

Final Report

on

**Product Intervention Powers under the
Regulation on Key Information Documents
for Packaged Retail and Insurance-Based
Investment Products (PRIIPs)**

Table of Contents

1. Executive summary	3
2. Feedback statement	3
3. Annexes	10
Annex I: Technical Advice on measures specifying the criteria and factors to be taken into account in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union or to the stability of the financial system within at least one Member State	10
Annex II: Possible costs and benefits of the Technical Advice measures	16
Annex III: Comparison table on intervention criteria	17
Annex IV: Resolution of comments	29

1. Executive summary

Introduction

At the beginning of August 2014, the European Insurance and Occupational Pensions Authority (EIOPA) received a request for technical advice from the European Commission on delegated acts regarding product intervention powers for insurance-based investment products under the PRIIPs Regulation.

The PRIIPs Regulation states that EIOPA's and National Competent Authorities' (NCA) powers should be complemented with an explicit mechanism for temporarily prohibiting or restricting the marketing, distribution and sale of insurance-based investment products, which give rise to serious concerns regarding investor protection, orderly functioning and integrity of financial markets, or the stability of the whole or part of the financial system, together with appropriate coordination and contingency powers for EIOPA.

Content

On 27 November 2014, following approval of its Board of Supervisors, EIOPA launched a Public Consultation on the draft Technical Advice on Product Intervention Powers under the Regulation on Key Information Documents for Packaged Retail and Insurance-Based Investment Products (PRIIPs)¹(the 'PRIIPs Regulation').

The Final Report analyses the feedback received and explains EIOPA's position. The Final Report includes a summary of the main conclusions of the Public Consultation, the possible costs and benefits of the Technical Advice measures, as well as the Comments and Resolutions Template. The Final Report specifies criteria and factors pursuant to Articles 16(2)(a) and Articles 17(2)(a) of the PRIIPs Regulation to be taken into account in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union or to the stability of the financial system within at least one Member State.

Next step

As a next step, EIOPA will submit the Technical Advice to the Commission. Furthermore, EIOPA will continue its work on implementing the new powers under the PRIIPs Regulation.

2. Feedback statement

General comments

EIOPA welcomes the remarks on the criteria and factors as discussed in the Consultation Paper EIOPA-CP-14/064. Although EIOPA's Consultation Paper did not cover the additional conditions² laid down in Articles 16(2)(b)-(c) and

¹ 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) (OJ L 352, 9.12.2014, p. 1), available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2014:352:TOC>.

² An NCA may take a prohibiting or restricting decision under the PRIIPs Regulation if it is satisfied on reasonable grounds that: the proposed action meets the requirements under Article 17(2)(a) of the PRIIPs Regulation, taking into account criteria and factors such as the ones envisaged in this Final Report; existing regulatory requirements under Union law applicable to the insurance-based investment product or activity or practice do not sufficiently address the

Articles 17(2)(b)-(e) the PRIIPs Regulation, EIOPA welcomes the general remarks on these additional conditions as well. In particular, the general remarks on the application and implementation of product intervention powers under the PRIIPs Regulation are particularly useful. Therefore, EIOPA believes that the future application and implementation of such product intervention powers will benefit from the comments received.

On a general level, a number of respondents agreed that under certain circumstances product intervention might be an appropriate measure. Furthermore, respondents mentioned that the availability of this tool could already restore the confidence of market participants in case of a crisis.

EIOPA received a formal opinion from the Insurance and Reinsurance Stakeholder Group (IRSG) pursuant to Article 37(6) of the EIOPA Regulation³. In it, the IRSG provided helpful general and specific observations on the draft Technical Advice. In general, the IRSG highlighted the importance of a clear delimitation of EIOPA's intervention powers in relation to those exceptional cases, where the NCAs cannot intervene. In the view of the IRSG, the possibility for EIOPA to exercise its product intervention powers should be delimited and the relevant criteria and factors for doing so should be specified and clearly determined.

EIOPA is of the view that those criteria and factors described in Annex I are high-level and flexible and, at the same time, sufficiently specific and clear. Only in this way can NCAs and, in exceptional cases, EIOPA make use of their powers, even on a precautionary basis. Further delimitation, as suggested by the IRSG, is not fruitful.

The following is a summary of the key findings raised during the public consultation and EIOPA's consideration of these issues:

2.1. Criteria

a. Summary of the findings

Respondents acknowledged that EIOPA considered innovation in relation to the insurance-based investment product, activity or a practice (hereinafter 'innovation') not being harmful *per se*. The same acknowledgement was also sought in relation to the complexity of the insurance-based investment product (hereinafter 'complexity'). According to some respondents, this complexity could mitigate any volatility arising from the investment and could bring added value for a customer investing in such a product. Nevertheless, a few respondents suggested deleting the criteria innovation and complexity from the Technical Advice.

risks under Article 17(2)(a) of the PRIIPs Regulation and the issue would not be better addressed by improved supervision or enforcement of existing requirements; the action is proportionate taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market participants who may hold, use or benefit from the insurance-based investment product or activity or practice; the NCA has properly consulted NCAs in other Member States that may be significantly affected by the action; and the action does not have a discriminatory effect on services or activities provided from another Member State.

EIOPA may take a prohibiting or restricting decision under the PRIIPs Regulation only if all of the following conditions are fulfilled: the proposed action meets the requirements under Article 16(2)(a) of the PRIIPs Regulation, taking into account the criteria and factors envisaged in this Final Report; regulatory requirements under Union legislation that are applicable to the relevant insurance-based investment product or activity do not address the threat; and an NCA (or NCAs) has not taken action to address the threat or the action that has been taken does not adequately address the threat.

³ 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, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2010:331:TOC>

Respondents wondered why the notional value of the insurance-based investment product (hereinafter 'notional value') is considered as a criterion, as this is not an insurance-specific concept. Therefore, a few respondents questioned whether EIOPA should use this criterion in its Technical Advice.

Respondents criticised the fact that NCAs and EIOPA may introduce new supervisory practices based on the list of criteria, in particular where criteria are currently not monitored by the competent supervisors. While respondents agree with the concept of market monitoring in general, market monitoring should not be understood as monitoring of all proposed criteria. Neither should it be interpreted, for example, as an undesirable constant and on-going supervision of the calculation of costs and premiums or the premium structure.

b. EIOPA resolution

EIOPA acknowledges that neither the concept of innovation nor complexity *per se* should be the sole reason for making use of product intervention powers, if it does not lead to significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the financial system within at least one Member State. EIOPA shares the view of respondents that innovation can be, in principle, a driving force for development and prosperity in the European Union. The same can be said for complexity, whenever the interests of policyholders/insured persons and manufacturers/ distributors are aligned in complex products. Complexity can be a driving force for the variety of products and thus enables a diverse choice among most suitable or even tailored products. Finally, complexity can help to deliver the outcomes consumers want. This innovating in respect of the needs of consumers could be done more efficiently, or with better mitigated risk, by using more complex underlying financial engineering.

However, both innovation and/or complexity can, depending on the individual circumstances, be a source for a significant investor protection concern or a threat to the orderly functioning and integrity of insurance markets or the stability of the financial system of a Member State or in the Union. An example of this is where innovative products would exploit gaps in regulation, creating for instance new kinds of investment exposures and/or ways of packaging them that were not foreseen in the design of regulation. Exposure will not be stopped through packaging financial instruments in insurance-based investment products, as there is no clear 'firewall'. Complexity might create a specific detriment for example in those cases, where it is essential for the provider and/or the customer to understand and assess the product fully in order to make an informed decision. For that reason and because innovation and complexity are provided by the PRIIPs Regulation as aspects of the criteria and factors under the Commission's possible Delegated Act, EIOPA has included these two aspects in its Technical Advice.

Furthermore, EIOPA acknowledges that the concept of notional value might seem to be not specific to insurance-based investment products. However, the concept of notional value is explicitly mentioned in Article 16(8) and 17(7) PRIIPs Regulation. Therefore, for the purposes of ensuring consistency and legal certainty, EIOPA has included this aspect in its Technical Advice as well. Furthermore, when the underlying investment of insurance-based investment products is exposed for example to market fluctuation, the concept of 'notional value' might be useful to capture discrepancies between the market and notional value, where those are relevant.

Finally, it should be noted that Article 15 of the PRIIPs Regulation provides for market monitoring competences of EIOPA and the NCAs under specific circumstances. In this respect, EIOPA believes that the PRIIPs Regulation gives NCAs the necessary flexibility to carry out the market monitoring in an appropriate way. While the PRIIPs Regulation

refers to market monitoring, it does not refer to an extensive monitoring of all of the herewith proposed criteria and factors on an on-going basis.

Furthermore, EIOPA distinguishes these monitoring competences from the product intervention powers, which are aimed at identifying whether certain criteria and factors are complied with for particular insurance-based investment products.

2.2. Application

a. Summary of the findings

The majority of respondents had comments on the possible future application of the product intervention powers. Comments were made on the distribution of responsibilities between NCAs and EIOPA and on the thresholds of the criteria.

Respondents stressed that the intervention powers should only be used as measures of last resort and should be restricted to exceptional circumstances. In their view, NCAs are the competent authorities and should be able to resolve any domestic issue. Furthermore, NCAs should adhere to very high thresholds in assessing the criteria and factors.

In the opinion of respondents, not only should EIOPA specify more detailed criteria, but also communicate that the thresholds for meeting the criteria are very high and therefore, the risk of making use of these powers would be, in practice, very slim. Respondents asked EIOPA to give examples regarding the criteria and their possible application. At the same time, a few respondents agreed that EIOPA / NCAs should be flexible in assessing the criteria.

b. EIOPA resolution

EIOPA acknowledges that the exercise of product intervention powers by NCAs and, in exceptional cases, by EIOPA should be subject to specific conditions and legal provisions, while remaining sufficiently flexible. Where those conditions are met, the NCA or EIOPA should be able to impose a prohibition or restriction - even on a precautionary basis - before an insurance-based investment product has been marketed, distributed or sold to investors. It should be noted that, while NCAs will often be best placed to monitor and react primarily to an adverse national development, EIOPA should also have the power to take measures, where needed, benefitting from its European perspective and overview. The main focus of EIOPA will therefore be on the internal market of the European Union.

EIOPA welcomes the provision of an appropriate mechanism which enables, as a last resort and in very specific circumstances, the adoption of product intervention measures throughout the European Union. Where necessary, such measures may take the form of decisions directed at certain participants in those markets.

EIOPA will contribute to ensuring the consistent, efficient and effective application of the product intervention powers under the PRIIPs Regulation and will foster supervisory convergence. EIOPA will work in the future on the question of how to make use of its power by revising its internal procedures and will involve NCAs in the process of applying the product intervention powers.

2.3. Insurance-specific language

a. Summary of the findings

Respondents noted that EIOPA used language in the Technical Advice that is closely aligned with language from the banking and securities sectors. Critical views were

expressed regarding the use of terms such as 'investor' or 'switch an instrument'. Respondents suggested that EIOPA should use insurance-specific language and terms such as 'policyholder' or 'converted contracts' in its Technical Advice.

b. EIOPA resolution

The PRIIPs Regulation uses the term 'investor' when referring to policyholder and other terms that are not specific to the insurance sector. EIOPA acknowledges the differences in the financial sectors and especially that insurance-based investment products are based on a contractual relationship between the investor and the insurance undertaking.

When the PRIIPs Regulation refers to investors, EIOPA understands this as a reference to policyholders. Within the limited scope of EIOPA's product intervention powers under the PRIIPs Regulation, all policyholders are also investors, as they have invested in insurance-based investment products. It is appropriate to refer to this group as 'investors'. Therefore, and to be consistent with the PRIIPs Regulation, the Technical Advice uses the term 'investor'. EIOPA decided not to use the term 'policyholder', which might be misinterpreted to expand the scope of the powers under the PRIIPs Regulation. Furthermore, EIOPA is following the invitation of the Commission to take into account the technical advice which has already been provided by ESMA and EBA on product intervention and chose to align the terminology, unless material differences required reflecting specificities of the insurance sector.

2.4. Scope

a. Summary of the findings

Respondents criticised the fact that EIOPA referred in iii.d. to pension savings, when the PRIIPs Regulation excludes pension products. In their view, the reference should be deleted. Pension products that are recognised under national law are not within the scope of the PRIIPs Regulation.

b. EIOPA resolution

The PRIIPs Regulation does not apply to pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits. At the same time, EIOPA acknowledges that insurance-based investment products are regularly used for the purpose of providing the policyholder with an income in retirement. Therefore, EIOPA has amended the examples in its Technical Advice to reflect the purpose and avoid any doubts regarding the scope.

2.5. Price regime and product pre-approval

a. Summary of the findings

Some respondents feared that the use of criteria on product intervention could introduce price regulation or product pre-approval. Furthermore, a few respondents feared that the criteria will reinforce EIOPA's Guidelines on Product Oversight and Governance arrangements for insurance undertakings, when EIOPA makes reference to the concept in its Technical Advice.

b. EIOPA resolution

EIOPA acknowledges that these powers should not imply any requirement to introduce or apply product approval or licensing by the NCA or by EIOPA, and do not relieve the manufacturer of an insurance-based investment product of its responsibility to comply

with all relevant requirements of the PRIIPs Regulation. Recital 25 of the PRIIPs Regulation supports this view, as it states that the *"powers do not imply any requirement to introduce or apply product approval or licensing"*. At the same time, EIOPA's Guidelines on Product Oversight and Governance arrangements for insurance undertakings can be viewed as complementary to the product intervention powers under the PRIIPs Regulation in the sense that the Guidelines are about bringing a customer-centric focus into the design of products throughout their lifecycle and therefore the likelihood for product intervention should rather be considered low.

2.6. No distinction between EIOPA's and NCA's powers

a. Summary of the findings

A few respondents suggested that EIOPA's Technical Advice should sufficiently distinguish between measures specifying the criteria and factors for NCAs and those for EIOPA.

b. EIOPA resolution

As the empowerments for NCAs in Article 17(7) and for EIOPA in Article 16(8) broadly share the same wording, the criteria and factors to be specified should generally be the same for both. In addition, EIOPA has taken into consideration the relevant case-law of the Court of Justice of the European Union⁴ and advises the Commission to assess the need to set the list of criteria suggested in the Technical Advice as an exhaustive list for EIOPA, while keeping the factors and criteria non-exhaustive for NCAs.

2.7. Alignment with MiFIR

a. Summary of the findings

Some respondents criticised EIOPA for aligning the draft technical advice with ESMA's intervention powers under MiFIR⁵, saying that EIOPA did not consider the different nature of insurance-based investment products. Other respondents welcomed the close alignment with MiFIR and questioned why EIOPA, for example, added "significantly" to criterion iii.e when referring to selling outside the target market, which would be less strict than rules for other sectors.

b. EIOPA resolution

On the one hand, EIOPA was invited by the Commission in its request for advice to cooperate closely and take into account the result of work which has been already undertaken by ESMA and EBA in the context of the product intervention powers under MiFIR. On the other hand, EIOPA acknowledges that insurance-based investment products have specificities, which are taken into account and were reflected in the Technical Advice, where appropriate. Examples of these specificities are the valuation of technical provisions or the contractual relationship with regard to investing in insurance-based investment products.

Finally, EIOPA accepts the arguments made by stakeholders and has aligned its criterion iii.e with the wording proposed by ESMA and EBA in their advice.

⁴ Judgment of the Court (Grand Chamber) of 22 January 2014, United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union, Case C-270/12

⁵ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L73, 12.6.2014, p. 84), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2014:173:TOC>.

2.8. Forthcoming legislation of the European Union

a. Summary of the findings

Respondents were of the opinion that current and forthcoming Level 1 rules make most criteria for product intervention powers essentially superfluous. In particular, the rules on the Key Information Document (KID) under the PRIIPs Regulation will solve transparency issues, but also IMD2/IDD and Solvency II will make a number of criteria obsolete in practice.

Furthermore, respondents referred to EIOPA's own instruments such as Guidelines on Product Oversight and Governance arrangements, and the ESAs' Consultation Paper on Guidelines on cross-selling practices. These could address some of the criteria and factors proposed. In their view, EIOPA could reduce the list of criteria and factors and should address only developments that are not covered by other regulatory approaches.

b. EIOPA resolution

It should be noted that the product intervention powers are not dependent on forthcoming legislation of the European Union. Other legislation aids in preventing upfront serious concerns regarding investor protection, orderly functioning and integrity of financial markets, or the stability of the whole or part of the financial system but might not be able to completely avoid detriment. However, product intervention powers are considered an effective and specifically targeted tool for NCAs and for EIOPA to react to the adverse conditions as specified in Article 16 and 17 of the PRIIPs Regulation. These powers are considered as measure of last resort and criteria -on which the assessment and actions are based upon- are essential for consistency in decision-making on a national basis as well across the European Union.

3. Annexes

Annex I: Technical Advice on measures specifying the criteria and factors to be taken into account in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union or to the stability of the financial system within at least one Member State

The Commission seeks EIOPA's Technical Advice on the content of the delegated acts pursuant to Articles 16(8) and 17(7) of the Regulation on key information documents for packaged retail and insurance-based investment products ("PRIIPs Regulation")⁶. These provisions cover temporary product intervention powers for EIOPA and competent authorities. These delegated acts should be adopted in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU).

Supplementing similar provisions under Regulation (EU) No 600/2014⁷, the PRIIPs Regulation reinforces the role and power of supervisory authorities by conferring upon competent authorities and EIOPA the power to monitor insurance-based investment products and, subject to certain conditions, temporarily to prohibit or restrict the marketing, distribution or sale of insurance-based investment products, financial activities or practices. While these powers need to be applied in a proportionate way, and are of an extraordinary nature and constitute a measure of last resort, there is also a need to ensure that such powers are dynamic enough to address significant risks that may arise in the markets.

EIOPA is providing its Technical Advice, as requested by the Commission⁸, on measures specifying the criteria and factors to be taken into account in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union or to the stability of the financial system within at least one Member State.

For the purposes of delivering its Technical Advice, EIOPA took into account the specificities of insurance-based investment products, the outcome of EIOPA's public consultation⁹ and the work undertaken by ESMA¹⁰ and EBA¹¹ on product intervention powers in respect to financial instruments and structured deposits. In addition to its draft policy proposal, EIOPA elaborates on possible costs and benefits of the proposed advice in the second part of this Technical Advice. This may aid the Commission in preparing an impact assessment on the relevant delegated act it has to adopt under Article 30 of the PRIIPs Regulation.

⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2014:352:TOC>

⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2014:173:TOC>

⁸ [Request from the European Commission](#) for EIOPA's Technical Advice on delegated acts in the Regulation on key information for packaged retail and insurance based investment products.

⁹ In order to provide stakeholders with an early orientation on issues that will need to be addressed in the Technical Advice to the Commission and to gather feedback from the market, EIOPA published a [Consultation Paper](#) on 27 November 2014.

¹⁰ ESMA's Technical Advice to the Commission on MiFID II and MiFIR, Final Report published on [ESMA's website](#).

¹¹ EBA's Technical Advice on possible delegated acts on criteria and factors for intervention powers concerning structured deposits under Articles 41 and 42 of Regulation (EU) No 600/2014 (MiFIR), published on [EBA's website](#).

The Commission's request for advice

EIOPA is invited to provide Technical Advice on measures specifying the criteria and factors to be taken into account by competent authorities in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the Union or to the stability of the financial system within at least one Member State.

As Regulation (EU) No 600/2014 establishes an identical framework for competent authorities, ESMA and EBA intervention powers in respect to financial instruments and structured deposits, and as factors and criteria to be taken into account for the exercise of product intervention powers for financial instruments and structured deposits should be similar to (if not identical to) those set for competent authorities and EIOPA with respect to insurance-based investment products, EIOPA is invited to liaise closely with and consult ESMA and EBA when providing its Technical Advice to the Commission and propose factors and criteria for intervention powers in accordance with Articles 16(8) and 17(7) of the PRIIPs Regulation.¹²

Analysis of measures specifying the criteria and factors

EIOPA deems it appropriate to develop its Technical Advice to the Commission on the basis of the criteria and factors proposed by ESMA and EBA. Because of the specificities of insurance-based investment products, not all the criteria proposed by EBA and ESMA in their consultation papers may be considered relevant and easily applicable. At the same time, EIOPA tries to be as consistent as possible, while carefully tailoring the examples specifically for insurance-based investment products.

It is essential that product intervention powers are dynamic enough to enable NCAs and exceptionally the ESAs to deal with a range of different exceptional situations and to allow steps to be taken to address issues before they become widespread. EIOPA, therefore, shares the view of ESMA and EBA that flexibility is required, both to be able to intervene in relation to new PRIIPs that may not meet given criteria, or conversely not necessarily intervene if given criteria are met but overall consumer detriment or disorderly functioning of markets is not detected.

Assessment and conclusion

Criteria and factors should be non-exhaustive and high-level and it appears impracticable to suggest specific quantitative thresholds for intervention. This is further supported by the possibility to exercise these powers on a precautionary basis, a possibility that would not seem compatible with a quantitative definition of detriment or disorderly functioning of markets.

EIOPA has taken into consideration the relevant case-law of the Court of Justice of the European Union. In particular, following the judgment of the Court of Justice of the European Union in *UK v European Parliament and Council* Case C-270/12¹³, EIOPA advises the Commission to assess the need to set the list of criteria and factors, as suggested in the Technical Advice, as an exhaustive list for EIOPA. Such an approach would ensure that EIOPA acts within the limits of its legitimate powers thereby

¹² http://ec.europa.eu/finance/finservices-retail/docs/investment_products/20140730-request-eiopa-advice_en.pdf

¹³ Judgment of the Court (Grand Chamber) of 22 January 2014, United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union, Case C-270/12

ensuring that EIOPA applies an appropriate margin of discretion in relation to the imposition of a temporary prohibition or restriction.

In addition, specifying an exhaustive list of criteria and factors to be taken into account by EIOPA in determining in which cases there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or the stability of the financial system of the Union would clearly delineate the powers of intervention available to EIOPA in a transparent manner.

Furthermore, such an exhaustive list of criteria and factors would serve as a benchmark against which judicial review of an EIOPA decision regarding temporary prohibitions or restriction would be performed.

In this respect, EIOPA is of the view that the criteria and factors are adequately outlined in the Technical Advice.

Technical Advice

EIOPA considers that the criteria and factors should include the following:

i. The degree of complexity of the insurance-based investment product or type of financial activity or practice of an insurance or reinsurance undertaking. Under this factor, more detailed elements to be considered could include, for example:

- a. the type and transparency of the underlying;
- b. non-transparent costs and charges, arising, for example, from multiple layers;
- c. the performance calculation complexity. Under this criterion, more detailed elements to be considered could include, for example whether:
 - the return is dependent on the performance of one or more underlying which might in turn be affected by other factors;
- d. the nature and scale of any risks;
- e. whether the insurance-based investment product is bundled with other products or services; and
- f. the complexity of any terms and conditions.

ii. The size of the potential problem or detriment. Under this factor, more detailed elements to be considered could include, for example:

- a. the notional value of the insurance-based investment product;
- b. number of clients, investors or market participants involved;
- c. relative share the product has in investors' portfolios;
- d. probability, scale and nature of any detriment, including the amount of loss potentially suffered;
- e. anticipated persistency of the problem or detriment;
- f. volume of the premium;
- g. number of intermediaries involved;
- h. growth of the market or sales;
- i. the average amount invested by each investor in the insurance-based investment product;
- j. the coverage level defined in national insurance guarantee schemes law, where such scheme exist; and

- k. the value of the technical provisions with respect to the insurance-based investment products.
- iii. The type of investors involved in an activity or practice or to whom an insurance-based investment product is marketed and sold. Under this factor, more detailed elements to be considered could include, for example:
- a. whether the client is a retail client, professional client or eligible counterparty under MiFID;
 - b. features characterising investors' skills and abilities, e.g. level of education, experience with similar insurance-based investment products or selling practices;
 - c. features characterising investors' economic situation, e.g. income, wealth;
 - d. investors' core financial objectives, e.g. saving for income in retirement, need for risk coverage;
 - e. whether the product or service is being sold to investors outside the intended target market, or the target market has not been adequately identified; and
 - f. the eligibility for coverage by an insurance guarantee scheme, where national insurance guarantee schemes exist.
- iv. The degree of transparency of the insurance-based investment product or type of activity or practice. Under this factor, more detailed elements to be considered could include, for example:
- a. the type and transparency of the underlying;
 - b. any hidden costs and charges;
 - c. the use of features that draw investors' attention but that do not necessarily reflect the suitability or overall quality of the product or service;
 - d. visibility of risks;
 - e. the use of product names or of terminology or other information that imply greater levels of safety and/or return than are actually possible or likely; and
 - f. whether there was insufficient, or insufficiently reliable, information about an insurance-based investment product to enable market participants to which it was targeted to form their judgment, taking into account the nature and type of insurance-based investment products.
- v. The particular features or underlying components of the insurance-based investment product or transaction including any leverage a product or practice provides. Under this factor, more detailed elements to be considered could include, for example:
- a. the leverage inherent in the product;
 - b. the leverage due to financing; and
 - c. the features of securities financing transactions.
- vi. The degree of disparity between expected return or benefit for investors and risk of loss in relation to the insurance-based investment product, activity or practice. Under this factor, more detailed elements to be considered could include, for example:
- a. the structuring and other costs;
 - b. the disparity in relation to issuer's risk (where retained by issuer); and

- c. the risk/return profile.
- vii. The ease and cost for investors to switch or sell a product. Under this factor, more detailed elements to be considered could include, for example:
- a. the impediments when changing an investment strategy in relation to an insurance contract;
 - b. the fact that early withdrawal is not allowed or it is allowed at such contractual condition that it can be considered as not allowed; and
 - c. any other barriers to exit.
- viii. The pricing and associated costs. Under this factor, more detailed elements to be considered could include, for example:
- a. the use of hidden or secondary charges; and
 - b. charges that do not reflect the level of distribution service provided by the insurance intermediaries.
- ix. The degree of innovation of an insurance-based investment product, an activity or practice. Under this factor, more detailed elements to be considered could include, for example:
- a. the degree of innovation related to the structure of the insurance-based investment product, activity or practice, e.g. embedding, triggering;
 - b. the degree of innovation relating to the distribution model/length of intermediation chain, e.g. "originate-to-distribute";
 - c. the extent of innovation diffusion, i.e. whether the insurance-based investment product, activity or practice is innovative for particular categories of investors;
 - d. innovation involving leverage;
 - e. the opacity of underlying; and
 - f. the experience of the market with similar insurance-based investment products or selling practices for insurance-based investment products.
- x. The selling practices associated with the insurance-based investment product. Under this factor, more detailed elements to be considered could include, for example:
- a. the communication and distribution channels used;
 - b. the information, marketing or other promotional material associated with the investment; and
 - c. whether the decision to buy is secondary or tertiary following another purchase.
- xi. The situation of the issuer of an insurance-based investment product. Under this factor, more detailed elements to be considered could include, for example:
- the financial situation; and
 - the suitability of reinsurance arrangements regarding the insurance-based investment products.
- xii. The risk to the orderly functioning and integrity of financial markets. Under this factor, more detailed elements to be considered could include, for example, whether:
- a. the underlyings of the insurance-based investment product or activities pose a high risk to the performance of transactions entered into by participants or investors in the market or product in question;

b. the characteristics of insurance-based investment products make them particularly susceptible to being used for the purposes of financial crime. Under this factor, more detailed elements to be considered could include, for example, whether the characteristics could favour the use of the insurance-based investment products for:

- any fraud or dishonesty;
- misconduct in, or misuse of information, relating to a financial market;
- handling the proceeds of crime;
- the financing of terrorism; or
- facilitating money laundering;

c. activities or practices pose a particularly high risk to the resilience or smooth operation of markets;

d. an insurance-based investment product or activity or practice would lead to a significant and artificial disparity between prices of a derivative and those in the underlying market;

e. a product or practice or activity poses particular risks to the market or payment systems infrastructure, including clearing and settlement and trading systems); and

f. an insurance-based investment product or practice would threaten the investors' confidence in the financial system.

xiii. the insurance-based investment product or practice or activity poses a high risk of disruption to financial institutions deemed to be important to the financial system of the European Union or, in relation to NCAs' powers only, to the national financial system of the Member State of the NCA.

Annex II: Possible costs and benefits of the Technical Advice measures

In developing its Technical Advice on intervention powers under the PRIIPs Regulation, EIOPA is incorporating an analysis of costs and benefits into its work from the beginning.

The draft Technical Advice, including the analysis of costs and benefits, was subject to public consultation and the comments received from the stakeholders were duly taken into account and served as a valuable input in order to improve the Technical Advice. Stakeholders were specifically consulted with respect to the estimated costs and benefits of the proposed measures. Criteria and factors to be taken into account for the measures can be found in Articles 16(8) and 17(7) of the PRIIPs Regulation.

However, these criteria and factors are high-level criteria and could be understood in different ways. This could lead to inconsistencies when it comes to the supervision of different sectors. It could also lead to inconsistencies in the exercise of such intervention powers by insurance supervisory authorities in the EU Member States. EIOPA is providing more detail with its Technical Advice with the clear objective of trying to avoid these inconsistencies.

The objective of this Technical Advice is to provide the necessary detail regarding the mentioned criteria and factors, following a common approach whilst taking account of the specificities of the insurance-based investment products. This specific objective is consistent with the general objective of the protection of investors under the PRIIPs Regulation.

When analysing the impact from proposed policies regarding different measures specifying criteria and factors, a baseline scenario is applied as the basis for comparing policy options. For the analysis of the potential related costs and benefits of the proposed non-exhaustive list of examples on measures specifying the criteria and factors, EIOPA has applied as a baseline scenario the effect from the requirements specified in the examples in Articles 16(8) and 17(7) of the PRIIPs Regulation.

The baseline scenario already has factors and criteria that need to be considered. Adding certain factors and criteria neither change direct impacts such as the impact in relation to regulatory compliance costs and administrative burden nor does it change indirect impacts.

The proposed list of examples adds a level of detail to the criteria and factors, while at the same time allows for flexibility, when needed. No incremental costs have been identified with regards to the factors and criteria specifying when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system. The responses to the public consultation are in line with these assumptions. Respondents raise the valid point that costs and benefits may very well depend on the concrete application of such powers either by EIOPA or the NCAs.

Even though the higher flexibility given by the list of non-exhaustive examples might give the impression of increasing the level of uncertainty for insurance undertakings, the approach nevertheless enhances cross-sectoral consistency and reduces uncertainties in cross-border situations when NCAs want to make use of these powers. This can lead to more effective supervision, an increased level of protection of policyholders/insured persons and ultimately, more legal certainty for insurance undertakings.

Annex III: Comparison table on intervention criteria

Criteria for insurance-based investment products (as proposed herewith)	Criteria for structured deposits (as proposed in EBA's Technical Advice)	Criteria for financial instruments (as proposed in ESMA's Technical Advice)
i. The degree of complexity of the insurance-based investment product or type of financial activity or practice of an insurance or reinsurance undertaking. Under this factor, more detailed elements to be considered could include, for example:	i. The degree of complexity of the structured deposit or type of financial activity or practice. Under this factor, more detailed elements to be considered could include, for example:	i. The degree of complexity of the financial instrument or type of financial activity or practice and the relation to the type of clients to whom it is marketed and sold. Under this factor, more detailed elements to be considered could include, for example:
a. the type and transparency of the underlying;	a) the type and transparency of the underlying;	a. the type and transparency of the underlying;
b. non-transparent costs and charges, arising, for example, from multiple layers;	b) non-transparent costs and charges, arising, for example, from multiple layers;	b. non-transparent costs and charges arising, for example, from multiple layers of such costs and charges ;
c. the performance calculation complexity. Under this criterion, more detailed elements to be considered could include, for example whether:	c) the performance calculation complexity. Under this criterion, more detailed elements to be considered could include, for example, whether:	c. the performance calculation complexity. Under this criterion, more detailed elements to be considered could include, for example whether:
- the return is dependent on the performance of one or more underlying which might in turn be affected by other factors;	- the return is dependent on the performance of one or more underlyings which might in turn be affected by other factors;	- the return is dependent on the performance of one or more underlying which might in turn be affected by other factors;

	- the return depends not only on the values of the underlying at the initial and maturity (or interest payment) dates, but also on the values during the lifetime of the product (path dependency);	- when applicable, the return depends not only on the values of the underlying at the initial and maturity dates, but also on the values during the lifetime of the product.
d. the nature and scale of any risks;	d) the nature and scale of any risks;	d. the nature and scale of any risks;
e. whether the insurance-based investment product is bundled with other products or services; and	e) whether the structured deposit is bundled with other products or services; and	e. whether the instrument or service is bundled with other products or services; and
f. the complexity of any terms and conditions.	f) the complexity of any terms and conditions.	f. the complexity of any terms and conditions.
ii. The size of the potential problem or detriment. Under this factor, more detailed elements to be considered could include, for example:	ii. The size of the potential problem or detriment. Under this factor, more detailed elements to be considered could include, for example:	ii. The size of the potential problem or detriment. Under this factor, more detailed elements to be considered could include, for example:
a. the notional value of the insurance-based investment product;	a) the notional value of an issuance of structured deposits;	a. the notional value of the financial instrument;
b. number of clients, investors or market participants involved;	b) number of clients, investors or market participants involved;	b. number of clients, investors or market participants involved;
c. relative share the product has in investors' portfolios;	c) relative share the product has in investors' portfolios;	c. relative share the product has in investors' portfolios;
d. probability, scale and nature of any detriment, including the amount of loss potentially suffered;	d) probability, scale and nature of any detriment, including the amount of loss potentially suffered;	d. probability, scale and nature of any detriment, including the amount of loss potentially suffered;
e. anticipated persistency of the problem or detriment;	e) anticipated persistency of the problem or detriment;	e. anticipated persistency of the problem or detriment;
f. volume of the premium;	f) volume of the issuance;	f. volume of the issuance;
g. number of intermediaries involved;	g) number of institutions involved;	g. number of intermediaries involved;

h. growth of the market or sales;	h) growth of the market or sales;	h. growth of the market or sales; and
i. the average amount invested by each investor in the insurance-based investment product;	i) the average amount invested by each client in the structured deposit; and	i. the average amount invested by each client in the financial instrument.
j. the coverage level defined in national insurance guarantee schemes law, where such scheme exist; and	j) the coverage level defined in the Deposit Guarantee Schemes Directive.	
k. the value of the technical provisions with respect to the insurance-based investment products.		
iii. The type of investors involved in an activity or practice or to whom an insurance-based investment product is marketed and sold. Under this factor, more detailed elements to be considered could include, for example:	iii. The type of clients involved in an activity or practice or to whom a structured deposit is marketed or sold. Under this factor, more detailed elements to be considered could include, for example:	iii. The type of clients involved in an activity or practice or to whom a financial instrument is marketed or sold. Under this factor, more detailed elements to be considered could include, for example:
a. whether the client is a retail client, professional client or eligible counterparty under MiFID;	a) whether the client is a retail client, professional client or eligible counterparty under MiFID;	a. whether the client is a retail client, professional client or eligible counterparty under MiFID;
b. features characterising investors' skills and abilities, e.g. level of education, experience with similar insurance-based investment products or selling practices;	b) features characterising clients' skills and abilities, e.g. level of education, experience with similar financial products or selling practices;	b. features characterising clients' skills and abilities, e.g. level of education, experience with similar financial instruments or selling practices;

c. features characterising investors' economic situation, e.g. income, wealth;	c) features characterising clients' economic situation, e.g. income, wealth;	c. features characterising clients' economic situation, e.g. income, wealth;
d. investors' core financial objectives, e.g. saving for income in retirement, need for risk coverage;	d) clients' core financial objectives, e.g. pension saving, home ownership financing;	d. clients' core financial objectives, e.g. pension saving, home ownership financing; and
e. whether the product or service is being sold to investors outside the intended target market, or the target market has not been adequately identified; and	e) whether the product or service is being sold to clients outside the intended target market, or the target market has not been adequately identified; and	e. whether the instrument or service is being sold to clients outside the intended target market or where the target market has not been adequately identified.
f. the eligibility for coverage by an insurance guarantee scheme, where national insurance guarantee schemes exist.	f) the eligibility for coverage by a deposit guarantee scheme.	
iv. The degree of transparency of the insurance-based investment product or type of activity or practice. Under this factor, more detailed elements to be considered could include, for example:	iv. The degree of transparency of the structured deposit or type of financial activity or practice. Under this factor, more detailed elements to be considered could include, for example:	iv. The degree of transparency of the financial instrument or type of financial activity or practice. Under this factor, more detailed elements to be considered could include, for example:
a. the type and transparency of the underlying;	a) the type and transparency of the underlying;	a. the type and transparency of the underlying;
b. any hidden costs and charges;	b) any hidden costs and charges;	b. any hidden costs and charges;
c. the use of features that draw investors' attention but that do not necessarily reflect the suitability or overall quality of the product or service;	c) the use of features that draw clients' attention but that do not necessarily reflect the suitability or overall quality of the instrument or service;	c. the use of features that draw clients' attention but that do not necessarily reflect the suitability or overall quality of the instrument or service;

d. visibility of risks;	d) visibility of risks;	d. visibility of risks; and
e. the use of product names or of terminology or other information that imply greater levels of safety and/or return than are actually possible or likely; and	e) the use of product names or of terminology or other information that is misleading by implying product features that do not exist; and	e. the use of product names or of terminology or other information that imply greater levels of safety and/or return than are actually possible or likely.
f. whether there was insufficient, or insufficiently reliable, information about an insurance-based investment product to enable market participants to which it was targeted to form their judgment, taking into account the nature and type of insurance-based investment products.	f) whether there was insufficient, or insufficiently reliable, information about a structured deposit, provided either by the manufacturer or the distributor, to enable market participants to which it was targeted to form their judgment, taking into account the nature and type of structured deposit;	
	g) whether the identity of deposit takers which might be responsible for the client's deposit, is disclosed.	
v. The particular features or underlying components of the insurance-based investment product or transaction including any leverage a product or practice provides. Under this factor, more detailed elements to be considered could include, for example:	v. The particular features or underlying components of the structured deposit including any leverage a product or practice provides. Under this factor, more detailed elements to be considered could include, for example:	v. The particular features or underlying components of the financial instrument or transaction including any leverage a product or practice provides. Under this factor, more detailed elements to be considered could include, for example:
a. the leverage inherent in the product;	a) the leverage inherent in the product;	a. the leverage inherent in the product;
b. the leverage due to financing; and	b) the leverage due to financing; and	b. the leverage due to financing;
c. the features of securities financing transactions.		c. the features of securities financing transactions; and

	c) the fact that the value of the underlying is no longer available or reliable.	d. as applicable, the fact that the value of the underlying(s) is (are) no longer available or reliable.
vi. The degree of disparity between expected return or benefit for investors and risk of loss in relation to the insurance-based investment product, activity or practice. Under this factor, more detailed elements to be considered could include, for example:	vi. The degree of disparity between expected return or benefit for investors and risk of loss in relation to the structured deposit, activity or practice. Under this factor, more detailed elements to be considered could include, for example:	vi. The degree of disparity between expected return or benefit for investors and risk of loss in relation to the financial instrument, activity or practice. Under this factor, more detailed elements to be considered could include, for example:
a. the structuring and other costs;	a) the structuring and other costs;	a. the structuring and other costs;
b. the disparity in relation to issuer's risk (where retained by issuer); and	b) the disparity in relation to issuer's risk (where retained by issuer); and	b. the disparity in relation to issuer's risk (where retained by issuer); and
c. the risk/return profile.	c) the risk/return profile.	c. the risk/return profile.
vii. The ease and cost for investors to switch or sell a product. Under this factor, more detailed elements to be considered could include, for example:	vii. The ease and cost for investors to exit a structured deposit. Under this factor, more detailed elements to be considered could include, for example:	vii. The ease and cost for investors to switch or sell an instrument. Under this factor, more detailed elements to be considered could include, for example:
a. the impediments when changing an investment strategy in relation to an insurance contract;		a. the bid/ask spread;
b. the fact that early withdrawal is not allowed or it is allowed at such contractual condition that it can be considered as not allowed; and	a) the fact that early withdrawal is not allowed; and	
		b. the frequency of trading availability;

		c. the issuance size and size of the secondary market;
		d. the presence or absence of liquidity providers or secondary market makers;
		e. the features of the trading system; and
c. any other barriers to exit.	b) any other barriers to exit.	f. any other barriers to exit.
viii. The pricing and associated costs. Under this factor, more detailed elements to be considered could include, for example:	viii. The pricing and associated costs. Under this factor, more detailed elements to be considered could include, for example:	viii. The pricing and associated costs. Under this factor, more detailed elements to be considered could include, for example:
a. the use of hidden or secondary charges; and	a) the use of hidden or secondary charges; and	a. the use of hidden or secondary charges; and
b. charges that do not reflect the level of distribution service provided by the insurance intermediaries.	b) charges that do not reflect the level of service provided.	b. charges that do not reflect the level of service provided.
ix. The degree of innovation of an insurance-based investment product, an activity or practice. Under this factor, more detailed elements to be considered could include, for example:	ix. The degree of innovation of a structured deposit, an activity or practice. Under this factor, more detailed elements to be considered could include, for example:	ix. The degree of innovation of a financial instrument, an activity or practice. Under this factor, more detailed elements to be considered could include, for example:
a. the degree of innovation related to the structure of the insurance-based investment product, activity or practice, e.g. embedding, triggering;	a) the degree of innovation related to the structure of the structured deposit, activity or practice, e.g. embedding, triggering;	a. the degree of innovation related to the structure of the financial instrument, activity or practice, e.g. embedding, triggering;
b. the degree of innovation relating to the distribution model/length of intermediation chain, e.g. "originate-to-distribute";	b) the degree of innovation relating to the distribution model/length of intermediation chain;	b. the degree of innovation relating to the distribution model/length of intermediation chain, e.g. "originate-to-distribute";

c. the extent of innovation diffusion, i.e. whether the insurance-based investment product, activity or practice is innovative for particular categories of investors;	c) the extent of innovation diffusion, i.e. whether the structured deposit, activity or practice is innovative for particular categories of clients;	c. the extent of innovation diffusion, i.e. whether the financial instrument, activity or practice is innovative for particular categories of clients;
d. innovation involving leverage;	d) innovation involving leverage;	d. innovation involving leverage;
e. the opacity of underlying; and	e) the opacity of underlying; and	e. the opacity of underlying; and
f. the experience of the market with similar insurance-based investment products or selling practices for insurance-based investment products.	f) the experience of the market with similar structured deposits or selling practices.	f. the experience of the market with similar financial instruments or selling practices.
x. The selling practices associated with the insurance-based investment product. Under this factor, more detailed elements to be considered could include, for example:	x. The selling practices associated with the structured deposit. Under this factor, more detailed elements to be considered could include, for example:	x. The selling practices associated with the financial instrument. Under this factor, more detailed elements to be considered could include, for example:
a. the communication and distribution channels used;	a) the communication and distribution channels used;	a. the communication and distribution channels used;
b. the information, marketing or other promotional material associated with the investment; and	b) the information, marketing or other promotional material associated with the investment;	b. the information, marketing or other promotional material associated with the investment;
	c) the assumed investment purposes; and	c. the assumed investment purposes; and
c. whether the decision to buy is secondary or tertiary following another purchase.	d) whether the decision to buy is secondary or tertiary following another purchase.	d. whether the decision to buy is secondary or tertiary following another purchase.
xi. The situation of the issuer of an insurance-based investment product. Under this factor, more detailed elements to be considered could include, for example:	xi. The situation of the issuer of a structured deposit. Under this factor, more detailed elements to be considered could include, for example:	xi. The situation of the issuer of a financial instrument. Under this factor, more detailed elements to be considered could include, for example:

- the financial situation; and	a) the financial situation of the issuer or any guarantor; and	a. the financial situation of the issuer or any guarantor; and
- the suitability of reinsurance arrangements regarding the insurance-based investment products.	b) the transparency of the situation of the issuer or guarantor.	b. the transparency of the situation of the issuer or guarantor.
xii. The risk to the orderly functioning and integrity of financial markets. Under this factor, more detailed elements to be considered could include, for example, whether:	xii. The risk to the orderly functioning and integrity of financial markets. Under this factor, more detailed elements to be considered could include, for example, whether:	xii. Whether there was insufficient, or insufficiently reliable, information about a financial instrument, provided either by the manufacturer or the distributors, to enable market participants to which it was targeted to form their judgment, taking into account the nature and type of instrument;
a. the underlyings of the insurance-based investment product or activities pose a high risk to the performance of transactions entered into by participants or investors in the market or product in question;	a) the structured deposits or activities pose a high risk to the performance of transactions entered into by participants or investors in the market or product in question;	xiii. Whether the financial instruments or activities pose a high risk to performance of transactions entered into by participants or investors in the market or product in question;

		xiv. Whether the activities or practices would significantly compromise the integrity of the price formation process in the market concerned so that: a) the price or value of the financial instrument in question was no longer determined according to legitimate market forces of supply and demand; and/or b) market participants were no longer able to rely on the prices formed in the market or volumes of trading as a basis for their investment decisions;
b. the characteristics of insurance-based investment products make them particularly susceptible to being used for the purposes of financial crime. Under this factor, more detailed elements to be considered could include, for example whether the characteristics could favour the use of the insurance-based investment products for:	b) the characteristics of structured deposits make them particularly susceptible to being used for the purposes of financial crime. Under this factor, more detailed elements to be considered could include, for example whether the characteristics could favour the use of structured deposit for:	xv. Whether the characteristics of financial instruments make them particularly susceptible to being used for the purposes of financial crime. Under this factor, more detailed elements to be considered could include, for example whether the characteristics could favour the use of the financial instruments for:
- any fraud or dishonesty;	- any fraud or dishonesty;	a. any fraud or dishonesty;
- misconduct in, or misuse of information, relating to a financial market;	- misconduct in, or misuse of information, relating to a financial market;	b. misconduct in, or misuse of information, relating to a financial market;
- handling the proceeds of crime;	- handling the proceeds of crime;	c. handling the proceeds of crime;
- the financing of terrorism; or	- the financing of terrorism; or	d. the financing of terrorism; or
- facilitating money laundering;	- facilitating money laundering;	e. facilitating money laundering;

c. activities or practices pose a particularly high risk to the resilience or smooth operation of markets;	- activities or practices pose a particularly high risk to the resilience or smooth operation of markets and their infrastructure;	xvi. Whether activities or practices pose a particularly high risk to the resilience or smooth operation of markets and their infrastructure;
d. an insurance-based investment product or activity or practice would lead to a significant and artificial disparity between prices of a derivative and those in the underlying market;	c) a structured deposit or activity or practice would lead to a significant and artificial disparity between prices of a derivative and those in the underlying market;	xvii. Whether a financial instrument or activity or practice would lead to a significant and artificial disparity between prices of a derivative and those in the underlying market;
e. a product or practice or activity poses particular risks to the market or payment systems infrastructure, including clearing and settlement and trading systems); and	d) a product or practice or activity poses particular risks to the market or payment systems infrastructure;	xviii. Whether the financial instrument or practice or activity poses a high risk of disruption to financial institutions deemed to be important to the financial system of the EU or, in relation to NCAs' powers only, to the national financial system of the Member State of the NCA;
f. an insurance-based investment product or practice would threaten the investors' confidence in the financial system.	e) a structured deposit or practice would threaten the investors' confidence in the financial system; and	xix. The relevance of the distribution of the financial instrument as a funding source for the issuer;
	f) a structured deposit or practice would leave the national economy vulnerable to risks.	xx. Whether a product or practice or activity poses particular risks to the market or payment systems infrastructure, including clearing and settlement and trading systems); and

<p>xiii. the insurance-based investment product or practice or activity poses a high risk of disruption to financial institutions deemed to be important to the financial system of the EU or, in relation to NCAs' powers only, to the national financial system of the Member State of the NCA.</p>	<p>xiii. The risk of disruption to financial institutions deemed to be important to the whole or part of the financial system of the EU or, in relation to CAs' powers only, to the national financial system of the Member State of the CA, posed by a structured deposit or practice or activity. Under this factor, more detailed elements to be considered could include, for example:</p>	<p>xxi. Whether a financial instrument or practice would threaten the investors' confidence in the financial system.</p>
	<p>a) the hedging strategy pursued by financial institutions in relation to the issuance of the structured deposit, including the mispricing of the capital guarantee at maturity;</p>	
	<p>b) the relevance of the structured deposit as a funding source for financial institutions; and</p>	
	<p>c) the reputational risks posed by the structured deposit or practice or activity to the financial institutions.</p>	

Annex IV: Resolution of comments

Summary of Comments on Consultation Paper on TA regarding product intervention EIOPA-14-064 powers - EIOPA-CP-14/064

CP-14-064 TA on product intervention

EIOPA would like to thank Allianz SE, Anacofi, Association of British Insurers, Association of International Life Offices, BdV (Bund der Versicherten), BEUC, BIPAR, GEMA, German Insurance Association, Insurance Europe, IRSG, The European Federation of Financial Advisers and Zurich Insurance Group

The numbering of the paragraphs refers to Consultation Paper No. 14/064 (EIOPA-CP-14/064)

No.	Name	Reference	Comment	Resolution
1.	Allianz SE	General Comment	<p>Allianz appreciates the opportunity to comment on EIOPA's Consultation Paper (CP) on Product Intervention Powers under the PRIIPs Regulation.</p> <p>Allianz agrees that circumstances may exist where a product intervention or ban is an appropriate measure to avoid greater harm for customers, the orderly functioning of financial markets and/or the stability of the financial system overall.</p> <p>From the wording it should be clear that the product intervention powers based on the PRIIPs Regulation are designed as emergency measures applied only in extraordinary circumstances and as a last resort. While this also applies to interventions by national competent authorities (NCAs), the characteristic as a measure of last resort needs to be made even clearer for interventions of EIOPA itself. Furthermore, all measures need to conform to the principles of proportionality and subsidiarity. This means that, fortunately, the need for actual interventions is (and should be) a very rare event.</p>	<p>EIOPA recognizes that the exercise of such powers by competent authorities and, in exceptional cases, by EIOPA should be subject to specific conditions and legal prerequisites. EIOPA will contribute to ensuring the consistent, efficient and effective application of the product intervention powers under the PRIIPs Regulation and will foster supervisory convergence.</p>

			<p>We perceive that the focus of the CP is on possible situations or issues which potentially could trigger a product intervention. While this may be valuable, we perceive that a clarification of the thresholds for criticality that an intervention would have to meet is even more important than a list of potential indicators. Surprisingly, very little to no effort seems to have gone into this important aspect.</p> <p>In particular, regarding</p> <ul style="list-style-type: none"> <input type="checkbox"/> Significant investor protection concerns: the trigger should be an observed (not just potential) systematic high volume damage to customers, not just a critical assessment by a supervisor (NCA or EIOPA) <input type="checkbox"/> Threat to the orderly functioning and integrity of financial markets: any threat should be with respect to the functioning of whole market segments or a substantial share of all intermediaries or manufacturers. In other words, product concerns regarding one or a few companies are not sufficient to ban a whole product type or category based on these rules. In particular, we would like to point out that there should be only very few circumstances, where insurance-based investment products (= insurance PRIIPs) meet these criteria. <input type="checkbox"/> Threat to the stability of the whole or part of the financial system: an intervention based on this criterion would clearly require systemic (macro-prudential) threats, which could potentially threaten the whole financial system, e.g. by contagion or interconnectedness. <p>We are concerned, that the extensive (but still non-exhaustive) list of possible sources of issues mentioned in the CP could give the (possibly wrong) impression about the intention to extend the product intervention powers beyond its intended and codified level. We would like to highlight, that such extension of product intervention powers under the PRIIPs Regulation beyond this clearly defined scope would be</p>	
--	--	--	--	--

			<p>not be covered by the mandate, and therefore be questionable, misguided and unacceptable. In other words: Any product intervention based on the PRIIPs Regulation has to conform to the very high thresholds discussed above.</p> <p>Interpreted even further, some passages could be misunderstood to aim at the implementation of a nucleus of a product pre-approval regime, e.g. the call for sufficient flexibility and a highlighting of the non-exhaustive character of the criteria list in section 1.11. For clarification it should be noted that the product intervention powers granted under the PRIIPs Regulation should in no case be used to implement a (de facto) pre-approval regime for PRIIPs products, neither directly or indirectly (e.g. by threat of interventions in case of non-compliance with proposed rules).</p> <p>Most NCAs should also already be sufficiently empowered to recognize and address most serious issues, including those addressed by the PRIIPs product intervention powers. This further supports the notion that the need for an ESA / EIOPA product intervention should be an extremely rare event.</p>	
2.	Anacofi	General Comment	We agree that the demonstrated criteria and factors are all reasonable and proper from our point of view	Noted.
3.	Association of British Insurers	General Comment	<p>The ABI welcomes EIOPA's Consultation Paper on Product Intervention Powers under the Regulation of Key Information Documents for Packaged Retail and Insurance-Based Investment Products.</p> <p>Currently in the UK, product intervention rules are made under Section 137D of the Financial Services and Markets Act 2000 (FSMA) (as amended by the Financial Services Act 2012) aiming to tackle issues relating to specific products (or types of products), product features or marketing practices relating to specific products. Temporary product intervention rules also exist and are enforceable without consultation for a limited period of 12 months to enable the national competent</p>	It should be noted that, while competent national authorities will often be best placed to monitor and react immediately to an adverse development, the PRIIPs Regulation provides EIOPA with competences to take measures in exceptional cases,

			<p>authority to investigate further and make permanent provisions. These rules exist alongside other regulatory tools. Therefore, whilst we do support a consistent application and co-ordination of common supervisory provisions, it is for the national competent authorities to carry out the direct supervision over their respective markets. In view of the differences between the national markets and the different expectations of national consumers, we believe that, in all but the most extreme circumstances, the national supervisor model is the right one.</p> <p>Recital 25 of the PRIIPs Regulations states that there must be "serious concerns" and that the intervention requires a public interest and, therefore, a collective interest. Furthermore, this Technical Advice should serve as a tool for assessment rather than automatic criteria that leads to intervention. As such, EIOPA should only intervene under the PRIIPs Regulation in exceptional cases. We agree with EIOPA that flexibility is required; however, any further regulation should be focused on more effective, proactive and consistent supervision of national supervisors in respect of the enforcement of existing rules.</p>	where needed.
4.	BdV (Bund der Versicherten)\German Association of I	General Comment	<p>The Bund der Versicherten (BdV - German Association of Insured) would like to thank EIOPA for consulting stakeholders on Product Intervention Powers (related to KIDs for PRIIPs). Find below our comments.</p> <p>The language used in this consultation paper is - in our opinion - strongly influenced by a terminology deriving from banking and securities markets. Customers are described as "investors", who buy "financial instruments". For insurances such a vocabulary is unusual, terms like clients or customers or contracts are commonly used instead. Same observation is made for the possibility "to switch an instrument" (cf. 1.16.7, p. 10), we propose calling it "converted contracts". These terms are used by EIOPA in its own publications, so we</p>	Noted.

			recommend using these terms typical for insurances if referring actually to an insurance product.	
5.	BEUC	General Comment	<p>First of all, BEUC would like to thank EIOPA to give us the opportunity to comment on this consultation paper.</p> <p>In general, BEUC welcomes the Product Intervention Powers (PIP) conferred to NCAs and ESAs by both MiFIDII and the PRIIPS regulation. Such tools are vital in order to help restoring consumer confidence in financial products.</p> <p>In order to avoid any possible regulatory arbitrage and guarantee a level playing field, we welcome the fact that the criteria for PIP under PRIIPS in this draft Technical Advice are well aligned with the corresponding MIFIDII criteria under development.</p>	Noted.
6.	BIPAR	General Comment	<p>BIPAR is the European Federation of Insurance Intermediaries. It groups 50 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 can be found on: www.bipar.eu</p> <p>Broadly speaking, there are three types of intermediaries.</p> <p>Most intermediaries are small or micro enterprises, established near to the consumer in the High Street of each and every city and village. They render personalised services to mostly local private clients and smaller businesses. They are confronted with growing competition from alternative forms of distribution. Many intermediaries are SME type enterprises servicing SME's in all sectors of the economy at regional or national level. These intermediaries follow increasingly their clients abroad when they export or import or set up branches or subsidiaries outside their national borders.</p> <p>Some of these intermediaries are large enterprises. They work Europe-wide or even globally serving a wide range of mainly</p>	<p>EIOPA would like to remind that Article 69(1) of EIOPA's founding Regulation is applicable for cases of non-contractual liability.</p> <p>In accordance with the general principles common to the laws of the Member States, EIOPA has to make good any damage caused by it or by its staff in the performance of their duties.</p>

			<p>business clients. Some intermediaries also handle reinsurance business.</p> <p>BIPAR welcomes the opportunity provided by EIOPA to comment on EIOPA consultation paper on Product Intervention Powers under the Key Information Documents for Packaged Retail and Insurance-Based Investment Products (PRIIPs).</p> <p>BIPAR is in favour of all actions taken in order to ensure the safety of products where the cost-benefits has been clearly and precisely assessed.</p> <p>We wonder how the responsibility of National Competent Authorities or of EIOPA is engaged if they prohibit a product which is, in the end, not falling under the requirements of Articles 16 and 17 of PRIIPs and where a damage is caused by this prohibition.</p> <p>BIPAR would also like to highlight the fact that the intervention of the NCAs or of EIOPA, in exceptional cases, must be limited to the circumstances clearly described in Articles 16 and 17 of the PRIIPs Regulation. The intervention of the NCAs or of EIOPA must not be used as a pre-approval tool.</p> <p>Several European Legislations address this issue and the interaction between the different texts and the intervention powers of the NCAs and of EIOPA must also clearly be taken into account in the drafting of the Technical Advice.</p>	
7.	GEMA	General Comment	<p>GEMA welcomes the opportunity to contribute to the discussion on product intervention powers under the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs).</p> <p>We would like to express two general comments :</p> <ul style="list-style-type: none"> - PRIIPs regulation sets strict conditions for EIOPA interventions (see article 16). These conditions are to be read cumulatively and must be met before EIOPA can adopt the 	Noted.

			<p>specific measures set out in Article 16 §1.</p> <p>- EIOPA should not intervene in the legislative field on the pretext that the legislator asks for specifying criteria before taking action under article 16. In particular EIOPA should neither interfere in the PRIIPs regulation itself nor in the implementation of the Insurance Mediation Directive (IMD2) which is still under discussion nor in fields concerning manufacturers' responsibility only.</p>	
8.	German Insurance Association	General Comment	<p>German Insurance Association, Wilhelmstr. 43G, 10117 Berlin (ID Number 6437280268-55)</p> <p>The basic idea of European System of Financial Supervision (ESFS) is that the European Supervisory Authorities (ESAs) ensure a consistent application of common supervisory provisions and coordinate supervisory action while national competent authorities (NCAs) execute the direct supervision (day-to-day business) over their respective markets. The intervention powers in Article 16 and Article 17 PRIIPs Regulation reflect this distribution of roles between EIOPA and the NCAs: In Article 16 (2) PRIIPs Regulation, the European legislator sets out conditions that have to be met by EIOPA to adopt the specific measures, inter alia, that EIOPA only takes action if the respective NCA fails to act adequately. This legislative threshold seems to be in line with the ruling of the European Court of Justice (ECJ) that regards intervention powers of European agencies only as legally admissible, if they are appropriately limited (see ECJ C-270 /12 from 02.01.2014, No. 45 et seq.).</p> <p>However, in accordance with the ECJ judgement the legal conditions in Article 16 need to be interpreted strictly in order to effectively limit the powers in practice. This particularly applies to legal requirements in Article 16 (2)a PRIIPs Regulation ("significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or</p>	<p>EIOPA has taken relevant EU case-law into consideration. EIOPA is of the view that the criteria and factors are adequately outlined and EIOPA's intervention acts based on those criteria are open to judicial review.</p>

			<p>to the stability of the whole or part of the financial system in the Union)". Furthermore, recital 25 of the PRIIPs Regulation clarifies that there must be "serious concerns" and that the intervention requires a "public interest", i.e. a collective concernment in order to assume a "significant investor protection concern". This said, the Technical Advice should be very clear about the fact that the specific criteria and factors serve only as a tool for assessment ("to be taken into account"). Moreover, they can neither replace careful examination by EIOPA nor define the legal terms in Article 16 (2) PRIIPs Regulation. It should be a common understanding and clarified in the delegated acts that even if certain criteria or factors in the delegated acts apply, there is no automatism that the intervention powers are available to EIOPA. Moreover, a single criterion should never be sufficient for making use of product intervention powers, since the supervisors should only take a decision under the PRIIPs Regulation in exceptional cases. Furthermore, any intervention should be based on clear factual evidence.</p> <p>Moreover, the criteria and factors listed cannot be understood as a general request to anticipate new legislation. There are already legislative acts that refer to specific criteria. For example, the PRIIPs Regulation should set standards for the transparency of cost, risk and reward with its key information document. It would not be acceptable that independently new standards were established while the political discussion is still ongoing. Moreover, product design and pricing should always remain within the responsibility of the manufacturers. The intervention powers should also not anticipate the implementation of the Insurance Mediation Directive (IMD2) which is still under discussion. The Member States' options under IMD2 must not be circumvented.</p> <p>The limits of the intervention powers, which stem from the scope of the Regulation, must be taken into account when determining the criteria. Article 2 (2) PRIIPs Regulation lists</p>	
--	--	--	---	--

			products to which the Regulation and, therefore, the intervention powers are not applicable. In addition, the rules currently discussed for pension products should not be prejudged.	
9.	Insurance Europe	General Comment	<p>The basic idea of European Insurance supervision (ESFS) is that the European Supervisory Authorities (ESAs) ensure a consistent application of common supervisory provisions and coordinate supervisory action while the national competent authorities (NCAs) execute the direct supervision (day-to-day business) over their respective markets. The intervention powers in Art. 16 and Art. 17 PRIIPs Regulation reflect this distribution of roles between the European Insurance and Occupational Pensions Authority (EIOPA) and the NCAs: the European legislator in Art. 16(2) and Art. 16(3) PRIIPs Regulation sets out conditions that are to be read cumulatively and must be met before EIOPA can adopt the specific measures set out in Art. 16(1). The legal conditions in Art. 16 strictly limit EIOPA's powers in practice. This particularly applies to legal requirements in Art. 16(2)(a) PRIIPs Regulation ("significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union"). Furthermore, recital 25 of the PRIIPs Regulation clarifies that there must be "serious concerns" and that the intervention requires a "public interest", i.e. a collective effect in order to evidence a "significant investor protection concern". This said the Technical Advice should be very clear about the fact that the specific criteria and factors serve only as a tool for assessment ("to be taken into account"). Moreover, they can neither replace careful examination by EIOPA nor define or replace the legal requirements in Art. 16 (2) PRIIPs Regulation. It should be a common understanding and clarified in the Delegated Acts that even if certain criteria or factors in the delegated acts apply, there is no automatic right for EIOPA to intervene and, in any event, only in</p>	<p>EIOPA agrees, that where all required conditions are met, the competent authority or, in exceptional cases, EIOPA should be able to impose a prohibition or restriction - even on a precautionary basis - before an insurance-based investment product has been marketed, distributed or sold to investors.</p>

			<p>exceptional circumstances. The legal threshold to be met before EIOPA can intervene under Art. 16 is, rightly, very high. Supervisors may only intervene under the PRIIPs Regulation in exceptional cases.</p> <p>The request by the legislator to specify criteria and factors to be taken into account by EIOPA before taking action under Art. 16 must not be understood as a general invitation to anticipate new legislation. There already are legislative acts that refer to specific criteria. Other legislation is currently discussed. For example, the PRIIPs Regulation sets standards for the transparency of cost, risk and reward with its key information document. It would not be acceptable if EIOPA and the Commission were to establish new standards without regard to the political discussion and its results on Level 1. Product design and pricing should always remain within the responsibility of the manufacturers. The intervention powers should also not anticipate the implementation of the review of the Insurance Mediation Directive (IMD2), which is still under discussion. Areas which the EU legislator deliberately leaves to Member States' discretion at level 1 must be respected. The criteria should not, therefore, pre-empt or interfere in any way with the way Member States will implement the future IMD 2 provisions.</p> <p>A number of criteria or factors quoted fail to give evidence justifying a need for a prohibition or restriction of a product. Examples include the criteria falling under the "degree of innovation" or "communication or distribution channels" or "selling practices associated with insurance-based investment products". It is more a list of areas where intervention could take place than criteria or factors to be taken into account in determining when there is a problem or a threat justifying intervention.</p> <p>In Insurance Europe's view, EIOPA should be cautious when adopting regulation developed by the European Banking</p>	
--	--	--	---	--

			<p>Authority (EBA) and the European Securities and Markets Authority (ESMA) for the financial sector, as these do not always suit the specificities of insurance-based investment products.</p> <p>The limits of the intervention powers, which stem from the scope of the PRIIPs Regulation, must be taken into account when determining the criteria. Art. 2(2) PRIIPs Regulation lists products to which the Regulation and, therefore, the intervention powers are not applicable. In particular, the rules currently discussed for pension products should not be prejudged.</p> <p>Any product intervention by the ESAs or NCAs must not deter investment and innovation and will only cause investor access problems and ultimately reduce choice. It is therefore important that compelling evidence must be available to justify any radical intervention, particularly at pan-EU level.</p> <p>Finally, there must be clarity as to the process of appeal to be followed by manufacturers where EIOPA has taken a decision to intervene.</p>	
10.	IRSG	General Comment	<p>IRSG welcomes the opportunity provided by EIOPA to comment upon the Product Intervention Powers under the Regulation on KID for PRIIPs.</p> <p>As a general overview, IRSG considers of utmost importance the clear delimitation of EIOPA's intervention powers to exceptional cases, where the NCAs cannot intervene. Therefore, the flexibility should be required only if the criteria set for NCAs are met fail to intervene but not as a general principle.</p> <p>EIOPA interventions based on the PRIIPs empowerment should be emergency measures applied in extraordinary circumstances and as a last resort. Also, they need to conform to principles of proportionality and subsidiarity.</p>	Noted.

			<p>Therefore, the possibility of intervention should not be flexible and the criteria and factors should be specific, clearly determined.</p> <p>Regarding the threshold of ““threat to the orderly functioning and integrity of financial marketes””, it should be considered a threat to the functioning of whole markets / segments or whole intermediary groups, or otherwise the majority of those mentioned, not just high losses for one company. In other words, risk should be already partially systemic (== macro-prudential) not just company-specific (== micro-prudential) in order to threat the stability of the whole or part of the financial system.</p> <p>The extensive (but even so non-exhaustive) list of possible sources of problems in the paper gives the (maybe mistaken) impression to use any material violation as a basis for an EIOPA intervention. This would not be covered by the rules and therefore unacceptable, if the very high thresholds mentioned above are not met.</p> <p>Intervention powers should neither directly or indirectly (e.g. by threat of their application) be used to address possible products in scope, where the NCAs already have sufficient competencies. An intervention by the ESAs/EIOPA therefore should be extremely rare.</p> <p>Finally, there must be clarity as to the process of appeal to be followed by manufacturers where EIOPA has taken a decision to intervene.</p>	
11.	The European Federation of Financial Advisers and	General Comment	<p>FECIF welcomes the fact that EIOPA is establishing ground rules regarding the product intervention powers aligned with the EBA and ESMA. The demonstrated criteria and factors are all reasonable and appropriate from our point of view.</p> <p>FECIF would like to stress that the manufacturer cannot take full responsibility over distribution - which is regulated</p>	Noted.

			<p>anyway. The European institutions and authorities seem to want the manufacturer to oversee and control the sale, which does not work for manufacturers without direct sales forces or for independent intermediaries.</p> <p>Generally speaking, more expensive and administratively onerous regulation, in the current difficult economic climate, will only reduce the number of intermediary firms, putting people out of work while leaving consumers without assurance (financial protection) or sufficient savings for retirement. Also, it will create a greater financial burden for Member States' social services and benefits systems.</p> <p>FECIF believes there are ways to treat customers fairly, transparently, and without conflict of interest, using sensible regulation which does not penalize the Intermediary. FECIF believes treating clients in this way will improve industry standards at intermediary levels as well as at the financial institution level (large banks, insurance companies etc.).</p>	
12.	Zurich Insurance Group	General Comment	<p>The draft Technical Advice makes a number of foundational assumptions that should be carefully reconsidered.</p> <p>Potential Overstatement of Risk to Financial Markets and Systems</p> <p>The draft Technical Advice appears to converge the four distinct purposes of EIOPA or an NCA's authority to temporarily prohibit or restrict (a) the marketing, distribution or sale of an insurance-based investment product; or (b) a type of financial activity or practice of an insurance or reinsurance undertaking.</p> <p>Those four distinct purposes for extraordinary intervention arise where a PRIIP presents a:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Significant investor protection concern <input type="checkbox"/> Threat to the orderly functioning and integrity of financial markets 	<p>The aim of this Technical Advice is to respond to the Commission's request on advice regarding measures specifying the criteria and factors and not cover the additional conditions set out by the PRIIPs Regulation.</p> <p>Furthermore, EIOPA acknowledges the differences in the financial sectors.</p>

			<p><input type="checkbox"/> Threat to the stability of the whole or part of the financial system of the Union</p> <p><input type="checkbox"/> Threat to the stability of the financial system within at least one Member State</p> <p>See Article 16, Para. 2(a); Article 17, Para. 2(a).</p> <p>The draft Technical Advice appears to assume that the criteria and factors set out in the draft are equally applicable and should be similarly applied with respect to each of the four distinct purposes that may justify extraordinary intervention.</p> <p>It would certainly appear highly unlikely that the same criteria and factors that would trigger an investor protection concern related to a PRIIPs could be applied to an analysis whether a PRIIPs has placed the stability of the Union’s financial system in jeopardy.</p> <p>While EIOPA has clearly sought to preserve flexibility, in this case such flexibility results in a missed opportunity to explore what – if any – factors and criteria relating to a PRIIPs can trigger an immediate threat to the functioning of financial markets or to the stability of a national or the European financial system that would justify the exercise of extraordinary powers of product intervention.</p> <p>We respectfully submit that such a review would find scant evidence of realistic factors or criteria that suggest a PRIIPs is or could be threatening to the financial markets or the financial stability of either a Member State or the EU as a whole.</p> <p>Accordingly, we would welcome EIOPA’s promulgation of a discussion paper on whether and under what circumstances a PRIIPs might present such a threat. We believe that such an exercise would provide valuable insights that would permit EIOPA to differentiate the criteria and factors as they relate – or do not relate – to the four separate purposes of</p>	
--	--	--	--	--

		<p>extraordinary intervention.</p> <p>Blending of Banking and Insurance Concepts</p> <p>EIOPA considered it appropriate to base its Technical Advice on the proposals of the EBA and ESMA (Para. 1.9). While EIOPA has made efforts to remove patently inapplicable material from those other documents, EIOPA's draft Technical Advice risks obscuring the relevance of the document to insurance. For example, policyholders are referred to in the draft Technical Advice as "investors" (Para. 1.15). More substantively, the technical Advice refers to "notional value" and other concepts which have not been domesticated within the insurance industry.</p> <p>While there is no doubt value in alignment and coordination with the banking and securities industries, the indisputable fact is that insurance is an equally important but different industry with its own risks, attributes, business model and role in society. For whatever reason, bankers and securities dealers do not face the re-designation of their customers as "policyholders." Insurance should be afforded that same respect as a separate financial service. Our customers are policyholders and it would be appreciated if the Technical Advice were to address them as such.</p> <p>While use of appropriate terms would send a strong signal that insurance and other financial sectors are materially different, the Technical Advice should also take this opportunity to make clear how – in the context of the purposes of extraordinary intervention – insurance and other financial sectors do, indeed, differ.</p> <p>For example, the draft Technical Advice makes the observation that PRIIPs are "based on a contractual relationship between the [policyholder] and the insurance undertaking." EIOPA recognizes that this contractual relationship determines the ease and cost of customer</p>	
--	--	--	--

			<p>switching – as compared to the securities markets where unwinding of an investment depends on the accessibility and stability of the secondary market (Para. 1.14).</p> <p>However, the clear stabilizing influence of this contractual underpinning – unavailable in the banking or securities context – is not accounted for as a mitigating criteria in considering whether a PRIIPs could threaten financial markets or financial stability. Such is the missed opportunity for discussion where one begins the analysis by asking how insurer’s differ from banks and securities dealers. A more full and productive dialogue could be had if one were to first examine insurance and then compare those findings to conclusions that the respective regulators have drawn concerning banks and securities dealers.</p> <p>Potential Ambiguity of Scope</p> <p>As a general observation the Technical Advice should be very clear and often repeat that it applies only in the context of PRIIPs. While that is obvious from the PRIIPs regulation itself and from the origin of the request for advice, taken alone the document may be mistaken as applying in some manner beyond the realm of PRIIPs. The Technical Advice becomes particularly confusing where the reference to “activity”, “practice” or “service” is not clearly linked by referenced and subordination to a PRIIPs. Of course, if the intention is to consider factors or criteria outside of the scope of a PRIIPs or to expand into services, then the Technical Advice exceeds the mandate of the Regulations and must be conformed.</p>	
13.	Allianz SE	Q1	<p>Generally, products problems may arise from different sources. While this may justify a general and / or broad list of potential trigger criteria, such a list could give the misguided impression that any violation of the criteria would trigger a mandate for an intervention by a NCA or ESA, even if the event is far below the critical threshold for a real crisis as defined in the Regulation. As stated in the General Comments,</p>	<p>EIOPA does not share the views on criteria which are described and required by the PRIIPs Regulation itself. Regarding the criteria on innovation</p>

			<p>product interventions should in effect be exceptional events used only as a last resort , not to define general guardrails for product design.</p> <p>We would therefore suggest to put more effort into clarifying an adequately high intervention threshold as opposed to extending the breadth or depth of the already very long list of potential problem sources.</p> <p>Against this backdrop, the following specific aspects should be considered with respect to the criteria proposed:</p> <p>In our understanding, the EIOPA mandate in Art. 16 (8) of the PRIIPs Regulation only covers interventions with respect to the product itself. By contrast, the criteria listed in the CP also include indicators for activities and practices, i.e. conduct regulation, especially in the sections 1.16.1, 1.16.4, 1.16.5, and 1.16.9. We doubt these aspects are covered by the mandate in Art. 16 and should (if necessary) be relegated to the appropriate act, namely IMD2/IDD.</p> <p>Complexity (see section 1.16.1) is not problematic per se, and in many cases is even beneficial, in particular where a certain complexity is needed to deliver better or more suitable protection (e.g. biometric risk transfer) tailored to the customers' need. Furthermore, it is not clear, how a lack of transparency regarding costs (referred to in section 1.16.1(b)) could lead to a product intervention based on the rules under this regime, especially since it can be assumed, that the KID design rules would clearly specify the necessary cost disclosure.</p> <p>Transparency (see section 1.16.4): It is not clear, how intransparency per se should be a sufficiently strong indicator for a product intervention under these rules, even if a certain transparency with respect to a product's core features is desirable. In addition, transparency has different dimensions to be adequately considered. In particular, different structures</p>	<p>and complexity, EIOPA will follow the PRIIPs Regulation and introduce those criteria and factors in its Technical Advice. At the same time, EIOPA acknowledges the importance of applying the aforementioned criteria in a proportionate and considerate way.</p> <p>While the KID is aimed at enhancing disclosure and transparency, the product intervention powers under the PRIIPs Regulation are independent empowerments for national competent authorities and EIOPA. The same point can be made with respect to IMD2/IDD rules. Therefore, EIOPA believes that product intervention powers will supplement other legislative and regulatory measures.</p>
--	--	--	--	--

			<p>in product regulation of different life insurance products by design lead to different degrees of transparency with respect to these dimensions. For example, some life insurance products provide beneficial commitments (and hence transparency) about long-term benefits but less transparency about the composition of the corresponding assets backing these benefits at any point in time. Conversely, unit-linked products by design provide more transparency about the composition of the assets at any time but no or less commitments or transparency about ultimate payouts. For an adequate assessment, all relevant dimensions should be adequately considered. Similarly, the implied call for full transparency could mask the necessity to balance certain desirable properties, e.g. completeness vs. comprehensibility / relevance of disclosure: For a customer it may be more relevant to have transparency about the effective guarantees included in an insurance-based investment product than in the detailed composition of the assets used to achieve these goals (as long as the solvency of provider is ensured by suitable prudential regulation).</p> <p>Disparity between expected return and risk of loss (see section 1.16.6) and pricing and costs (section 1.16.8): the wording used in these sections could be misunderstood or potentially misused as a basis for supervision or prescriptions for permissible pricing ranges. Specifically, rule 1.16.8 (b) should not be conceived as a "quality enhancement rule" for charges (as included in MiFID II for commissions).</p> <p>Innovation (section 1.16.9): While there may be problematic innovations, per se it is neither sufficient nor problematic. At any rate, innovation is indispensable to tailor products to changing customer needs, especially in dynamically changing environments (see at least partial concession to this point in section 1.12 of the CP). Seen from this angle, innovation is a key to more variety and choice thereby acting as a catalyst to promote beneficial competition resulting in higher fit with as</p>	<p>Finally, the criteria and factors should not trigger an automatic response. Each action should be assessed on a case-by-case basis and even in cases, where certain criteria are met, for example a significant investor protection concern might not be identified.</p>
--	--	--	--	---

			well as adaptation to customer needs at lower cost. Selling practices (section 1.16.10): The rules implemented or proposed here should neither contradict nor materially extend the upcoming IMD2/IDD rules generally addressing similar issues.	
14.	Anacofi	Q1	Yes	Noted.
15.	Association of British Insurers	Q1 Do you agree with the criteria and factors prop	<p>The ABI has concerns regarding the following criteria;</p> <p>1.16.1: A complex product is not necessarily detrimental to the consumer. Many insurance-based investment products require a level of complexity in order to reduce the investor's risk and provide them with capital guarantees or cushioning them from the volatility of the market through the 'smoothing' offered by a with-profits fund.</p> <p>1.16.1 (b)The requirement for full transparency of costs. This is covered through the PRIIPs Regulation and is currently being developed at Level 2. This will include all costs and disclosure is to be in a prescribed comparable and transparent manner, therefore, we do not feel it is necessary for EIOPA to be concerned regarding a lack of cost transparency.</p> <p>1.16.1 (e) With regard to the bundling of products, this is currently being consulted on in the context of the revision of the IMD and the ESAs' cross-selling consultation paper. The implementation of this Directive and the consultation paper should, therefore, not be pre-empted.</p> <p>1.16.3 (e) The PRIIPs Regulation does not mention the term "target market" and therefore it should be avoided in the level 2 text. The term "target market is currently being discussed and defined in the development of rules on product governance. The introduction of this term on the basis of the PRIIPs regulation could result in obligations for manufacturers which are not foreseen in the level 1 text.</p> <p>1.16.4 The degree of transparency will be ensured through the</p>	<p>EIOPA agrees that complex products are not <i>per se</i> detrimental to consumers. However, some complex products can be the source of detriment under certain circumstances.</p> <p>While the KID is aimed at enhancing disclosure and transparency, the product intervention powers under the PRIIPs Regulation are independent empowerments for national competent authorities and EIOPA. The same point can be made with respect to Solvency II and other forthcoming regulatory initiatives. Therefore, EIOPA</p>

			<p>PRIIPs KID and the extensive provisions that are currently being developed at level 2. It is unclear, therefore, how the degree of transparency can be a possible criterion for product intervention given that this should be avoided through the prescribed nature of the KID.</p> <p>1.16.6 The degree of disparity between expected return or benefit. According to the PRIIPs Regulation retail investors will be informed about the risks and the corresponding returns of a product through the KID. Retail investors will be able to choose a product that suits their requirements. Furthermore, product intervention rules should not be used against products which perform poorly due to market volatility. Consumer detriment should not encompass losses arising from the crystallisation of market risk (such as investment performance) as long as the product is well-designed and appropriately marketed to the identified target market.</p> <p>1.16.8 The calculation of costs and premiums are the responsibility of product manufacturers and not under the general control of the supervisory authorities. This should be made clearer.</p> <p>1.16.9 The degree of Innovation; The ABI agrees with EIOPA that the concept of innovation should not be a stand-alone reason for making use of product intervention powers. Innovation is a driving force for continued development of new products. Deterring innovation will only exacerbate consumer access problems and ultimately reduce choice. With regard to putting provisions in place, Solvency II ensures that risks arising from the sale of a new product are appropriately taken into account to ensure the financial soundness of the insurance undertaking. As such, innovation does not represent a threat to the stability of the financial system.</p>	believes that product intervention powers will supplement other legislative and regulatory measures.
16.	Association of International Life Offices	Q1	<p>AILO broadly agrees subject to a few observations:</p> <ul style="list-style-type: none"> - Wrapper type products are very common especially in the 	The argument that EIOPA would not need to intervene on

			<p>cross border market and as such it is extremely unlikely that the product itself could create a significant investor protection concern. AILO generally considers that the intervention powers of ESMA and EBA at asset level (financial instruments and structured deposits) ought to be sufficient to prevent the marketing of such an asset within a wrapper . The wide choice of asset links enjoyed by policyholders and their advisers may in certain circumstances contain a particular, unsuitable asset for the policyholder. This should be distinguished from the choice of asset class; NCA's and local Regulators must be free to determine asset admissibility for technical reserves purposes, within the permissible classes under the Solvency II Directive.</p> <ul style="list-style-type: none"> - As indicated in the paper it is important for the future of the Single Market that powers are not used which might have the unintended consequence of stifling innovation. - There is strong concern to ensure powers are not used by certain Regulators as a means to impose product pre-approval contrary to Article 182 Solvency II Directive. - There must be recognition of Home State permitted asset rules. NCAs and EIOPA should make information public to ensure that they have abided by all the requirements of Article 17 of the PRIIPs Regulation (in particular 17.2(c), (d) and (e). We have strong concerns that NCAs may well decide to take steps to impose a blanket prohibition without taking account of the different degrees of sophistication of policyholders and their advisers. Such actions would have a discriminatory effect on the activities and innovation of cross border insurers, and damage the future development of the Single Market. - In terms of the experience of the "market" we would have concern if that were only considered to be domestic markets, rather than the EU Single Market of 28 Member States. Again such actions would create the potential to restrict innovation and impose a high level of subjectivity and disproportionate 	<p>insurance wrapper products as they are under the product intervention powers of ESMA and EBA does not convince. Those powers (Article 39-43 MiFIR) refer to financial instruments as defined in Article 4(1)(15) MiFID II. Insurance wrapper products are not included in the MiFID II definition. However, it seems plausible that distributors have an intrinsic incentive to avoid the marketing of an insurance wrapper product with a 'banned' asset.</p> <p>While the KID is aimed at enhancing disclosure and transparency, the product intervention powers under the PRIIPs Regulation are independent empowerments for national competent authorities and EIOPA. The same</p>
--	--	--	--	---

			<p>application.</p> <p>- Certain of the criteria in respect of costs and charges would seem to be superfluous given the disclosure requirements for the PRIIPs KID. In the event that the costs and charges are not transparently disclosed, this ought to be a matter for the administrative sanctions given under the PRIIPS Regulation. The nature and scale of any risks ought to also be adequately explained, however we do agree that appropriate criteria might include a product with a disproportionate risk to return ratio.</p> <p>Other criteria would appear to be superfluous given the improved appropriateness and suitability regime under proposed IDD2 which operates at the level of the sale, rather than at the whole-of-market level. Insurance clients may be of varying wealth, experience and risk appetites and accordingly, a given the sector does not have an imbedded retail vs professional distinction, unlike MiFID, great care ought to be taken before making assumptions on whether a 'target market' (eg private individuals) is appropriate.</p> <p>In particular:</p> <ol style="list-style-type: none"> 1. In relation to paragraph 1.16.1(a) we believe that the type of underlying asset is a matter for the relevant supervisory authority (EBA, ESMA) and instead might refer to "the type and transparency of the insurance based investment product". 2. We believe that paragraph 1.16.1(b) ought to be deleted. Where the costs and charges of the PRIIP are not transparently disclosed, this ought to be dealt with through administrative sanctions for a breach of regulation 8.3(f) of the PRIIPS Regulation. In terms of the costs of an asset which might be linked to the PRIIP, article 6.3 will require the manufacturer to inform the policyholder as to where information can be found on the investment option, and will 	<p>point can be made with respect to IDD2, Solvency II and other forthcoming regulatory initiatives. Therefore, EIOPA believes that product intervention powers will supplement other legislative and regulatory measures.</p>
--	--	--	---	--

			<p>address the concern of 'multiple layers' of costs.</p> <p>3. We believe that paragraph 1.16.1(c) ought to be retained, but only to address the situation where the KID disclosures which are required to be made under regulations 8.3(d)(iii) and (iv) cannot adequately convey the true nature of the performance calculation.</p> <p>4. We agree with the text of paragraph 1.16.1 (d) on the basis that notwithstanding the KID disclosures required by articles 8.3(d)(i) and (ii) (risk indicator and maximum loss of capital), EIOPA ought to take action for a product where the risks are disproportionate to the costs and rewards. This paragraph might instead be combined into paragraph 1.16.6.</p> <p>5. In paragraph 1.16.2(b) we would instead refer to the "numbers of policyholders or market participants", to use the correct insurance industry terminology.</p> <p>6. We would delete paragraphs 1.16.2(c) and (i), as the relative share of the product in an investor portfolio, and the average amount invested, cannot be enforced at whole of market level; rather it is a matter for an insurance distributor under the appropriateness and suitability review to be introduced under IDD2.</p> <p>7. The preamble to paragraph 1.16.3 should refer to the 'type of policyholder' rather than 'the type of investors' to use the correct insurance industry terminology.</p> <p>8. The MIFID categorisation of clients at paragraph 1.16.3(a) ought to be deleted. In paragraph 1.16.3(e) we would submit that the relevant criteria is not whether the PRIIP is being sold outside the target market , but rather whether the appropriateness and suitability assessment has adequately matched the demands and needs of the policyholder with the most suitable product, under IDD2. Instead, might this be reworded to reflect that there is a high probability that the product would not be suitable or</p>	
--	--	--	---	--

			<p>appropriate for any policyholder within the intended or likely target market.</p> <p>9. We were unclear as to the meaning of paragraphs 1.16.3(b), (c), (d) and (f) but insofar as the intention was to prevent a distributor from marketing a PRIIP as having appropriate features for particular types of policyholders, or eligibility for an insurance guarantee scheme this might be dealt with through civil liability measures where a misrepresentation has been made. These criteria ought not to prevent insurers offering PRIIPS with a minimum premium level, or making true statements about the tax deductibility of premia if the product is an approved pension product etc. By comparison, we agreed with paragraphs 1.16.4(c), (e) and (f).</p> <p>10. We would submit that paragraphs 1.16.4(a), (b) and (d) be deleted for the reasons described above.</p> <p>11. Paragraph 1.16.7 is not appropriate to insurance products which are generally whole of life or endowment products with cancellation charges for early surrender and the costs of early exit must already be adequately explained under article 8.3(g) of the PRIIPS Regulation.</p> <p>12. Paragraph 1.16.8(a) ought to be deleted for the reasons described above (already dealt with by the disclosure measures required under Regulation 8.3(f)). We would agree that the relevant criteria would include that the charges do not reflect the service provided, but we would add that additional criteria of the charges not reflecting the guarantees given, and/or risks lowered by the product, in combination.</p> <p>13. We would not agree with paragraph 1.16.9(e) (the opacity of the underlying) for the reason that again, the type of underlying asset, and the disclosures in the corresponding KID is a matter for the relevant supervisory authority (EBA, ESMA). We would submit that new products or selling practices be reviewed on their merits and not based on</p>	
--	--	--	--	--

			<p>previous experience of the market, as this could stifle innovation (paragraph 1.16.9(f)).</p> <p>14. While we do not disagree with 1.16.11 it would be sincerely hoped that the Solvency II framework would not bring about a situation where an undertaking is able to continue operating under such conditions.</p>	
17.	BdV (Bund der Versicherten\German Association of I	Q1	<p>Yes, we fully agree upon the criteria and factors proposed in the Consultation Paper under "Draft Technical Advice". We confirm that they have to be non-exhaustive, general and dynamic without specific quantitative thresholds for intervention. Supervisory authorities (ESAs and NCAs) must be able to react effectively despite the high degree of innovation of PRIIPs.</p>	Noted.
18.	BEUC	Q1	<p>BEUC agrees with the criteria proposed. We would like to add here that the detailed list of criteria proposed should remain flexible and non-exhaustive, in order to accommodate for any market evolution that could require regulatory intervention.</p>	Noted.
19.	BIPAR	Q1	<p>It is important to ensure that the criteria listed are as complete and precise as possible since the intervention powers may have a detrimental effect on investors (in particular for those investors who acquired the product before it was withdrawn from the market).</p> <p>The PRIIPs Regulation does not refer to distribution channels as one of the criteria when it comes to product intervention while paragraph 1.16.10 of the draft Technical Advice does. We wonder why this element has been added and how it would work in practice.</p>	Noted.
20.	GEMA	Q1	<p>EIOPA suggests criteria and factors to be taken into account by EIOPA in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or</p>	EIOPA disagrees with the comments on criteria which are described and

			<p>part of the financial system of the Union.</p> <p><input type="checkbox"/> The first criterion is the degree of complexity of the insurance-based investment product and the relation to the type of investor to whom it is marketed and sold.</p> <p>We consider that the factor “complexity” does not imply per se the unsuitability of the product to the consumer. Life insurance products often present a degree of complexity in order to reduce consumers’ risks. Frequently, customers ask for additional protection to prevent capital loss.</p> <p>In this case, a degree of complexity can protect consumers.</p> <p>Moreover, we want to emphasise that the advice given by the distributor, which is mandatory under French law, is always adapted to the needs and demands of the customers especially when selling complex insurance based investment products.</p> <p>Therefore we believe that EIOPA should not capture these products under this criterion.</p> <p><input type="checkbox"/> The third and ninth criteria suggested by EIOPA concern the degree of innovation of a product and the product design. These criteria are both the responsibility of the insurer. We believe it is of the utmost importance not to limit product innovation freedom and we do not think that innovations could represent a threat to the orderly functioning and integrity of financial markets or to the stability of the financial system.</p> <p>Moreover, rules concerning the definition of product should be regulated by European laws and not by EIOPA. For example, IMD2 provides for product oversight and governance arrangements.</p> <p>So, we believe that EIOPA shall not intervene in the innovation and the design of a product.</p> <p>Last but not least, we insist on the fact that, in France, the</p>	<p>required by the PRIIPs Regulation itself. Regarding the criteria on innovation and complexity, EIOPA will follow the PRIIPs Regulation and introduce those criteria and factors in its Technical Advice. At the same time, EIOPA acknowledges the importance of applying the aforementioned criteria in a proportionate and considerate way.</p>
--	--	--	---	---

			<p>duty of advice prevents distributors from commercializing products that are not fit for the needs and demands of the customers. In our view, it is a sufficient protection for customers and there is no need for EIOPA to intervene on these bases.</p> <p><input type="checkbox"/> The fourth and sixth criteria deal with the degree of transparency of the insurance based investment product and the degree of disparity between expected return or benefit and risk of loss.</p> <p>In our view, transparency and disparity will be ensured through the key information document required by the PRIIPs regulation. This document provides consumers with understandable and comparable information regarding costs, risks and performance indicators. Therefore, this document supplemented by thorough advice should be sufficient to avoid a detriment to consumers. We believe that EIOPA intervention is unnecessary on the bases of these criteria.</p> <p><input type="checkbox"/> The tenth criterion, which concerns the selling practices, is in our view anticipating the currently discussed review of the insurance mediation directive (IMD2).</p>	
21.	German Insurance Association	Q1	<p>It is important that the clarifications mentioned in the general comments are made in the delegated acts. Due to the amount of the criteria/factors a detailed assessment is not possible. But we would like to address at least the following points (in order of importance):</p> <p>1.16.1. Degree of complexity</p> <p>First of all, it should be noted that the factor/criterion "complexity" is not per se detrimental or could imply unsuitability of products for the retail investors. Many insurance-based investment products require a certain degree of complexity in order to reduce the investor's risk, for example by providing certain guarantees, which offer a greater level of protection to retail investors, cushioning them</p>	<p>EIOPA shares the view that certain insurance-based investment products have a certain degree of complexity, which is not per se detrimental to consumers. The concrete construction of these features will have to be assessed on a case-to-case basis to determine if</p>

			<p>from the volatility of the market. These guarantees are one of the main reasons for retail investors to purchase insurance-based investment products: they want additional protection against risks. However, the concrete construction of these features is neither detrimental nor does it correlate with higher risk for the investor. Therefore, EIOPA should clarify that products that require a certain degree of complexity in order to e.g. produce certain guaranteed benefits to the retail investors are not captured by the criteria mentioned in 1.16.1.</p> <p>As regards 1.16.1.(d), it is questionable whether the criterion “nature and scale of any risks” is meaningful for the assessment of a need for possible product interventions. Different retail investors have different risk preferences. It is, therefore, important that the different risk and the corresponding reward profiles of insurance-based investment products are transparent and understandable for retail investors and enable comparability between different products. The risk indicator and the corresponding performance scenarios which were introduced in the PRIIPs Regulation are currently being developed at Level 2. Therefore, sufficient information that ensure that retail investors purchase insurance-based investment products that suit their risk appetite will be provided by through the PRIIPs KID requirements.</p> <p>As regards 1.16.1.(b), the full transparency of costs is also provided through the PRIIPs Regulation: the cost indicator and the corresponding performance scenarios which are also currently being developed at Level 2, should include all costs and represent these in a comparable and transparent manner. Therefore, it is unclear, why EIOPA is concerned about a possible intransparency of costs.</p> <p>As regards 1.16.1.(e), it should be taken into account that the provisions on bundling of products with other services or products are being currently discussed within the IMD2. Thus,</p>	<p>the intervention criteria are met.</p> <p>While the KID is aimed at enhancing disclosure and transparency, the product intervention powers under the PRIIPs Regulation are independent empowerments for national competent authorities and EIOPA. The same point can be made with respect to IDD2, Solvency II and other forthcoming regulatory initiatives. Therefore, EIOPA believes that product intervention powers will supplement other legislative and regulatory measures.</p> <p>EIOPA does not share the views on criteria which are described and required by the PRIIPs Regulation itself. Regarding the criteria on innovation, complexity and notional value, EIOPA will follow the PRIIPs</p>
--	--	--	---	---

		<p>the recast and the implementation of this Directive should not be pre-empted.</p> <p>For these reasons, the GDV suggests that the proposed factors set out in sections 1.16.1.(b), (d) and (e) should be abandoned and not included in any future Technical Advice.</p> <p>1.16.9 The degree of innovation of an insurance-based investment product, an activity or practice</p> <p>The GDV welcomes the fact that EIOPA is emphasising that the concept of innovation per se should not be the sole reason for making use of product intervention powers. Indeed, innovation is a driving force and indispensable for a continuous development of new products that increasingly reflect the changing needs of retail investors.</p> <p>In our view, one must be careful when considering innovation as detrimental to retail investors or to financial stability. Moreover, the potential detriment is very limited for insurance-based investment products since Solvency II provisions ensure that the risks that arise from the sale of a new product are appropriately taken into account in order to ensure the financial soundness of an insurance undertaking. Therefore, innovations do not represent a threat to the orderly functioning and integrity of financial markets or to the stability of the financial system.</p> <p>1.16.2. The size of the potential problem or detriment</p> <p>It should be clarified that the criteria „volume and notional value of the insurance-based investment product“ concern the potential threat to the stability of the financial system and not investor protection. We assume that it is an editorial error, that unlike Article 17(7)(d), this is not explicitly clarified in Article 16(8)(b) of the PRIIPs Regulation.</p> <p>1.16.3. The type of investors involved in an activity or practice or to whom an insurance-based investment product is</p>	<p>Regulation and introduce those criteria and factors in its Technical Advice. At the same time, EIOPA acknowledges the importance of applying the aforementioned criteria in a proportionate and considerate way.</p>
--	--	--	---

			<p>marketed and sold</p> <p>First, we would like to point out two specific and necessary changes:</p> <ul style="list-style-type: none">- The only example in (d) is "pension saving". This should be deleted since nationally recognised pension products and occupational pensions are excluded from the scope (Article 2 (c) and (f)).- Point (e) should be deleted for the reasons outlined below. <p>Under the heading of intervention powers, EIOPA proposes to introduce various criteria for product design. It should, however, be clarified that product design is first and foremost the responsibility of the manufacturers. Regulation on product design should not be introduced on the basis of intervention powers but requires a decision in principle by the legislator. For general concerns regarding product oversight and governance, please see also the GDV's position paper on the currently discussed regulation on product governance in IMD2 and EIOPA's draft guidelines. Insofar, sales outside the identified target market or its insufficient identification are not appropriate criteria for intervention powers. The PRIIPs Regulation does not mention the term "target market", therefore it should be avoided also on Level 2. The term used in the PRIIPs Regulation is "type of retail investor to whom the PRIIP is intended to be marketed". Its relevant characteristics are already contained in EIOPA's criteria (b and c). In contrast, the term "target market" is currently being discussed and defined in the context of the development of rules on product governance. The introduction of this term on the basis of the PRIIPs Regulation could result in obligations for manufacturers which are not foreseen on Level 1. We would like to highlight that individual needs must be identified when adequate advice is provided. Banning the distribution of products to particular investors seriously interferes with the</p>	
--	--	--	--	--

			<p>autonomy of the retail investors and could not be introduced by the executive alone.</p> <p>1.16.6. The degree of disparity between expected return or benefit for investors and risk of loss in relation to insurance-based investment product, activity or practice / 1.16.8 The pricing and associated costs</p> <p>Again, according to the PRIIPs Regulation, retail investors will be thoroughly informed about the risks and the corresponding rewards of a product through the KID. If comparability is sufficiently ensured, retail investors will be able to choose a product that suits their needs.</p> <p>1.16.6. and 1.16.8 are misleading. It should be noted that the calculation of costs and premiums is primarily the task of the manufacturers and not of the supervisory authorities. It should be clarified explicitly that no general control by supervisory authorities over the pricing and the premium structure is intended.</p> <p>With respect to 1.16.8(b), it should be borne in mind that there is no legal basis for regulation of product design by EIOPA (see also the comments on No. 1.16.3). The criterion should therefore be deleted.</p> <p>1.16.4. The degree of transparency of insurance-based investment product or type of activity or practice</p> <p>Transparency should be ensured through the key information document required by the PRIIPs Regulation and a lack of information should be avoided. Therefore, the political choice made by the legislator about the specific content and the presentation of it should be respected; deficits must be addressed in the ordinary legislative procedure.</p> <p>The KID for PRIIPs has been developed to provide retail investors with understandable, reliable, robust, stable and comparable information. Regarding (b), the transparency of</p>	
--	--	--	---	--

			<p>costs in the PRIIPs Regulation and the extensive Level 2 provisions ensure that the investor is comprehensively informed about the costs and charges . This applies also to 1.16.8(a). Regarding(c), the format and the structure of the information in the KID will ensure that the insurance-based investment product is suitable for the retail investor. Regarding (d), the risk indicator is developed in a way, that retail investors clearly understand the risk exposure connected to the insurance-based investment product.</p> <p>Therefore, it is unclear and in our view superfluous to consider the degree of transparency as a possible criterion for product intervention, since the possible detriment to retail investors should be generally avoided through the extensive KID provisions.</p> <p>1.16.10 The selling practices associated with the insurance based investment product</p> <p>The intervention powers should not predjudge the outcome of the review of IMD2.</p>	
22.	Insurance Europe	Q1	<p>It is important that the clarifications mentioned in the general comments are made in the Delegated Acts. Due to the number of criteria/factors, a detailed assessment is not possible. Insurance Europe would, however, like to address at least these points (in order of importance):</p> <p>1.16.1. Degree of complexity</p> <p>The criterion “complexity” is not, per se, detrimental nor does it imply products are inappropriate for the retail investors. Many insurance-based investment products require a certain degree of complexity in order to reduce the investor’s risk, for example by providing certain guarantees, which offer a greater level of protection to retail investors, cushioning them from the volatility of the market. These guarantees are one of the main reasons retail investors buy insurance-based investment products: they want additional protection against</p>	Noted, please see comments above.

			<p>risks. However, the concrete construction of these features is neither detrimental nor does it correlate with a higher risk for the investor. EIOPA should therefore clarify those products that require a certain degree of complexity in order to e.g. produce certain guaranteed benefits to the retail investors are not captured by the criteria mentioned in 1.16.1.</p> <p>As regards 1.16.1(d), it is questionable whether the criterion “nature and scale of any risks” is meaningful in the assessment of a need for possible product intervention. Different retail investors have different risk preferences. It is, therefore, important that the different risk and the corresponding reward profiles of insurance-based investment products are transparent and understandable for retail investors and enable comparison between different products. The risk indicator and the corresponding performance scenarios (which were introduced in the PRIIPs Regulation) are currently being developed at Level 2. Therefore, sufficient information requirements, that ensures that the retail investors buy insurance-based investment products that suit their risk appetite, will be safeguarded through the PRIIPs key information document (KID).</p> <p>As regards 1.16.1(b), the transparency of costs is also achieved through the PRIIPs Regulation: the cost indicator and the corresponding performance scenarios, which are also currently being developed at Level 2, should ensure the transparency of costs and represent these in a comparable and transparent manner. It is therefore unclear why EIOPA should be concerned about a possible lack of transparency of costs.</p> <p>As regards (e), it should be taken into account that the provisions on bundling of products with other services or products are currently being discussed in the context of IMD2. The revision and the implementation of this Directive should not therefore be pre-empted.</p>	
--	--	--	---	--

			<p>For these reasons, Insurance Europe would propose that the proposed factors set out in sections 1.16.1(b), (d) and (e) be abandoned and not included in any future Technical Advice.</p> <p>1.16.9 The degree of innovation of an insurance-based investment product, an activity or practice</p> <p>Insurance Europe welcomes the fact that EIOPA emphasises that the concept of innovation should not be a sole, stand-alone reason for making use of product intervention powers. Indeed, innovation is a driving force and indispensable for a continuous development of new products that increasingly reflect the changing needs of retail investors.</p> <p>In Insurance Europe’s view, innovation must never be considered as detrimental to retail investors nor to financial stability. This is because innovation drives developments to better meet retail investors’ needs, demands and expectations. In Insurance Europe’s view, the Solvency II provisions could reduce potential detriment since the risks that arise from the sale of a new product are appropriately taken into account in order to ensure the financial soundness of an insurance undertaking. Innovations do not represent a threat to the orderly functioning and integrity of financial markets or to the stability of the financial system.</p> <p>For these reasons, Insurance Europe would propose an explicit mention in any further Technical Advice on this criterion that underlines: (i) the very low likelihood that innovation should be a cause for EIOPA to take action under Art. 16.2, in addition to (ii) the care EIOPA should take in relying on this criterion due to its possible unforeseen consequences on manufacturers.</p> <p>1.16.2. The size of the potential problem or detriment</p> <p>It should be clarified that the criteria “size and notional value of the insurance-based investment product” relates to the</p>	
--	--	--	--	--

			<p>orderly functioning and integrity of financial markets and not investor protection. Insurance Europe assumes that this is an editorial error, that unlike Art. 17.7(d), it is not explicitly mentioned in Art. 16.8(b) of the PRIIPs Regulation. Further, point 1.16.2(f) (the volume of the issuance) is not relevant.</p> <p>1.16.3. The type of investors involved in an activity or practice or to whom an insurance-based investment product is marketed and sold</p> <p>Under the heading of intervention powers, EIOPA proposes to introduce various criteria for product design. It should, however, be clarified that product design is first and foremost the responsibility of the manufacturers. Regulation on product design should not be introduced on the basis of intervention powers but requires a decision in principle by the legislator. For general concerns regarding product oversight and governance, please see Insurance Europe's position paper on EIOPA's draft guidelines on product oversight and governance. Insofar, sales outside the identified target market or its insufficient identification are not appropriate criteria for intervention powers. The PRIIPs Regulation does not mention the term "target market", therefore it should be avoided also on Level 2. The term used in the PRIIPs Regulation is "type of retail investor to whom the PRIIP is intended to be marketed". Its relevant characteristics are already contained in EIOPA's criteria (b) and (c). In contrast, the term "target market" is currently being discussed in the context of possible rules on product governance. The introduction of this term on the basis of the PRIIPs Regulation could result in obligations for manufacturers which are not foreseen at Level 1. Insurance Europe would emphasise that individual needs must be identified when adequate advice is provided. Banning the distribution of products to particular investors seriously interferes with retail investors' freedom of choice.</p> <p>The only example in (d) is "pension saving". This should be</p>	
--	--	--	---	--

			<p>deleted since national recognised pension products and occupational pensions are excluded from the scope of the PRIIPs Regulation (Art. 2 e and (f)).</p> <p>Point (e) should be deleted due to the reasons mentioned above.</p> <p>1.16.6. The degree of disparity between expected return or benefit for investors and risk of loss in relation to insurance-based investment product, activity or practice / 1.16.8 The pricing and associated costs</p> <p>Again, according to the PRIIPs Regulation, retail investors will be thoroughly informed about the risks and the corresponding rewards of a product through the KID. A sufficient comparability being ensured, the retail investors will be able to choose a product that meets their needs.</p> <p>1.16.6. and 1.16.8 are misleading. It should be noted that the calculation of costs and premiums is primarily the task of the manufacturers and not of the supervisory authorities. It should be clarified explicitly that no general control by supervisory authorities over the pricing and the premium structure is intended.</p> <p>With respect to 1.16.8(b), it should be borne in mind that there is no legal basis for EIOPA to regulate the design of products (see also the comments on No. 1.16.3). The criterion should therefore be deleted.</p> <p>1.16.4. The degree of transparency of insurance-based investment product or type of activity or practice</p> <p>Transparency is ensured through the KID required by the PRIIPs Regulation. Therefore, the political choice made by the legislator about the specific content and the presentation of it should be respected; any shortcomings must be addressed in the ordinary legislative procedure.</p> <p>The KID for PRIIPs has been developed to provide retail</p>	
--	--	--	---	--

			<p>investors with understandable, reliable, robust, stable and comparable information. Regarding 1.16.4(b): the transparency of costs in the PRIIPs Regulation and the extensive Level 2 provisions ensure that the investor is informed about the costs and charges. This applies also to 1.16.8(a). Regarding 1.16.4(c): the format and the structure of the information in the KID will ensure that the insurance-based investment product is adequate for the retail investor. Regarding 1.16.4(d): the risk indicator is developed in a way that retail investors clearly understand the risk exposure connected to the insurance-based investment product.</p> <p>It is therefore superfluous to consider the degree of transparency as a possible criterion for product intervention, since possible detriment to retail investors should be avoided through the provision of the KID.</p> <p>1.16.10 The selling practices associated with the insurance based investment product</p> <p>The intervention powers should not anticipate the currently discussed review of the insurance mediation directive.</p>	
23.	IRSG	Q1	<p>Problems may arise in different areas. Therefore, a broad list is generally acceptable, but the criticality threshold for a crisis should be met, as a premise for intervention. Therefore, more effort should not be directed towards extending the non-exhaustive list of possible sources, but to define the criticality thresholds.</p> <p>With this in mind, the following aspects should be taken into account with respect to the criteria:</p> <p><input type="checkbox"/> complexity (section 1.16.1): is ambivalent and not problematic per se, especially if complexity of the products serves to provide substantial benefits for the customer. A case in point would be guarantees, which offer the customer a greater level of protection. In addition, intransparencies opacities with respect to costs (see section 1.16.1 (b)) should</p>	Noted, please see comments above.

			<p>be adequately addressed in the KID disclosure requirements and not lead to a product ban based on the rules discussed here. Moreover, complexity doesn't necessary arise from the insurance-based investment product or service being bundled with other products or services, as it can be a mixture of, for example, two very simple products. This factor can be understood as a criterion being met by any package of products, which can be considered of course more complex than a single product but not necessarily a problem.</p> <p><input type="checkbox"/> the type of investors involved in an activity or practice or to whom an insurance-based investment product is marketed and sold (1.16.3): The PRIIPs regulation does not mention the term "target market", therefore it should be avoided also on Level 2. The term used in the PRIIPs regulation is "type of retail investor to whom the PRIIP is intended to be marketed". Banning the distribution of investment-based insurance products to particular investors could seriously interfere with the autonomy of the retail investors, whose risk profiles can be very different.</p> <p><input type="checkbox"/> transparency (section 1.16.4): is also ambivalent (similar to argument of complexity). The construction of a guarantee or portfolio may not be fully transparent to the single customer yet be more beneficial than a fully transparent but more risky participation of the customer in a fully unit-linked product. Transparency should be ensured through the Key Information Document (KID) required by the PRIIPs regulation.</p> <p><input type="checkbox"/> disparity between expected return and risk of loss (section 1.16.6) and pricing and costs (section 1.16.8): in no case the wording of the rules should lead to supervision or prescriptions for permissible pricing. In particular, rule 1.16.8 (b) should not be interpreted as a general "quality enhancement rule" for charges (as included in MiFID II). Retail investors will be thoroughly informed about the risks</p>	
--	--	--	---	--

			<p>and the corresponding rewards of a product through the Key Information Document (KID). It should be clarified explicitly that no general control by supervisory authorities over the pricing and the premium structure is intended. It should also be borne in mind that there is no legal basis for regulation of product design by EIOPA. The assessment by EIOPA or by the NCA of both criteria should be made with sufficient guarantees for the rights of the insurance undertakings. It seems that EIOPA or the NCA can decide that there is an "adequate" pricing range, or risk/return profile range, or cost structure range for an insurance-based investment product and any difference from the set ranges can justify an intervention by EIOPA or by the NCA. This could go against the free market principle or the Competition Law.</p> <p><input type="checkbox"/> innovation (section 1.16.9): innovation per se should not be considered beneficial or problematic. In any case, innovation is necessary to meet customer needs and promote choice, variety and competition. Moreover, using the degree of innovation as a criteria (as per point a)) is risky as it may stop the very foundation of growth.</p> <p><input type="checkbox"/> selling practices (section 1.16.10): the criteria provided should not contradict or even materially extend the rules currently discussed under IMD2/IDD.</p>	
24.	The European Federation of Financial Advisers and	Q1	Yes, FECIF agrees with the criteria and factors proposed.	Noted.
25.	Zurich Insurance Group	Q1	<p>We respectfully suggest that the criteria are challenging to test against practical hypotheticals. As a result, we are concerned that the value of the Technical Advice is unnecessarily weakened.</p> <p>Unclear Connection between Objectives of Intervention and the Factors</p>	While the criteria and factors are kept deliberately broad, EIOPA agrees with the importance to understand the practical application

			<p>For example, Para. 1.16.1(e) provides as a suggested element of complexity to consider whether the PRIIPs is bundled with other another product or service. It is not clear how a bundled product could threaten the stability of a national financial system or the functioning of a financial markets. Perhaps bundling could lead to a complexity relevant to investor protection (generally, though, bundling simplifies the number of interactions required, the decision-making processes and the need to independently determine coordination of the elements) but bundling of insurance products seems far out of place in the context the remaining objectives relating to the functioning of financial markets and stability of the financial system.</p> <p>Opportunity for Concrete Examples</p> <p>As another example that is difficult to understand in practical application, Para. 1.16.2(a) refers to the “notational value” of the PRIIPs as a indicator of the size of the “problem or detriment.” While unclear from the context, it would appear that notional value references the face value or death benefit of the contract. If that is the case, then it would be helpful if the guidance offered examples how the level of death benefit drives the degree of concern relating to the function of financial markets and national (or EU-wide) financial stability.</p> <p>Para. 1.16.12(d) asks that EIOPA or an NCA consider whether a PRIIPs would lead to a “significant or artificial disparity between prices of a derivative and those in the underlying market.” An illustration of such a circumstances does not easily come to mind such that the provision of an example would be informative to the reader. Likewise, Para. 1.16.12(f) suggests the consideration how a PRIIPs threatens the “payment systems infrastructure, including clearing and settlement and trading systems.” It would be helpful to demonstrate in concrete terms how this criteria might be observed in practice in the context of a PRIIPs.</p>	<p>of the product intervention powers. EIOPA will contribute to ensuring the consistent, efficient and effective application of the product intervention powers under the PRIIPs Regulation and will foster supervisory convergence.</p>
--	--	--	---	--

			<p>Variable and Impractical Reference Points</p> <p>Para. 1.16.3 suggests that EIOPA or an NCA consider the “type of [policyholders] involved” with respect to a sale. This factor appears impractical to apply as described. Specifically, the detailed elements appear variably positioned as those of (a) a single involved policyholder; or (b) the entirety of the group of actual policyholders.</p> <p>It is likely impossible for either EIOPA or a NCA to understand the skills and abilities, the economic situation or financial objectives of any one or all of the actually involved policyholders. It would be far more practical if the criteria set forth in subparagraphs (a)-(d) were applied to the “target market” policyholder. That is, the criteria should be applied to the assumed attributes of the defined policyholder base to which the product is intended to be sold. Subparagraph (e) would then capture the consideration that the sales were directed outside of that target market.</p> <p>Importation of Non-Insurance Terminology</p> <p>Para. 1.16.4(f) appears to refer to insurance customers as “market participants.” The term “policyholder” would be a more appropriate description. Para. 1.16.4(c) appears to refer to the insurance policy as an “instrument.” It would be more appropriate to describe the policy as a “PRIIPs” than an “instrument.”</p> <p>The draft Technical Advice incorporates other non-insurance nomenclature resulting in confused meanings. For example, Para. 1.16.12(a) asks that EIOPA and NCAs consider whether a PRIIPs poses “a high risk to the performance of transactions entered into by participants or investors in the market or product in question.” In the context of a policyholder purchasing an insurance policy with an investment component, it is rather difficult to confidently understand:</p>	
--	--	--	---	--

			<ul style="list-style-type: none"> <input type="checkbox"/> What "transactions" refers to <input type="checkbox"/> Who market participants are <input type="checkbox"/> What market is being referred to <p>Undefined References to Services</p> <p>The Technical Advice makes various references that imply that EIOPA or an NCA could apply its extraordinary intervention powers to "services." Such an expansion does not appear to be supported by the Regulation.</p> <p>As an example, Para. 1.16.4(c) refers to the suitability or quality of a "service" provided by the undertaking. Likewise, Para. 1.16.3(e) refers to the sale of "services." Similarly, Para. 1.16.8(b) suggest an analysis of the pricing of the product as an indication whether the services provided do not support the product's pricing.</p> <p>The Regulation itself only extends to products and no other provision suggests that EIOPA or an NCA may rely upon that Regulation for intervention with respect to "services" - however it may be that this term is understood. Accordingly, references to the evaluation of services should be removed or justified based on the Regulation.</p> <p>Blending of Aggravating and Mitigating Factors</p> <p>Because the Technical Advice does not attempt to apply the criteria or factors through explanation or illustration, it is likely that the user of the Technical Advice will have some difficulty in understanding whether a particular element is an aggravating or mitigating factor. For example, Para. 1.16.7 explains that an element to consider is whether early withdrawals from the PRIIPs are prohibited or there are other barriers to exit. In the context of financial stability, such barriers to exit prevent or at least slow a "run" on the insurance company through early redemptions. In that</p>	
--	--	--	--	--

			<p>respect, the existence of such a barrier or penalty to exit is strongly mitigatory in terms of a stabilizing factor for financial markets and the financial system.</p> <p>It may be that the draft Technical Advice is suggesting a contrary view in the context of investor protection. Because the draft Technical Advice does not illustrate or apply any of the criteria it is difficult to discern how the element is to be construed. For example, the fact that the policyholder is not reliant on a viable secondary market to unwind a PRIIPs may be a strong consumer protection as implied in Para. 1.14.</p> <p>Opportunity to Better Manage the “Innovation” Dilemma</p> <p>While noting that it is constrained to include “innovation” as a risk factor because of the Regulation, EIOPA demonstrates an understandable ambivalence or caution in doing so. Indeed, innovation more often than not improves customer outcomes and reduces risk. For example, in the context of other consultations EIOPA is suggesting that insurance companies should innovate with respect to product governance procedures.</p> <p>Should EIOPA find the flexibility, it would be of great service to insurance customers, insurance companies and the financial system if the negative connotations the Regulation seems to impose upon “innovation” could be merged into the more appropriate criteria of complexity. In other words, we suggest that it would be a far better approach to merge the relevant substance of Para. 1.16.9 into Para. 1.16.1 (and, if appropriate, into other sections such as Para. 1.16.4).</p> <p>Uncertain Scope of Extraordinary Intervention</p> <p>The scope of the extraordinary intervention powers under PRIIPs appear to overlap or blend with other intervention powers. For example, Para. 1.16.11 appears to indicate that</p>	
--	--	--	--	--

			<p>the financial condition of the insurance company issuing a PRIIPs would permit intervention. Of course, other laws and regulations designate the powers of a NCA to intervene in the event an insurance company has become or may become impaired. There is some concern that by including this factor, the Technical Advice may send conflicting signals over the law and procedures through which financially impaired insurers are regulated.</p> <p>Unsupported Assessment of Financial Crime Risk</p> <p>Para. 1.16.12(b) is rather surprising and appears ungrounded in fact. According to the draft Technical Advice, PRIIPs are “particularly susceptible to be used for purposes of financial crime.” In fact, most commentators regard insurance as lower risk for use in most financial crime as compared to other types of financial products. It would be useful for EIOPA to explain its risk assessment methodology in greater detail or adjust its characterization of these products.</p>	
26.	Allianz SE	Q2	No, see Q1.	Noted.
27.	Anacofi	Q2	No	Noted.
28.	Association of British Insurers	Q2	No	Noted.
29.	Association of International Life Offices	Q2	No	Noted.
30.	BdV (Bund der Versicherten)\German Association of I	Q2	There are two additional factors we would like to stress: mortality tables, which are used by life insurers calculating life expectancy and life annuities, and subsequent capital assets / reservations related to the existing portfolios. The actual monthly amounts of life annuities are often strongly reduced by the hyper-prudential calculation of life expectancy which entails inevitably harsh detriment of policy holders. Therefore we propose that standardized mortality tables shall be used by	Noted, however the link between mortality tables (ultimately amount paid in annuities) seems not obvious and no criteria or factors for the Technical Advice

			<p>life insurers, which are published by the NCA before. If a life insurer uses a different mortality table, a mandatory explanation should be published why doing so (following to the principle: comply or explain).</p> <p>There are more than 80 million contracts of capital life insurances (and life annuities) only in Germany, as the biggest national insurance market in the EU. That is the reason why we strongly recommend taking into account the following factors, which are particular for the German life insurance market:</p> <ul style="list-style-type: none"> <input type="checkbox"/> zillmerisation method (method of calculation of entry or acquisition costs). <input type="checkbox"/> promise of guarantees (guaranteed interests on investment part of premium). <input type="checkbox"/> mandatory transparency requirement of contract clauses, which stipulate the participation of benefits ("Transparenzgebot für Klauseln der Gewinnbeteiligung"; cf. further details in comment 4 on judgments of Federal High Court of Justice (BGH) in 2012). <p>Comparison table in CP, p. 18, paragraph e: Intervention powers are proposed by EBA and ESMA, "whether the instrument or service is being sold to clients outside the intended target markets". EIOPA changes this proposal adding "significantly" being sold to investors outside the intended target markets. We cannot perceive any reason for this change, why - related to insurances - there should be a lower threshold for intervention powers by the supervisory authorities. Clearly defined target markets are a fundamental part of guidelines for product oversight and governance arrangements, and we do not see any contradiction to this (cf. our comments for EIOPA consultation paper on POG in January).</p>	<p>seem apparent. However, we understand that this concern could be addressed under the performance calculation, if needed.</p> <p>Furthermore, the criteria and factors should be non-exhaustive for national competent authorities and would therefore allow sufficient flexibility to reflect specificities of the national insurance market.</p> <p>Finally, EIOPA agrees to delete "significantly" when referring to the intended target market.</p>
31.	BIPAR	Q2	Article 16.3 of PRIIPs states that when action is taken, it	Noted.

			<p>should be ensured that it does not:</p> <p>(a) have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to the benefits of the action; or</p> <p>(b) create a risk of regulatory arbitrage.</p> <p>This addition could positively complete the Technical Advice.</p>	
32.	German Insurance Association	Q2	-	
33.	Insurance Europe	Q2	-	
34.	IRSG	Q2	<p>There should be a criteria related to the trigger for intervention: who announces EIOPA and by what means? Where does the information comes from?</p> <p>It should also be made very clear what intervention powers (normal cases) are conferred upon the NCAs.</p>	Noted.
35.	The European Federation of Financial Advisers and	Q2	No, there are no additional criteria and/or factors that we would suggest adding.	Noted.
36.	Zurich Insurance Group	Q2	No additional criteria or factors are suggested. Instead, it would be beneficial to sharpen, reduce and illustrate the existing criteria and factors.	Noted.
37.	Allianz SE	Q3	<p>Reasons for the inclusion of pension savings in the list (see section 1.16.3 (d)) is not clear, since occupational and private pensions are excluded from the scope of the PRIIPs Regulation.</p> <p>Also, in our understanding the EIOPA mandate in Art. 16 (8) of the PRIIPs Regulation only covers interventions with respect to the product itself. By contrast, the criteria listed in the CP</p>	EIOPA changed the reference to pension products.

			also include indicators for activities and practices, i.e. conduct regulation, especially in the sections 1.16.1, 1.16.4, 1.16.5, and 1.16.9. We doubt these aspects are covered by the mandate in Art. 16 and should (if necessary) be relegated to the appropriate act, namely IMD2/IDD.	
38.	Anacofi	Q3	Yes Comments on Criteria ix It is difficult to understand how information on innovation is integrated. It just weigh down on the process without any benefit ix e. the link between innovation and opacity is questionable x a. we wonder why the precision on distribution channels is useful in such document	Noted.
39.	Association of British Insurers	Q3	1.16.3 Refers to "pension savings". This reference should be deleted as occupational and private pensions that are recognised under national law are outside of the scope of the PRIIPs Regulations at present.	EIOPA changed the reference to pension products.
40.	Association of International Life Offices	Q3	No	Noted.
41.	BdV (Bund der Versicherten\German Association of I	Q3	We deem that leverage (1.16.5.) is not very relevant as a particular feature of insurance-based products. Therefore it should not be added as one of the main features for intervention powers related to insurance contracts.	Noted.
42.	BEUC	Q3	BEUC would like to reiterate here that insurance-based investment products and investment products covered by MiFIDII are often substitutes for consumers with very similar product features. In that perspective we see no reason why certain criteria should not apply for insurance-based investment products. Once again, any leeway for regulatory	EIOPA would like to remind that Article 1(6)(d) of EIOPA's founding Regulation is about preventing regulatory arbitrage

			arbitrage should be avoided here.	and promoting equal conditions of competition.
43.	BIPAR	Q3	<p>Paragraph 1.16.3.a) states that one of the elements to take into account before intervening is to know whether or not the client is a retail client, professional client or eligible counterparty under MiFID.</p> <p>We wonder why reference is made to MiFID and not to IMD in this paragraph.</p>	Noted.
44.	German Insurance Association	Q3	<p>The criterion mentioned in 1.16.3.(d) cites „pension saving” as an example for investor objectives . This reference should be deleted since occupational pensions and pension products that are recognised under the national law are not within the scope of the PRIIPs Regulation.</p> <p>As mentioned in our reply to question 1, it is questionable whether the criteria/factors for the degree of complexity/innovation are applicable to insurance-based investment products. Furthermore, a sufficient degree of transparency is already ensured within the KID for PRIIPs.</p>	EIOPA changed the reference to pension products.
45.	Insurance Europe	Q3	<p>Q3: Is there evidence that certain criteria do not apply under any circumstances to insurance-based investment products? Please elaborate.</p> <p>1.16.3(d) refers to “pension savings”. This reference must be deleted since occupational and private pensions that are recognised under the national law do not fall within the scope of the PRIIPs Regulation.</p> <p>As mentioned in Insurance Europe’s reply to question 1, it is questionable whether the criteria/factors in the context of the degree of complexity/innovation are applicable to insurance-based investment products. A sufficient degree of transparency is already ensured within the KID for PRIIPs.</p>	EIOPA changed the reference to pension products.
46.	IRSG	Q3	Mentioning of pension savings (section 1.16.3 (d)) is not clear,	EIOPA changed the

			since occupational and private pensions are excluded from the scope	reference to pension products.
47.	The European Federation of Financial Advisers and	Q3	Indeed, we can foresee circumstances in which such criteria could apply. Comments on intervention criteria (Annex I): ix) It is difficult to understand how information on innovation is integrated. It just creates a burden on the process without any benefit. ix e.) the link between innovation and opacity is questionable. x a.) we wonder why the precision on distribution channels is useful in such a document.	
48.	Zurich Insurance Group	Q3	As reflected in response to Q1, the Technical Advice would benefit from the use of insurance terminology and illustrations in the context of the PRIIPs. In doing so, it is likely to become obvious that some factors are not appropriate or could be expressed in a more practical manner.	Noted.
49.	Allianz SE	Q4	The costs and benefits depend very much on the exact application. The costs can be expected to be in an acceptable range if it clarified that <input type="checkbox"/> the materiality threshold for a product intervention is set adequately high (as outlined in the General Comments) so that product interventions are limited to truly exceptional situations and <input type="checkbox"/> no additional explicit controls, reporting, and compliance requirements have to be implemented to comply with these rules. In any case, it should be noted that any additional cost burden would ultimately have to be paid for by the customers.	Noted.
50.	Anacofi	Q4	It might mainly impact the turnover of insurance undertaking and intermediaries	Noted.

51.	Association of British Insurers	Q4	The costs will depend on how these product intervention powers are utilised and if, as intended, they are only applied in exceptional circumstances.	Noted.
52.	Association of International Life Offices	Q4	Given the Corporate Governance requirements for insurers under Solvency II, then , in principle, AILO does not anticipate there to be any real changes. However that is subject to our comments at question 1 and NCAs and EIOPA ought to not using this as an excuse to impose further General Good requirements on providers. The Single Market benefits must take precedence over domestic idiosyncrasies.	Noted.
53.	BdV (Bund der Versicherten)\German Association of I	Q4	<p>The BdV is a NGO and not a manufacturer of any financial products. That is the reason, why we are not able to provide any estimates of single and ongoing costs of change related to product interventions.</p> <p>But we stress the importance of these regulations by giving the following example. In Germany, contract clauses used by life insurers relating to cancellation fees and loading acquisition costs onto initial premium payments were ruled ineffective by the Federal High Court of Justice, since these clauses put the consumer at an inappropriate disadvantage or lacked transparency (Bundesgerichtshof - BGH, four judgements in 2012; cf. Consumer Protection Aspects of Financial Service, Study by London Economics, February 2014, presented at European Parliament Committee IMCO in October 2014). Following to the claiming consumer organisation, Verbraucherzentrale Hamburg, the compensation scheme will possibly amount to Euro 1bn.</p> <p>The new compliance provisions have to be as precise as possible in order to prevent mis-allocation by life insurers (like AXA TwinStar or Allianz Variable Annuities in 2008/2009). The costs of capital guarantees related to these products were so high, that their distribution had to be stopped because of volatility of financial markets. There was a strong detriment of</p>	Noted.

			consumer interests, because a huge amount of capital was necessary securing these volatile products instead of increasing the participation of benefits for policy holders. It is possible to foresee such developments, and they ought to be prevented by efficient product intervention in time.	
54.	BIPAR	Q4	It is not possible to evaluate the potential costs of the possible changes outlined in this Consultation if it is not been made very clear and certain that the intervention is a last resort process in exceptional cases.	Noted.
55.	German Insurance Association	Q4	The costs will largely depend on the fact whether it is made sufficiently clear in the delegated acts that the intervention of the supervisory authorities only applies in exceptional situations – as is made clear by the cumulative application of Article 16(2) (a), (b) and (c) as well as Article 16(3). Another important factor is the responsible handling of the powers by the supervisory authorities.	Noted.
56.	Insurance Europe	Q4	The costs will largely depend on whether it is made sufficiently clear in the Delegated Acts that the intervention of the supervisory authorities only applies in exceptional situations – as is made clear by the cumulative application of Art. 16(2)(a), (b), (c) as well as Art. 16(3). Another important factor for cost implications is the responsible handling of the powers by the supervisory authorities.	Noted.
57.	IRSG	Q4	Unclear very much dependent on exact application. Acceptable costs, if it can be made very clear to limit intervention powers to exceptional situations. Any additional parallel supervisory regime can potentially create material additional costs (which would ultimately have to be borne by the customers). Depending on the exact procedure which will be followed for EIOPA to receive the information on the situations where intervention is necessary, it is possible that further investigation of the situation to imply additional costs.	Noted.
58.	The European	Q4	The changes outlined in this Consultation might mainly impact	Noted.

	Federation of Financial Advisers and		the turnover of insurance undertakings and intermediaries.	
59.	Zurich Insurance Group	Q4	<p>We respectfully submit that a careful consideration of the specific comments and principles submitted herewith provide an opportunity ensure an appropriate level of alignment with analogous provisions in the banking and securities sectors while reducing the risk that EIOPA, NCAs, insurance companies, policyholders and other stakeholders develop an impractical or variable understanding of the Technical Advice.</p> <p>Moreover, without an independent analysis and discussion of the factors and criteria relevant to insurance, there is considerable risk that these stakeholders may perceive that the threats posed by insurance companies to the financial system and financial markets are the same as those presented by banks and securities dealers. In such a case, those stakeholders may come to expect identical solutions and approaches in determining whether and how to apply extraordinary intervention powers – an approach that could lead to imprecise, misdirected, ineffective and/or less than credible intervention decisions and actions.</p> <p>We would welcome the opportunity to clearly distinguish in these stakeholders’ understanding the very real and demonstrable differences in risk to the financial markets, financial systems and to consumers presented by insurance as compared to other financial products. We would strongly urge that EIOPA take this opportunity to focus the dialogue about insurance on insurance. While we should welcome the opportunity to extract perspectives and learnings from other financial sectors, we find ourselves reluctant to subject the insurance industry to approaches, solutions and thinking engrafted from industries that present wholly different risks, attributes and roles in society.</p>	<p>EIOPA agrees that solutions need to be found on a case-by-case basis and applying solutions from other sectors might lead to sub-optimal outcomes.</p> <p>EIOPA will contribute to ensuring the consistent, efficient and effective application of the product intervention powers under the PRIIPs Regulation and will foster supervisory convergence.</p>