurance Distribution Directive, January 2016; our comment on Q20 for EIOPA Consultation Paper on Technical Advice on possible Delegated Acts concerning the Insurance Distribution Directive, October 2016).</p>	<p>EIOPA agrees that transparency is critical, but these Guidelines do not address disclosure requirements.</p>
10.	CNCIF	General Comments		
11.	DAV German Actuarial Society	General Comments	<p>Criteria should be high level and in line with minimum harmonisation aim of IDD</p> <p>The German Actuarial Society (DAV) agrees that complex products should not be distributed without the appropriateness test. We would like to point out that some product features might be uncommon in one Member State but they can be typical and well-known to customers in another market instead. Therefore, we support that EIOPA envisages only high-level criteria for non-complex products, so that products that are well-known and well understood by consumers in some markets are not wrongly deemed complex. We also welcome that EIOPA acknowledges IDD's minimum harmonisation aim as well as the fact that for execution-only sales national competent authorities may maintain or introduce additional more stringent national provisions in this area in order to protect consumers accordingly.</p>	

		<p>Level playing field between UCITS funds and collective investment should be ensured</p> <p>Further from an actuarial point of view, there is no reason why an insurance company's general (cover) assets in which retail investors do not invest directly should be generally regarded as more complex than their UCITS funds counterpart. According to the currently suggested criteria this is due to the fact that insurers also invest in assets that, for example, do not qualify as non-complex products according to MiFID II, such as many long-term investments.</p> <p>In addition, the required mandatory investment guarantee for products qualifying for article 30(3)(a)(ii) should in our opinion additionally take into account if the underlying investment vehicle itself was not managed according to the general principles that protect customers and limit downside risk to a certain extent. These investment principles could be based on the idea of e.g. ensuring the security, quality, liquidity and profitability of the underlying investment vehicle as a whole. If these principles – that could further be aligned with Solvency II requirements – were fulfilled, the mandatory guarantee requirement should be waived to ensure a level playing field on the notion of product complexity between banks, asset managers and insurance companies.</p> <p>Broader scope of complexity should be taken into account</p> <p>Moreover, the question if an IBIP qualifies as complex or not is of a great relevance. Not only does it play a role in a so-called "execution-only" distribution of insurance-based investment products (IBIPs), but it is also (presumably much more) relevant in other fields. For example, according to the newly amended PRIIPs RTS complex products according to IDD's scope will then also receive a mandatory comprehension alert. We fear that some products will be unintentionally stigmatised. Many products which are no more complex from a consumer perspective than UCITS funds might be labelled complex just because they fall under a different legal framework and are not covered by MiFID.</p> <p>The delegated act should take into account changes in the guidelines</p> <p>Furthermore, the DAV strongly supports that EIOPA will take into account any differences between the delegated act which are currently being finalised</p>	<p>EIOPA has aimed for appropriate consistency with the comparable rules for UCITS as well as other MiFID investment products, whilst also reflecting the wide range of different types of IBIPs available in different Member States.</p> <p>Please see the Feedback Statement.</p> <p>Please see the feedback statement.</p>
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			by the European Commission and EIOPA’s technical advice, prior to finalising these Guidelines. In our view, it is of utmost importance that a consistent approach between Level 2 and Level 3 regulation is ensured such that products that are readily understood by consumers were not wrongly deemed complex. Moreover, although we understand that the distinction between products which fall under Article 30(3)(a)(i) and those that fall under Article 30(3)(a)(ii) originally stems from the IDD Level 1 text, we support that EIOPA is taking a generalised approach to capture the properties of all IBIPs at once.	
C 12.		General Comments	Confidential comment	
13.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	General Comments	<p>Due to the nature of IBIPs (for example, as concerns the financial instruments in which these can be invested, the varying tax treatment across the EU and the fact that these are generally medium to long-term products), we believe that determining only the “needs and demands” of the customer is insufficient and it is essential that an assessment of the “suitability and appropriateness” for the customer is also carried out before a product is recommended and sold. Consideration should also be given to the fact that many people use IBIPs as part of their overall financial planning, including for retirement (now more important than ever in view of the unsustainability of State pension systems and the extending of State retirement ages). Hence, a holistic view should be taken of the customer’s total financial situation and future objectives, when recommending sales of IBIPs.</p> <p>Therefore, we do not feel that IBIPs can be sold on an “execution-only” basis, under the provisions of Article 30(3) of the IDD.</p>	Please see the Feedback Statement to the public consultation on the IDD technical advice.
14.	EUROPEAN FINANCIAL PLANNING ASSOCIATION EFPA	General Comments	<p>EFPA welcomes EIOPA’S consultation paper on the proposal Guidelines under the IDD and mostly endorses and shares the criteria and analysis of the paper.</p> <p>We are responding this consultation based on the need to contribute to the informed choice and decisions to be made by customers of insurance and financial industry.</p> <p>EFPA, as a professional standards setting and certification organization for financial services’ professionals in Europe, is convinced that face-to-face and personalized advice is what is needed to protect policyholders. The need for financial advice is greater than ever as we observe several key challenges to individuals’ financial security around the world. EU’s challenges such as the</p>	

			zero interest rate scenario, the longevity (...) increase, the retirement income gap, the customers' lack of confidence, and the lack of financial literacy, require better access to advice.	
15.	German Insurance Association (GDV)	General Comments	<p>Criteria should be high level and in line with minimum harmonisation aim of IDD</p> <p>The German insurers agree that complex products should not be sold without the appropriateness test required by Article 30 (2) IDD. We would like to point out that some product features might be uncommon in one Member State but they can be typical and well-known to customers in another market instead. Therefore, we support that EIOPA envisages only high-level criteria for non-complex products, so that products that are well-known for consumers in some markets are not wrongly deemed complex. We also welcome that EIOPA acknowledges IDD's minimum harmonisation aim as well as the fact that for execution-only sales national competent authorities may maintain or introduce additional more stringent national provisions in this area in order to protect consumers accordingly.</p> <p>Level playing field between UCITS funds and collective investment should be ensured.</p> <p>We would like to stress that Article 30(3)(a)(i) is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation.</p>	<p>EIOPA has aimed for appropriate consistency with the comparable rules for UCITS as well as other MiFID investment products, whilst also reflecting the wide range of different types of IBIPs available in different Member States.</p> <p>EIOPA has deleted some of the explanatory text referring to the interpretation of Article 30(3)(a)(i) of the IDD. This was not considered to be within the scope of the Guidelines on structures which may be difficult for the</p>

		<p>Products where the investment is done by the insurer who is subject to a very strong prudent person principle should, therefore, fall into the scope of Guideline 1. Otherwise investment products covered by MiFID II would receive a preferential treatment compared to insurance products. Furthermore, the current provisions would also influence the investment of insurers, e.g. impede the investment in alternative investments such as infrastructure. This would go beyond the scope of a Directive on distribution of insurance products. We fear that consumers' access to insurance products and long-term investments will be limited, including products with profit participation, and would put such instruments at a clear disadvantage to comparable financial instruments without any insurance aspects.</p> <p>Thus, absolute care has to be taken in order to avoid postulating principles (by means of Level 3 guidelines) which may leave products that are well-established in the relevant European insurance markets – such as life-insurance products with profit participation – as being deemed complex under IDD.</p> <p>Finally, the principles stated in the consultation paper's guidelines have to be scrutinised thoroughly, to avoid the erroneous classification of such products as complex.</p> <p>The delegated act should take into account changes in the guidelines</p> <p>Furthermore, the GDV strongly supports that EIOPA will take into account any differences between the delegated acts which are currently being finalised by the European Commission and EIOPA's technical advice, prior to finalising these Guidelines. In our view, it is of utmost importance that a consistent approach between Level 2 and Level 3 is taken so that products that are readily understood by consumers are not wrongly deemed complex. Moreover, although we understand that the division between products that fall under Article 30(3)(a)(i) and those that fall under Article 30(3)(a)(ii) stems from the IDD Level 1 text, we support that EIOPA is taking a generalised approach to capture the properties of all insurance-based investment products (IBIPs).</p>	<p>customer to understand.</p> <p>The Guidelines do not restrict the investment decisions of the insurer which are governed by the Solvency II prudent person principle. The Guidelines address whether the features of the product, and in particular the factors that determine the maturity, surrender value or pay out, can be understood by the customer.</p> <p>Please see the Feedback Statement.</p>
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			<p>Broader relevance of complexity should be taken into account</p> <p>Moreover, the question of complexity of IBIPs is of a great relevance. Not only does it play a role in a so-called "execution-only" distribution of IBIPs, but it is also relevant in other fields. For example, according to the newly amended PRIIPs RTS complex products will also receive a comprehension alert. Moreover, also the POG rules newly introduced in the IDD currently depend on the complexity of an IBIP.</p>	Please see the Feedback Statement.
16.	Institute and Faculty of Actuaries	General Comments	<p>Insurance products differ from investment products in that they aim to achieve specific outcomes for customers on defined life events, with the insurer in some cases providing a guarantee as part of the achievement of this outcome. The complexity of the product from a distribution / advice perspective should therefore be judged on the complexity of customer outcomes, rather than necessarily the underlying product mechanics / investment strategy.</p>	Please see the Feedback Statement.
17.	Insurance Europe	General Comments	<p>Insurance Europe welcomes the opportunity to comment on EIOPA's consultation paper on the proposal for guidelines on insurance-based investment products (IBIPs) that incorporate a structure which makes it difficult for the customer to understand the risks involved.</p> <p>Insurance Europe sees a real danger that the whole of the IBIPs market will be considered to be complex if the proposed criteria are not further refined (both through the examples and through the clarifications suggested in the answers below). As they stand now, the criteria would significantly impede the 'execution only' option, as in practice very few products on the market would be eligible to benefit from such a sales process. In particular, the principles stated in the consultation paper's guidelines have to be scrutinised thoroughly, to avoid the erroneous classification of such products as complex.</p> <p>We are concerned with the restrictive approach EIOPA has taken to the sale of IBIPs in both in its consultation paper and on the definition of complex IBIPs in its technical advice. We believe that this could limit consumer's</p>	EIOPA does not agree with this assessment, but has made some clarifications in the final Guidelines.

		<p>access to insurance products (including annuity insurance) that provide long-term investment instruments with reduced risk exposure by wrongly classifying many IBIPs as complex. Such a measure would also put insurance products at a disadvantage with competing financial instruments.</p> <p>Our main concerns are as follows:</p> <p>Criteria should be high level in line with minimum harmonisation aim of IDD</p> <p><input type="checkbox"/> Insurance Europe agrees that complex products should not be sold without the appropriateness test required by Article 30(2) IDD. We would like to point out that some product features might be uncommon in one Member State but they can be typical and well-known to customers in another market instead. Thus, we support high-level criteria for non-complex products so that products that are well-known for consumers in some markets are not wrongly deemed complex. We also welcome the fact that EIOPA acknowledges the minimum harmonisation aim of IDD.</p> <p>National rules should be recognised</p> <p><input type="checkbox"/> Furthermore, it should be acknowledged that rules imposed by the (national) regulator that are in the best interest of consumers (eg with regard to the height of certain costs) do not need to be taken into account when assessing the criteria and do not make a product complex.</p> <p>The delegated act should take into account changes in the guidelines</p> <p><input type="checkbox"/> Insurance Europe strongly supports that EIOPA will take into account any differences between the delegated acts which are currently being finalised by the European Commission and EIOPA's Guidelines. In our view, it is of utmost importance that a consistent approach between Level 2 and Level 3 is taken so that products that are readily understood by consumers are not wrongly deemed complex. As it currently stands it is very difficult to understand both the coherence between, and the content of the proposed criteria under the EIOPA technical advice for possible delegated acts under the IDD (p. 77 EIOPA-17/048), and the proposed guidelines under consultation. Moreover, although we understand that the division between</p>	<p>EIOPA has amended the final Guidelines to take this point into account.</p> <p>Please see the Feedback Statement. The generic examples were included for illustrative purposes within the Consultation Paper. They are not included in the final Guidelines.</p>
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		<p>products that fall under Article 30(3)(a)(i) and those that fall under Article 30(3)(a)(ii) stems from the IDD Level 1 text, we support that EIOPA is taking a generalised approach to capture the properties of all insurance-based investment products (IBIPs). The generic examples in the appendix of the consultation document could clarify how the criteria of the guidelines are to be understood. However, as it now stands some of the examples present a wrong picture or create confusion (see our answer to question 8).</p> <p>Broader relevance of complexity should be taken into account</p> <p><input type="checkbox"/> Moreover, the question of complexity of IBIPs is of a great relevance. Not only does it play a role in a so-called “execution-only” distribution of IBIPs, but it is also relevant in other fields. For example, according to the newly amended PRIIPs RTS complex products will also receive a comprehension alert and will be labelled publically as difficult to understand. Moreover, also the POG rules newly introduced in the IDD currently depend on the complexity of an IBIP.</p> <p>Level playing field should be ensured</p> <p><input type="checkbox"/> Competing product lines should be governed by comparable regulatory provisions to ensure a level playing field. Both the definition of complex IBIPs of the EIOPA technical advice and the proposed guidelines in fail to achieve this aim. In the current set up, MiFID II would provide pooled investment vehicles, such as investments in UCITS funds, with a favourable regulatory treatment compared to the provisions of the IDD for IBIPs. It should be recognised that IBIPs such as standard unit linked investment options and products with profit participation provide exposure to diversified investment pools, similarly to UCITS funds. IBIPs aim to smoothen returns and reduce exposure to market volatility, and should therefore have comparable regulatory status as investment vehicles caught by MiFID II.</p> <p><input type="checkbox"/> We would like to stress that Article 30(3)(a)(i) is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise</p>	<p>Please see the Feedback Statement.</p> <p>EIOPA has aimed for appropriate consistency with the comparable rules for UCITS as well as other MiFID investment products, whilst also reflecting the wide range of different types of IBIPs available in different Member States.</p> <p>EIOPA has deleted some the explanatory text referring to the interpretation of Article 30(3)(a)(i) of the IDD. This was not considered to be within the scope of the</p>
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		<p>of a professional investor who is subject to supervisory regulation. Products where the investment is done by the insurer who is subject to a very strong prudent person principle should, therefore, fall into the scope of Guideline 1. Otherwise UCITS funds would receive a preferential treatment compared to insurance products. Furthermore, the current provisions would also influence the investment of insurers, e.g. impede the investment in alternative investments such as infrastructure. This would go beyond the scope of a Directive on distribution of insurance products.</p> <p><input type="checkbox"/> Thus, absolute care has to be taken in order to avoid postulating principles (by means of Level 3 guidelines) which may leave products that are well-established in the relevant European insurance markets – such as life insurance products with profit participation – as being deemed complex under IDD.</p> <p><input type="checkbox"/> We fear that parts of guideline 2 on a “structure making it difficult for a consumer to understand the risks involved” fail to meet the objectives of the IDD in terms of their focus. This puts insurance products at a considerable disadvantage compared to other financial instruments. Guideline 2 as currently drafted, could actually restrict consumer choice and access to such products. Insurers should instead be able to clearly disclose the insurance-specific product conditions to the customer, for example if conditions are attached to guarantees.</p> <p><input type="checkbox"/> A level-playing field should always be guaranteed regarding the possibility of selling products via execution-only. It should be stressed therefore that, compared with execution-only sales under MiFID, there is an additional layer of protection for consumers subject to the IDD as there is also a “demands and needs” requirement that always needs to be fulfilled.</p> <p>Growing importance of execution-only sales should be taken into account</p>	<p>Guidelines on structures which may be difficult for the customer to understand. The guidelines do not restrict the investment decisions of the insurer which are governed by the Solvency II prudent person principle. The guidelines address whether the features of the product, and in particular the factors that determine the maturity, surrender value or pay out, can be understood by the customer.</p> <p>It was decided within IDD that there should always be a demands and needs test for insurance contracts. These Guidelines cannot go against that decision. The Guidelines consider the types of IBIPs that incorporate a structure that may be difficult for the customer to understand.</p> <p>The Guidelines do not address whether products should be sold online or not,</p>
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			<p><input type="checkbox"/> The focus of the consultation paper on execution only sales could hinder innovation in the market, by introducing too rigid provisions for insurance products. Products should be available through various different channels, and it should be considered that digital distribution of retail financial services plays an important role in this. Buying products on-line should not be made unnecessarily burdensome.</p> <p>Existing regulation should be taken into account</p> <p><input type="checkbox"/> Insurers are heavily regulated entities. Solvency II, national regulations and existing product oversight and governance requirements ensure safeguarding of consumer's interests and investments. The extensive disclosure requirements in place ensure that consumers are provided with documents such as the PRIIPs KID and additional pre-contractual information, which disclosure information about products.</p>	<p>but whether or not an appropriateness or suitability assessment should be undertaken.</p> <p>Whilst these requirements have been borne in mind, the fact that insurers are subject to prudential and conduct of business regulations and disclosure requirements does not per se mean that an IBIP does not contain a structure which may be difficult for the customer to understand the risks involved.</p>
18.	Intesa Sanpaolo	General Comments	<p>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, 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>	Noted.
19.	Investment and Life Assurance Group (ILAG)	General Comments	<p>The Investment & Life Assurance Group (ILAG) is a representative body, with members from across the UK Life Assurance and Wealth Management Industries.</p> <p>ILAG members openly share and develop their practical experiences and</p>	Noted.

			<p>expertise, applying this practitioner knowledge to the development of their businesses, both individually and collectively, for the benefit of members and their customers.</p> <p>ILAG is run by practitioners for practitioners, whether by engagement with industry associated bodies or through active consultation.</p> <p>We have considered the content of the Consultation and are broadly supportive of the proposals. Our Members' comments are detailed below.</p>	
20.	IRSG	General Comments	<p>The IRSG welcomes EIOPA's initiative to consult on Guidelines on complex IBIP.</p> <p>The challenge of the exercise is that it maybe difficult to characterize a complex IBIP.</p> <p>These guidelines cannot be discussed in isolation without also discussing the EIOPA technical advice on the Delegated Acts which are under development by the Commission.</p> <p>Based on the combination of Delegated Acts currently under discussion and these draft guidelines there is a real risk that almost all traditional insurance type savings products and even new products designed specifically to meet good standards of risk and transparency could be deemed complex. This outcome must be avoided and we believe that a relatively small proportion of current sales involve complex products. In particular the current EIOPA advice on the Delegated Act text which automatically defines a product as complex if the surrender value is different from the maturity value must be changed and these guidelines should clarify that such a product is not complex unless the detail surrounding the charges, surrender value, maturity value are complex.</p> <p>Clearly there are people for whom the point at which the complexity of a product makes it difficult to understand is very different from others. It</p>	<p>Please see the Feedback Statement.</p> <p>EIOPA does not agree with this assessment. Please see the Feedback Statement regarding EIOPA's technical advice.</p> <p>EIOPA did not consider policy option 2.3 to be the preferred</p>

			<p>relates, among others, to the capacity of the person to be able to manage their finances and to their level of financial literacy. Additionally, a certain feature might be uncommon in one Member State but it can be typical and well-known to costumers in another Member State. We therefore recommend that policy option 2.3 would be more appropriate than the one proposed by EIOPA because it is advisable to establish more high-level criteria for assessing complex products. This would allow Competent Authorities within a Member State to take into account not only the characteristics of the product but also the client profile and the features that are common or uncommon in that Member State.</p> <p>Secondly the designer of a complex IBIP is the producer (namely an insurer or a bank or a portfolio management company). The first rule should be to prevent these producers from designing a product which has a high probability of being detrimental to the investor's interest. This should be covered by the POG rules. Then the responsibility on which we must concentrate in the scope of this consultation, is that of the distributor.</p> <p>These guidelines being related to the IDD, this consultation meets well the above concerns.</p> <p>Nevertheless one can wonder about the lack of reference to the capacities of understanding of each individual. Would it had not been more appropriate or efficient to take the problem of complexity from the point of view of the client rather than from the characteristics of the product ?</p> <p>Finally, a level-playing field should always be guaranteed regarding the possibility of selling products via execution-only in MiFID and IDD. It should also be highlighted that, regarding execution-only sales, and compared to MiFID, there is an additional layer of protection for consumers subject to the IDD because the « demands and needs test » always applies (this kind of « demands and needs test » does not exist in MiFID).</p> <p>In this regard, we would like to highlight the importance of providing advice, which contributes towards ensuring that the customer is well informed prior to taking a decision.</p>	<p>option for the reasons explained in the impact assessment.</p> <p>In the context of an execution-only sale the financial knowledge of the customer is not assessed.</p> <p>It was decided within IDD that there should always be a demands and needs test for insurance contracts. These Guidelines cannot go against that decision. The Guidelines consider the types of IBIPs that incorporate a structure that may be difficult for the customer to understand.</p>
C 21.		General Comments	This comment is confidential.	

22.	OP Financial Group	General Comments	<p>The unit-linked insurance are similar to other financial instruments deemed non-complex under MiFID II (especially UCITS-funds) and they should be treated under the same rules. However, because of the differences in IDD and MiFID II, the state of affairs is that insurance-based investment products will not be treated under the same rules than other investment products; hence, the level playing field cannot be reached in this connection. We see that the additional requirements applied on insurance-based investment products is a restriction that can have a negative impact on the business development. This could be especially negative on the development of digital channels.</p>	<p>EIOPA has aimed for appropriate consistency with the comparable rules for UCITS as well as other MiFID investment products, whilst also reflecting any complexity that can arise from the insurance contract as required by Article 30(3)(a) of IDD.</p>
23.	Standard Life UK	General Comments	<p><input type="checkbox"/> We seek parity across MiFID II and IDD, and consideration of Solvency II.</p> <p>As it stands, the IDD would appear to be placing more restrictive rules on insured funds compared to mutual funds under MIFID II. We ask that this situation is equalised.</p> <p>If our interpretation is correct, where we have strategies which utilise derivatives for the purposes of efficient portfolio management, these would be treated as complex under the IDD.</p> <p>Under MIFID II, provided a fund is classified as a UCITS, it could use derivatives for this same purpose but not be classified as complex on the basis that UCITS are considered to be non-complex financial instruments.</p> <p>This treatment of insured funds under the IDD would have significant impact on customer choice, by applying unnecessary restrictions resulting in reduced choice for customers.</p> <p>In addition, Solvency II indicates that the use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management and we would welcome this being reflected in</p>	<p>This issue is considered to concern the requirements in the IDD and not the Guidelines.</p>

		<p>EIOPA's Guidelines.</p> <p><input type="checkbox"/> We seek clarity on the intention under the IDD by the "exposure to" wording. We believe this suggests a look through to the underlying assets is required. We would appreciate clarity on which level we should be measuring complexity at – the product, fund, or asset level?</p> <p>This would mean that the presence of derivatives, even where these are only used for efficient portfolio management, renders many existing unit linked funds complex, where equivalent strategies under MIFID II would not be. We include a diagram below to illustrate the point.</p> <p>Under the current IDD wording, we believe the "exposure to" wording suggests that complexity is measured at the asset level; whereas under MIFID II this would be at the fund level.</p> <p>If we measure at asset level, we believe a distinction should be drawn between funds using derivatives for efficient portfolio management and funds using derivatives in pursuit of their investment objective or to generate investment returns, which should be considered complex in certain cases.</p> <p>We suggest funds using derivatives for effective portfolio management are treated as non-complex, like UCITS funds under MIFID II.</p> <p>MIFID II IDD Product</p>	<p>Guideline 1 addresses the types of financial instruments to which non-complex IBIPs (under Article 30(3)(a)(i)) can provide investment exposure.</p>
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			<p>e.g. Pension Wrapper IBIP</p> <p>Fund Vehicle UCITS Fund Unit Linked Fund</p> <p>Assets e.g. Equities, bonds, derivatives (for effective portfolio management) etc. e.g. Equities, bonds, derivatives (for effective portfolio management) etc.</p>	
24.	Allianz SE	Question 1	<p><input type="checkbox"/> A consistent approach between Level 2 and Level 3 regulation is currently not ensured. We strongly encourage to review Level 2 in view of the Technical Advice p. 76/ Nr. 16 and the outcome of this Consultation.</p> <p><input type="checkbox"/> EIOPA states that the scope and objectives of the proposed guidelines were on facilitating “the identification of types of insurance-based investment products, or product features within insurance-based investment products, that incorporate structure which makes it difficult for the customer to understand the risks involved and which are therefore complex and not fit for distribution via execution-only”. A large part of IBIPs includes underlying investment strategies and instruments, intrinsic to the nature of insurance, that are technically difficult for the customers to understand in view of the underlying investment strategy. However, we do not agree with EIOPAs assessment that IBIPs are “often complicated and difficult to understand for consumers” from the perspective of what the customer needs to understand in order to be able to take a well informed decision. The product features that are necessary to be understood with view to potential risk exposure from customer perspective are often well understandable, namely when it comes to the protective effects of guarantees or potential economic benefit like participation in annual surplus.</p>	<p>Please see the Feedback Statement.</p> <p>The statement that IBIPs are “often complicated” has been amended.</p> <p>The issue of minimum guarantee amounts a maturity and surrender was addressed in EIOPA’s technical advice.</p> <p>Please see the Feedback Statement regarding profit participation mechanisms.</p>

			<p><input type="checkbox"/> The level playing field between UCITS and insurance products is jeopardised. The criteria proposed suggest that investments in insurance general accounts, in which investors do not invest directly, should be regarded as more complex than UCITS funds. If the investment exposure in general accounts is guaranteed by minimum value at maturity, this should qualify as not difficult to understand from the customer's perspective, irrespective of (complex) underlying target investment strategy. Similarly participation in profit sharing mechanism does not constitute risk exposure for the customer but adds potential customer benefit. Furthermore the surrender risk exposure in IBIPs should be assessed against the same principles as UCITS investments under MiFID II where a potential negative return does not hinder their qualification as non-complex product. Accordingly, an IBIP that ensures a transparent surrender value, including charges, over time should qualify as "non-complex".</p> <p><input type="checkbox"/> The qualification of an IBIP as complex will not only govern the "execution-only" sale but also trigger the mandatory comprehension alert to be placed on the Key Information Document governed by PRIIPs RTS. Therefore the criteria proposed in the context of IDD must be rigorously assessed in view of the guiding principle of the customer risk perspective. However, as currently drafted, the vast majority of IBIP being marketed by financial advisor (who is mandated and qualified to well explain the products) will show the comprehension alert. This alert will easily be understood by consumers as warning on a "risky product" and preventing them from investing in long term savings products with guarantee mechanisms that are providing protection against investment risk that are not available in pure UCITS investments.</p> <p><input type="checkbox"/> Understood and very well-known products established in many European insurance markets should not unnecessarily be labelled complex.</p>	Please see the Feedback Statement.
25.	ANASF - Associazione Nazionale Consulenti Finanzia	Question 1	For the sake of investor protection, we believe that for all types of IBIPs at least the assessment of appropriateness shall be required (i.e., execution-only sales shall not be admitted). This approach is adhered to by the Italian regulator as the assessment of appropriateness or suitability is always required for financial products issued by insurance companies: cf. Article 87 of Consob Regulation no. 16190/2007, which excludes the application of the provisions on execution-only (Articles 43 and 44) to this category of products, thereby providing for an enhanced standard of investor protection.	Please see the Feedback Statement to the public consultation on the IDD technical advice.
26.	Association of	Question 1	We believe that the Impact Assessment fails to take account of existing	Whilst these requirements

	British Insurers	<p>regulatory requirements, or that many product features of IBIPs are very familiar to customers. The restrictive approach taken by EIOPA could have adverse effects on the ability of customers to access IBIPs through different sales channels, and on the ability of insurers to innovate, as it would likely render most execution-only sales of IBIPs impossible. Furthermore, it might restrict the investment options for insurers and limit investments into assets automatically classed as complex, such as infrastructure.</p> <p>We believe that EIOPA focusses excessively on the execution-only sales journey without taking into account the many different safeguards in place to protect and disclose information to consumers. These include:</p> <ul style="list-style-type: none"> □ Product oversight and governance (POG) arrangements: The IDD puts in place POG requirements, proportionate to how complex and risky a product is. Product manufacturers have to establish appropriate measures in the process of designing, monitoring, reviewing, and distributing products, as well as take necessary action where there is potential for customer detriment. This includes the demands and needs test and mitigation of conflicts of interest. The IDD Technical Advice also sets out clear responsibilities for the manufacturer’s management. These POG requirements cover the features of an insurance aspect, including the coverage, costs, risks, target market, compensation and guarantee rights, as well as any personalisation of the product. They also stipulate that manufactures must select distribution channels that are appropriate for the target market. □ PRIIPs: The PRIIPs KID includes information about how risky a product is, what the product’s likely future performance looks like including a stress scenario, and detailed information about costs including how these affect performance. The comprehension alert now makes an explicit link to the IDD, and this change should be considered in the Impact Assessment and reflected upon to ensure a proportionate regulatory approach is chosen. □ Financial Services Compensation Scheme (FSCS): In the UK, insurance and investment firms (and all regulated financial services product providers) are covered by the FSCS. Where a regulated firm defaults, customers may claim compensation from the scheme for lost investments. All ABI members are regulated entities, and the products they sell will be covered by the FSCS. 	<p>have been borne in mind, the fact that insurers are subject to prudential and conduct of business regulations and disclosure requirements does not per se mean that an IBIP does not contain a structure which may be difficult for the customer to understand the risks involved.</p>
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27.	Association of Financial Mutuals (AFM)	Question 1	<p>To properly understand the consequences of the options set out, and the costs and benefits associated, it will be necessary to see a detailed list from the NCAs of which insurance products are deemed complex and which are not. The costs to industry may be very high, if products that historically have been capable of being sold on an execution-only basis, are deemed complex and might therefore only be sold with advice. The costs include higher selling costs, but also reduced volumes that will increase marginal administrative costs.</p> <p>Likewise, the withdrawal of products which historically have been purchased without advice may be detrimental to consumers if in the future they are deemed complex, and there is no significant supply of advice. For example, if the product attracts low levels of premium, the levels of commission payable to advisers, or fees that can be levied will be low ; an example from amongst AFM members is the Tax Exempt Savings Plan (TESP), which is a form of tax-advantaged plan offered only by UK mutuals, which has a maximum monthly contribution of £25 and which most intermediaries consider too low to generate sufficient income.</p>	The costs mentioned are considered to be reflected in the Impact Assessment.
28.	Association of International Life Offices AILO	Question 1	No	
29.	Austrian Insurance Association VVO	Question 1	<p>The VVO does not share EIOPA's assessment that IBIPs are "often complicated and difficult to understand for consumers". Most IBIPs invest either in a collective pool with profit participation (traditional life insurance) or in units of funds. Especially traditional life insurance products have been common for a long time and are well-known to policyholders. Also other features of an insurance contract like maturity payment, surrender value or death benefits have been used for decades and are usually common and familiar to consumers since they get detailed precontractual information about the values.</p> <p>The VVO calls for a consistent approach across all different financial sectors in order to achieve a level playing field. However, through the proposed Guidelines this would not be achieved. We do not understand why an investment in non-structured UCITS funds which invest in shares or</p>	<p>The wording of the Impact Assessment has been revised on this point.</p> <p>EIOPA has aimed for appropriate consistency with the comparable rules for UCITS as well as other MiFID</p>

			<p>derivatives and where the customer is exposed to a rather high investment risk should be deemed non-complex and a traditional life insurance where the investment risk is borne by a professional investor who is subject to strict regulation and where the profit participation only increases the contractually agreed values would be automatically considered as complex (see example 9).</p> <p>To ensure a proper level playing field, it is necessary that investments made and managed by insurers are not deemed complex per se. Currently, this is only provided for products that guarantee the sum of paid in contributions minus legitimate costs at all times, as in EIOPA-17/048, page 77 criterion (a)). Due to the business model of traditional life insurance this is always the case at the end of the contract. However, guaranteed surrender values may be lower, especially at the beginning of the contract. Although the possibly lower level of surrender values we are not of the opinion that this leads to a complexity which makes it difficult to understand the risks involved since the policyholder is informed in a table about the guaranteed surrender values at the end of each year of the contract before concluding the contract.</p>	<p>investment products, whilst also reflecting the wide range of different types of IBIPs available in different Member States.</p> <p>The issue of minimum guarantee amounts at maturity and surrender was addressed in EIOPA's technical advice.</p>
30.	Better Finance	Question 1	<p>Better Finance agrees with EIOPA that "Without Guidelines regarding the assessment of the complexity of insurance-based investment products, there is likely to be different approaches implemented by different Member States. In particular, this creates the risk of an inadequate level of consumer protection and in turn risks resulting in cases of mis-selling of insurance products where consumers are sold products, the risks of which they do not properly understand". These guidelines need to be consistent with those published by ESMA. Indeed, in particular unit-linked insurance products are often composed of fund "units" and those are governed by MiFID rules and ESMA guidelines. Besides many IBIPs are "substitutable" to other retail investment products that are governed by MiFID rules and ESMA guidelines. This is why the PRIIPs Regulation scope encompasses both investment funds, banking structured products and IBIPs.</p> <p>Our organization shares the objectives pursued by the guidelines stated on page 12 of the consultation. However, it is very important for consumers that these aims are really implemented. We believe that the improvement of</p>	<p>As stated in the Impact Assessment, EIOPA considers that the Policy Option chosen provides an appropriate balance between the need for a high level of consumer protection and not unduly restricting the investment choices for customers.</p>

			<p>consumer protection should be at the heart of the guidelines. In this respect, the guidelines must provide some benefits and promote a high-level of protection, irrespective of the kind of insurance-based investment product.</p> <p>Article 20 (1) of the IDD stresses that that consumers must be enabled to make informed decisions. That is the reason why we disagree with the argument (stated in page 14) against a restrictive approach assuming that “this option would limit the customer’s choice and freedom to buy insurance-based investment products as responsible adults without the need to provide information on their knowledge and investment experience”.</p> <p>Taking into account the low level of financial education among EU citizens and the complexity of most IBIPs, this statement is very dangerous and can lead to a mis-use of consumer protection provision. Even “responsible adults” - - who possess more financial education than the average of the EU population - could take the wrong decisions (or at least not their “best” choice) due to mis-leading marketing strategies and poor technical advice. EIOPA repeatedly outlines the negative impacts by using the results of behavioural financial economics. Therefore, Better Finance advocates for a restrictive approach in this matter.</p>	
31.	BIPAR	Question 1	<p>BIPAR notes that in the Impact Assessment, p 10, EIOPA points out that it will take into account any differences between the Delegated Acts and EIOPA’s technical advice, prior to finalising the Guidelines. BIPAR believes that it is important that the final Delegated Acts and the EIOPA guidelines with regard to “complex IBIPs” are not in contradiction with one another.</p> <p>Regarding the different policy options described in the Impact Assessment, BIPAR is not in favour of a broad scope of “execution-only”.</p>	EIOPA considers that the Guidelines are consistent with the delegated acts adopted by the Commission.
32.	Bund der Versicherten BdV	Question 1	<p>We fully agree upon EIOPA’s assessment in the baseline scenario that without these guidelines on complex/non-complex IBIPs there definitely is “the risk of an inadequate level of consumer protection and in turn risks resulting in cases of mis-selling of insurance products where consumers are sold products, the risks of which they do not properly understand” (CP, p. 11). That is why these guidelines have to be as consistent and precise as</p>	As stated in the Impact Assessment, EIOPA considers that the Policy Option chosen provides an appropriate balance between the need for a high level of consumer

			<p>those published by ESMA.</p> <p>For consumers the development of guidelines must have the benefit of promoting a consistently high level of protection, irrespective of the type of insurance-based investment product. Consumers must be enabled to make informed decisions, as IDD article 20 (1) stipulates. That is why we strongly reject the argument against a very restrictive approach assuming that "this option would limit the customer's choice and freedom to buy insurance-based investment products as responsible adults without the need to provide information on their knowledge and investment experience" (CP, p. 14).</p> <p>This argument is very dangerous, because it may be mis-used against any kind of consumer protection provision. Even "responsible adults" who - on a theoretical level - have unlimited access to all necessary product information will surely make false decisions against their own "best" interest due to misleading marketing strategies and poor advice. At many occasions in her consultation papers EIOPA has outlined these negative impacts by using the results of behavioral financial economics. That is why we advocate an approach as restrictive as possible.</p>	<p>protection and not unduly restricting the investment choices for customers.</p>
33.	CNCIF	Question 1	<p>We consider that suitability/appropriateness assessment should be applied with no exception for all types of IBIPS, in order to ensure that the insurance intermediary obtains all relevant information necessary to assess whether a specific insurance is suitable appropriate for a specific customer.</p> <p>Furthermore, the logic of "execution-only sales of IBIPS" clearly contradicts the French Regulator (ACPR) approach which considers that the insurance product should not be sold without a suitability or appropriateness process.</p> <p>Finally, we believe that the idea of considering only the complexity of underlying financial instruments is too restrictive: the insurance product should not be considered only as an investment product but also as a specific contractual relationship between an insurance undertaking and a customer, which can have a significant impact on this customer's personal interests.</p>	<p>The Guidelines follow the IDD which allows for sales of IBIPs without an assessment of suitability or appropriateness, subject to the Member State option in Article 30.</p> <p>The Guidelines do not only consider the complexity of the underlying financial instruments.</p>

			Consequently, the product should not be sold without at least a suitability or appropriateness process.	
34.	DAV German Actuarial Society	Question 1	<p>DAV urges EIOPA to treat complexity in a much broader context. Not only does it play a role in a so-called "execution-only" distribution of IBIPs, but it is also (presumably much more) relevant in other fields. For example, according to the newly amended PRIIPs RTS complex products according to IDD's scope will then also receive a mandatory comprehension alert. We fear that the products will be unintentionally stigmatised. Moreover, also the POG rules newly introduced in the IDD currently depend on the complexity of an IBIP. EIOPA states that the scope and objectives of the proposed guidelines on products' complexity were on facilitating "the identification of types of insurance-based investment products, or product features within insurance-based investment products, that incorporate structure which makes it difficult for the customer to understand the risks involved and which are therefore complex and not fit for distribution via execution-only;". Thus, the DAV urges EIOPA to acknowledge that the notion of "product complexity" (and hence not being fit for execution only according to IDD) will presumably have a very high impact on IBIPs through other existing regulations.</p> <p>Thus, absolute care has to be taken in order to avoid postulating principles (by means of Level 3 guidelines) which may leave products that have been established, understood and very well-known to many European insurance markets – such as life-insurance products with profit participation – as being deemed complex under IDD and hence suffer from this notion of complexity in a very different context. For this reason, the DAV does not agree with EIOPAs assessment that IBIPs are "often complicated and difficult to understand for consumers". In our view, especially the principles stated in the consultation paper's guidelines have to be scrutinised thoroughly, especially taking these possible side effects into account.</p>	<p>Please see the Feedback Statement.</p> <p>The statement referred to has been revised in the Impact Assessment.</p>
C 35.		Question 1	Confidential comment.	

36.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Question 1	For the sake of investor protection, we believe that for all types of IBIPs the assessment of appropriateness shall be required (i.e., execution-only sales shall not be admitted). Investor protection is paramount to any other considerations arising from the IDD. Whilst some certainty is provided in Article 30(3)(a)(i) by referring to financial instruments deemed non-complex under Directive 2014/65/EU, this is insufficient. Therefore, we agree with Policy Option 1.1 that Guidelines on “other non-complex insurance-based investments” should be issued. We feel that this reduces the risk of variations in interpretation occurring across the EU, for example, if NCAs and distributors of IBIPs are permitted to decide whether or not the insurance-based investment is complex or not.	Noted.
37.	EUROPEAN FINANCIAL PLANNING ASSOCIATION EFPA	Question 1	<p>EFPA agrees with the impact assessment described in the consultation paper, particularly regarding the assessment of complexity of certain insurance-based investment products, with the risk of different supervision implementation in Member States and thus, to end up with an inadequate level of consumer protection and risk of misselling.</p> <p>EFPA also agrees with EIOPA on the need to issue guidelines and to take the intermediate policy option of using ESMA guidelines as (a) starting point. We believe this approach to be the most appropriate for policyholders, industry (including professionals) and NCA’s. At a time of customers’ lack of confidence, when the main challenge is to boost it, consumer’s vulnerability is not an option.</p>	Noted.
38.	German Insurance Association (GDV)	Question 1	The GDV does not agree with EIOPA that IBIPs are “often complicated and difficult to understand for consumers”. Most of the products invest either in a collective pool with profit participation or in units of funds. Both mechanisms have been common in the German market for a long time and are well-known to the consumers. Also other features of an insurance contract such	The statement referred to has been revised in the Impact Assessment.

		<p>as maturity payment, surrender value or death benefits have been used for decades and are usually common and familiar to consumers.</p> <p>GDV welcomes that a consistent approach should be applied across different financial sectors so that a level playing field is achieved. However, German insurers fear that EIOPAs comparison is not always correct. For example, the investment in non-structured UCITS funds is deemed non-complex under MiFID II (see Example 1 on page 32) even if the respective UCITS funds invest in derivatives. In case of IBIPs, where the customer does not make an investment selection (e.g. a traditional life insurance product with profit participation) and the insurer invests in some derivatives, such a product will be automatically regarded as complex, unless surrender and maturity value are guaranteed.</p> <p>Article 30(3)(a)(i) is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. Products where the investment is done by the insurer who is subject to a very strong prudent person principle should, therefore, also fall into the scope of Guideline 1.</p> <p>Insurance undertakings are obliged under the Solvency II regime to invest all their assets in accordance with the prudent person principle, for which there are a number of qualitative requirements. Under the prudent person principle insurers may only invest in assets the risks of which they can properly identify, measure, monitor, manage and control. They have to ensure that their corresponding obligations can be fulfilled at all times. So they have to choose carefully the type, scope and quality of the coverage and have to act in the best interests of the policyholders. In addition, all assets must be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole. According to the EIOPA Guidelines on System of Governance undertakings have to establish an investment risk management policy, in which the undertakings have to establish the level of</p>	<p>EIOPA has aimed for appropriate consistency with the comparable rules for UCITS as well as other MiFID investment products, whilst also reflecting the wide range of different types of IBIPs available in different Member States.</p> <p>EIOPA has deleted some of the explanatory text referring to the interpretation of Article 30(3)(a)(i) of the IDD. This was not considered to be within the scope of the Guidelines on structures which may be difficult for the customer to understand.</p> <p>Whilst these requirements have been borne in mind, the fact that insurers are subject to prudential and conduct of business regulations and disclosure requirements does not per se mean that an IBIP does not contain a structure which may be difficult for the customer to understand the risks involved.</p>
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			<p>security that they are aiming for with regard to the whole portfolio of assets and outline how they plan to achieve this. The insurer has to explain in this investment risk management policy that the undertaking assesses the financial market environment and takes this into consideration accordingly. In addition, insurers must prepare an internal schedule of investments, which should contain quantitative limits for investments and exposures, including sovereign exposures. The financial market environment has to be understood in terms of both general conditions as well as current developments and regulatory changes. Even these few examples of the requirements which insurers have to fulfil when engaging in investment activity show clearly, that the asset allocation of insurers is very strictly regulated.</p> <p>To ensure a proper level playing field, it is necessary that investments made and managed by the insurers are not deemed complex (currently, this is only provided for products that guarantee the sum of paid in contributions minus legitimate costs at all times, as in EIOPA-17/048, page 77 criterion (a)). The proposed wording would inevitably lead to investment restrictions on insurers: in order to offer non-complex products insurers would refrain from investing in e.g. long-term investments such as infrastructure and other alternative investments which do not fall within non-complex MiFID instruments. Such a restriction of the investment horizon in turn would make it more difficult to ensure the security, quality, liquidity and profitability of the portfolio as a whole. Furthermore, consumers would not benefit from yields of long-term investments. Thus, such collective investments of insurers should also be addressed as investment according to Article 30(3)(a)(i).</p> <p>Finally, German insurance urge EIOPA to treat complexity in a much broader context. Not only does it play a role in a so-called "execution-only" distribution of IBIPs, but it is also relevant in other fields. For example, according to the PRIIPs Regulation complex products will receive a comprehension alert. Moreover, also the product oversight and governance rules in the IDD currently depend on the complexity of an IBIP.</p>	<p>The Guidelines do not restrict the investment decisions of the insurer which are governed by the Solvency II prudent person principle. The Guidelines address whether the features of the product, and in particular the factors that determine the maturity, surrender value or pay out, can be understood by the customer.</p> <p>Please see the Feedback Statement.</p>
39.	Insurance	Question 1	Do you have any comments on the Impact Assessment?	

	Europe		<p>Insurance Europe does not share EIOPA’s assessment that IBIPs are “often complicated and difficult to understand for consumers”. Most IBIPs invest either in a collective pool with profit participation or in units of funds.</p> <p>Insurance Europe welcomes that a consistent approach should be applied across different financial sectors so that a level playing field is achieved. However, Insurance Europe fears that EIOPA’s comparison is not always correct. For example, the investment in non-structured UCITS funds is deemed non-complex under MiFID II (see example 1 on page 32) even if the respective UCITS funds invest in derivatives. In the case of IBIPs, where the customer does not make an investment selection and the insurer invests in some derivatives (as in example 9 on page 33), such a product will be automatically regarded as complex, unless the sum of paid-in contributions (minus costs) is guaranteed at surrender and maturity (as in example 11 on page 33).</p> <p>This is due to the fact that EIOPA in our view wrongly assesses the scope of Article 30(3)(a)(i): it is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is therefore not absorbed by the expertise of a professional investor who is subject to supervisory regulation. Products where the investment is done by the insurer who is subject to a very strong prudent person principle should therefore fall into the scope of Guideline 1: insurance undertakings are obliged under the Solvency II regime to invest all their assets in accordance with the prudent person principle, for which there are a number of qualitative requirements. Under the prudent person principle insurers may only invest in assets the risks of which they can properly identify, measure, monitor, manage and control. They have to ensure that their corresponding obligations can be fulfilled at all times. Thus, they have to carefully choose the type, scope and quality of the coverage, and act in the best interests of the policyholders.</p>	<p>The statement referred to has been revised in the Impact Assessment.</p> <p>EIOPA has aimed for appropriate consistency with the comparable rules for UCITS as well as other MiFID investment products, whilst also reflecting the wide range of different types of IBIPs available in different Member States.</p> <p>EIOPA has deleted some of the explanatory text referring to the interpretation of Article 30(3)(a)(i) of the IDD. This was not considered to be within the scope of the Guidelines on structures which may be difficult for the customer to understand.</p>
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			<p>To ensure a proper level playing field, it is necessary that investments made and managed by insurers are not deemed complex per se (currently, this is only provided for products that guarantee the sum of paid in contributions minus legitimate costs at all times, as in criterion (a) on page 77). Otherwise, this would inevitably lead to investment restriction on insurers: in order to offer non-complex products insurers would refrain from investing in eg long-term investments such as infrastructure and other alternative investments which do not fall within non-complex MiFID instruments. Such a restriction of the investment horizon in turn would make it more difficult to ensure the security, quality, liquidity and profitability of the portfolio as a whole. Thus, such own investments of insurers should also be addressed in investments according to Article 30(3)(a)(i).</p> <p>Furthermore, we fear that EIOPA fails to acknowledge the adverse effects that these restrictive measures could have on the market. By making sales of IBIPs more restrictive, EIOPA risks to limit access to such products for consumers, and that insurers may be forced to change their product design and investment strategies.</p>	<p>The Guidelines do not restrict the investment decisions of the insurer which are governed by the Solvency II prudent person principle. The Guidelines address whether the features of the product, and in particular the factors that determine the maturity, surrender value or pay out, can be understood by the customer.</p> <p>The Impact Assessment considers the benefits and costs of different options including the potential impact on the availability or access to products.</p>
40.	Intesa Sanpaolo	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>	<p>The Guidelines specify which criteria need to be satisfied depending on whether a IBIP falls within the scope of point (i) or point (ii) of Article 30(3)(a).</p>
41.	Investment and Life Assurance Group (ILAG)	Question 1	<p>Whilst we note the rationale for your proposals, as UK users of the market option 1.2, not issuing guidelines for other non-complex products, is more suitable for UK firms. This option provides more flexibility at national level, whereas option 1.1 would be more attractive for a member state where the market is still developing, and consumers might need extra protection.</p>	<p>As explained in the Impact Assessment EIOPA considered not issuing the Guidelines or issuing very general criteria was not preferred due to the risk of divergent approaches</p>

			<p>For Policy Options 2.1, 2.2 and 2.3, we understand option 2.2, using the MiFID Guidelines, is preferred, as it achieves consistency between the two Directives.</p> <p>However, option 2.3, allowing very general criteria regarding products is the most attractive for the UK market, as it allows considerable discretion to national Governments.</p> <p>Complexity, in isolation, is not detrimental to consumers, the danger is that consumers do not understand the risks they are exposed to and can't afford to take. Ensuring consumers understand the risks associated with the product they are buying is essential, but providing information on every detail of the product is not likely to produce understanding.</p>	across Member States.
42.	IRSG	Question 1	<p>The impact assessment seems to be very complete. On the basis of the analysis carried out and of the references made to MIFID 2 and the PRIIP's regulation we can understand and approve the choices made among the policy options. However, we caution about the use of the wording « difficult to understand » which can not be precisely defined. Additionally, the statement in which EIOPA says that most IBIPs products are complicated and difficult to understand for customers can be questioned too. Most IBIPs products sold today (e.g.traditional guaranteed insurance products) are not complex for the consumer. Also, the reasons why EIOPA should retain the ESMA Guidelines on debt instruments as a starting point are not convincing and there is a big difference between debt instruments and shares or UCITS. We are surprised that EIOPA does not seek to develop its own product complexity criteria. There could be a case for a fourth option: Policy option 2.4 :</p> <p style="text-align: center;">Criteria developed by EIOPA.</p>	<p>EIOPA has revised the statement referred to in the Impact Assessment.</p> <p>Whilst ESMA's Guidelines were taken as a starting point, EIOPA has carefully considered how the criteria should be adopted to be appropriate for the insurance sector</p>
C 43.		Question 1	Confidential comment	
44.	OP Financial Group	Question 1	We welcome the Impact Assessment in EIOPA's consultation paper on draft guidelines. EIOPA has thoroughly analysed the key policy questions and	EIOPA has aimed for appropriate consistency with

			policy options in the Impact Assessment. The costs and benefits have also been assessed carefully. However, because of the differences in IDD and MiFID II, the state of affairs is that insurance-based investment products will not be treated under the same rules than other investment products; hence, the level playing field cannot be reached in this connection.	MiFID II whilst also recognising the differences between the two frameworks.
45.	Standard Life UK	Question 1	Do you have any comments on the Impact Assessment? No comment.	
46.	Allianz SE	Question 2	<input type="checkbox"/> We see rising importance of execution only acquisition of financial products for the digital native generation due to online sales channel. Although advice can be provided online, many online customers are used to easy and fast solutions and might not always be interested in a full suitability assessment. <input type="checkbox"/> Complexity label has implication above and beyond execution only <ul style="list-style-type: none"> o It triggers the PRIIP comprehension alert o Since the term complexity is often used in everyday language this will often be misunderstood. Consumers or even intermediaries might mistake the complexity label as indicating a more risky product – while the regulatory intent is to preserve these products on advisory sales channels. o It is a term also often used in legal texts. Even the EIOPA technical advice for IDD contains the word complexity in several instances where non-IBIPs are concerned. 	<p>As required by IDD, execution-only sales are only possible for non-complex IBIPs.</p> <p>The comprehension alert required by the PRIIPs Regulation does not use the term “complexity”.</p>
47.	ANASF – Associazione Nazionale Consulenti Finanzia	Question 2	As we explain in our answer to Q1, execution-only sales of IBIPs shall not be admitted for the sake of investor protection.	Noted.
48.	Association of British Insurers	Question 2	As EIOPA correctly notes in its CP, certain customers are interested in receiving execution only services, without considering it necessary to go through a more complex sales journey including questions regarding their financial knowledge and experience. Execution-only sales can therefore be a	Please see the feedback statement. It can also be added that the Guidelines are considered to be technology

			<p>convenient process for customers who have a sufficient knowledge of financial markets and are able to make their own investment choices – as the CP also acknowledges. Furthermore, some of the product mechanisms taken into account by the CP have been common for decades, meaning that consumers are likely to have previous experience of these. It is also crucial to note that consumers may have received advice from a non-regulated financial services provider, such as an accountant.</p> <p>As the demands and needs of customers are considered in advised, non-advised, and execution-only sales journeys, it is crucial to allow customers with a high level of financial literacy to make their own decisions, and to allow insurers to distribute their products through a range of channels. Consumers increasingly turn to digital channels to purchase goods and services across the UK and the EU. Eurostat¹ shows that 11% of financial services products such as shares and insurance were purchased online, against a background of some 65% of EU internet users shopping online in 2015. Internal analysis by members shows that 44% of customers would prefer to buy insurance and investment products online in the UK, with only 21% preferring not to. These consumer preferences should not be neglected. With the number of online sales increasing year on year, it is therefore vital not to put in place unnecessary restrictions on distribution channels that would limit innovation in this field. As digital distribution evolves, proportionate and technology neutral regulation is necessary to mirror consumer demands, providing for execution-only and non-advised sales.</p> <p>¹ http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals#Clothes_and_sports_goods_predominate_in_online_purchases</p>	<p>neutral. They do not address whether products should be sold online or not, but whether or not an appropriateness or suitability assessment should be undertaken.</p>
49.	Association of Financial Mutuals (AFM)	Question 2	<p>Ultimately, we would be concerned if providers were willing to continue distributing products, either directly or through intermediaries, if those products did not meet the demands and needs of the customer.</p>	<p>The demands and needs test needs to be carried out for all sales of insurance contracts.</p>
50.	Association of	Question 2	<p>As alluded to in the Impact Assessment, Regulators need to keep in mind</p>	<p>As stated in the Impact</p>

	International Life Offices AILO		<p>that consumers should take responsibility for their own actions and, so far as possible, have freedom to decide how they purchase IBIPs. That said, distributors and providers must remain free to decide whether or not to permit execution only sales.</p> <p>It is likely that with increasing digitalisation of financial services certain consumers will be keen to purchase products on line with no advice for two main reasons - comfort that there is sufficient disclosure of information to reach a considered opinion, and consequently avoiding paying for unnecessary advice. We would not foresee difficulty in providers complying with Article 20(1) by use of appropriate statements in the application process.</p> <p>It should be mentioned that the work of the Commission and EIOPA itself in terms of a pan European Personal Pension product envisages a low cost mass market product which would only be viable through internet sales.</p>	<p>Assessment, EIOPA considers that the Guidelines provide an appropriate balance between the need for a high level of consumer protection and not unduly restricting the investment choices for customers.</p>
51.	Assuralia	Question 2	<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 possibility to apply 'execution only' in the sales process (both when underwriting and executing transactions) will alleviate the sales process 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 process.</p>	<p>As stated in the Impact Assessment, EIOPA considers that the Guidelines provide an appropriate balance between the need for a high level of consumer protection and not unduly restricting the investment choices for customers.</p>
52.	Austrian Insurance Association VVO	Question 2	-	
53.	Better Finance	Question 2	<p>Our organization thought that, during EIOPA's public hearing on IDD Delegated Acts in September 2016 in Frankfurt, it had been clearly stated that there is a clear separation of, on the one hand, the tests of the demands and the needs and, on the other hand, the suitability and appropriateness assessment.</p> <p>The requirement in Article 20 (1) of the IDD for the distribution to specify the</p>	<p>As stated in the Impact Assessment, EIOPA considers that the Guidelines provide an appropriate balance between the need for a high level of consumer protection and not unduly restricting the</p>

			<p>demands and needs of the customer aims at the basic analysis of insurance risk coverage of the customer (health, disability, longevity, etc). This has not much to do with the investment options included in IBIPs, which should be analyzed by the suitability and appropriateness assessment. That is the reason why the possibility to sell an IBIP on an execution-only basis does not have any impact on the obligation for the demands and needs test by the distributors.</p> <p>However, in numerous IBIPs the additional suitability and appropriateness assessment will be omitted due to the fact that they may be sold via execution-only. Therefore, there will be no changes on what refers to the current mis-selling distribution practices of life-insurances. Consequently, the non-complex IBIPs approach must be as restrictive as possible. Like that a decrease of the risks of the product not being appropriate or suitable for a customer will be achieved.</p>	investment choices for customers.
54.	Bund der Versicherten BdV	Question 2	<p>We are badly astonished about this question. During EIOPA's public hearing on IDD Delegated Acts on 23 September 2016 in Frankfurt to which we assisted, it was convincingly pointed out that there is clear separation between the test of the demands and needs on the one hand and the suitability and appropriateness assessment on the other hand.</p> <p>The requirement in Article 20 (1) of the IDD for the distributor to specify the demands and needs of the customer aims at the basic analysis of insurance risk coverage of the customer (health, disability, liability, home as well as death, longevity, etc.). It has nothing to do with any kind of investment options additionally included only in IBIPs which shall be analyzed by the suitability and appropriateness assessment. That is why the possibility to sell an IBIP on an execution-only basis does not have any impact on the obligation for the demands and needs test by the distributors.</p> <p>But if for a large number of IBIPs the additional suitability and appropriateness assessment will be omitted, because they may be sold via execution-only, then there will be no change at all related to the current (mis-selling) distribution practices of life insurances. Consequently the approach to non-complex IBIPs must be as restrictive as possible in order to strongly reduce the not only potentially, but definitely higher risks of the</p>	As stated in the Impact Assessment, EIOPA considers that the Guidelines provide an appropriate balance between the need for a high level of consumer protection and not unduly restricting the investment choices for customers.

			product not being suitable or appropriate for the customer (cf. our comment on Q1 above and our comments on Q15 and Q16 for EIOPA's CP on IDD possible Delegated Acts, October 2016).	
55.	CNCIF	Question 2	As mentioned above, execution-only sales of IBIPS shall not be admitted.	
56.	DAV German Actuarial Society	Question 2	<p>In our opinion, regardless the additional demands and needs test, execution only sales might currently play a minor role in some markets. However, especially considering the generation of "digital natives", the internet could become a more important sales channel for insurance-based investment products. While it is possible to give advice online we also expect rising demand for execution only sales from digital natives. Therefore, it is important that the demand and needs test does not impede the execution-only distribution of IBIPs.</p> <p>Summarising, in the mid- to long-term the market share of products distributed by means of execution-only may tremendously grow. This potential market growth however implies a thoroughly elaborated approach on the definition of "product complexity" and the demands and needs test now.</p> <p>Finally, the DAV urges EIOPA to treat complexity in a much broader context than the mere question of execution-only sales of these products. Other possibly far more reaching consequences should be taken into consideration. For example, complex IBIPs will be labelled with a comprehension alert under PRIIPs Regulation, which originally had a much narrower scope for products which cannot be sufficiently comprehensibly described through the PRIIPs KID. Furthermore the complexity of products is a key factor with regard to the scope of the obligations proposed by the current technical advice on product oversight and governance.</p>	Please see the Feedback Statement.
C 57.		Question 2	Confidential comment	

58.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Question 2	We do not feel that IBIPs can be sold on an "execution-only" basis, under the provisions of Article 30(3) of the IDD for the reasons stated above.	Noted.
59.	EUROPEAN FINANCIAL PLANNING ASSOCIATION EFPA	Question 2	Execution-only sales of insurance-based investment products will necessarily have a residual role. Moreover, it will be a high compliance risk within this residual scope.	Noted.
60.	German Insurance Association (GDV)	Question 2	The GDV urges EIOPA to treat complexity in a much broader context than the mere question of execution-only sales of these products. Other possibly more far-reaching consequences should be taken into consideration. For example, complex IBIPs will automatically be labelled with a comprehension alert under PRIIPs Regulation. However, the PRIIPs Regulation originally had a much narrower scope for the comprehension alert that was supposed to include products which cannot be sufficiently clearly described through the PRIIPs KID. Furthermore the complexity of products is a factor with regard to the extent of the obligations proposed by the technical advice on product oversight and governance.	Please see the Feedback Statement
61.	Institute and Faculty of Actuaries	Question 2	Question: What role do you consider that execution only sales will have in the distribution of insurancebased investment products in view of the restrictions in Article 30(3)(a) of the IDD, the fact that the provisions in Article 20(1) of the IDD	The demands and needs test needs to be carried out for all sales of insurance contracts.

			<p>still need to be satisfied regarding the specification of the customer's demands and needs, and the potentially higher risks of the product not being suitable or appropriate for the customer?</p> <p>The requirement for insurers to ensure that client demands and needs are met for 'non-complex' products is likely to result in a complex 'on-boarding' process for clients and insurers, even though an advice process is not required. This could discourage execution-only sales, which some customers may well prefer.</p>	
62.	Insurance Europe	Question 2	<p>What role do you consider that execution-only sales will have in the distribution of insurance-based investment products in view of the restrictions in Article 30(3)(a) of the IDD, the fact that the provisions in Article 20(1) of the IDD still need to be satisfied regarding the specification of the customer's demands and needs, and the potentially higher risks of the product not being suitable or appropriate for the customer?</p> <p>As EIOPA acknowledges in the consultation paper, 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 possibility to apply 'execution-only' in the sales process (both when underwriting and executing transactions) will make the sales process more convenient for the customer concerned. In addition, execution-only may contribute to foster the development of internet sales, as this distribution channel typically may benefit from a simplified sales process.</p> <p>Insurance Europe would also urge EIOPA to treat complexity in a much broader context than the mere question of execution-only sales. Further, possibly more far-reaching, consequences should be taken into consideration. For example, complex IBIPs will automatically be labelled with</p>	<p>Please see the Feedback Statement.</p>

			<p>a comprehension alert under the PRIIPs Regulation. However, the PRIIPs Regulation originally had a much narrower scope for the comprehension alert (see the criteria under recital (18)). Furthermore, the complexity of products is a key factor with regard to the extent of the obligations proposed by the provisions on product oversight and governance in EIOPA's technical advice on the IDD delegated acts.</p> <p>Consumers increasingly turn to digital channels to purchase goods and services across the EU. The execution-only sales journey plays an important part in ensuring that consumers can purchase products through the digital channel. Thus, it is not simply a question of the current status quo but it is also important to give sufficient consideration to the general trend towards more online sales in the future. This development, as well as the element of choice for consumers, should not be damaged by putting in place overly restrictive measures that would significantly impede the execution-only option.</p>	
63.	Intesa Sanpaolo	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; - 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. 	<p>IDD requires that the assessment of a product's complexity takes into account the overall contractual structure and not only the underlying financial instruments to which it provides investment exposure.</p>

			<p>management cost structure).</p> <p>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.</p> <p>In particular:</p> <ul style="list-style-type: none"> - 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. <p>We think that the first option should be supported.</p> <p>In particular, given that – in these cases - it is not possible to pursue the sale under execution only:</p> <ul style="list-style-type: none"> - 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. 	
64.	Investment and Life Assurance Group (ILAG)	Question 2	<p>Execution only sales can and should be permitted, but should not be allowed if the provider can make material variations to the contract. Variations of this nature would include not permitting surrender, only allowing surrender on disadvantageous terms, using complex mechanisms to determine policy value or operating a complex charging structure.</p> <p>It is important to note that customers purchasing on an execution only basis,</p>	<p>These elements were considered during the development of the Guidelines.</p>

			<p>will have already decided what they want to do and are, therefore, not open to alternative options.</p> <p>Execution only consumers want their provider to affect their wishes having already decided what their demands and needs are. We do not see the benefit of completing Demands and Needs statements in these circumstances. Given the restrictions on which products can be sold on an execution only basis, we do not believe this action would increase the risk for this cohort of consumers.</p> <p>A consequence of these provisions is that distributing products on an execution-only basis will be more expensive. These costs are likely to be passed on to end customer or incurred by providers. Firms may be less likely to distribute some products by this means, which will reduce overall choice.</p>	The demands and needs test needs to be carried out for all sales of insurance contracts.
65.	IRSG	Question 2	<p>Execution-only sales should continue to have a role in the distribution of IBIPs. There is no reason to prevent an investor from making his or her own choice among different financial products and investing in that choice, as long as he or she has the capacity to understand its features. The warnings provided in Art 30 (2) and (3) (c) are sufficient to allow this.</p>	The Guidelines do not intend to prohibit execution-only sales.
C 66.		Question 2	Confidential comment.	
67.	OP Financial Group	Question 2	<p>In our view, the unit-linked insurance are similar to other financial instruments deemed non-complex under MiFID II (especially UCITS-funds) and they should be treated under the same rules. However, even if a Member State chooses to allow the execution-only sale of insurance-based investment products, still the additional requirements under IDD has to be taken into account which makes it impossible to treat those similar products in the same way.</p> <p>The contracts in accordance with Article 30(a)(i) of IDD, i.e. contracts which provide investment exposure to the financial instruments deemed non-</p>	The demands and needs test needs to be carried out for all sales of insurance contracts.

			<p>complex under MiFID II could easily be distributed via execution-only. We do not see that there would be high risk that this kind of product was not suitable or appropriate for certain customers. However, we see that the additional IDD Article 20(1) requirement applied on investment products is a restriction that can have a negative impact on the business development. This could be especially negative on the development of digital channels.</p> <p>Consequently, taking into account the very restrictive criteria, we consider that the execution-only sales of insurance-based investment products will not play a big role in comparison to other similar packaged investment products.</p>	
68.	Standard Life UK	Question 2	<p>What role do you consider that execution-only sales will have in the distribution of insurance-based investment products in view of the restrictions in Article 30(3)(a) of the IDD, the fact that the provisions in Article 20(1) of the IDD still need to be satisfied regarding the specification of the customer's demands and needs, and the potentially higher risks of the product not being suitable or appropriate for the customer?</p> <p>We expect to see a reduction in the volume of execution-only sales of insurance-based investment products (IBIPs) and a potential increase in the number of customers going through an appropriateness assessment.</p>	Noted.
69.	Actuarial Association of Europe	Question 3	<p>According to our understanding, the general account seems to be addressed by the directive through the article 30.3.a(ii) and implicitly excluded from the scope of article 30.3.a(i). From an actuarial point of view, there is no reason why an insurance company's general (cover) asset in which retail investors do not invest directly should be generally regarded as more complex for customers than their UCITS funds counterpart. The same analysis prevails for similar investment options specific to insurance contracts, such as internal or ring fenced funds, which should be eligible under 30.3.a(i). This would ensure a level playing field with regard to product complexity between banks, asset managers and insurance companies.</p>	This issue concerns the interpretation of the IDD rather than the content of the guidelines.

			<p>More generally, in line with Question 6, we think that the complexity of products relying on the general account should be assessed by taking into account the fact that they are often widespread products, that are well-known and well understood by consumers in their markets, and that their guarantee, even if it relates for some products only to the maturity value, should relegate the potential complexity of their management to a lower level. In such cases the financial instruments invested into by the insurer should not be deemed as relevant criteria.</p>	<p>The issue was considered in the context of EIOPA's technical advice on this topic.</p>
70.	ANASF - Associazione Nazionale Consulenti Finanzia	Question 3	<p>As we explain in our answer to Q1, execution-only sales of IBIPs shall not be admitted for the sake of investor protection.</p>	<p>Please see EIOPA's response to that question.</p>
71.	Association of British Insurers	Question 3	<p>ABI members currently believe that virtually all IBIPs would be caught by either Article 30(3)(a)(i) or Article 30(3)(a)(ii) due to the EIOPA Technical Advice on other non-complex IBIPs, and the proposals within this CP. We explain why we believe this approach is too restrictive with possible adverse effects in our other answers to this Consultation.</p> <p>A main concern is that products which only link to insured funds could still be deemed complex. It is also unlikely that any non-MIFID II financial instruments that are available through an IBIP such as property, deposit accounts (other than structured deposits) and gold etc. would be considered non-complex due to Article 30 (3)(a)(i).</p>	<p>Please see EIOPA's responses to your specific comments.</p> <p>As stated in Article 30(3) of the IDD and in the explanatory text to the guidelines, where a contract does not comply with the conditions in point (a)(i), it may still fall within point (a)(ii).</p>
72.	Association of Financial Mutuals (AFM)	Question 3	<p>In the UK we are expecting the Financial Conduct Authority to consult on this in its second IDD consultation in July, and will have a better view than of how EIOPA's guidelines will be interpreted for the UK market.</p> <p>We generally take from the EIOPA consultation that the key to recognising complexity is whether the product is likely to be understood by the customer. The guidelines and examples provided by the consultation recognise that it is the general terms and conditions of the product- and the implications of its</p>	<p>Noted. EIOPA has made some amendments in the final Guidelines with a view to clarifying how some of the provisions apply in the case of with-profits or profit sharing contracts.</p>

			<p>features- that are key in defining complexity. Hence EIOPA appears to conclude most with-profits products are likely to be non-complex, where there might be guarantees, clearly defined bonuses, and where they avoid investment in complex, structured derivatives, and clear charging structures.</p> <p>We are satisfied that the with-profits products offered by most AFM members, such as Tax Exempt Savings Plans and Holloway Income Protection meet these criteria (Holloway contracts are Income Protection products which provide pay bonuses sourced from unused premiums which are only available from a small number of UK friendly societies). This is because they invest in a combination of cash, bonds and equities, but exclude complex debt instruments and structured deposits.</p> <p>In the past the UK conduct supervisor has indicated they consider with-profits as at least partly opaque, due to their charging structure and the nature of performance, and have suggested this would be sufficient for them to be deemed complex under the terms of the IDD. We do not see evidence of this in EIOPA's paper, and will be keen to see the Financial Conduct Authority take this fully into account in its future implementation.</p>	
73.	Association of International Life Offices AILO	Question 3	Unit linked policies linked to MiFID II non-complex instruments within Article 30(3)(a)(i). Many with-profit contracts and others involving structured product/notes linkage, Article 30(3)(a)(ii)	Noted.
74.	Assuralia	Question 3	<p>In principle, article 30 (3) (a) itself excludes only a part 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-products, by sticking as much as possible to the MiFID-interpretation of complex and non-complex products. Assuralia is of the opinion that ideally only underlying structured funds of a unit-linked life insurance product 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>	EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.

75.	Austrian Insurance Association VVO	Question 3	<p>In principle, Article 30(3)(a) of the IDD excludes only a part of the IBIPs market from 'execution only' sales by labelling them as complex, unless level 2 (delegated acts) and level 3 (guidelines) impose a very restrictive interpretation of this article.</p> <p>It is important that a level playing field is maintained with distributors of MiFID-products, by sticking as much as possible to the MiFID-interpretation of complex and non-complex products. The VVO is of the opinion that ideally only underlying structured funds of a unit-linked life insurance product 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> <p>We believe that products where the customer does not make an investment selection with regard to individual financial instruments, but where the investment is done by the insurer who is subject to a very strong prudent person principle should fall into the scope of Article 30(3)(a)(i).</p>	EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.
76.	Better Finance	Question 3	<p>Better Finance agrees with EIOPA's statement on the fact that "IDD indicates that complexity in relation to insurance_based investment products stems from two elements: (1) the nature of the exposure to market fluctuations or more specifically the nature of the financial instruments to which an insurance_based investment product provides exposure;; (2) the structure or features of the contract with the customer, for example governing the charges to be levied by the insurance undertaking to manage the investment". Our association, as EIOPA, believes that the complexity to IBIP stem from those two elements.</p> <p>Traditional capital life-insurance contracts are the only contracts where the customer cannot select the investment strategy and the insurers assures an interest rate on the investment part of the premium. In this respect, the individual knowledge and experience is not directly important. On the contrary, the comprehensive disclosure of costs which strongly reduce the investment part of the premium is all the more necessary.</p>	Noted.

			Our organization would like to stress that we believe there are very few “other non-complex insurance-based investment products” following to Article 30 (3, a, ii). The “execution-only” presumption does not fit for any unit – or index linked IBIP currently offered.	
77.	Bund der Versicherten BdV	Question 3	<p>We agree upon EIOPA’s opinion that the complexity to IBIPs stem from two elements: “the nature of the exposure to market fluctuations” and “the structure or features of the contract with the customer... governing the charges” (cf. CP, p. 20, no. 2.9). That is why, with regard to the scope of Article 30(3)(a)(i), we emphasize again our comment on Q20 for EIOPA’s CP on IDD possible Delegated Acts, October 2016:</p> <p>Only related to traditional capital life-insurance contracts, where the customer cannot choose the investment strategy and therefore the insurers guarantees an interest rate on the investment part of the premium, the individual knowledge and experience of the customer related to investment strategies is not directly relevant. Instead of this, the comprehensive disclosure of costs which strongly reduce the investment part of the premium is all the more necessary.</p> <p>Again we stress that from our perspective there are no “other non-complex insurance based investment products” following to Article 30(3)(a)(ii). The “execution-only”-presumption does not fit for any unit- or index linked IBIP currently offered – at least - on the German market (including those from Anglo-Saxon manufacturers), because customers have always multiple choices with regard to their investment options while and after concluding the contract.</p>	Noted.
78.	CNCIF	Question 3	As mentioned above, execution-only sales of IBIPS shall not be admitted.	Please see the responses above.
79.	DAV German Actuarial Society	Question 3	From an actuarial point of view, there is no reason why an insurance company’s general (cover) assets in which retail investors do not invest directly should be generally regarded as more complex for customers than their UCITS funds counterpart. In our opinion, article 30(3)(a)(i) should additionally take into account if the underlying investment vehicle itself was not managed according to the general principles that protect customers and limit downside risk to a certain extent. This article is supposed to address products which provide only direct investment exposure to the financial	EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.

			instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. In such cases the financial instruments invested into by the insurer should not be taken into account if the overall investment ensures that there are no hidden risks for consumers. These investment principles could be based on the idea of e.g. ensuring the security, quality, liquidity and profitability of the underlying investment vehicle as a whole as the prudent person principle under Solvency II. This would ensure a level playing field on the notion of product complexity between banks, asset managers and insurance companies. Otherwise investment products covered by MiFID would receive a preferential treatment compared to insurance products.	
C 80.		Question 3	Confidential comment.	
81.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Question 3	We do not feel that IBIPs can be sold on an "execution-only" basis, under the provisions of Article 30(3) of the IDD for the reasons stated above.	Please see the responses above.
82.	EUROPEAN FINANCIAL PLANNING ASSOCIATION EFPA	Question 3	<p>Insurance-based investment products falling within the scope of Article 30(3)(a)(i) should mainly be those exposed to financial instruments deemed non-complex under MiFID II.</p> <p>Reference made to 'other non-complex insurance-based investment products' in Article 30(3)(a)(ii), constitutes a mere closing clause which aim is to allow financial engineering and flexibility under the NCA's supervision on a 'case-by-case' basis. Nevertheless, it is important to avoid the policyholder be put at risk by means of this closing clause. For instance, under this closing clause it would be possible to end up in a situation where distributors may choose the selling of the insurance-based investment products with capital not guaranteed at 100% at the maturity invested in equities or bonds on</p>	The criteria that EIOPA proposed in its technical advice on 'other non-complex IBIPs' as well as the criteria in these Guidelines seek to appropriately delineate the IBIPs that can be sold via execution-only.

			regulated markets, instead of investment funds with the same underlying investment assets.	
83.	German Insurance Association (GDV)	Question 3	<p>We believe that products where the customer does not make an investment selection with regard to individual financial instruments, but where the investment is done by the insurer who is subject to a very strong prudent person principle fall into the scope of Article 30(3)(a)(i). This article is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. In such cases the financial instruments invested into by the insurer shall not be taken into account since the overall investment ensures that there are no hidden risks for consumers. This is also the case for UCITS which on one hand may invest in complex instruments such as derivatives but on the other hand are still regarded as non-complex due to the overarching structure. Otherwise investment products covered by MiFID II would receive a preferential treatment compared to insurance products.</p> <p>In addition, this would inevitably lead to investment restriction on insurers: in order to offer non-complex products insurers would refrain from investing in e.g. long-term investments such as infrastructure and other alternative Investments which do not fall within non-complex MiFID instruments. Such a restriction of the investment horizon in turn would make it more difficult to ensure the security, quality, liquidity and profitability of the portfolio as a whole. Thus, the collective investments of an insurer should per se not be deemed complex.</p>	<p>EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.</p> <p>The Guidelines do not restrict the investment decisions of the insurer which are governed by the Solvency II prudent person principle. The Guidelines address whether the features of the product, and in particular the factors that determine the maturity, surrender value or pay out, can be understood by the customer.</p>
84.	Insurance Europe	Question 3	<p>What types of insurance-based investment products do you think could fall within the scope of Article 30(3)(a)(i) and which within the scope of Article 30(3)(a)(ii) of the IDD?</p> <p>In principle, Article 30(3)(a) of the IDD excludes only a part of the IBIPs</p>	

		<p>market from 'execution-only' sales by labelling them as complex, unless level 2 (delegated acts) and level 3 (guidelines) impose a very restrictive interpretation of this article.</p> <p>We believe that products where the customer does not make an investment selection with regard to individual financial instruments, but where the investment is done by the insurer who is subject to a very strong prudent person principle, fall into the scope Article 30(3)(a)(i). This article is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. In such cases, the financial instruments invested into by the insurer should not be taken into account if the overall investment ensures that there are no hidden risks for consumers. This is also the case for UCITS, which on the one hand may invest in complex instruments such as derivatives, but on the other hand are still regarded as non-complex due to the overarching structure. Otherwise, investment products covered by MiFID would receive a preferential treatment compared to insurance products which are not covered under MiFID II.</p> <p>This would inevitably lead to investment restriction on insurers: in order to offer non-complex products insurers would refrain from investing in eg long-term investments such as infrastructure and other alternative investments which do not fall within non-complex MiFID instruments. Such a restriction of the investment horizon in turn would make it more difficult to ensure the security, quality, liquidity and profitability of the portfolio as a whole. Thus, such own investments of insurers should per se not be deemed complex.</p>	<p>EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.</p> <p>The Guidelines do not restrict the investment decisions of the insurer which are governed by the Solvency II prudent person principle. The Guidelines address whether the features of the product, and in particular the factors that determine the maturity, surrender value or pay out, can be understood by the customer.</p>
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85.	Intesa Sanpaolo	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.	This point is addressed in the explanatory text to the Guidelines.
86.	IRSG	Question 3	<p>There are certain features of insurance savings products that are not complex and should not be discriminated against.</p> <p>1) Products where the surrender value and maturity value are different should not be automatically complex as is currently defined in the draft Delegated Acts. Firstly because this is not at all complex for a customer. For example customers are already very used to the concept that a train tickets may be fully flexible or may be changeable only before the specific journey date. Likewise it is a very simple concept to understand that a guarantee may apply only on the agreed maturity date and before that an early surrender will have a different (simple) value such as the value of the underlying assets. Secondly because forcing companies to have identical early surrender and maturity valuation rules goes against good risk and asset liability management and will make it more difficult for insurers to invest in long-term illiquid investments such as infrastructure.</p> <p>2) Products which invest in derivatives to mitigate risk (rather than create leverage and unpredictable outcomes) should not be defined as complex. Any product with guarantees may need to invest in derivatives which are therefore a fundamental feature of many insurance based savings products especially where those products provide risk mitigation features to customers. This does not of itself make the product complex.</p> <p>Again, the difficulty lies in the understanding of “a structure which makes it difficult for the customer to understand the risks involved”.</p> <p>In any case, it is essential that a level playing field is maintained with distributors of MiFID products, by sticking as much as possible to the MiFID interpretation of complex and non-complex products.</p>	<p>Please see the Feedback Statement regarding EIOPA’s technical advice on this topic.</p> <p>The product would need to be assessed against the relevant criteria in the Directive, delegated acts and these Guidelines.</p> <p>EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.</p>
C 87.		Question 3	Confidential comment	
88.	OP Financial	Question 3	We have available a wide range of various investment products of which	Noted.

	Group		<p>some of them fall within the scope of Article 30(a)(i) of IDD. Some of these unit-linked insurance products are now very popular. These contracts provide investment exposure to the financial instruments deemed non-complex under MiFID II and they do not incorporate a structure, which could make it difficult for the customer to understand the risks involved. We see that the unit-linked insurance are broadly similar to those investment products under MiFID II and they should not be considered more complex than other financial instruments.</p> <p>The cumulative criteria of EIOPA’s technical advice on other insurance-based investment products makes it difficult to find a product that would pass the non-complexity test under Article 30(a)(ii) of IDD.</p>	
89.	Standard Life UK	Question 3	<p>What types of insurance-based investment products do you think could fall within the scope of Article 30(3)(a)(i) and which within the scope of Article 30(3)(a)(ii) of the IDD?</p> <p>For Standard Life, it is our investment bonds – onshore and offshore bonds – that will fall within scope.</p>	Noted.
90.	Allianz SE	Question 4	<p><input type="checkbox"/> Guideline 1 basically just repeats and consolidates rules from levels 1 and 2.</p>	The Guideline is considered to be relevant for clarification purposes.
91.	ANASF Associazione Nazionale Consulenti Finanzia	- Question 4	<p>As outlined in our answer to Q1, execution-only sales of IBIPs shall not be admitted and this approach is already adhered to by the Italian regulator. In the event that other Member States choose to exercise the derogation under Article 30(3) of the IDD, and thereby allow for the execution-only sale of IBIPs, we believe that the following “product-based” principle shall be generally valid: the identification of complex and non-complex IBIPs shall not be merely based on the types of underlying financial instruments; rather, it shall be based on the content of the product. Indeed, all the features of the insurance product (and their interaction) result in the complex or non-</p>	As provided for in the IDD and these Guidelines, non-complex IBIPs should not incorporate a structure which makes it difficult for the customer to understand the risk involved.

			complex nature of the product itself: that is to say, the idea of considering only the underlying financial instruments is not enough, especially from the point of view of a thorough customer protection.	
92.	Association of British Insurers	Question 4	<p>We believe that it is necessary to aim for a level playing field between different regulatory regimes, to ensure that similar and competing financial products are governed by comparable regulatory provisions. To achieve a level playing field between the IDD and MiFID II, Guideline 1 should clarify that it is to be assessed at the level of the underlying fund for products where the customer bears the investment risk and not at product level. Otherwise, this could wrongly classify the majority of IBIPs as complex. Furthermore, focussing this Guideline on the structure of the underlying investment options helps ensure customers understand any associated risks resulting from the way the investment option is structured. We would therefore request that EIOPA clearly explains that Guideline 1 relates to the underlying investment options, not to the product structure.</p> <p>EIOPA should also acknowledge and reflect in its final guidelines that the use of derivatives can facilitate efficient portfolio management and reduce risks. The use of derivatives should not automatically make the product complex and Guideline 1 should be amended to reflect this. Like UCITS funds under MiFID II, funds using derivatives for effective portfolio management should be treated as non-complex. We propose that a further point is added to Guideline 1, stating that:</p> <p>'(d) derivative instruments that contribute to a reduction of risks, or facilitate efficient portfolio management.'</p> <p>Furthermore, we note that if there is exposure to a non-MIFID II financial instrument, it is for the product manufacturer to determine complexity. The ESMA Q&As for MIFID II complexity² provide that appropriateness tests are not required for non-MIFID financial instruments such as deposits, loans, mortgages and life insurance policies. Adding reference to this particular principle in Guideline 1 could be helpful.</p> <p>² https://www.esma.europa.eu/sites/default/files/library/2015/11/09_559.pdf</p>	<p>EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.</p> <p>Guideline 1 aims to clarify the relevant provisions to consider when determining whether a financial instrument is deemed non-complex under Directive 2014/65/EU.</p>

93.	Association of Financial Mutuals (AFM)	Question 4	<p>We agree with the approach taken in Guideline 1.</p> <p>As the consultation indicates, with-profits products leave some discretion for the insurer, but essentially invest in the same investments as lower risk unit-linked and index-linked contracts. We have undertaken analysis of with-profits contracts provided by mutual organisations in the UK, and compared that to: all with-profits insurers; with-profits provided by non-mutual insurers; 'balanced managed'/ 'mixed 40-85%' unit-linked funds; and 90-day deposit accounts.</p> <p>Through our analysis we can see that :</p> <ul style="list-style-type: none"> - There is a direct correlation between the investment performance cycle of with-profits and unitised products, which is as you would expect given the similarity of their underlying investment content ; - With-profits products smooth investment returns, meaning that part of the return is held back in good years to boost bonus rates in years where the return on underlying investments in low or negative, but over the long-term there is little or no effective difference in raw performance; - Ownership of the insurer though does have a significant impact on investment return: even though mutuals tend to take a more conservative approach to investment, the average return over 25 years to 2015 was 21% higher for a mutual than for a PLC insurer. Comparable data for 2014 (the last date this data was published), showed a mutual with-profits fund outperformed the average 40-85% unit-linked fund by 17% over the long-term, and the average 90-day deposit account by 53%. <p>(For more detail, see: http://www.financialmutuals.org/resources/mutually-yours-newsletter/with-profits-performance-review-2014.)</p> <p>These are therefore long-term trends and evidence that reinforce our view that where a customer invests in a with-profits product, they are not exposed to great investment risk. The nature of guarantee, as well as life cover provided and the locking-in of bonuses as part of the contract, all contribute</p>	Noted.
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			<p>to reduced uncertainty. Whilst the performance of the investment is not directly related to the performance of the underlying investment in any one period, in the long-term this is the case; and whilst the absence of instant valuations reduces immediate transparency, the provider has a clear investment mandate to work to and can only deviate from this with prior agreement of policyholders.</p> <p>In short, with-profits works to simplify investments for customers, and we do not share the views of UK supervisors that they are more complex.</p>	
94.	Association of International Life Offices AILO	Question 4	No	
95.	Assuralia	Question 4	<p>Assuralia understands that the exposure to an underlying complex product should be evaluated only in case of a direct exposure 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>	<p>Guideline 1 aims to clarify the relevant provisions to consider when determining whether a financial instrument is deemed non-complex under Directive 2014/65/EU.</p>
96.	Austrian	Question 4	Taking into account our answer to question 3 the statement in number 2.14	This statement has been

	Insurance Association VVO		of the explanatory text should be restricted to those cases where the provider is not subject to the prudent person principle under Solvency II. Otherwise investment products covered by MiFID would receive a preferential treatment compared to insurance products which are not covered in the MiFID II.	deleted from the final version of the Guidelines.
97.	Better Finance	Question 4	<p>Based on the examples given on page 21, we find it will be very complicated for any type of IBIP not to be considered a non-complex. Therefore, we strongly disagree with this greatly broad definition for non-complexity, which may exclude ""hybrid"" IBIPs where several investment exposures are simultaneously linked in one insurance contract.</p> <p>On another note, although in the non-hybrid IBIPs the customers do not know which part of the premiums it is going to be invested to the performance of the underlying investment product, with or without guarantee mechanisms. Therefore, the detriment is clear and can be measured by making the difference between calculated and actual costs, because the investment part of the premium (and consequently possible rewards) will be inevitably be reduced.</p> <p>Based on our experiences guarantee mechanisms apply only for maturity values but not for surrender values. That is why we deem the assumptions made under 2.14 are at least partly wrong.</p>	<p>EIOPA does not agree that the definition of complexity is overly broad.</p> <p>The explanations on page 21 were not intended to state that the types of products referred to would necessarily be deemed non-complex. In all cases they would need to satisfy the relevant criteria in the remainder of the Guidelines. Nevertheless, this section of the explanatory text has been revised in the final Guidelines.</p>
98.	Bund der Versicherten Bdv	Question 4	<p>Following to the examples outlined in CP, p. 21, mainly no. 2.13 and 2.14, it will nearly be impossible for any kind of IBIP NOT to be considered as non-complex. We definitely reject this extremely broad definition of non-complexity which may exclude only ""hybrid"" IBIPs where several investment exposures are simultaneously linked in one insurance contract.</p> <p>Maybe if an IBIP includes only one underlying investment product (for example only one UCITs fund), it might be considered as non-complex. But is this assumption realistic under the current market conditions? Usually life insurers make strong advertisement explicitly with reference to the</p>	<p>EIOPA does not agree that the definition of complexity is overly broad.</p> <p>The explanations on page 21 were not intended to state that the types of products referred to would necessarily be deemed non-complex. In all cases they would need to satisfy the relevant criteria in the remainder of the</p>

			<p>possibilities of choice among several investment funds for the policyholders.</p> <p>Additionally even in the case of non-hybrid IBIPs the customers still do not know, which is the part of their premiums which will be invested and consequently exposed to the performance of the underlying investment product (with or without any guarantee mechanisms). Detrimental impact for customers results from any difference between calculated and actual costs, because the investment part of the premium (and consequently possible rewards) will inevitably be reduced. In Germany the regional court of Cologne (Oberlandesgericht Köln) recently forbade any additional costs not being disclosed in the insurance contract before. (cf. our comment on Q14 for EIOPA's CP on IDD possible Delegated Acts, October 2016).</p> <p>From our experiences guarantee mechanisms apply only for maturity values but not for surrender values. That is why we esteem the assumptions made under no. 2.14 are at least partly wrong (cf. our comment on Q3 above).</p>	<p>Guidelines. Nevertheless, this section of the explanatory text has been revised in the final Guidelines.</p>
99.	CNCIF	Question 4	<p>As mentioned above, execution-only sales of IBIPS shall not be admitted.</p>	<p>Please the responses above.</p>
100.	DAV German Actuarial Society	Question 4	<p>We understand that Guideline 1 closely follows the requirements of Levels 1 and 2. However we think there should be a level playing field between investment and insurance products. Often the pooled investment contains less risk for consumers than the average UCITS fund. The benefits are easy to understand even if the actuarial calculation itself might appear complicated.</p> <p>We do not agree with the assessment in Guideline 1. Article 30(3)(a)(i) is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves. Products where the customer does not make an investment selection and where the investment is done by the insurer and is subject to a very strong prudent person principle should, therefore, be included in Guideline 1. In such cases indirect investments should not be considered separately if the overall investment ensures that there are no hidden investment risks for consumers. This is also the case for UCITS which on one hand may invest in complex instruments such as derivatives but on</p>	<p>EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.</p>

			<p>the other hand are still regarded as non-complex due to the overarching structure. Therefore, (2.14) should only be restricted to those cases where the provider is not subject to the prudent person principle under Solvency II. Otherwise investment products covered by MiFID would receive a preferential treatment compared to insurance products which are not covered in the MiFID II. Furthermore, the current provisions would also influence the investment of insurers, e.g. impede the investment in alternative investments such as infrastructure. This would go beyond the scope of a Directive on distribution of insurance products.</p> <p>Furthermore, EIOPA notes itself that products with profit participation schemes may provide additional benefits to consumers and seems keen on the further development of collective profit sharing schemes: Gabriel Bernardino says in his speech at the Finanstilsynet Conference: "Pensions when the guarantees disappear" from 9 March 2017: « Products could allow the pooling of investments with the smoothing of returns across members of the pool, so that all members benefit from average long-term returns of the fund and are protected from extremely negative outcomes in stressed market situations. » This statement conflicts with the envisaged notion of complexity.</p>	<p>As stated in the explanatory text, the existence of profit participation mechanisms would not necessarily result in an IBIP being deemed complex. EIOPA does not therefore see a conflict.</p>
C 101.		Question 4	Confidential comment.	
102.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Question 4	<p>We do not feel that IBIPs can be sold on an "execution-only" basis, under the provisions of Article 30(3) of the IDD.</p> <p>However, in the event that Member States are allowed to derogate from the obligations of Article 30(2) of the IDD, it is essential that the Guidelines on "other non-complex insurance-based investments" are sufficiently robust to ensure the highest level of consumer protection necessary. We believe that the following "product-based" principle shall be generally valid: the identification of complex and non-complex IBIPs shall not be merely based on the types of underlying financial instruments; rather, it shall be based on the content of the product. Indeed, all the features of the insurance product (and their interaction) result in the complex or non-complex nature of the product itself; that is to say, the idea of considering only the underlying financial instruments is not enough, especially from the point of view of thorough customer protection.</p>	<p>This paragraph has been</p>

			<p>2.14 of Guideline 1 refers to contracts where the maturity or surrender value is guaranteed by the insurance undertaking. However, the 'value' of this guarantee can be affected by the financial strength of the insurance undertaking – which can evolve over time – and so due to the medium to long-term nature of IBIPs, cannot be wholly depended upon as attributing the IBIP to being a non-complex product.</p> <p>Consideration should also be given to the limit of the protection provided to policyholders under investor compensation schemes, which may be insufficient to wholly guarantee the the full value of the IBIP, in the event of the failure of the insurance undertaking.</p> <p>Furthermore, changes in national legislation can lead to a situation whereby the risks to the customer who has invested in an IBIP are increased, regardless of the guarantee provided by the insurance undertaking. This is the case in France, whereby the Article L. 631-2-1 of the Code Monetaire was amended, following the enactment of Loi no. 2016-1691 on 9th Decemembr 2016 (also known as "Sapin II").</p>	<p>deleted. However, as stated in the Guidelines it is necessary for an IBIP to not incorporate a structure which makes it difficult for the customer to understand the risks, irrespective of whether or not there is a guaranteed return.</p>
103.	EUROPEAN FINANCIAL PLANNING ASSOACIATION EFPA	Question 4	<p>EFPA agrees with the content of Guideline 1, without prejudice to the necessary revision of this Guideline once the referenced Commission Delegated Regulation is approved.</p>	<p>Noted.</p>
104.	German Insurance Associastion (GDV)	Question 4	<p>We do not agree with EIOPA's assessment in the explanatory text to Guideline 1 (number 2.14). Article 30(3)(a)(i) is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. Products where the customer does not make an investment selection with regard to individual financial instruments, but where the investment is done by the insurer who is subject to a very strong prudent person principle should, therefore, fall into the scope of Guideline 1. In such cases the financial instruments invested into by the insurer should not be taken into account if the overall investment ensures that there are no hidden risks for consumers. This is also the case for UCITS which on one hand may invest in complex instruments such as derivatives but on the other hand are still regarded as non-complex due to the overarching structure. Therefore, the statement in</p>	<p>EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.</p>

			<p>number 2.14 of the explanatory text should be restricted to those cases where the provider is not subject to the prudent person principle under Solvency II. Otherwise investment products covered by MiFID would receive a preferential treatment compared to insurance products. Furthermore, the current provisions would also influence the investment of insurers, e.g. impede the investment in alternative investments such as infrastructure. This would go beyond the scope of a Directive on distribution of insurance products.</p> <p>Furthermore, EIOPA notes itself that products with profit participation benefit consumers. Gabriel Bernardino says in his speech at the Finanstilsynet Conference: "Pensions when the guarantees disappear" from 9 March 2017: "Products could allow the pooling of investments with the smoothing of returns across members of the pool, so that all members benefit from average long-term returns of the fund and are protected from extremely negative outcomes in stressed market situations." We fear that consumer's access to insurance products and long-term investments will be limited, including products with profit participation, and puts such instruments at a clear disadvantage to comparable financial instruments without any insurance aspects.</p> <p>Finally, we suggest that criterion (c) should specify the ESMA Guidelines in question (Guidelines dated 4 February 2016, ESMA/2015/1787). A dynamic reference to any future Guidelines which ESMA may adopt on this issue would risk introducing rules which are not in line with insurance specific characteristics or regulation.</p>	<p>As stated in the explanatory text, the existence of profit participation mechanisms would not necessarily result in an IBIP being deemed complex. EIOPA does not therefore see a conflict.</p>
105.	Institute and Faculty of Actuaries	Question 4	<p>Question:</p> <p>Do you have any comments on Guideline 1 and its explanatory text?</p> <p>(Guideline 1: Investment exposure to the financial instruments deemed non complex under Directive 2014/65/EU)</p>	<p>Guideline 1 follows directly from the requirements in IDD.</p>

			<p>It is useful to recognise that derivatives are also used for non-speculative/ efficient portfolio management purposes; for example maintaining exposure to a defined asset benchmark whilst reducing the need for frequent rebalancing trades. This type of activity, which would ultimately serve to enhance product returns for the customer, would be discouraged under the draft guidance, which is counterproductive for product investment strategies that are otherwise 'non-complex'.</p>	
106.	Insurance Europe	Question 4	<p>Do you have any comments on Guideline 1 and its explanatory text?</p> <p>Insurance Europe does not agree with EIOPA's assessment in the explanatory text to guideline 1 (paragraph 2.14). Article 30(3)(a)(i) is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. Products where the customer does not make an investment selection with regard to individual financial instruments, but where the investment is done by the insurer who is subject to a very strong prudent person principle should, therefore, fall into the scope of guideline 1. In such cases, the financial instruments invested into by the insurer should not be taken into account if the overall investment ensures that there are no hidden risks for consumers. This is also the case for UCITS, which on the one hand may invest in complex instruments such as derivatives, but on the other hand are still regarded as non-complex due to the overarching structure. Therefore, the statement in paragraph 2.14 of the explanatory text should be restricted to those cases where the provider is not subject to the prudent person principle under Solvency II. Otherwise, investment products covered by MiFID would receive a preferential treatment compared to insurance products which are not covered under MiFID II. Furthermore, the current provisions would also influence the investment of insurers, eg impede investment in alternative investments such as infrastructure. This would go beyond the scope of a Directive on the distribution of insurance products.</p>	<p>EIOPA has deleted paragraph 2.14 from the explanatory text of the Final Guidelines.</p>

			<p>Furthermore, EIOPA notes itself that products with profit participation benefit consumers. Gabriel Bernardino noted in his speech at the 9 March 2017 Finanstilsynet Conference that “the development of collective profit sharing products could allow the pooling of investments with the smoothing of returns across members of the pool, so that all members benefit from average long-term returns of the fund and are protected from extremely negative outcomes in stressed market situations”. We fear that the restrictive approach taken, however, will limit consumer’s access to insurance products, including products with profit participation, and puts such instruments at a clear disadvantage to comparable financial instruments without any insurance elements.</p> <p>We suggest that criterion (c) should specify the ESMA Guidelines in question (guidelines dated 4 February 2016, ESMA/2015/1787). A dynamic reference to any future guidelines which ESMA may adopt on this issue would risk introducing rules which are not in line with insurance-specific characteristics or regulation.</p> <p>EIOPA should also acknowledge and reflect in its final guidelines that the use of derivatives can facilitate efficient portfolio management and reduce risks. Therefore, the use of derivatives should not automatically make the product complex, and guideline 1 should be amended to reflect this. We propose that a further point is added, stating the following:</p> <p>“(d) derivative instruments that contribute to a reduction of risks, or facilitate efficient portfolio management.”</p>	<p>As stated in the explanatory text, the existence of profit participation mechanisms would not necessarily result in an IBIP being deemed complex.</p> <p>The reference is considered to be appropriate.</p> <p>Guideline 1 follows directly from the requirements in IDD.</p>
107.	Intesa Sanpaolo	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</p>	<p>Please see EIOPA’s response to that comment.</p> <p>EIOPA has deleted paragraph</p>

			<p>Explanatory text accompanying guideline 1 where it says „ 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 » . 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>	<p>2.14 from the explanatory text of the Final Guidelines.</p> <p>The part of the explanatory text has been revised with a view to clarifying the intention. The reference to ESMA’s Guidelines has been deleted.</p>
108.	IRSG	Question 4	<p>In addition to the comments formulated above and concerning the reference to ESMA guidelines, it should also be noted that in the case of guaranteed products, many insurance undertakings make use of hedging derivatives (e.g. swaps) in order to ensure an adequate matching of assets cash-flows and liabilities cash-flows (asset-liability management). The IBIP product does not expose the client to these investments, because a guarantee at maturity is provided by the insurance undertaking. It should be clarified that these products, very similar to Government and corporate bonds, are not complex products.</p>	<p>The part of the explanatory text has been revised with a view to clarifying the intention. The reference to ESMA’s Guidelines has been deleted.</p>
109.	OP Financial Group	Question 4	<p>We agree with Guideline 1 concerning investment exposure to the financial instruments deemed non-complex under MiFID II.</p>	<p>Noted.</p>
110.	Standard Life UK	Question 4	<p>Do you have any comments on Guideline 1 and its explanatory text?</p> <p>Complexity and risk should be assessed at the underlying investment level,</p>	<p>Guideline 1 follows directly from the requirements in IDD.</p>

			<p>not necessarily at product level. The criteria set out under the proposed Guideline 2 for measuring whether a product's structure is, should be sufficient. Focussing on the structure of the underlying investment options, helps ensure customers understand any associated risks resulting from the way the investment option is structured and achieves consistency between IDD and MiFID II.</p> <p>We ask that in its final Guidelines, EIOPA acknowledges and reflects that the use of derivatives can facilitate efficient portfolio management and reduce risks. We ask EIOPA to amend Guideline 1 to reflect that the use of derivatives should not automatically make a product or fund complex.</p> <p>We propose that a further point (d) is added to Guideline 1, stating that:</p> <p>"(d) derivative instruments that contribute to a reduction of risks, or facilitate efficient portfolio management."</p>	
111.	Unipol Gruppo Finanziario S.p.A.	Question 4	<p>Si osserva che nella categoria dei prodotti di investimento assicurativi contemplati dalla Linea Guida 1, o che comunque incorporano una struttura che rende difficile per il cliente comprendere il rischio assunto, dovrebbe essere espressamente esclusa l'ipotesi dell'investimento da parte tali di prodotti in strumenti derivati, in considerazione delle finalità non speculative bensì di copertura a favore del cliente che determina oggettive caratteristiche di bassa rischiosità. Tale struttura contrattuale ampiamente consentite dalla normativa italiana di riferimento (v. Regolamento Ivass N. 24 del 6 giugno 2016 in materia di investimenti e di attivi a copertura delle riserve tecniche).</p> <p>Sempre con riferimento alla Linea Guida 1 relativa ai prodotti di investimento assicurativi che hanno come sottostante strumenti finanziari non complessi ai sensi della direttiva MIFID II, si rileva una apparente incongruenza fra la classificazione degli OICR prevista dalla citata Linea Guida e quella indicata dal Regolamento IVASS (Autorità di vigilanza sul settore assicurativo) n. 24 del 6 giugno 2016.</p> <p>Infatti, pur riconoscendo le differenti finalità delle normative, si segnala come</p>	EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules. Guideline 1 follows directly from the requirements in IDD.

			gli OICR siano considerati, da un lato, uno strumento complesso per gli investimenti di una compagnia di assicurazione e, dall'altro e ai fini MIFID II, uno strumento finanziario ritenuto non complesso, rendendo di conseguenza non complessi anche i prodotti di investimento assicurativi che abbiano degli OICR (non strutturati) come sottostante (in assenza di strutture contrattuali complesse).	
112.	Actuarial Association of Europe	Question 5	<p>The complexity of a product should be put into perspective, where this product is widespread within a local market, very well understood by distributors and familiar to customers.</p> <p>Therefore, local authorities should play a role in assessing the complexity of the products because they should be able, through their knowledge of the market, to weight this local market characteristic in a relevant manner. For the same reasons, whereas using examples may help to illustrate the regulator's intentions, as in Guideline 2 paragraph 3.a), it may not be sufficient to address the regulation objectives with the required legal certainty and precision. It seems in this view reasonable to encompass duly in the regulation the local level relevance in order to promote an adequate and appropriate assessment of product's complexity.</p> <p>For MOPs, with regards to paragraph 3.b of Guideline 2, in many cases, the insurance contract, and particularly its cost structure, doesn't add any significant complexity to the product in comparison to funds directly held by the consumer. We agree with the approach consisting of assessing the relative complexity at the ongoing costs level.</p>	The Guidelines aim to strike a balance between the need for national discretion and a convergent application of the IDD across member states.
113.	Allianz SE	Question 5	<p><input type="checkbox"/> EIOPA adds additional criteria going beyond the TA, whereas level 3 guidelines should just explain and refine level 2 and not add to it.</p> <p><input type="checkbox"/> EIOPA should only lay down high level principles based on consumer understanding. E.g. for costs it is not important how they are calculated exactly. It should be only important that they are disclosed in a transparent way, i.e. via the PRIIP costs indicators. This should be solved on the same level as for UCITS funds which do not have detailed requirements for cost calculations but for costs disclosure (ongoing charge).</p> <p><input type="checkbox"/> There should be enough leeway for NCAs to adapt the principles to be compatible with national legislation for consumer protection, e.g. mandatory profit sharing should not be seen a risky or detrimental but adding customer benefit: this is not difficult for the customer to understand.</p>	The Guidelines are based on the empowerments in Article 30 of IDD. Please see the Feedback Statement.

			<p><input type="checkbox"/> Actuarial prudence requires appropriate surrender fees which take the present value of the underlying assets into account otherwise long term investments are not feasible. It should only be required that surrender fees are made transparent, instead of understanding the calculation.</p> <p><input type="checkbox"/> Requirements are not consistently applied, e.g. for complex IBIPs understandability of technical calculation for consumer is taken as a condition – whereas e.g. UCITS funds do not satisfy all criteria of guideline 2. E.g. average customer cannot understand UCITS charges in detail, average customer cannot understand how UCITS return is calculated. In view of a level playing field we therefore recommend to revert to the consistent approach that a customer should only need to understand the potential benefits (or risk) of a product feature.</p> <p><input type="checkbox"/> Mandatory profit sharing might automatically render every product complex as the average customer does not understand the legal requirements of its calculation. However it should be only relevant whether the result is transparent not a calculation. Even for a simple banking account it is not transparent how the current interest rate is determined – yet nobody think a savings account is complex.</p>	
114.	ANASF – Associazione Nazionale Consulenti Finanzia	Question 5	<p>As outlined in our answer to Q1, execution-only sales of IBIPs shall not be admitted and this approach is already adhered to by the Italian regulator. In the event that other Member States choose to exercise the derogation under Article 30(3) of the IDD, we restate the “product-based” principle mentioned in our answer to Q4: the identification of complex and non-complex IBIPs shall be based on the content of the product. That is to say, all the features of the insurance product (and their interaction, let’s consider the effects of financial engineering) result in the complex or non-complex nature of the product itself.</p> <p>We also propose to amend Guideline 2 in light of the statements exposed in the Consultation Paper (p. 23, 2.20 and 2.21): “guarantee” is a term that creates certain customer expectations (in particular, customers may assume there are no conditions attached to it) and the nature of the guarantee needs to be considered. We also consider that guarantees are typically product features developed to meet the customer’s demands and needs (cf. p. 24, 2.20 of the Consultation Paper) and manufacturers incur costs to provide these guarantees. Accordingly, the cost of the guarantee may be reflected in the price of the product and surrender fees (specifically, these fees may decrease over time, in order to disincentive early surrender).</p>	<p>Please see the EIOPA response to the comment on that question.</p> <p>The Guideline has been amended to reflect this point.</p>

			<p>Specifically, we propose the following amendment:</p> <p>3. Where the contract contains any of the following features, the insurance undertaking or insurance intermediary should deem it as not satisfying the conditions in Article 30(3)(a) of the IDD: [...]</p> <p>(e) the guarantee regarding the amount of premiums paid or the maturity or surrender value or pay out upon death are conditional or have time limitations which makes it difficult for the customer to understand the risks involved.</p>	
115.	Association of British Insurers	Question 5	<p>Guideline 2 sets out what should constitute 'a structure which makes it difficult for the customer to understand the risks involved'. However, large parts of the Guideline could be interpreted as focussing on the actuarial mechanisms insurers use to provide consumers with instruments which diversify risks and smoothen returns. This places an unfair regulatory burden on insurers compared with providers of other financial instruments such as UCITS. Complexity under MIFID II means a high degree of opacity of the connection between the consumer's investment and the possible risks and returns, for example involving investment strategies with complex derivative instruments to leverage risks, non-transparent exposure to several market risks and / or credit risks. For insurance products, the actuarial mechanisms of the smoothing may be difficult for the customer to understand, but the concept is not, including what this means for how risky a product is.</p> <p>It should be made clear that insurers or intermediaries can clearly explain to the customer whether there are conditions attached to guarantees, or if the insurance undertaking is able to exercise discretion. This would ensure that the structure of the product should not be difficult to understand, including for execution-only sales. We hope that EIOPA clarifies that the Guidelines should not be interpreted as focussing on the actuarial mechanisms in place, and that the existence of discretion or conditions attached to guarantees do not result in the product being deemed complex, as touched upon in point 2.23 of the Consultation.</p> <p>Specifically, our concerns relate to:</p>	Please see the Feedback Statement.

		<p><input type="checkbox"/> Paragraph 2 (a)–(c): The points listed are linked to conditions to specify complexity of a product, but do not necessarily relate to a structure which makes it difficult to understand the risks. These factors should therefore only be defined in the definition for what constitutes ‘other non-complex insurance-based investments’, as provided by Article 30 (a) of the IDD. Provided that insurers or intermediaries clearly explain the consequences of such conditions to the consumer, such a structure of the product should not be difficult to understand, as point 2.23 of the Consultation acknowledges when it states that ‘the existence of discretion on behalf of the insurance undertaking does not automatically result in the product being deemed complex’.</p> <p>Furthermore, we hope that EIOPA clarifies that a contractual clause that offers a customer the possibility to switch between underlying funds is not covered by these provisions, particularly paragraph 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.</p> <p><input type="checkbox"/> Paragraph 3 (a), and paragraph 3 (a) (i): Focussing on the provisions of ‘complex mechanisms that determine the maturity or surrender value on death’, or ‘the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking, the effects of which are difficult for the customer to understand’, could be interpreted as implying that any traditional insurance products that may pay discretionary bonuses would be deemed complex. We believe that the focus should be on the outcome for the customer and the actual risks involved, and not on the mechanisms which insurers use. We therefore suggest that these points are deleted.</p> <p><input type="checkbox"/> Paragraph 3 (a) (ii): The provision that ‘the maturity or surrender value or pay out upon death is based on exposure to different types of financial instruments’ could be interpreted as meaning that if insurance investment contained different shares and bonds and the value was derived from the different exposures, the product would be deemed complex. However, this would not be different in nature from a pooled UCITS fund which would qualify as non-complex. We feel that this would put insurance products at a clear disadvantage against comparable financial instruments, and should therefore be deleted.</p> <p><input type="checkbox"/> Paragraph 3 (a) (iii): The point that ‘the maturity or surrender value</p>	<p>As explained in the explanatory text, EIOPA considers that it is important to have consistency in the assessment criteria within Article 30(3)(a).</p> <p>This is now addressed in the explanatory text.</p> <p>Please see the Feedback Statement.</p> <p>The drafting of the Guidelines has been revised and additional explanatory text added.</p> <p>This drafting of the Guideline has been amended to reflect</p>
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116.	Association of Financial Mutuals (AFM)	Question 5	<p>The Guidelines set out EIOPA's thinking clearly and establish some useful benchmarks for assessing complexity in a product. However, they do provide some elements that are potentially vague, or open to interpretation in different ways. For example, paragraph 2(a) suggests a contract may be deemed complex where it 'incorporates a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk or pay our profile' of the IBIP. In the UK, some with-profits products sometimes carry a 'Market Value Adjuster' to reflect times where a policyholder seeks to withdraw funds in adverse conditions. Whilst MVAs involve a clause and trigger before they can be invoked, they can only be used in circumstances specified in the original contract, so they do not materially alter the nature of the product, and where they are intended to equalise the payout with general market conditions, it is not clear that this is unfair- given that unitised products would already reflect any fall in the value of the underlying investments. So we think it would be valuable for EIOPA to define further what conditions in has in mind.</p> <p>In this respect, we share EIOPA's view that : « the existence of discretion on behalf of the insurance undertaking, does not automatically result in the product being deemed complex» (paragraph 2.23). This concludes that it is</p>	<p>EIOPA has sought to further clarify the intention of the provision in the explanatory text.</p>

			the nature and boundaries of the discretion and whether and how this affects the maturity or surrender that determines whether the contract is complex.	
117.	Association of International Life Offices AILO	Question 5	<p>As we have stated previously to EIOPA, we do not consider that guideline 2 point 3(d) has any place in the guidelines. In our opinion, questions relating to title to policy proceeds has nothing whatsoever to do with complexity or otherwise of an IBIP product. It may be that a particular NCA has had concerns which from the wording of the text appears to suggest fraudulent activities. In which case those should be dealt with appropriately at national level. In any event creation of a "beneficiary", which is itself an undefined expression in the guidelines, will be handled in different ways in civil and common law jurisdictions and may have no connection with contract law. If there is considered a pressing need for some guideline then we would urge that clear and unambiguous language be used so everyone can understand what "beneficiary clause" and "contractual provisions" is intended to mean - in particular, by who and how can they be modified? and is this solely in relation to provisions applying on death or maturity.</p> <p>Arguably, any common law power of appointment trust could be a "beneficiary clause" as drafted and the Trustees would have power to appoint benefits. The customer would understand who they would want to benefit today but it is almost a certainty that the customer would find it difficult to understand the legal language in the deed!</p> <p>Regarding point 2.26 of the explanatory text, we presume the rationale is that the product was purchased as one with no complex investment options available but that these might be made available for the product later? We would suggest that this is an unlikely scenario and as such it could be more appropriate for the text to state that such a product must at all times only offer access to investment options deemed non-complex.</p>	<p>The existence of a "beneficiary clause" is not intended to automatically render a product complex. The Guideline and explanatory text has been amended to address this point.</p> <p>The explanatory text is considered to be appropriate.</p>
118.	Assuralia	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 assessment of the criteria should be done at the level of the underlying fund. Assuralia asks to specify this directly in the guidelines 2, 2 and 2,3 (a) to (c).</p> <p>Moreover, it should be clear that a contractual clause that offers a customer</p>	<p>Paragraph 2.24 has been deleted as it was not considered to provide clarity.</p> <p>This point has been</p>

			<p>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.</p> <p>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.</p> <p>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.</p>	<p>addressed in the explanatory text.</p> <p>Please see the Feedback Statement.</p> <p>The drafting has been amended to state "may include fiscal penalties".</p>
119.	Austrian Insurance Association VVO	Question 5	<p>With regard to Guideline 2. (a) 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.(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.</p> <p>With regard to Guideline 2. (b) it should be clarified that life insurance products where the policyholder gets a table with guaranteed annual minimum surrender values for the whole contract periode is not covered by Guidelines 2. (b).</p>	<p>This point is addressed in the explanatory text.</p> <p>This point is addressed in the explanatory text.</p>

			<p>With regard to Guideline 2.(c) it should be clarified that where national laws allow for surrender fees which are suitable and which are agreed in the insurance contract they should not be taken into account for the complexity assessment of a product.</p> <p>Focussing on the provisions of "complex mechanisms that determine the maturity or surrender value on death", or "the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking, the effects of which are difficult for the customer to understand", could be interpreted as implying that all traditional life insurance products with profit participation would be deemed complex. We believe that the focus should be on the outcome for the customer and the actual risks involved, and not on the mechanisms which insurers use. We therefore suggest that if the policyholder gets precontractual information about yearly guaranteed minimum surrender values and the guaranteed benefits at the end of the contract and if the guaranteed benefits at the end of the contract are at least the amount of the premiums paid minus legitimate costs levied these products should not fall under the scope of Guideline 2 3. (a). The policyholder is aware at any time of the contract's minimum guaranteed surrender values which may only be increased by profit participation.</p>	<p>The guidelines have been amended to reflect this point.</p> <p>Please see the Feedback Statement.</p>
120.	Better Finance	Question 5	<p>Contrary to the first guideline wrote for this matter, Guideline 2 represents the real dimension of possible consumer detriment by IBIPs: complexity of IBIPs is less linked to the underlying investment products but to the lack of transparency of various "layers" of costs. The part of the premiums paid by the policyholder which will actually be invested is strongly reduced by entry and ongoing costs of the insurers and of the investment companies as well. Moreover, there are exit penalties.</p> <p>This is why the provision in page 22 (paragraph 2 (c)) is so relevant: "there are explicit or implicit charges which have the effect that, even though there are, technically, options to surrender the insurance_based investment product, doing so may cause unreasonable detriment to the customer, because the charges are disproportionate to the cost to the insurance undertaking of the surrender". And we believe that this Guideline should be strong in this matter.</p>	<p>This provision is included in the Final Guidelines.</p>

			<p>Furthermore, the provision mentioned in page 22 (paragraph 2 (a)) should not include pay-out options like lump-sum, annuities, programmed withdrawal or income drawdown: "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". At this point, it is important to remember that the maturity or surrender value or pay-out upon death is dependent on variables set by the insurance undertaking, the effects of which are difficult for the customer to understand.</p>	<p>This point is addressed in the explanatory text.</p>
121.	Bund der Versicherten BdV	Question 5	<p>In contrast to Guideline 1, Guideline 2 reflects the real dimension of possible consumer detriment by IBIPs: complexity of IBIPs is less linked to the underlying investment products but to the lack of transparency of various "layers" of costs. The part of the premiums paid by the policyholder which will actually be invested is strongly reduced by entry and ongoing costs of the insurers and of the investment companies as well. Additionally there are exit penalties.</p> <p>That is the reason why the provision in paragraph 2(c) of this Guideline (CP, p. 22) is so important: all these different charges have definitely the effect "that, even though there are, technically, options to surrender the insurance-based investment product, doing so may cause unreasonable detriment to the customer, because the charges are disproportionate to the cost to the insurance undertaking of the surrender." We clearly advocate that this Guideline must not be "softened".</p> <p>With regard to provision in paragraph 2(a) of this Guideline (CP, p. 22) concerning the "nature, risk or pay-out profile" which might be altered by the insurer, we stress that this provision should not only include pay-out options like lump sum, annuities, programmed withdrawal or income drawdown. It must be taken into consideration that the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking (like mortality tables and participation in benefits - changeable even during contract duration), the effects of which are difficult for the customer to understand.</p>	<p>This provision is included in the Final Guidelines.</p> <p>This point is addressed in the explanatory text.</p>

			<p>Related to provision in paragraph 3(d) of this Guideline (CP, p. 22), we underline that the modification or personalization of contractual provisions with regard to the receiving benefits at the end of the contractual relationship (the "beneficiary clause") is – at least following to the German insurance contract law – a quite usual contract option ("widerrufliches / unwiderrufliches Bezugsrecht"). So this provision should be specified in order not to prohibit this usual option, otherwise it should be excluded (cf. our comment on Q19 for EIOPA's CP on IDD possible Delegated Acts, October 2016).</p>	<p>The existence of a "beneficiary clause" is not intended to automatically render a product complex. The Guideline and explanatory text has been amended to address this point.</p>
122.	CNCIF	Question 5	We have no comment.	
123.	DAV German Actuarial Society	Question 5	<p>We support that EIOPA thoroughly investigates different features of IBIPs that might lead to unexpected hidden risks for consumers. However, particularly in view of life insurance products with profit participation it should be duly taken into account that some Member States already implemented rules that protect consumers' interests. (For example, in Germany there are provisions on actuarial calculation of the surrender value of IBIPs. They ensure that consumer receives the right value of his assets in case of an early surrender by demanding that the surrender fees are agreed, put in figures and appropriate. Furthermore, additional rules also exist for allocation of surplus to consumers to ensure strong protection for the customers.) Thus, from consumers' perspective, it is not necessary to understand the exact actuarial methods behind products with profit participation as long as these methods are not arbitrarily set by the manufacturer and follow some law that ensures high level of consumer protection. We would strongly welcome EIOPAs clarification in this regard in guideline 2.</p> <p>Guideline 2, paragraph 3, (a) to (c) We strongly suggest that the respective subcriteria (i) to (iii) of criteria (a) to (c) in Point 3 of Guideline 2 should be conclusive and not only conceived as examples of other possible cases of complexity. With a view to the very broad wording of criteria (a), (b) and (c) (without regard to the respective subcriteria), the aim of achieving legal certainty for manufacturers, distributors and consumers alike will otherwise not be achieved. For example the material content of Point 3 (a) of Guideline 2 is limited to the tautology that a product is complex if there are complex mechanisms that determine its payout value. EIOPA should bear in mind that</p>	<p>Please see the Feedback Statement.</p>

		<p>the Guidelines can be amended at any time in the future, should the criteria prove not to be sufficient.</p> <p>Guideline 2, paragraph 3(a)(i): We would like to draw EIOPA’s attention to the fact that products which offer guarantees almost always provide for a surplus participation of the policyholders. Although confined by strict regulation when apportioning the surplus, the insurer has some leeway in order to balance the individual and the collective interest of policyholders over the long term. We strongly support EIOPA’s view, as expressed in the Technical Advice under IDD and reaffirmed in the Consultation Paper, that guarantees are valuable for the customer and should therefore not automatically be penalised by the label of complexity. To ensure high levels of consumer protection, the profit participation is strongly regulated and follows prescribed legal rules (under German law for example Section 153 Insurance Contract Act (VVG); Sections 139 and 140 Insurance Supervision Act (VAG); Sections 6, 7 and 8 Minimum Allocation Regulation (MindZV)). Some rules set by the legislator may in some cases appear complex, but they solely serve best possible consumer protection and should not lead to products being deemed complex.</p> <p>The following change is necessary:</p> <p>(i) the maturity or surrender value or pay out upon death is dependent on profit participation which is not subject to policyholder protection regulation or variables arbitrarily set by the insurance undertaking, the effects of which are difficult for the customer to understand;</p> <p>Guideline 2, paragraph 3(a)(ii)</p> <p>We do not understand why this criterion is relevant for insurers. We assume that the criterion is not aimed at the mechanisms which form the basis of any collective investment: Mr. Bernardino described such products as a candidate for PEPP, which cannot be seen as complex (“Products could allow the pooling of investments with the smoothing of returns across members of the pool, so that all members benefit from average long-term returns of the fund and are protected from extremely negative outcomes in stressed market situations.”), see our comments on question 4. Neither are unit-</p>	<p>The drafting of this provision and the explanatory text has been amended to clarify the intention.</p>
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		<p>linked products captured by this criterion.</p> <p>(This criterion should be deleted.</p> <p>Guideline 2, paragraph 3 (a) (iii): The point that “the maturity or surrender value or pay-out upon death may vary frequently or markedly at different points of time over the duration of the contract either because certain pre-determined threshold conditions are met or because certain time-points are reached” could be interpreted as deeming products with profit participation complex, when they for example guarantee to pay a final bonus on maturity. If contractual dates are clear to the customer at outset this would not seem to be a feature that would be difficult to understand.</p> <p>(Therefore, we believe this point should be deleted.</p> <p>Guideline 2, paragraph 3 (b)</p> <p>We do not understand why this criterion is necessary. All IBIPs will fall in the scope of the PRIIPs Regulation and, therefore, will provide a KID that describes all the costs included in the product through the disclosure of total costs and the Reduction in Yield (RIY). In particular, the RIY is a new concept that was thoroughly investigated in the consumer testing and is able to present the cost impact in a clear and comprehensive way.</p> <p>(This criterion should be deleted.</p> <p>Guideline 2, paragraph 3 (c)</p> <p>We understand that EIOPA wishes to keep the surrender fees as simple as possible. However, a too simplistic reference value would not always be fair towards consumers. For example, a fair processing fee of surrendering a contract would result in a fixed monetary sum. However, the loss of liquidity premium is fairly measured as a percentage of the investment. Thus, a combination of the in 3(c) mentioned quantities should also be allowed.</p> <p>(Therefore, the criterion should be amended in the following way</p>	<p>This provision has been revised to address this point.</p> <p>Please see the Feedback Statement.</p>
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		<p>(c) There are surrender fees that are difficult for the customer to understand, including where the cost of redeeming the insurance-based investment product before maturity does not satisfy one or the combination of the following conditions:</p> <ul style="list-style-type: none"> (i) it is a fixed sum; (ii) it is a fixed sum for each year or other specified time period remaining until the maturity of the contract; (iii) it is a fixed percentage of the amount of premiums paid or another amount that can be understood by the customer; (iv) it is a compensation for paying also the part of the surrender value which is greater than the death benefit at the time of surrender. <p>Furthermore, we would welcome the following clarification of paragraph 2(a):</p> <p>Guideline 2, paragraph 2a</p> <p>We agree with the general requirement in Guideline 2 that products which include “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” shall be deemed complex if these clauses can actually be exercised arbitrarily by the product provider and no further control mechanisms are in place to avoid any consumer detriment.</p> <p>Guideline 2, paragraph 2(a) A clarification of EIOPA’s understanding of “materially altering the pay out profile” of a product would be very much appreciated. Typically, in our view a product’s pay out profile might be “materially altered” when clients e.g. at some point in time received an asset they originally had not purchased instead of a monetary cashflow the product was originally equipped with or if clients received the lower value of an asset earlier than the original maturity dependent on a trigger (e.g. compare the possible pay out profile of a convertible bond). In contrast, regarding products where clients “just” receive more or less (monetary) return due to ordinary capital market fluctuations and hence potentially lower surplus participation rates, should not qualify as “materially altering the pay out profile”. Hence, we would be grateful if EIOPA clarified the understanding of “materially altering the pay out profile” as altering the structure of the pay out (and not the value of return due to ordinary capital market fluctuations)</p>	<p>EIOPA has further developed the explanatory text to this Guideline with a view to clarifying this provision.</p>
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			<p>in the guidelines' explanatory text, e.g. by providing some further examples.</p> <p>Further, especially considering long-term business such as life insurance business, some additional clauses in the products' terms and conditions are necessary to ensure that these products will actually work for the considered long-term time frame. Note, if for example a unit-linked policy were not issued with some clauses to replace an underlying investment fund with a similar (but different) investment vehicle, if the corresponding asset manager e.g. liquidated the original investment fund, no long-term product could be offered at all.</p> <p>Therefore, we propose a clarification of the rather general statement of paragraph 2(a) and would appreciate if EIOPA pointed out that only those clauses and conditions whose possible exercise is at the product provider's very discretion shall be deemed complex. If appropriate and hence necessary clauses are formulated transparently in a way that is understandable for the customer, these clauses shall not yield a product being deemed complex instead.</p>	
C 124.		Question 5	Confidential comment	
125.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Question 5	<p>We do not feel that IBIPs can be sold on an "execution-only" basis, under the provisions of Article 30(3) of the IDD.</p> <p>However, in the event that Member States are allowed to derogate from the obligations of Article 30(2) of the IDD, the assessment of whether or not a contract "incorporates a structure which makes it difficult for the customer to understand" should be considered in relation to both the financial instrument(s) in which the contract is invested and the terms and conditions of the contract. The identification of complex and non-complex IBIPs shall be based on the content of the product. That is to say, all the features of the insurance product (and their interaction, let's not forget the effects of financial engineering) result in the complex or non-complex nature of the product itself.</p> <p>As concerns 2.19 of Guideline 2, the reference to "exit penalties" should be considered and compared to IBIPs that make an initial charge deduction from the premium paid – typically up to 5%. Whilst the IBIP making the initial charge may be surrendered at any time without the application of an exit penalty, this does not guarantee that this is better for the customer than the comparable IBIP applying an exit penalty rather than an initial deduction</p>	<p>Please see the response to your previous comments.</p> <p>The Guidelines intend to address whether the customer can understand the risks involved and not per se what types of contractual features are in their best</p>

			<p>charge. For those IBIPs not making an initial charge deduction, the potential exit penalty diminishes over time and therefore, should not be an issue if the product is retained for the medium to long-term. In effect, this strengthens the argument that IBIPs should not be sold on an "execution-only" basis, since the insurance intermediary (or other distributor) is needed to assess the "suitability and appropriateness" of the IBIP in meeting the customer's objective, including the time horizon for the investment.</p> <p>We also propose to amend Guideline 2 in light of the statements exposed in the Consultation Paper (p. 23, 2.20 and 2.21): "guarantee" is a term that creates certain customer expectations (in particular, customers may assume there are no conditions attached to it) and the nature of the guarantee needs to be considered. We also consider that guarantees are typically product features developed to meet the customer's demands and needs (cf. p. 24, 2.20 of the Consultation Paper) and manufacturers incur costs to provide these guarantees. Accordingly, the cost of the guarantee may be reflected in the price of the product and surrender fees (specifically, these fees may decrease over time, in order to disincentive early surrender).</p> <p>Specifically, we propose the following amendment:</p> <p>3. Where the contract contains any of the following features, the insurance undertaking or insurance intermediary should deem it as not satisfying the conditions in Article 30(3)(a) of the IDD: [...]</p> <p>(e) the guarantee regarding the amount of premiums paid or the maturity or surrender value or pay out upon death are conditional or have time limitations which makes it difficult for the customer to understand the risks involved.</p>	<p>interests.</p> <p>The Guideline has been amended to include a provision on the nature of any guarantee.</p>
126.	German Insurance Association (GDV)	Question 5	<p>We support that EIOPA thoroughly investigates different features of IBIPs that might lead to unexpected hidden risks for consumers. However, particularly in view of life insurance products with profit participation it should be duly taken into account that some Member States have implemented rules that protect consumers' interests. For example, in Germany there are provisions on actuarial calculation of the surrender value of IBIPs. They ensure that consumer receives the correct value of his assets in case of an early surrender by demanding that the surrender fees are included in the terms of the individual insurance contract, that their extent is explained to the consumer and that their amount is appropriate. Detailed rules also exist for allocation of the surpluses to consumers. Calculations made by the insurer on the basis of these rules are subject to the scrutiny of</p>	<p>The Guidelines have been amended to reflect this point.</p>

		<p>the supervisory authorities as well as to judicial review if a consumer chooses to take legal action. Therefore, EIOPA should clarify in its Guidelines that rules that follow (legal) provisions that ensure a high level of consumer protection should not lead to products being deemed complex.</p> <p>In our view the following changes are necessary:</p> <p>Guideline 2, paragraph 3, (a) to (c): We strongly suggest that the respective subcriteria (i) to (iii) of criteria (a) to (c) in Point 3 of Guideline 2 should be conclusive and not only conceived as examples of other possible cases of complexity. With a view to the very broad wording of criteria (a), (b) and (c) (without regard to the respective subcriteria), the aim of achieving legal certainty for manufacturers, distributors and consumers alike will otherwise not be achieved. For example the material content of Point 3 (a) of Guideline 2 is limited to the tautology that a product is complex if there are complex mechanisms that determine its pay-out value. EIOPA should bear in mind that the Guidelines can be amended at any time in the future, should the criteria prove not to be sufficient.</p> <p>Guideline 2, paragraph 3(a)(i): We would like to draw EIOPA’s attention to the fact that products which offer guarantees almost always provide for a surplus participation of the policyholders. We strongly support EIOPA’s view, as expressed in the Technical Advice under IDD and reaffirmed in the Consultation Paper, that guarantees are valuable for the customer and should therefore not automatically be penalised by the label of complexity. To ensure high levels of consumer protection, the profit participation is strongly regulated and follows prescribed legal rules (under German law for example Section 153 Insurance Contract Act (VVG); Sections 139 and 140 Insurance Supervision Act (VAG); Sections 6, 7 and 8 Minimum Allocation Regulation (MindZV)). Some rules set by the legislator may in some cases appear complex, but they solely serve best possible consumer protection and should not lead to products being deemed complex.</p> <p>The following change is necessary:</p> <p>(i) the maturity or surrender value or pay out upon death is dependent on</p>	<p>Please see the Feedback Statement.</p>
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		<p>profit participation which is not subject to policyholder protection regulation or variables arbitrarily set by the insurance undertaking, the effects of which are difficult for the customer to understand;</p> <p>Guideline 2, paragraph 3(a)(ii): We do not understand why this criterion is relevant for insurers. We assume that the criterion is not aimed at the mechanisms which form the basis of any collective investment: Mr. Bernardino described such products as a candidate for PEPP, which cannot be seen as complex ("Products could allow the pooling of investments with the smoothing of returns across members of the pool, so that all members benefit from average long-term returns of the fund and are protected from extremely negative outcomes in stressed market situations."), see our comments on question 4. Neither are unit-linked products captured by this criterion.</p> <p>(This criterion should be deleted.</p> <p>Guideline 2, paragraph 3 (a) (iii): The point that "the maturity or surrender value or pay-out upon death may vary frequently or markedly at different points of time over the duration of the contract either because certain pre-determined threshold conditions are met or because certain time-points are reached" could be interpreted as deeming products with profit participation complex, when they for example guarantee to pay a final bonus on maturity. If contractual dates are clear to the customer at outset, this would not seem to be a feature that would be difficult to understand. In any case, we do not understand how this criterion is relevant for insurers.</p> <p>(This point should be deleted.</p> <p>Guideline 2, paragraph 3 (b): We do not understand why this criterion is necessary. All IBIPs will fall in the scope of the PRIIPs Regulation and, therefore, will provide a KID that describes all the costs included in the product through the disclosure of total costs and the Reduction in Yield (RIY). In particular, the RIY is a new concept that was thoroughly investigated in</p>	<p>The drafting of this provision and the explanatory text has been amended to clarify the intention.</p> <p>The Guidelines have been amended to reflect this point.</p> <p>Please see the Feedback Statement.</p>
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			<p>the consumer testing and is able to present the cost impact in a clear and comprehensive way.</p> <p>(This criterion should be deleted.</p> <p>Guideline 2, paragraph 3 (c): We understand that EIOPA wishes to keep the surrender fees as simple as possible. However, a too simplistic reference value would not always be fair towards consumers. For example, a fair processing fee of surrender a contract would result in a fixed monetary sum. However, the loss of liquidity premium is fairly measured as a percentage of the investment. Thus, a combination of the in 3(c) mentioned quantities should also be allowed.</p> <p>(Therefore, the criterion should be amended in the following way</p> <p>(c) There are surrender fees that are difficult for the customer to understand, including where the cost of redeeming the insurance-based investment product before maturity does not satisfy one or the combination of the following conditions:</p> <ul style="list-style-type: none"> (i) it is a fixed sum; (ii) it is a fixed sum for each year or other specified time period remaining until the maturity of the contract; (iii) it is a fixed percentage of the amount of premiums paid or another amount that can be understood by the customer; (iv) it is a compensation for paying also the part of the surrender value which is greater than the death benefit at the time of surrender. 	
127.	Institute and Faculty of Actuaries	Question 5	<p>Question:</p> <p>Do you have any comments on Guideline 2 and its explanatory text? (Guideline 2: Insurance -based investments products that incorporate a</p>	Please see the Feedback Statement.

			<p>structure which makes it difficult for the customer to understand the risks involved)</p> <p>An exception should be made where an insurer uses accepted actuarial approaches to transfer risk from the policyholder to the company, which serves to improve policyholder outcomes by, for example, removing market volatility in the case of with-profits contracts. This practice on its own should not be a determinant of whether a product is considered complex.</p> <p>On a separate point, it is restrictive to require surrender charges to be fixed as a percentage of premiums paid, or potentially of the value of the policyholder unit account. This does not allow reductions over time to incentivise policyholders to continue to invest funds for longer (which could potentially achieve favourable investment outcomes).</p>	
128.	Insurance Europe	Question 5	<p>Do you have any comments on Guideline 2 and its explanatory text?</p> <p>We support that EIOPA thoroughly investigates different features of IBIPs that might lead to unexpected hidden risks for consumers. However, it should be acknowledged that some Member States have implemented rules that protect consumers' interests. Therefore, EIOPA should clarify in its guidelines that any rules imposed by national regulators that are in the best interests of consumers and ensure a high level of consumer protection should not lead to products being deemed complex, and therefore do not need to be taken into account when assessing the criteria.</p> <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 the case of 'execution-only' sales of this product. This means that in the case of a unit-linked product, the assessment of the criteria should be done at the level of the underlying fund. We would suggest that this be specified directly in guidelines 2.2 and 2.3(a) to (c).</p>	<p>The Guidelines have been amended to reflect this point.</p> <p>It is considered appropriate to clarify this point in the explanatory text.</p>

		<p>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(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.</p> <p>Paragraph 2.19 of the explanatory text states that fiscal penalties could also be considered as unreasonable exit charges. However, this interpretation is not justified, as 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 the product. It is unclear what the practical consequences would be if this should happen.</p> <p>With regard to 2(c) of guideline 2 it should be clarified that where national laws allow for surrender fees which are suitable and which are agreed in the insurance contract, they should not be taken into account for the complexity assessment of a product.</p> <p>Large parts of this guideline focus on the mechanisms insurers use to provide consumers with instruments which diversify risks and smoothen returns, and place an unfair regulatory burden on insurers compared with providers of other financial instruments which only fall within the scope of MiFID II. Complexity under MiFID II means a high degree of opacity of the connection between the consumer's investment and the possible risks and returns, for example involving investment strategies with complex derivative instruments to leverage risks, non-transparent exposure to several market risks and/or credit risks. For insurance products, the actual mechanisms of the smoothing may be difficult for the customer to understand, but the concept is not, including what this means for how risky a product is.</p> <p>Insurance Europe would also like to make the following remarks on specific paragraphs of guideline 2:</p> <p><input type="checkbox"/> Paragraph 3 (a) to (c): We strongly suggest that the respective</p>	<p>This point is addressed in the explanatory text.</p> <p>The drafting has been amended to state "may include fiscal penalties".</p> <p>The Guidelines have been amended to reflect this point.</p> <p>Please see the Feedback Statement.</p> <p>The drafting approach is</p>
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		<p>subcriteria (i) to (iii) of criteria (a) to (c) in point 3 of guideline 2 should be conclusive and not only conceived as examples of other possible cases of complexity. With a view to the very broad wording of criteria (a), (b) and (c) (without regard to the respective subcriteria), the aim of achieving legal certainty for manufacturers, distributors and consumers alike will otherwise not be achieved. For example, the material content of point 3 (a) of guideline 2 is limited to the tautology that a product is complex if there are complex mechanisms that determine its pay-out value. EIOPA should bear in mind that the guidelines can be amended at any time in the future, should the criteria prove not to be sufficient.</p> <p><input type="checkbox"/> Paragraph 3(a) and paragraph 3(a)(i): Focusing on the provisions of “complex mechanisms that determine the maturity or surrender value on death”, or “the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking, the effects of which are difficult for the customer to understand”, could be interpreted as implying that any traditional insurance products that may pay discretionary bonuses would be deemed complex. We believe that the focus should be on the outcome for the customer and the actual risks involved, and not on the mechanisms which insurers use. We therefore suggest that these points are deleted.</p> <p><input type="checkbox"/> Paragraph 3(a)(i): We would like to draw EIOPA’s attention to the fact that products which offer guarantees almost always provide for a surplus participation of the policyholders. We strongly support EIOPA’s view, as expressed in the technical advice under the IDD and reaffirmed in the consultation paper, that guarantees are valuable for the customer and should therefore not automatically be penalised by the label of complexity. To ensure high levels of consumer protection, profit participation is strongly regulated and follows prescribed legal rules in some Member States (under German law for example Section 153 Insurance Contract Act (VVG); Sections 139 and 140 Insurance Supervision Act (VAG); Sections 6, 7 and 8 Minimum Allocation Regulation (MindZV)). Some rules set by the legislator may in some cases appear complex, but they solely serve the best possible consumer protection and should not lead to products being deemed complex.</p>	<p>considered to be appropriate.</p> <p>Please see the Feedback Statement.</p> <p>The Guidelines have been amended to reflect this point.</p>
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		<p>The following change is necessary in Guideline 2, paragraph 3 (a)(i):</p> <p>(i) the maturity or surrender value or pay out upon death is dependent on profit participation which is not subject to supervisory regulation or policyholder protection regulation (such as information requirements);</p> <p><input type="checkbox"/> Paragraph 3(a)(ii): We do not understand why this criterion is relevant for insurers. We assume that the criterion is not aimed at the mechanisms which form the basis of any collective investment: see our remarks under Q.4 regarding Mr. Bernardino’s comments. Neither are unit-linked products captured by this criterion. Thus, the wording of the criterion should be restricted to capture only products that are indeed complex. The provision could also be interpreted as meaning that if insurance investment contained different shares and bonds and the value was derived from the different exposures, the product would be deemed complex. However, this would not be different in nature from a pooled UCITS fund which would qualify as non-complex under MiFID II. We feel that this would put insurance products at a clear disadvantage with comparable financial instruments.</p> <p>(This criterion should therefore be deleted.</p> <p><input type="checkbox"/> Paragraph 3 (a) (iii): The point that “the maturity or surrender value or pay out upon death may vary frequently or markedly at different points of time over the duration of the contract either because certain pre-determined threshold conditions are met or because certain time-points are reached” could be interpreted as deeming with-profit type products complex, when they for example guarantee to pay a final bonus on maturity. If contractual dates are clear to the customer at outset this would not seem to be a feature that would be difficult to understand. Therefore, we believe this point should be deleted.</p> <p><input type="checkbox"/> Paragraph 3 (b): We do not understand why this criterion is necessary. All IBIPs will fall in the scope of the PRIIPs Regulation and, therefore, will provide a KID that describes all the costs included in the product through the disclosure of total costs and the Reduction in Yield (RIY). In particular, the RIY is a new concept that was thoroughly investigated in the consumer testing and is able to present the cost impact in a clear and</p>	<p>This provision and the explanatory text have been amended to clarify the intention.</p> <p>This provision has been amended to reflect this point.</p> <p>Please see the Feedback Statement.</p>
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			<p>comprehensive way. (This criterion should be deleted.</p> <p><input type="checkbox"/> Paragraph 3 (c): We understand that EIOPA wishes to keep the surrender fees as simple as possible. However, a too simplistic reference value would not be always fair towards consumers. For example, a processing fee of surrendering a contract would result in a fixed monetary sum. However, the loss of liquidity premium is fairly measured as a percentage of the investment. Rules on surrender values should be flexible, so that national authorities can adjust them to reflect national conditions.</p> <p>Furthermore, we would welcome a clarification concerning paragraph 2(a) and EIOPA’s understanding of “materially altering the pay-out profile” of a product. Typically, a product’s pay-out profile might be “materially altered” when clients eg at some point in time received an asset they originally had not purchased instead of a monetary cashflow the product was originally equipped with (eg compare the possible pay-out profile of a convertible bond). In contrast, regarding products where clients “just” receive more or less (monetary) return due to ordinary capital market fluctuations and hence potentially lower surplus participation rates, should not qualify as “materially altering the pay-out profile”. Hence, we would be grateful if EIOPA clarified its understanding of “materially altering the pay-out profile” in the guidelines’ explanatory text, eg by providing some further examples.</p>	<p>EIOPA has developed additional explanatory text with a view to clarifying these points.</p>
129.	Intesa Sanpaolo	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>	<p>The drafting of the Guidelines has been amended, including the development of additional explanatory text, with a view to clarifying the types of structure which are expected to be captured.</p>

		<p>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).</p> <p>More specifically :</p> <p>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»:</p> <ul style="list-style-type: none"> <input type="checkbox"/> 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 extend is the alteration <input type="checkbox"/> Whether the alteration is relevant both when it increases as well as when it decreases the overall risk. <p>In particular more clarity is needed on:</p> <ul style="list-style-type: none"> o 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 ; o Clauses that automatically rebalance investments exposures by re-establishing the original quota chose by the client, which have been altered by market fluctuations. <p>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.</p> <p>In this case, the definition of « available » should allow for the disclosure to the client of a quotation/cash value upon request.</p> <p>With regard to para 1.16 a) ii) , the requirement seems to forbid the sale of composite MOPs under execution-only regime, where these products combine both investment options on funds guaranteed by the undertaking</p>	<p>The reference was intended to include Article 30(3)(a) as a whole, including points (i) and (ii). However, the structure of the Guidelines has been changed to clarify this.</p> <p>Please see the additional explanatory text to this provision.</p> <p>Please see the additional explanatory text to this provision.</p> <p>Please see the revisions to this provision and the</p>
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			<p>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>	<p>additional explanatory text.</p> <p>The Guidelines intend to address whether the customer can understand the risks involved and not per se what types of contractual features are in their best interests.</p> <p>EIOPA has taken note of this comment and does not intend to prevent increased execution-only sales of products which do not incorporate a complex structure.</p>
130.	Investment and Life Assurance Group (ILAG)	Question 5	<p>Both the guideline and the explanatory text could be clearer in relation to guarantees. If the guarantee is subject to complicated rules determining the conditions of its application, this could be difficult for a consumer to understand. Consideration of the assessment of product complexity should be a priority. However, it would be helpful to have wording to the effect that a guarantee isn't automatic criteria for complexity.</p> <p>We reiterate that what is important is that the consumer understands the risks they are exposed to, in terms of potential financial loss, and early access to their money. Understanding how the product is constructed to mitigate those risks is secondary</p>	<p>A provision has been added to the Guidelines to address when a guarantee may be difficult to understand.</p>
131.	IRSG	Question 5	<p>See response to Q4 as the points are relevant here too.</p> <p>It should be advisable to establish more high-level criteria, not only depending on the contractual features, for assessing whether or not a product incorporates a structure which makes it difficult for the customer to understand the risks involved. The extensive cumulative list of criteria in</p>	<p>The Guidelines aim to strike a balance between the need for national discretion and a convergent application of the</p>

			<p>Guideline 2 should not lead to a situation in which most IBIPs are classified as complex IBIPs. It should also be highlighted that, regarding execution-only sales, and compared to MiFID, there is an additional layer of protection for consumers in the IDD because the « demands and needs test » always applies (this kind of demands and needs test does not exist in MiFID).</p> <p>In particular text in 1.15 paragraphs (a) and (b) need to be changed to properly identify complex products.</p>	<p>IDD across member states.</p> <p>These paragraphs have not been changed as they aim to achieve consistency within the application of Article 30(3)(a) of IDD. However, additional explanatory text has been developed to clarify the intention.</p>
C 132.		Question 5	Confidential comment	
133.	OP Financial Group	Question 5	We mainly agree with Guideline 2 on insurance-based investments products that incorporate a structure, which makes it difficult for the customer to understand the risks involved. These kind of products could be available in the future, although now it is difficult find a suitable product to the criteria.	Noted.
134.	Standard Life UK	Question 5	<p>Do you have any comments on Guideline 2 and its explanatory text?</p> <p>Guarantees</p> <p>We ask that the Guideline makes clear insurers or intermediaries can clearly explain to a customer whether there are conditions attached to guarantees, or if the insurance undertaking is able to exercise discretion. This would ensure that the structure of the product should not be difficult to understand.</p> <p>“Beneficiary clause” criteria</p> <p>We have concerns with the inclusion of the “beneficiary clause” criteria for determining complexity, as beneficiary clauses do not influence how risky a product is, or how it performs.</p>	<p>A provision has been added to the Guidelines to address when a guarantee may be difficult to understand.</p> <p>The existence of a “beneficiary clause” is not intended to automatically</p>

			<p>Modifying the beneficiary clause can be in the interests of customers as they enable them to keep control over the beneficiary. This can be easily explained and should not be a factor in this Guideline.</p> <p>We suggest this point is removed from the criteria or its intention clarified if EIOPA doesn't intend firms to make such a literal interpretation.</p>	<p>render a product complex. The Guideline and explanatory text has been amended to address this point.</p>
135.	Unipol Gruppo Finanziario S.p.A.	Question 5	<p>Linea Guida 2, paragrafo 1.</p> <p>In via generale, con riferimento alla "struttura che rende difficile per il Cliente comprendere il rischio sotteso" si segnala che le regole che andranno a disciplinare la qualificazione di prodotto complesso/non complesso non hanno riflesso unicamente sull'execution only ma anche nell'ambito della futura documentazione pre-contrattuale, posto che nel KID andrà esplicitamente indicato se un prodotto è complesso o meno (cfr. Regolamento REGOLAMENTO (UE) N. 1286/2014, Art. 8, co.3, lett.b).</p> <p>Ciò premesso, si ritiene che i criteri contenuti nelle Linee Guida in base ai quali la Compagnia sarà chiamata a valutare la complessità del prodotto siano eccessivamente generici e soggetti alla libera interpretazione da parte dei diversi player. Si correrebbe quindi il rischio di avere sul mercato prodotti con le medesime caratteristiche ma classificati diversamente (complesso per qualcuno, non complesso per altri) con i seguenti effetti:</p> <ol style="list-style-type: none"> 1- Mancato raggiungimento dell'obiettivo di "protezione del cliente"; 2- Possibili ripercussioni di natura commerciale (a parità di prodotto il cliente sarebbe maggiormente propenso all'acquisto di quello classificato come "non complesso"). <p>Si raccomanda pertanto una formulazione più puntuale dei criteri indicati.</p> <p>Linea Guida 2, paragrafo 2.</p> <p>Con riferimento alle indicazioni formulate nella Linea Guida 2 si osserva che le ipotesi richiamate alle lettere a), b) e c) del par. 2 non sono frequenti nella prassi, rappresentando per lo più esempi teorici, soprattutto con riferimento alle ipotesi di cui alla lettera b) (prodotti privi della facoltà di riscatto anticipato) o a quelle di cui alla lettera c) (prodotti con costi di riscatto irragionevoli).</p>	<p>The Guidelines aim to strike a balance between the need for national discretion and a convergent application of the IDD across member states.</p> <p>EIOPA has sought to clarify the application of these provisions in the explanatory text to the final Guidelines.</p>

		<p>Quanto alla lettera a), invece, si sollevano delle perplessità con riferimento all'ipotesi implicita secondo cui nei prodotti vita l'impresa di assicurazione possa esercitare una certa discrezionalità nella determinazione della prestazione o del valore di riscatto.</p> <p>Nell'ordinamento italiano sono previste unicamente le clausole che consentono all'assicuratore la modifica unilaterale delle condizioni contrattuali (es. clausole di riduzione del minimo garantito con riferimento alla lett. a.), ma che sono ampiamente limitate dal necessario rispetto delle regole poste dal Codice a tutela dei consumatori e dalle disposizioni di dettaglio sancite dall'Autorità di Vigilanza sul settore assicurativo (IVASS).</p> <p>Con riferimento alla lett. c) del par. 2, si osserva che di norma i costi di riscatto applicati al cliente non configurano una penalizzazione dello stesso, ma sono la conseguenza del diverso equilibrio tecnico-assicurativo del prodotto nel momento in cui il cliente esercita l'opzione di risolvere anticipatamente il contratto. Per tale motivo, essi non configurano una penalizzazione.</p> <p>In altri termini, il costo dell'opzione non può in alcun modo essere considerato un elemento che rende difficoltosa la comprensione del prodotto. Si chiede pertanto l'eliminazione della lett. c).</p> <p>Linea Guida 2, paragrafo 3.</p> <p>Con riferimento ai criteri di cui alla lettera a), romanini (i) e (ii) del par. 3 della Linea Guida 2 si osserva che il criterio della "difficile comprensibilità delle caratteristiche del prodotto da parte del cliente" è un criterio soggettivo che non consente un'agevole classificazione. Si raccomanda quindi la riformulazione del concetto in termini più oggettivi.</p>	<p>The existence of a "beneficiary clause" is not intended to automatically render a product complex. The Guideline and explanatory text has been amended to address this</p>
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			<p>investimento e prodotti di investimento non assicurativi.</p> <p>Conseguentemente, si potrebbe così verificare una disparità di trattamento tra diversi operatori sul mercato (imprese di assicurazione e non) a fronte dell'emissione di prodotti costruiti nella medesima maniera, ovvero secondo lo schema del contratto in favore di terzi con clausola del beneficiario.</p> <p><input type="checkbox"/> Si raccomanda quindi l'eliminazione della lett. d), par. 3.</p>	
136.	Actuarial Association of Europe	Question 6	<p>The link between the advice and the consultation could be strengthened by ensuring more consistency and taking more into account the guaranteed maturity value.</p> <p>We agree that a capital guarantee is an important feature for an IBIP. The guaranteed maturity value as expressed in the IDD advice seems relevant.</p> <p>But the guaranteed minimum surrender value condition seems not so appropriate since such a condition, although often satisfied in the past, is not consistent, namely with the level of interest rates, with the mid-long term nature of insurance products, so that including such a condition could represent a detrimental incentive from a prudential perspective. We suggest removing the surrender value condition provided that the surrender value could be assessed on an objective basis with reference to the value of the assets.</p>	Please see the Feedback Statement.
137.	Allianz SE	Question 6	<p><input type="checkbox"/> EIOPA adds additional criteria in the draft Guidelines, compared to the TA, while level 3 guidelines should just explain and refine level 2 and not add to it. Namely Guideline 2 is in many instances going beyond Level 1 and Level 2 texts with the detrimental effect to create an unlevel playing field to UCITS and banking products.</p> <p><input type="checkbox"/> The wording of the Technical Advice in p. 76, 77 is dependent on the comments received during this public consultation of the Guidelines. On that basis we urge a holistic re-assessment of the criteria proposed both in Level 2 and in potential Guidelines.</p>	Please see the Feedback Statement.
138.	Association of	Question 6	We have particular concerns that Guideline 2, read in conjunction with EIOPA	Please see the Feedback

	British Insurers	<p>Technical Advice specifying other non-complex IBIPs, could wrongly classify many IBIPs as complex. Gabriel Bernardino acknowledged in his address on pensions in Europe³ from 17 February 2017, that with-profits 'could allow the pooling of investments with the smoothing of returns across members of the pool, so that all members benefit from average long-term returns of the fund and are protected from extremely negative outcomes in stressed market situations'.</p> <p>We fear that the restrictive approach taken will limit consumers' access to insurance products, including with-profits, and puts such instruments at a clear disadvantage to comparable financial instruments without any insurance aspects. As currently proposed, it is likely that the vast majority of IBIPs would be classed as complex, therefore rendering execution-only sales nearly impossible – even when the demands and needs of customers are already taken into account. To sell products purely non-advised and advised places rigid requirements on insurers that could limit innovation in the sector, particularly for digital channels. These requirements also go beyond what is necessary to ensure that customers are made aware of complex products, or structures which are difficult to understand.</p> <p>Regulatory requirements for insurers, as explained in answer to Question 1, such as Solvency II, FSCS, existing product oversight and governance requirements, or the PRIIPs KID, already ensure that customers are protected and clearly informed of the underlying risks, likely performance, and costs of a product.</p> <p>We have specific concerns with regards to the following aspects of the Technical Advice:</p> <p><input type="checkbox"/> The requirement put in place by Technical Advice (a), for guarantees at both surrender and maturity level, would seem to deem most traditional insurance products that invest in unit linked funds as complex, for example. It also creates an uneven playing field with UCITS, which are automatically classed as non-complex and do not require guarantees, either at maturity or surrender level.</p> <p>We question why Technical Advice (e) refers to a structure making it difficult for the customer to understand the risks involved, when it is intended to specify 'other non-complex' IBIPs, as of Article 30 (a) (ii). The structure of</p>	Statement.
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			<p>the product, however, concerns Article 30 (a) (i). Again, it should be highlighted that EIOPA should focus on the ability for the customer to understand how the product is intended to work, rather than the actuarial science involved.</p> <p>³ https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/2017-02-17%20Occupational%20Pensions%20between%20European%20Union%20R rules%20and%20National%20Solutions.pdf</p>	
139.	Association of Financial Mutuals (AFM)	Question 6	We have no comments.	
140.	Association of International Life Offices AILO	Question 6	No	
141.	Assuralia	Question 6	<p>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:</p> <p>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;</p> <p>2) there is an inconsistency between the criteria in the EIOPA technical advice and in 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>This is correct.</p> <p>The different levels of legislation are part of the EU legislative framework. However, the structure of the guidelines has been changed to try to provide more clarity. Some amendments have also been made to the explanatory text to Guideline 1.</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>	
142.	Austrian Insurance Association VVO	Question 6	<p>The VVO wishes to highlight that it is difficult to understand the interaction between the two sets of criteria at two different legislative levels, and that it would have been preferable to have only one set of criteria in one legislative document. In addition we would like to draw the attention to the fact that IDD is based on minimum harmonization. Therefore and also to consider national particularities regarding product features and national information requirements there should be only high-level principles at European level which lead to a level playing field between products which are deemed non-complex under MiFID and IBIPs which are subject to IDD and Solvency II.</p>	<p>The different levels of legislation are part of the EU legislative framework. However, the structure of the guidelines has been changed to try to provide more clarity.</p>
143.	Better Finance	Question 6	<p>We partly agree and partly disagree upon the interaction between the requirements in EIOPA's technical advice on "other non-complex insurance based investments" and the requirements proposed in these Guidelines. In detail we draw the following conclusions (TA, p. 77):</p>	

		<p>Paragraph a) of the TA is clarified in detail by sub-paragraph 1.16 of Guideline 2, which we fully agree upon.</p> <p>On the contrary the wording of sub-paragraph 1.15 (a to c) of Guideline 2 essentially only repeat paragraphs b), c) and d) of TA without any further clarification, a fact which we have already strongly criticized in our General Comment above. The three paragraphs have to be weighted very differently:</p> <p><input type="checkbox"/> With regard to paragraph b) of TA concerning the “nature, risk or pay-out profile” which might be altered by the insurer, we again stress that this provision should not only include pay-out options like lump sum, annuities, programmed withdrawal or income drawdown. It must be taken into consideration that the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking (like mortality tables and participation in benefits - - changeable even during contract duration), the effects of which are difficult for the customer to understand.</p> <p><input type="checkbox"/> Paragraph c) of TA has to clarify, what does it mean that there are not options to surrender or otherwise realise the insurance-based investment product at a value that is “available to the customer”. We suppose that this wording implies „prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer (cf. Article 57 (b) of COM Delegated Regulation of 25.4.2016) like any other securities. We stress that this assessment is not valid for life insurances at all, because the surrender values of any contract are only calculated individually by the insurer and only on request of the policyholder. In consequence following to this paragraph alone there can not be any non-complex IBIPs currently available on the market.</p> <p><input type="checkbox"/> Paragraph d) of TA misses any necessary clarifications by the proposed Guidelines. We underline again that usually life or annuity insurance contracts include “hidden” acquisition costs by commissions and additional exit fees (“Stornogebühren”) which strongly reduce the surrender value. In case of early withdrawal the charges make an investment illiquid even though technically it may be possible to redeem. Additionally it is not clarified at all, what is “unreasonable detriment” to the customer? Which are the thresholds? That is why this feature must urgently be specified</p>	<p>Please see the explanatory text to the Final Guidelines.</p> <p>Please see the explanatory text to the Final Guidelines.</p> <p>Please see the explanatory text to the Guidelines. However, it is not considered to be appropriate to define a threshold.</p>
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			<p>(cf. our comment on Q19, October 2016). The insurers will always try to prove that their costs are not “disproportionate” in order to circumvent this feature.</p> <p>Paragraph e) of TA, too, is essentially only repeated in sub-paragraph 1.14 of Guideline 2 without any further clarifications. As already pointed out in our comment on Q5 above, complexity of IBIPs is less linked to the underlying investment products but to the lack of transparency of various “layers” of costs. The part of the premiums paid by the policyholder which will actually be invested is strongly reduced by entry and ongoing costs of the insurers and of the investment companies as well. Additionally there are exit penalties.</p> <p>This non-transparent structure of costs and of the actually invested part of the premium is incorporated in any IBID and therefore “makes it difficult for the customer to understand the risks involved.” The most important risk of consumer detriment consist in cancelling the contract before reaching maturity: no capital guarantees are valid, and additional high penalty fees heavily reduce the accumulated savings of the customer being paid out.</p>	<p>Please see paragraph 8 of EIOPA’s technical advice on this topic.</p> <p>This risk is considered to be addressed within the existing provisions in the technical advice and Guidelines.</p>
144.	Bund der Versicherten BdV	Question 6	<p>We partly agree and partly disagree upon the interaction between the requirements in EIOPA’s technical advice on ‘other non-complex insurance based investments’ and the requirements proposed in these Guidelines. In detail we draw the following conclusions (TA, p. 77):</p> <p>Paragraph a) of the TA is clarified in detail by sub-paragraph 1.16 of Guideline 2, which we fully agree upon.</p> <p>On the contrary the wording of sub-paragraph 1.15 (a to c) of Guideline 2 essentially only repeats paragraphs b), c) and d) of TA without any further clarification, a fact which we have already strongly criticized in our General Comment above. The three paragraphs have to be weighted very differently:</p> <p><input type="checkbox"/> With regard to paragraph b) of TA concerning the “nature, risk or pay-out profile” which might be altered by the insurer, we again stress that this provision should not only include pay-out options like lump sum, annuities,</p>	<p>Please see the explanatory text to the Final Guidelines.</p>

		<p>programmed withdrawal or income drawdown. It must be taken into consideration that the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking (like mortality tables and participation in benefits - changeable even during contract duration), the effects of which are difficult for the customer to understand.</p> <p><input type="checkbox"/> Paragraph c) of TA has to clarify, what does it mean that there are not options to surrender or otherwise realise the insurance-based investment product at a value that is "available to the customer". We suppose that this wording implies „prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer" (cf. Article 57 (b) of COM Delegated Regulation of 25.4.2016) like any other securities. We stress that this assessment is not valid for life insurances at all, because the surrender values of any contract are only calculated individually by the insurer and only on request of the policyholder. In consequence following to this paragraph alone there can not be any non-complex IBIPs currently available on the market.</p> <p><input type="checkbox"/> Paragraph d) of TA misses any necessary clarifications by the proposed Guidelines. We underline again that usually life or annuity insurance contracts include "hidden" acquisition costs by commissions and additional exit fees ("Stornogebühren") which strongly reduce the surrender value. In case of early withdrawal the charges make an investment illiquid even though technically it may be possible to redeem. Additionally it is not clarified at all, what is "unreasonable detriment" to the customer? Which are the thresholds? That is why this feature must urgently be specified (cf. our comment on Q19, October 2016). The insurers will always try to proof that their costs are not "disproportionate" in order to circumvent this feature.</p> <p>Paragraph e) of TA, too, is essentially only repeated in sub-paragraph 1.14 of Guideline 2 without any further clarifications. As already pointed out in our comment on Q5 above, complexity of IBIPs is less linked to the underlying investment products but to the lack of transparency of various "layers" of costs. The part of the premiums paid by the policyholder which will actually be invested is strongly reduced by entry and ongoing costs of the insurers and of the investment companies as well. Additionally there are exit penalties.</p>	<p>Please see the explanatory text to the Final Guidelines.</p> <p>Please see the explanatory text to the Guidelines. However, it is not considered to be appropriate to define a threshold.</p> <p>Please see paragraph 8 of EIOPA's technical advice on this topic.</p>
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			<p>This non-transparent structure of costs and of the actually invested part of the premium is incorporated in any IBID and therefore “makes it difficult for the customer to understand the risks involved.” The most important risk of consumer detriment consist in cancelling the contract before reaching maturity: no capital guarantees are valid, and additional high penalty fees heavily reduce the accumulated savings of the customer being paid out.</p>	<p>This risk is considered to be addressed within the existing provisions in the technical advice and Guidelines.</p>
145.	CNCIF	Question 6	We have no comment.	
146.	DAV German Actuarial Society	Question 6	<p>To our current understanding the definition of complexity and non-complexity following article 30(3)(a)(i) and 30(3)(a)(ii) (“other non-complex insurance based investment products”) only differs in the required investment guarantee when “other non-complex insurance-based investment products” are considered.</p> <p>From an actuarial point of view, there is in a first instance little reason why e.g. a non-structured UCITS fund (which is deemed non-complex under MiFID II) shall be deemed non-complex whereas a life insurance product with profit participation – a product family offered in many European countries – shall be deemed complex only due to the presumably lacking but required investment guarantee and because the respective general (cover) assets were not held in a UCITS wrapper although the insurer’s general assets aim at (collectively) protecting retail customers in a very similar way as required for UCITS funds. In our opinion, this required mandatory investment guarantee for products qualifying for article 30(3)(a)(ii) should additionally take into account if the underlying investment vehicle itself was not managed according to the general principles that protect customers and limit downside risk to a certain extent. This article is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. In such cases the financial instruments invested into by the insurer should not be taken into account if the overall investment ensures that there are no hidden risks for consumers. These investment principles could be based on the idea of e.g. ensuring the security, quality, liquidity and profitability of the underlying investment vehicle as a whole as the prudent person principle under Solvency II. This would If these principles – that could further be aligned with Solvency II</p>	<p>EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules,</p>

			requirements – were fulfilled, the mandatory guarantee requirement should be waived to ensure a level playing field on the notion of product complexity between banks, asset managers and insurance companies. Otherwise investment products covered by MiFID would receive a preferential treatment compared to insurance products.	
C 147.		Question 6	Confidential comment.	
148.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Question 6	We do not have any specific comments.	
149.	German Insurance Association (GDV)	Question 6	<p>In our view, there is little reason why e.g. a non-structured UCITS fund (which is deemed non-complex under MiFID II) shall be deemed non-complex whereas a life insurance product with profit participation – a product family offered in many European countries – shall be deemed complex only due to the presumably lacking but required investment guarantee and because the respective general (cover) assets were not held in a UCITS wrapper although the insurer’s general assets aim at (collectively) protecting retail customers in a very similar way as required for UCITS funds.</p> <p>We believe that products where the customer does not make an investment selection with regard to individual financial instruments, but where the investment is done by the insurer who is subject to a very strong prudent person principle fall into the scope Article 30(3)(a)(i). This article is supposed</p>	EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.

			to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. In such cases the financial instruments invested into by the insurer should not be taken into account if the overall investment ensures that there are no hidden risks for consumers. This is also the case for UCITS which on one hand may invest in complex instruments such as derivatives but on the other hand are still regarded as non-complex due to the overarching structure. Otherwise investment products covered by MiFID would receive a preferential treatment compared to insurance products.	
150.	Insurance Europe	Question 6	<p>Do you have any comments on the interaction between the requirements in EIOPA's technical advice on 'other non-complex insurance based investments' and the requirements proposed in these Guidelines?</p> <p>Insurance Europe wishes to highlight that it is difficult to understand the interaction between the two sets of criteria at two different legislative levels, and that it would have been preferable to have only one set of criteria in one legislative document.</p> <p>It is unclear, for example, how the criterion in the technical advice could apply to an IBIP that is composed of both a guaranteed savings part and a unit-linked part.</p> <p>In our view, there is little reason why eg a non-structured UCITS fund (which is deemed non-complex under MiFID II) shall be deemed non-complex whereas a participating life insurance product – a product family offered in many European countries – shall be deemed complex only due to the presumably lacking but required investment guarantee at maturity and surrender and because the respective general (cover) assets were not held in a UCITS wrapper although the insurer's general assets aim at (collectively) protecting retail customers in a very similar way as required for UCITS funds.</p> <p>We believe that products where the customer does not make an investment</p>	<p>The different levels of legislation are part of the EU legislative framework. However, the structure of the guidelines has been changed to try to provide more clarity.</p> <p>EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.</p>

			<p>selection with regard to individual financial instruments, but where the investment is done by the insurer who is subject to a very strong prudent person principle fall into the scope Article 30(3)(a)(i). This article is supposed to address products which provide only direct investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. These are investments where consumers make an investment choice themselves and where the investment exposure is, therefore, not absorbed by the expertise of a professional investor who is subject to supervisory regulation. In such cases, the financial instruments invested into by the insurer should not be taken into account if the overall investment ensures that there are no hidden risks for consumers. This is also the case for UCITS which on the one hand may invest in complex instruments such as derivatives, but on the other hand are still regarded as non-complex due to the overarching structure. Otherwise, investment products covered by MiFID would receive a preferential treatment compared to insurance products which are not covered under MiFID II.</p>	
151.	Intesa Sanpaolo	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>	It is not clear what potential contradiction is referred to.
152.	IRSG	Question 6	<p>These guidelines cannot be discussed in isolation without also discussing the EIOPA technical advice on the Delegated Acts which are under development by the Commission.</p> <p>Based on the combination of Delegated Acts currently under discussion and these draft guidelines there is a real risk that almost all traditional insurance type savings products and even new products designed specifically to meet good standards of risk and transparency could be deemed complex. This outcome must be avoided and we believe that a relatively small proportion of</p>	Please see the Feedback Statement.

			current sales involve complex products. In particular, the current EIOPA advice on the Delegated Act text which automatically defines a product as complex if the surrender value is different from the maturity value must be changed and these guidelines should clarify that such a product is not complex unless the detail surrounding the charges, surrender value, maturity value are complex.	
C 153.		Question 6	Confidential comment.	
154.	Standard Life UK	Question 6	Do you have any comments on the interaction between the requirements in EIOPA's technical advice on 'other non-complex insurance based investments' and the requirements proposed in these Guidelines? No.	
155.	Unipol Gruppo Finanziario S.p.A.	Question 6	Uno dei requisiti indicati nel parere tecnico (Technical Advice di Eiopa, punto a), pag. 32), qualifica un prodotto IBIP come "non-complex" se esiste un livello di garanzia del capitale alla scadenza o in fase di riscatto, pari almeno al premio investito. Tale requisito non sembra rinvenirsi tuttavia nelle presenti Linee Guida proposte da EIOPA. L'esempio illustrativo n. 3 riportato nel testo di proposta delle Linee Guida fa riferimento infatti a un livello di garanzia da parte dell'impresa assicuratrice pari all'80% dei premi pagati dal cliente. Alla luce di quanto espresso, si raccomanda quindi di chiarire se un prodotto IBIP possa qualificarsi come non complesso anche in presenza di un livello di garanzia del capitale che non sia pari al 100% del premio investito.	The Guidelines only include comparative provisions to those proposed in the technical advice where they were considered to be relevant in the context of Article 30(3)(a)(i) of IDD. In this case, it is possible for there to be a guarantee (provided it can be understood), but it is not necessary.
156.	Association of British Insurers	Question 7	Please see our answers to the other questions in this Consultation.	
157.	Association of	Question 7	It is not clear whether some of the structure mentioned above, such as MVAs	Please see the response to

	Financial Mutuals (AFM)		would exclude relevant products from being distributed via execution-only under IDD. In reality, whilst many contemporary sales still include MVAs, the volume of with-profits sales in the UK is now much diminished, so the view of EIOPA is has greatest impact in relation to existing products, and to top-ups to these contracts.	your previous comments on this issue.
158.	Association of International Life Offices AILO	Question 7	Not applicable	
159.	Austrian Insurance Association VVO	Question 7	-	
160.	Better Finance	Question 7	Better Finance does not distribute any IBIPs. As it has been pointed out in Q3, Traditional capital life-insurance contracts are the only contracts where the customer cannot select the investment strategy and the insurers assures an interest rate on the investment part of the premium. In this respect, the individual knowledge and experience is not directly important. On the contrary, the comprehensive disclosure of costs which strongly reduce the investment part of the premium is all the more necessary.	Noted.
161.	Bund der Versicherten BdV	Question 7	BdV does not distribute any IBIPs. As already pointed in our comment on Q3 above, only related to traditional capital life-insurance contracts, where the customer cannot choose the investment strategy and therefore the insurers guarantees an interest rate on the investment part of the premium, the individual knowledge and experience of the customer related to investment strategies is not directly relevant. Instead of this, the comprehensive disclosure of costs which strongly reduce the investment part of the premium is all the more necessary. Additionally it must be taken into account that the maturity and surrender values and pay out upon death are dependent on variables set by the insurance undertaking (like mortality tables and participation in benefits - changeable even during contract duration), the	Noted.

			effects of which are difficult for the customer to understand.	
162.	CNCIF	Question 7	We have no comment.	
163.	DAV German Actuarial Society	Question 7	Once again, we want to highlight that the definition of product complexity in the original context of IDD and hence its relation to the execution-process only is most likely to be adopted by different current regulations as well. Hence, although question 7 “only” addresses the issue that products currently already distributed by means of execution-only, may not be fit for this type of distribution after IDD is actually in place, the more pressing question is what the even further consequences of a product being deemed complex rather were? These further consequences have to be thoroughly taken into account when defining the notion of complexity.	Please see the Feedback Statement.
C 164.		Question 7	Confidential comment.	
165.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Question 7	We do not distribute IBIPs on an “execution-only” basis.	
166.	Insurance Europe	Question 7	If you currently distribute insurance-based investment products via execution-only, which of the proposed criteria regarding structures which make it difficult for the customer to understand the risks involved, would exclude those products from being distributed via execution-only under IDD?	
C 167.		Question 7	Confidential comment	
168.	Standard Life UK	Question 7	If you currently distribute insurance-based investment products via execution-only, which of the proposed criteria regarding structures which make it difficult for the customer to understand the risks involved, would exclude those products from being distributed via execution-only under IDD?	

			<p>We refer to our comments under question 5 regarding the inclusion of the “beneficiary clause” criteria for determining complexity. We suggest this point is removed from the criteria or its intention clarified if EIOPA doesn’t intend firms to make such a literal interpretation.</p> <p>We strongly believe the Guideline should specify that products are assessed at product level.</p>	<p>Please see the response to your previous comments on this point.</p>	
169.	ANASF Associazione Nazionale Consulenti Finanzia	-	Question 8	<p>Examples 3, 8 and 10 confirm our request to amend Guideline 2 to consider the importance of the guarantee mechanism (cf. our answer to Q5). In particular, it is necessary to verify that the guarantee is actually effective, thereby complying with precise standards of customer protection (specifically, a guarantee by a third party that is subject to the supervision of a competent national authority). Indeed, it is of utmost importance that the guarantee is not influenced by specific risks pertaining to the activities of the insurance undertaking which developed the IBIP distributed to the customer.</p> <p>Example 2 needs further explanation, particularly with regard to the definition of a surrender fee which is/is not « disproportionate to the cost to the insurance undertaking ».</p> <p>The definition of Example 5, being too extended, may lead to the improper qualification as “non-complex” of products which would be too difficult for the customer to understand the underlying investments: let’s consider, for instance, a unit-linked product whose underlying financial instruments are equity funds which invest in the markets of different countries (encompassing both EU Member States and third countries). On the contrary, a prudential approach is needed, based on the “product-based” principle espoused in our answer to Q4.</p> <p>The product described in Example 6 should be deemed complex in order to completely prevent possible cases of mis-selling.</p> <p>We do not believe that Example 7 refers to a non-complex product: although</p>	<p>The Guideline has been amended to reflect this point.</p> <p>EIOPA does not consider that it is appropriate to define this.</p> <p>The example is considered to be in line with Article 30(3)(a)(i) of IDD.</p> <p>The proposed categorisation is considered to be appropriate.</p>

			<p>the “other” product structures may not be “difficult”, the way in which the surrender or maturity value reflects the performance of underlying investments makes the product difficult to understand for the “average” retail investor (let’s consider, for instance, a unit-linked product whose underlying financial instruments are equity funds which invest in the markets of different countries, encompassing both EU Member States and third countries).</p> <p>We do not believe that Example 10 refers to a non-complex product: despite the guarantee, there is actually a structure which makes it difficult for the customer to understand the performance of the product, inasmuch as « the insurer also invests in some derivatives ».</p> <p>Finally, we consider that also Example 11 should refer to a complex product: in order to avoid regulatory loopholes, all products with profit participation mechanisms should be deemed complex.</p>	<p>The example is considered to be in line with Article 30(3)(a)(i) of IDD.</p> <p>The example is considered to be in line with the IDD and EIOPA’s technical advice.</p> <p>As stated in the example, EIOPA considers that it will depend on the nature of the profit participation mechanism</p>
170.	Association of British Insurers	Question 8	<p>We welcome that the CP outlines the decision trees and the examples on IBIPs, as they help to understand the interaction between the requirements in EIOPA’s technical advice on ‘other non-complex insurance based investments’ and the proposals of the CP.</p> <p>We have the following remarks:</p> <p><input type="checkbox"/> Example 4: It is not clear why it would be difficult for a customer to understand that below 500 euros investment value the annual management charge is 25 euros. This could be clearly disclosed to the customer.</p> <p>Examples 9 and 10: The only fundamental difference between the two examples is the existence of a guarantee, which seemingly mitigates the</p>	<p>The example was based on the draft version of the Guidelines. Please see the Feedback Statement regarding the final provisions on costs.</p> <p>The example is considered to be consistent with the IDD</p>

			holding of derivatives. UCITS are technically able to hold derivatives, yet they are being classed as non-complex.	and EIOPA's technical advice.
171.	Association of Financial Mutuals (AFM)	Question 8	<p>We consider the decisions trees provided are consistent with the guidelines and provide a useful basis for distributors to verify the circumstances involved in any particular sale.</p> <p>The generic examples provide a useful summary of the issued raised in the guidelines. We would welcome more clarity on 'the structures which make it difficult for the customer to understand', as we believe these statements will benefit from being consistently applied across Member States.</p>	
172.	Association of International Life Offices AILO	Question 8	No	
173.	Assuralia	Question 8	<p>The generic examples 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 of the utmost importance that the criteria from the technical advice, the guidelines and the examples are coherent. More specifically:</p> <p><input type="checkbox"/> 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;</p> <p><input type="checkbox"/> 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;</p> <p><input type="checkbox"/> Assuralia suggests to include them directly into the criteria to illustrate the interpretation of the different criteria.</p> <p>Example 3 however lacks relevance, as to our knowledge it is not possible for</p>	<p>EIOPA's technical advice did not distinguish between guaranteed and unit-linked products.</p> <p>Example 11 was not intended to be exactly reflect the provision in EIOPA's technical advice which was intended to establish a minimum level of the guarantee.</p> <p>EIOPA understands unit-</p>

			<p>an insurer to offer a guarantee in a unit-linked IBIP.</p> <p>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 derivatives¹, while an IBIP is complex as soon as it invests in some derivatives.</p> <p>¹ 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).</p>	<p>linked products with guarantees exist in some Member States</p> <p>The example is considered to be consistent with the requirements in the IDD and EIOPA's technical advice.</p>
174.	Austrian Insurance Association VVO	Question 8	<p>The generic examples in the appendix are helpful as they clarify how the criteria should be understood in practice. However, as we have stated several times in this answer to the consultation we do not understand why an investment in non-structured UCITS funds which invest in shares or derivatives and where the customer is exposed to a rather high investment risks should be deemed non-complex and a traditional life insurance where the investment risk is borne by a professional investor who is subject to strict regulation and where the profit participations only increases the contractually agreed values would be automatically considered as complex (see example 9).</p> <p>In addition, we do not understand why a product which includes a guarantee without any profit participation would be considered as non-complex , while the same product with profit participation (which grants consumers higher returns) might be seen as complex.</p>	<p>The examples are considered to be consistent with the requirements in the IDD, EIOPA's technical advice, and the draft Guidelines.</p> <p>As stated in the example, EIOPA considers that it depends on the nature of the profit participation mechanism.</p>
175.	Better Finance	Question 8	<p>Our organization believes that the decision trees shown from page 26 to 31 look adequate in principle. However, in order to be fully supportive of them we would like to know how would EIOPA effectively supervise these well-structured distribution practices, and more precisely for distributors that are commission-driven and for who the mis-selling practices are not forbidden by IDD?</p>	<p>The decision trees reflect the requirements in the IDD which need to be compiled with. National competent authorities are responsible for ensuring that these</p>

				requirements are compiled with on an ongoing basis.
176.	Bund der Versicherten Bdv	Question 8	<p>The decision trees outlined in the appendix of CP (pages 26 to 31) are well informed and detailed – in theory. That is why we urgently have to ask how EIOPA will effectively supervise these well-structured distribution practices knowing that usually „time is money“ especially for distributors and that commission-driven (mis-selling) practices are not prohibited - at least in principle - by IDD?</p> <p>This question has all the more to be asked reflecting the fact that EIOPA’s list of illustrative examples (CP, p. 32-34) includes many more non-complex than complex IBIPs. As already pointed out in our comment on Q2 above, the negative consequences will be inevitable: if for a large number of IBIPs the additional suitability and appropriateness assessment will be omitted, because they may be sold via execution-only, then there will be no change at all related to the current (mis-selling) distribution practices of life insurances.</p>	The decision trees reflect the requirements in the IDD which need to be compiled with. National competent authorities are responsible for ensuring that these requirements are compiled with on an ongoing basis.
177.	CNCIF	Question 8	<p>We consider that a “product-based principle” should be more appropriate than the “underlying financial instruments approach” to identify complex and non-complex IBIPs.</p> <p>Indeed, even if an underlying financial instrument of an IBIP is considered as a non-complex instrument pursuant to Article 30(3) of the Directive (“Guideline 1 – Investment exposure to the financial instruments deemed non complex under Directive 2014/65/EU 1.13. For the purposes of Article 30(3)(a)(i) of the IDD, the insurance intermediary or insurance undertaking should ensure that the insurancebased investment product only provides investment exposure to the financial instruments deemed noncomplex under Directive 2014/65/EU. Such noncomplex financial instruments include only the following instruments: (a) those identified in Article 25(4)(a) of Directive 2014/65/EU; (b) those satisfying the criteria in Article 57 of COMMISSION DELEGATED REGULATION (EU) .../...of 25.4.2016 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive7; (c) those not deemed to be complex in accordance with ESMA Guidelines on complex debt instruments and structured deposits”) the content, features</p>	Please see the responses to your previous comments.

			<p>and/or the insurance product management can be complex, especially from the point of view of a thorough customer protection.</p> <p>In particular, the product features (risks involved, surrender fees, mechanisms of guarantees...) must be explained to the client in order to obtain his free and informed consent.</p> <p>Furthermore, Example 5 ("A unit / index linked product where the customer can select from different underlying investment options, including various non_structured UCITS and various shares traded on a regulated market. The product does not have any other structures which make it difficult for the customer to understand the risks involved") needs further explanation, particularly with regard to the definition of "various non-structured UCITS". Indeed, it may be difficult for the customer to understand/identify the underlying instruments. In this case, the customer should have all the relevant information about selected underlying financial instruments.</p>	
178.	DAV German Actuarial Society	Question 8	<p>Comments on the product examples:</p> <p>Product example 3 is a variable annuity product. The guaranteed surrender or maturity value is hedged using derivative financial instruments in which the customer is not invested. Properly, such a product is considered non complex. However, there are also constructions in which the fair value of the guaranteed benefits is part of the surrender or maturity value. This fair value is the sum of fair value of the non-structured UCITS and the derivative financial instruments. Such a product would be classified as complex because the derivative financial instruments are complex. This product design carries the same risk as the product above but the customer benefit is significantly higher in this product. Such contradictions must be avoided.</p> <p>Example 3 can also be built as an insurance-based investment product where the customer does not make an investment selection. The insurance undertaking guarantees that the surrender or maturity value is at least 80% of the premiums paid by the customer. The product does not have any other structures which make it difficult for the customer to understand the risks involved. If, however the insurer invests in derivatives to provide the guarantee, the product is deemed complex under Article 30(3)(a)(i) and (ii) (see Example 9). In addition, we would like to note the following: This example shows that product features that benefit consumers are classified as</p>	<p>As stated the examples were intended to be illustrative and in practice the specific structure of the product would need to be considered in detail.</p>

			<p>complex. If such schemes were removed, the product would be no longer classified as complex, however, the benefit for consumers will be reduced. Such contradictions must be avoided.</p> <p>EIOPA states that product example 9 shall be deemed complex. In contrast, product example 7 shall not be deemed complex. Example 7 and 9 only differ by a potential investment in derivatives by the insurance company which then yields product example 9 being complex. We want to sincerely stress that the sheer existence of a potential derivative investment structure cannot mandatorily leave an insurer's product being complex. If so, each (structured and non-structured) UCITS fund – which could potentially invest into some derivatives as well – should also be deemed complex. However, this notion of complexity would then contradict MiFID II. Therefore, product example 9 shall in our view (similarly with a UCITS fund) not be deemed complex in general only due to the possible existence of derivative instruments and due to the offering by an insurance company instead of an asset manager via a UCITS fund. In order to ensure a level playing field of different product providers (here: insurance companies and asset managers), a level definition of the notion of complexity shall be reached.</p> <p>EIOPA acknowledges that life insurance policies with profit participation shall not in general be deemed complex by describing product example 11. However, combining product example 11 and the proposed paragraph 3(a) of guideline 2 eventually leaves product providers with a very incomplete picture of what and if so which kind of profit sharing mechanism shall actually be deemed complex or not. Therefore, we strongly propose EIOPA to amend paragraph 3 of guideline 2 – following product example 11 – such that profit sharing mechanisms do not generally yield to complex products. A possible solution could be that only profit sharing mechanisms where products providers may arbitrarily exercise these discretionary participation mechanisms should be deemed complex.</p>	<p>Examples 7 and 9 reflect the requirements in the IDD and EIOPA's technical advice.</p> <p>EIOPA has sought to provide some further specification on the assessment of profit participation features in the final Guidelines.</p>
C 179.		Question 8	Confidential comment.	
180.	European Federation of Financial	Question 8	Examples 3, 8 and 10 confirm our request to amend Guideline 2 to consider the importance of the guarantee mechanism (cf. our answer to Q5). In particular, it is necessary to verify that the guarantee is actually effective,	The final Guidelines include a provision on the nature of the guarantee.

	<p>Advisers and Financial Intermediaries (FECIF)</p>		<p>thereby complying with precise standards of customer protection (specifically, a guarantee by a third party that is subject to the supervision of a competent national authority). Indeed, it is of utmost importance that the guarantee is not influenced by specific risks pertaining to the activities of the insurance undertaking which developed the IBIP distributed to the customer.</p> <p>Example 2 needs further explanation, particularly with regard to the definition of a surrender fee which is/is not « disproportionate to the cost to the insurance undertaking ».</p> <p>The definition of Example 5, being too extended, may lead to the improper qualification of a product as “non-complex” where it would be too difficult for the customer to understand the underlying investments. Let’s consider, for instance, a unit-linked product whose underlying financial instruments are equity funds which invest in the markets of different countries (encompassing both EU Member States and third countries). On the contrary, a prudential approach is needed, based on the “product-based” principle espoused in our answer to Q4.</p> <p>The product described in Example 6 should be deemed complex in order to try and avoid possible cases of mis-selling.</p> <p>We do not believe that Example 7 refers to a non-complex product: although the “other” product structures may not be “difficult”, the way in which the surrender or maturity value reflects the performance of underlying investments makes the product difficult to understand for the “average” retail investor (let’s consider, for instance, a unit-linked product whose underlying financial instruments are equity funds which invest in the markets of different countries, encompassing both EU Member States and third countries).</p> <p>We do not believe that Example 10 refers to a non-complex product: despite the guarantee, there is actually a structure which makes it difficult for the customer to understand the performance of the product, in as much as « the insurer also invests in some derivatives ».</p>	<p>EIOPA does not consider that it is appropriate to define what is a disproportionate cost.</p> <p>The example is generic and illustrative. In practice the overall product features will need to be taken into account.</p> <p>The categorisation in the CP is considered to be appropriate.</p> <p>The example is considered to be in line with the requirements in Article 30(3)(a)(i).</p> <p>The example is considered to be in line with the requirements in the IDD and EIOPA’s technical advice.</p>
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			Finally, we also consider that Example 11 should refer to a complex product: in order to avoid regulatory loopholes, all products with profit participation mechanisms should be deemed complex.	As stated in the example, EIOPA considers that it should depend on the nature of the profit participation mechanism.
181.	EUROPEAN FINANCIAL PLANNING ASSOACIATION EFPA	Question 8	We would like to point out that the decision trees are useful and clarifying. Moreover, it would be valuable to include the decision trees in staff's training programs and in financial literacy plans.	
182.	German Insurance Association (GDV)	Question 8	<p>Example 9: In our view, product described in example 9 should not be considered to be complex due to extensive regulation, in particular the prudent person principle. Otherwise this would inevitably lead to investment restriction on insurers: in order to offer non-complex products insurers would refrain from investing in e.g. long-term investments such as infrastructure and other alternative investments which do not fall within non-complex MiFID instruments. Such a restriction of the investment horizon in turn would make it more difficult to ensure the security, quality, liquidity and profitability of the portfolio as a whole. Thus, such collective investments of insurers should per se not be deemed complex.</p> <p>Examples 10 and 11: We do not understand why a product which includes a guarantee without any profit participation would be considered as non-complex (provided it does not have any other structures which make it difficult for the customer to understand the risks involved), while the same product with profit participation (which grants consumers higher returns) might be seen as complex. It should be avoided that by setting too restrictive criteria incentive might arise to exclude profit participation.</p>	<p>The examples are considered to be consistent with the IDD and EIOPA's technical advice.</p> <p>As stated in the example, it will depend on the nature of the profit sharing mechanism.</p>
183.	Insurance Europe	Question 8	<p>Do you have any comments on the distribution processes outlined in the decision trees and the generic examples of complex and non-complex insurance based investment products?</p> <p>The generic examples in the appendix are helpful as they clarify how the criteria should be understood in practice. However, it is of the utmost importance that the criteria from the IDD delegated acts, the guidelines and</p>	The generic examples were included for illustrative purposes within the Consultation Paper. They are

			<p>these generic examples are coherent. As it now stands, some of the examples present a wrong picture or create confusion:</p> <p>Example 9: In our view, the product described in example 9 should not be considered to be complex due to extensive regulation, in particular the prudent person principle. Otherwise, this would inevitably lead to investment restriction on insurers: in order to offer non-complex products, insurers would refrain from investing in eg long-term investments such as infrastructure and other alternative investments which do not fall within non-complex MiFID instruments. Such a restriction of the investment horizon in turn would make it more difficult to ensure the security, quality, liquidity and profitability of the portfolio as a whole. Thus, such own investments of insurers should not be deemed complex per se.</p> <p>Examples 10 and 11: We do not understand why a product with profit participation (which grants consumers higher returns) might be seen as complex, while the same product which includes a guarantee without any profit participation would be considered as non-complex. It should be avoided that through too restrictive criteria the incentive might arise to exclude profit participation.</p> <p>Example 4: It is not clear why it would be difficult for a customer to understand that below 500 euros investment value the annual management charge is 25 euros. This could be clearly disclosed to the customer.</p> <p>Examples 9 and 10: The only fundamental difference is the existence of a guarantee, which seemingly mitigates the holding of derivatives. UCITS are technically able to hold derivatives, yet they are being classed as non-complex.</p>	<p>not included in the final Guidelines.</p> <p>The example is based on the provisions in Directive and EIOPA's technical advice.</p> <p>As stated in the example, it will depend on the nature of the profit sharing mechanism.</p> <p>The example was based on the draft version of the Guidelines. Please see the Feedback Statement regarding the final provisions on costs.</p> <p>The examples are considered to be consistent with the IDD and EIOPA's technical advice.</p>
184.	Intesa Sanpaolo	Question 8	We think that example 5 may be in contrast with what mandated by point 1.16 ii) ; since a product where « the costumer can select from different underlying investment options including various non-structured UCITS and	The provision that was in paragraph 1.16(ii) has been amended in the final

			<p>various shares traded on a regulated market » would fit the definition of « combined effect of these exposures is 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>	<p>Guidelines to clarify the intention.</p>
185.	Investment and Life Assurance Group (ILAG)	Question 8	<p>The decision trees illustrate that the process for making an execution only sale appears more complex than that for advised sales with a suitability assessment or non-advised sales with an appropriateness assessment.</p> <p>A consequence of this is that more sales could be processed on the basis of 'non-advised', which is a concern. Customers will not then provide or be asked to provide sufficient information to determine appropriateness.</p>	<p>The decision tree reflects the requirements in the IDD.</p>
186.	IRSG	Question 8	<p>A list of examples is very helpful to clarify the practical impact intended by the guidelines. We note that some examples are unrealistic and in other ways the list of illustrative examples of complex and non-complex IBIP is not comprehensive.</p> <p>The distribution process shows well the complexity of the legislation that will apply and is the living example of too much regulation as opposed to better regulation.</p> <p>On the generic example, the number 4 describes a product which is nothing but a robbery, because the management fee is rocketing to 5% from 1% when the value of the investment is going down below 500 ! (?)</p> <p>Example 9 should not be complex only because it invests in derivatives. The nature of the derivatives and the impact they have on the ability of an investor to understand likely outcomes should be considered before concluding.</p> <p>Among the non-complex products it should be added :</p>	<p>The example is illustrative only.</p> <p>The example is considered to be consistent with the IDD requirements.</p> <p>The examples have not been</p>

			<input type="checkbox"/> An example where the surrender value and maturity value are different but the product is still simple as well as one where it is complex <input type="checkbox"/> Existing products which are not complex should be included to avoid doubt – eg the most common IBIP sold in Spain, very demanded by conservative retail investors, where the customer does not make an investment selection and which provides a guarantee at maturity but in case of surrender the client receives the market value of the assigned Government and corporate bonds backing the liabilities (an essential feature required by Solvency II to qualify for the matching adjustment).	included in the Final Guidelines.
C 187.		Question 8	Confidential comment.	
188.	OP Financial Group	Question 8	The decision trees are illustrative examples of the distribution processes. We do not have any comments or proposals to the examples.	
189.	Standard Life UK	Question 8	<p>Do you have any comments on the distribution processes outlined in the decision trees and the generic examples of complex and non-complex insurance based investment products?</p> <p>The decision trees are a useful illustration of the distribution processes.</p>	
190.	Unipol Gruppo Finanziario S.p.A.	Question 8	<p>Relativamente agli esempi proposti – e con specifico riferimento all’esempio illustrativo n.10, pag. 34, – si segnala che nel testo si parla di garanzia per scadenza o riscatto pari almeno all’importo dei premi pagati; in realtà si dovrebbe parlare di capitale assicurato, in quanto è questo che viene garantito. Si segnala sul punto che all’interno dei Technical Advice (pag. 98, lett a) si parla di « ...the amount of premiums paid by the customer minus legitimate cost levied»).</p> <p>Si raccomanda quindi di apportare le necessarie modifiche all’esempio, al fine di allinearne la formulazione rispetto a quanto riportato nei Technical Advice.</p>	The example is considered to be consistent with EIOPA’s technical advice.
191.	Allianz SE	Question 9	<input type="checkbox"/> The approach proposed by EIOPA risks the effect, that self-informed customers interested in execution only / non-advised products will not have access to (digitized) insurance IBIP offering but only to MiFID products	EIOPA does not agree that the Guidelines will create such risks or incentives.

			<p>(UCITS), which we interpret as unintended consequence.</p> <p><input type="checkbox"/> Financial advisors will find themselves in a non-competed market position in the field of distribution of IBIPs. We fear that such lack of competition is expected to generate higher distribution costs and therefore higher prices for the customer.</p> <p><input type="checkbox"/> By excluding the vast majority of IBIPs from the scope of execution-only, EIOPA risks withdrawing the incentives to reducing product complexity in product development processes. Such a regulatory limitation jeopardizes the development of solutions in a digital economy at a moment when online distribution channels are increasingly sought, not only via execution only sales but also via robot advice. In particular, access to insurance should be ensured, in the long term, for digital customers who are financially literate and do not need to hold a physical meeting with a financial adviser to buy an insurance contract. Regulation is expected to leave room to adequate flexibility to adopt the customer preferences by avoiding disproportionate administrative burdens.</p>	
192.	ANASF – Associazione Nazionale Consulenti Finanzia	Question 9	<p>The Consultation Paper misses one important aspect which was conversely considered in the “Survey on the empowerment for EIOPA to develop Guidelines in Article 30(7) of the Insurance Distribution Directive”: the relationship between IBIPs and tax regulations may lead an IBIP to incorporate a structure which makes it difficult for the customer to understand the risks involved. Let’s consider, for instance, tax regulations subject to frequent changes which make it difficult, particularly in the case of long term investments, to monitor the impact of taxation on investment returns: this is the case of Italy, where tax rates for financial income have been reformed and increased twice (in 2011 and 2014) in a short time span.</p>	<p>The assessment of the complexity of the IBIP is made in relation to the product itself and not the individual or their tax circumstances.</p>
193.	Association of British Insurers	Question 9	<p>We hope that EIOPA will clarify that closed business and contracts concluded before the IDD comes into force on 23 February 2018 are not be covered by the Directive or the proposals of CP17/001, including where contractual options such as top ups or switches are exercised by the customer. The IDD concerns the distribution of products, and therefore any products distributed before the Directive coming into force should not be covered by its provisions.</p> <p>Currently, it is also unclear if a customer would require to go through an appropriateness test, if they held a non-complex IBIP and switched their</p>	<p>This issue is not within the scope of the Guidelines, but concerns the application of the IDD in general.</p> <p>This issue is addressed in the explanatory text to the</p>

			<p>investment selection to an underlying investment option that would deem the product complex. We believe that it is crucial to specify that products should be assessed at product level.</p> <p>We hope to be able to provide further product examples to EIOPA in the near future, of IBIPs currently considered to be classed as complex by UK insurers.</p>	guidelines.
194.	Association of Financial Mutuals (AFM)	Question 9	We have no other comments.	
195.	Association of International Life Offices AILO	Question 9	No	
196.	Austrian Insurance Association VVO	Question 9	-	
197.	Better Finance	Question 9	No comments	
198.	Bund der Versicherten BdV	Question 9	<p>Our general conclusions on these proposed Guidelines are based on three main criticisms:</p> <p><input type="checkbox"/> The proposed features for non-complex IBIPs are - by far - not restrictive enough. The consequence is obvious: it will nearly be impossible for any kind of IBIP NOT to be considered as non-complex. We definitely reject this extremely broad definition of non-complexity (cf. our comment on Q4 above).</p> <p><input type="checkbox"/> The Guidelines do not sufficiently provide at all for unequivocal details related to four of five provisions of the Technical Advice (cf. our comments on Q6). We stress again that point c) of the TA alone – taken seriously – would broadly and definitely reduce the quantity of possible non-complex IBIPs.</p>	<p>EIOPA does not agree with this assessment.</p> <p>Clarifications are provided in the explanatory text to the Guidelines.</p>

			<p>□ Baring in mind these criticisms – from our perspective - the negative consequences will be inevitable: if for a large number of IBIPs the additional suitability and appropriateness assessment will be omitted, because they may be sold via execution-only, then there will be no change at all related to the current (mis-selling) distribution practices of life insurances.</p> <p>This “circumvention” by the life insurers would make ineffectively one of the core objectives of the directives and regulations of PRIIPs, MIFID2 and IDD: there still would be no level-playing field with regard to the distribution procedures of packaged retail investor products and insurance-based investment products. That is why we additionally will have to examine if these proposed Guidelines – remaining unchanged – are in breach of the European Law.</p>	<p>EIOPA considers that the restrictions on the sale of IBIPs via execution-only should minimise the risk of mis-selling.</p> <p>EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules, where certain products can also be sold without an assessment of suitability or appropriateness.</p>
199.	CNCIF	Question 9	We have no comment.	
200.	DAV German Actuarial Society	Question 9	<p>The DAV strongly supports that EIOPA will take into account any differences between the delegated act which are currently being finalised by the European Commission and EIOPA’s technical advice, prior to finalising these Guidelines. In our view, it is of utmost importance that a consistent approach between Level 2 and Level 3 regulation is ensured so that products that are readily understood by consumers were not wrongly deemed complex.</p> <p>Furthermore, the question of complexity of IBIPs is of a great relevance. Not only does it play a role in a so-called “execution-only” distribution of IBIPs, but it is also (presumably much more) relevant in other fields. For example, according to the newly amended PRIIPs RTS complex products following IDD’s scope will then also receive a comprehension alert.</p> <p>From an actuarial point of view, there is no reason why an insurance company’s general (cover) assets in which retail investor do not invest directly should be generally regarded as more complex for consumers than their UCITS funds counterpart. According to EIOPA’s current interpretation this is due to the fact that insurers also invest in assets that, for example, do not qualify as non-complex products according to MiFID II, such as many long-term investments. The current text yields to an unlevel playing field between different product providers such as fund managers and insurers.</p>	<p>EIOPA considers that the Guidelines are consistent with the delegated acts adopted by the Commission.</p> <p>Please see the Feedback Statement.</p> <p>EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.</p>
C		Question 9	Confidential comment.	

201.				
202.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Question 9	<p>The Consultation Paper does not address the post-sale consequences of an “execution-only” sale. In particular, if the customer who has invested in the IBIP does not benefit from on-going advice, as their personal and financial situation evolves or perhaps there are changes in legislation (including fiscal), resulting in the IBIP no longer being suitable but the product is retained, this could be detrimental to the customer.</p> <p>Moreover, the Consultation Paper misses one important aspect which was conversely considered in the “Survey on the empowerment for EIOPA to develop Guidelines in Article 30(7) of the Insurance Distribution Directive”; the relationship between IBIPs and tax regulations may lead an IBIP to incorporate a structure which makes it difficult for the customer to understand the risks involved. Let’s consider, for instance, tax regulations subject to frequent changes which make it difficult, particularly in the case of long term investments, to monitor the impact of taxation on investment returns. This is the case in Italy, where tax rates for financial income have been reformed and increased twice (in 2011 and 2014) in a short time span.</p>	The assessment of the complexity of the IBIP is made in relation to the product itself and not the individual or their tax circumstances.
203.	EUROPEAN FINANCIAL PLANNING ASSOCIATION EFPA	Question 9	<p>As we have stated above, policyholders have a scarce capacity to understand insurance-based investment products. In this light, exceptions made on their protection should be limited.</p> <p>EFPA would like to propose an alternative solution that would guarantee policyholders’ access to all the products available in the market that might meet the customer’s needs, including complex insurance-based investment products. This solution entails to count with a financial advisor. We can compare financial advisors with family doctors. Some medicines are subject</p>	The IDD allows for the sale of IBIPs without advice where certain conditions are met.

			to medical consultation before their consumption, and patients need medical prescription for taking them. In the same way, policyholders need the expert advice of financial advisors before concluding a contract on insurance-based investment products.	
204.	German Insurance Association (GDV)	Question 9	<p>In our view, there is no reason why an insurance company's general (cover) assets in which retail investor does not invest directly should be regarded to be generally more complex than their UCITS funds counterpart. According to EIOPA's current interpretation this is due to the fact that insurers also invest in assets that, for example, do not fall under the MiFID II, such as many long-term investments. The current text creates an unlevelled playing field between fund managers and insurers.</p> <p>The GDV strongly supports that EIOPA will take into account any differences between the Delegated Act which are currently being finalised by the European Commission and EIOPA's technical advice, prior to finalising these Guidelines. In our view, it is of utmost importance that a consistent approach between Level 2 and Level 3 is taken so that products that are readily understood by consumers are not wrongly deemed complex.</p> <p>Finally, the question of complexity of IBIPs is of a great relevance. Not only does it play a role in a so-called "execution-only" distribution of IBIPs, but it is also relevant in other fields. For example, according to the newly amended PRIIPs RTS complex products will also receive a comprehension alert.</p>	<p>EIOPA has sought to ensure appropriate consistency with the relevant MiFID rules.</p> <p>EIOPA considers that the Guidelines are consistent with the delegated acts adopted by the Commission.</p> <p>Please see the Feedback Statement.</p>
205.	Insurance Europe	Question 9	<p>Do you have any other comments on this Consultation Paper?</p> <p>Insurance Europe would welcome an added clarification that the guidelines are applicable only for the distribution of new products, and are not intended to apply to closed-book business and contracts concluded before the IDD comes into force on 23 February 2018, including when contractual options are exercised by the customer. The IDD concerns the distribution of products, and therefore any products distributed before the Directive comes into force should not be covered by its provisions.</p> <p>In our view, there is no reason why an insurance company's general (cover)</p>	<p>This issue is not within the scope of the Guidelines, but concerns the application of the IDD in general.</p> <p>EIOPA has sought to ensure</p>

			<p>assets in which the retail investor does not invest directly should be regarded as generally more complex than their UCITS funds counterpart. According to the currently suggested criteria, this is due to the fact that insurers also invest in assets that, for example, do not fall under MiFID II, such as many long-term investments. The current text creates an uneven playing field between fund managers and insurers.</p> <p>Insurance Europe strongly supports that EIOPA will take into account any differences between the delegated acts which are currently being finalised by the European Commission and EIOPA's technical advice, prior to finalising these guidelines. In our view, it is of utmost importance that a consistent approach between Level 2 and Level 3 is taken so that products that are readily understood by consumers are not wrongly deemed complex.</p> <p>Furthermore, the question of complexity of IBIPs is of great relevance. Not only does it play a role in the execution-only distribution of IBIPs, but it is also relevant in other fields. For example, according to the newly amended PRIIPs RTS, complex products will also receive a comprehension alert.</p>	<p>appropriate consistency with the relevant MiFID rules.</p> <p>EIOPA considers that the Guidelines are consistent with the delegated acts adopted by the Commission.</p> <p>Please see the Feedback Statement.</p>
206.	IRSG	Question 9	It should be made clear that the guidelines only apply to products where new sales are made and not to closed-book business	This issue is not within the scope of the Guidelines, but concerns the application of the IDD in general.
C 207.			Confidential comment	
208.	OP Financial Group	Question 9	<p>We welcome the EIOPA proposal to issue Guidelines on "other non-complex insurance-based investments" using ESMA's Guidelines for MiFID II as a starting point. However, as mentioned in the answer for Q1, the level playing field with MiFID II non-complex financial instruments cannot be reached.</p> <p>As EIOPA mentions in the consultation paper, there is a risk that if the criteria proposed will result in less products being available for sale via execution-only, it can be expected that the costs of distributing those</p>	Noted.

			<p>products may increase. This is undesirable development for the customers, who seek easy ways to buy low-cost simple investment products. The consumer trend is increasingly moving to the direction that there is a growing demand for execution-only products. We see that the proposed restrictive criteria and the possibility that Member States will not allow execution-only will unduly restrict these sales. This will limit especially the development of digitally available products. Further, we see that there is a need to encourage customers to make personal long-term savings and any further legislative restrictions are not welcomed.</p>	
209.	Standard Life UK	Question 9	<p>Do you have any other comments on this Consultation Paper?</p> <p>Closed business</p> <p>We ask EIOPA to clarify that closed business and contracts concluded before the IDD comes into force on 23 February 2018 are not covered by the Directive or the proposals of CP17/001, including when contractual options such as top-ups or switches of investment options are exercised by the customer.</p> <p>The IDD concerns the distribution of products from when the Directive comes into force on 23 February 2018, so any products distributed before this date should not be covered by its provisions.</p> <p>Switches</p> <p>It is also unclear if a customer would be required to go through an appropriateness test if they held a non-complex IBIP and switched their investment selection to an underlying investment option that would deem the product complex.</p>	<p>This issue is not within the scope of the Guidelines, but concerns the application of the IDD in general.</p> <p>EIOPA addresses this issue in the Explanatory Text to the Guidelines.</p>