	Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive	Deadline 3 October 2016 18:00 CET
Name of Company:	Assuralia	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
	Please follow the following instructions for filling in the template: ⇨ Do **not** change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-16-006@eiopa.europa.eu.** **Our IT tool does not allow processing of any other formats.** The numbering of the questions refers to the Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive	
Reference	**Comment**	
General Comment	Assuralia is the Belgian Insurance Association and the representative body for mutual, co-operative and joint-stock insurance companies in Belgium since 1920. It represents more than 98 % of the Belgian insurance market (de Meeûssquare 29, 1000 Brussels, European Transparency Register nr. 0026376672-48).	

	As a general remark Assuralia wishes to highlight the importance of sufficient implementation time for the industry. The further elaboration of the requirements on product oversight and governance, inducements, suitability and appropriateness, conflicts of interest and reporting could require significant changes to current business models and organizational structures. After the Commission adopts the delegated acts, Member States still have to transpose the requirements into national law. Therefore it is key that (i) the industry is provided with the final requirements as soon as possible and (ii) a proportionate and pragmatic approach is taken in order to avoid unnecessary burden and costs. Such approach should leave room for an efficient implementation of the IDD requirements at national level. Existing national rules that pursue the same objectives and reflect the principles in the technical advice, should not be adapted for the sake of formality only.	
Question 1	As the current draft policy proposals leave room for interpretation, Assuralia is not in a position to properly estimate the costs and benefits of the possible changes outlined in the consultation at this moment. In general, Assuralia encourages EIOPA to allow for an efficient implementation of the IDD requirements at national level in order to avoid unnecessary costs. Existing national and European rules that already pursue the same objectives should not be altered for the sake of formality only.	
Question 2	The policy proposals based on EIOPA's preparatory guidelines (p. 14-26 of the CP) contain sufficient detail. EIOPA rightly points out that a wide range of insurance products, which are heterogeneous and contain different levels of complexity, are subject to the POG requirements (§2 page 31). Taking into account that broad scope and the differences between insurance markets across the EU, Assuralia is of the opinion that the policy proposals should remain high-level and flexible. EIOPA should ensure that the POG requirements can be implemented at national level as efficient as possible and take into account existing national and European rules that already pursue the same objectives. This approach would ensure that the POG requirements fit the national distribution practices and products and limit unnecessary costs and burden for the insurance industry and consumers.	

Assuralia favors a pragmatic implementation of the POG requirements, taking into account the existing legal framework. Existing national and European rules that pursue the same objectives and reflect the principles in the technical advice should not be adapted for the sake of formality only.

With regard to the analysis and concrete proposals contained in the consultation, Assuralia would like to raise the following considerations.

Scope

The IDD requires manufacturers to maintain a product approval process for each insurance product, or significant adaptations of an existing product, before it is marketed or distributed to customers (art. 25 IDD). Assuralia calls on EIOPA to clarify in the technical advice that the policy proposals only concern (i) newly designed products that are not yet put on the market and (ii) existing products that are significantly changed after the IDD becomes applicable. This clarification was included in EIOPA's final report on the public consultation on preparatory guidelines (EIOPA-BoS-16-071 p.17 and p.65), but seems to be missing in the draft technical advice.

Assuralia calls on EIOPA to clarify that the policy proposals only concern (i) newly designed products that are not yet put on the market and (ii) existing products that are significantly changed after the IDD becomes applicable.

Proportionality

Assuralia strongly supports EIOPA's call for proportionality to avoid too burdensome processes for insurance business classes with lower risk and / or complexity. The POG requirements should take into account the complexity of the products and the related risks as well as the nature, scale and complexity of the relevant business of the manufacturer/distributor involved. This is particularly important for non-complex products.

	A proportionate approach is key for custom-made products. The POG requirements in the IDD are applicable towards customers, including professionals (cf. EIOPA's interpretation on p.6 of EIOPA-BoS-16-071). One of the main objectives of the POG requirements is to ensure that products are designed to meet the objectives, interests and characteristics of the customer involved. This overarching goal loses value when applied to insurance products for legal entities and profession-related insurance products, as they are often fully or partially tailor-made to the specific needs of the customer involved. These products however are not always 'large risks' under the IDD and could therefore be subject to the POG requirements. The same goes for occupational pension schemes which are the result of social negotiations between the employees and the employer and contain legally defined characteristics (for example the end date of the contract has to be fixed at the retirement age by law). Those products would evidently meet the objectives and needs of the customer involved, as they are customised or predetermined by law. Furthermore, it would prove difficult to identify a generic target market for such tailor-made products. A pragmatic and proportionate approach is in order. A proportionate approach is also justified when it comes to the practical application of the POG requirements for different types of distributors. It needs to be acknowledged that there is a big difference between tied agents, who act under the responsibility of the insurer(s) involved, and independent intermediaries such as brokers. In the latter, the insurer has very little control over the broker's conduct of business. That's why, in Belgium, insurers (in their role as manufacturer) and brokers agree on a division of tasks and responsibilities. The manufacturer is responsible for providing the distributor with all necessary information on the product and the identified target market. Such agreements however may stipulate that, once the manufacturer has provided that information, the independent broker is responsible for ensuring that the product is sold in accordance with the product oversight arrangements and conduct of business requirements. Such agreements should be taken into account in the POG framework, as they allow for a practical implementation of the POG requirements. It should also be acknowledged that tied agents act under the responsibility of the insurer(s) involved. In practice, tied agents often follow the distribution strategy set out by the	

insurer. In such case, the tied agent should be able to simply join the strategy of the manufacturer (e.g. the POG requirements of both the manufacturer and distributor can be dealt with in an integrated POG process).

In §30 on page 17 EIOPA also states that the product testing should be proportionate to the complexity of the product and its risks. The following concrete proposals may help to put this proportionality principle into practice:

- insurance undertakings should be allowed to re-use relevant existing product testings and scenario analyses as a basis when they test similar insurance products;

- when changes are introduced to an existing insurance product that has already been submitted to product testing, only these changes should be subject to a new product testing exercise. This is of course provided that the changes do not impact the rest of the product that already was tested. An example could be the addition of an extra cover, that has no influence whatsoever on the other components of the product;

- guarantees and product features required by law should not be subject to product testing;

- for insurance PRIIPs the PRIIPs-KID requires several performance scenarios. It should be acknowledged that these also serve the purpose, and form part of product testing.

Assuralia strongly supports the proportionality principle in order to avoid too burdensome processes for insurance business classes with lower risk and / or complexity. The proportionality principle should ensure a proportionate and pragmatic approach with regard to non-complex products, customized products and the different types of insurance distributors.

Future proof POG requirements that allow for innovation

It is important to ensure that the POG requirements do not hamper the insurance sector in responding to future trends or future needs of customers. In that respect, we invite EIOPA to take into account the following considerations.

Firstly, a growing number of customers prefer to buy insurance products online. In, for example, the ESA consultation on automated advice (JC 2015 080) the ESAs conclude that online distribution channels will probably gain importance in the coming years. Assuralia therefore calls on EIOPA to ensure that the policy proposals with regard to POG work efficiently in an online environment. Insurers should be given flexibility when it comes to ensuring that the product is distributed to the target market in case of online sales.

Secondly, it is important for manufacturers to be able to respond quickly to market trends, which sometimes are temporary in nature. The POG requirements should not hamper product innovation nor cause unnecessary delay in product development.

The POG requirements should not hamper product innovation or cause unnecessary delay in the product development.

Distribution channels

The draft advice does not pay enough attention to the differences between distribution channels, despite the explicit request in the Commission's mandate. Tied agents and brokers, for example, operate in different frameworks with different levels of co-operation with and supervision by the insurance company involved. These differences are not reflected in the draft technical advice (for example §22 and 23 on p.23).

Paragraphs 22 and 23 of the draft technical advice state that the manufacturer shall take all reasonable steps to monitor that distribution channels act in compliance with the objectives of the POG arrangements and shall examine whether the product is distributed to the target market. However, in case of brokers, manufacturers have less control over how or to whom their products are sold. Examining proactively whether an independent distributor acts in compliance with the manufacturer's POG arrangements would be a problem as it is not possible for manufacturers to interfere in the business of independent distributors. It needs to be acknowledged that, in such

	cases, the manufacturer is in practice not able to organize a full monitoring and can only monitor on the basis of complaints. In general, the actual proactive monitoring of compliance with the POG arrangements by distributors should be carried out by the national supervisory authority (FSMA in Belgium). Only the national supervisor has the necessary tools at his disposal to actively monitor and enforce compliance with POG arrangements, while manufacturers in general do not. Considering that the distribution landscape can differ significantly between member states, Assuralia is of the opinion that the monitoring requirements should be filled in at national level for the different types of distributors. Assuralia therefore invites EIOPA to allow for a pragmatic and proportionate application of the POG requirements at national level. Manufacturers should provide the necessary information on the product and identified (broad) target market to the distributor. Assuralia considers this information sufficient to enable a distributor to (i) understand and place the product properly on the target market and (ii) identify the target market for which the product is designed and groups of customers for whom the product is likely not appropriate (cf. paragraph 21 of the draft advice). In that respect, we suggest to rephrase the following sentence in §50 on p.20: *"An important prerequisite to setting up a distribution strategy is that the insurance distributor has ~~detailed~~* ***the relevant*** *knowledge about the approval process of the manufacturer, in particular the target market of the individual insurance product, as well as about all other necessary information on the product from the manufacturer in order to fulfil its regulatory obligations towards the customer."* EIOPA's final advice should clarify that a manufacturer is not required to share its entire product approval process with a distributor, as this could include a manufacturer's decision with regard to the use or non-use of competing distributors, but only the relevant information on the product and identified target market. Therefore we call on EIOPA to include this specification into the technical advice.	

Considering that the distribution landscape can differ significantly between member states, Assuralia is of the opinion that the POG requirements should be filled in at national level for the different types of distributors, taking into account the principle of proportionality.

Claims ratio's

Although there is no mentioning of claims ratio's or claims payment policies in the draft technical advice itself, we regret that EIOPA refers to these ratio's and policies in the accompanying analysis (page 18 of the consultation paper). Insurers should not be obliged to focus on claims ratio's or claims payment policies in the monitoring of their products or product testings. These criteria are not always appropriate to estimate if the product is of value to the identified target market. Furthermore, claims ratio's need to be evaluated over time. An insurance contract provides cover against certain risks that might or might not occur (take cover against floods as an example). As the claims ratio is linked to the occurrence of the insured risk or not, it is well possible that the insurer has to make little payments in, for example, the first 5 years of the contract because weather conditions were good. However, just one storm or period of heavy rainfall could change this scenario completely overnight. So, the fact that little payments were made in the first years should never be interpreted as a sign that the cover is not valuable to the target market.

Assuralia considers that the final technical advice should not contain any references to claims ratio's and claims payment policies.

Coherent framework

Finally, we agree that the final technical advice should entail a consolidated and comprehensive set of policy principles, as duplications or inconsistencies would only lead to unnecessary burden or legal uncertainty.

	We call on EIOPA to deliver a consolidated set of POG requirements in the final technical advice, avoiding duplications and inconsistencies.	
Question 3	Assuralia considers the following aspects to be necessary and important: - the POG arrangements should be applied in a proportionate and pragmatic way (see our remarks on proportionality in Q2). In order to achieve this goal, the current legislative framework (both national and European) should be taken into account. Existing rules that serve the same objectives should not be duplicated by POG, in order to reduce unnecessary costs and administrative burden. For example: in Belgium the insurance industry has implemented the MiFID 1 rules on conduct of business only two years ago ('AssurMiFID'). These AssurMiFID rules reflect many of the principles contained in EIOPA's draft advice. It would generate a disproportionate cost if existing good practices would have to be adapted for the sake of formality only; - the draft advice does not pay enough attention to the differences between distribution channels. For instance, tied agents and brokers operate in different frameworks with different levels of co-operation with and control by the insurance company involved. This justifies a proportionally differentiated approach of the POG obligations. In this regard, Assuralia calls on EIOPA to allow for an efficient and proportionate implementation of the POG requirements at national level. Considering that the distribution landscape can differ significantly between Member States, the POG requirements should be filled in at national level for the different types of distributors.	
Question 4	Assuralia is not in a position to provide an estimate or quantitative data on the amount of costs related to the implementation of the POG requirements. However, the following principles need to be taken into account: - in order to limit unnecessary costs, the existing legal framework (both European and national) should be taken into account (see our answer to Q2 and Q3); - the principle of proportionality needs to be applied in practice (see our answer to Q2 and Q3);	

	- the policy proposals should only concern (i) newly designed products that are not yet put on the market and (ii) existing products that are significantly changed after the IDD becomes applicable, as required by the IDD. Any retroactive application would significantly raise costs.	
Question 5		
Question 6		
Question 7	We agree with EIOPA that the principle of proportionality has to be taken into account when considering the granularity of the target market and that this granularity should depend on the characteristics, risk profile and complexity of the product. As the majority of simple products (for instance home insurance) are developed for the purpose of covering a particular risk, Assuralia considers that all persons affected by the risk form the natural target group of those products covering a particular risk. A too narrow delineation of the target market could lead to the exclusion of customers from suitable insurance coverage if, for different reasons, they do not form part of the target group despite the fact that the product still meets their individual needs. For life insurance products, not only the product itself should be taken into account but also the portfolio of the customer. A narrowly defined target market would be hard to reconcile with a portfolio approach, where both defensive and more risky investment products can be sold to the same investor in order to achieve a balanced investment portfolio. In general, we believe that the target market should be defined in a broad way by the manufacturer. We agree with EIOPA that (i) the target market describes a group of customers at a broader and more abstract level and (ii) differs from the individual assessment of the adequacy of an insurance product for a specific customer. In Assuralia's opinion, the identification of a broad target market by the manufacturer should enable the distributor to understand to whom the product is meant to be sold	

	and serves as a first filter (at product level) to highlight that the product may not have value for customers outside the identified target market. However, it is the distributor involved who, based on the analysis of the customer's demands & needs, is best placed to determine if that particular product is aligned with that specific customer's needs (customer level). This approach acknowledges the important role of the distributor involved, who should remain in charge of analysing the customer's interests, objectives and characteristics. This division of responsibilities and tasks between the manufacturer and distributor is in line with the IDD and would ensure that products are only sold to customers for whom they are fit. Although sales outside the target market would be rare in case of a broader and more abstractly defined target group, Assuralia calls on EIOPA to clearly state in the technical advice that sales outside the target market are allowed, provided that they are justified in that particular situation (for instance when the distributor involved decides on the basis of the demands and needs analysis that the product fits that specific customer's needs). This would ensure that customers aren't deprived from suitable insurance cover if, for any reason, they fall outside the identified target market. This would be in line with the approach taken by the European Banking Authority (EBA) in its guidelines on POG (EBA/GL/2015/18 page 8). Furthermore, the distributor is required to provide the manufacturer with information on the amount of sales outside the target market (cf. §54 on page 21). If this information indicates that there is a problem with the identification of the target market, the manufacturer will evaluate if adjustments to the identified target group are required. Finally, we like to bring to EIOPA's attention that existing national and European information requirements (for example PID / KID) already regulate in detail which information a customer should have at his disposal. In this regard, we wonder if it is relevant to take into account the level of information available to the target market	

	(§9 page 22 CP).	
Question 8	Firstly, Assuralia would like to raise the following concerns with regard to the proposed review obligations: - we agree with EIOPA *"that manufacturers and distributors should take appropriate action when they <u>become aware</u> of an event that could materially affect the potential guarantees of the target market"* and we invite EIOPA to take on board the underlined clarification in the final advice (cf. §6 page 37); - the advice itself should clarify that senior management is ultimately responsible for the POG arrangements and not the compliance function. This is more in line with §5 p.22 which states that the manufacturer's administrative, management or supervisory body is responsible for the POG arrangements; -the manufacturer and distributor must have appropriate written agreements in place in order to coordinate their reviews (§2 draft advice, p.38). As the written agreements concern the review of the product, Assuralia understands that such agreements only have to be made between an insurer and an intermediary which manufactures insurance products for sale to customers. For the sake of clarity, this should be specified in the advice; - it is unclear how independent intermediaries, such as brokers, are supposed to coordinate the review of their product distribution arrangements with the review of the manufacturer (§6 draft advice, page 38). Secondly, Assuralia considers that an on-going review of insurance products would put a heavy burden on the insurance sector. The following concrete proposals may help to keep this review process as effective and efficient as possible and to ensure that the principle of proportionality is taken into account: - there should be a link between the stability of the product and the need to conduct a review. The more stable the product, the less need to conduct a review; - for non-life insurance products a review should only take place when significant changes occur with regard to the product, the applicable legislation or the market	

	conditions. These could be, for instance, modifications to the terms and conditions of the insurance product or changes to the legally defined compensation limits; - for insurance-based investment products, the need for a review should be directly linked to the review of the PRIIPs KID. A review should be carried out in case, for instance, the risk class of the product changes (cf. risk indicator in the PRIIPs KID needs to be modified) or the investment objective or asset mix changes; - the essential elements of the review should take into account the nature, scale, risks and complexity of the insurance products and the relevant business of the manufacturer or distributor. The proportionality principle has to ensure that too burdensome processes for insurance business classes with lower risk and / or complexity are avoided, since not all insurance products require regular reviews. Assuralia therefore advices EIOPA not to prescribe any defined intervals for the review process.	
Question 9	Assuralia agrees that the practices listed in §2 on page 45 do not by definition result in a conflict of interests and that the list should not be interpreted as such. It is important to avoid any ambiguity with regard to the wording of this principle, however. We therefore suggest in particular to rephrase the term "assumed" and to clarify paragraph 6 on page 44. Furthermore, the broad formulation of §2(c) on page 45 makes it even more important to clearly state in the technical advice that the listed practices are to be considered as potential conflicts of interest only (e.g. not by definition).	
Question 10	Assuralia supports the principle of proportionality and agrees with EIOPA that the policy proposals allow sufficient flexibility to adapt the organisational requirements to existing business models.	
Question 11	Assuralia does not agree with the proposed methodology to determine whether an inducement has a detrimental impact on the quality of the service, for the reasons stated below. Assuralia agrees however with EIOPA that an overall assessment is required, but the draft advice seems to contain contradictions on this point and a more balanced approach is required.	

Contradicting methodology

The proposed methodology to determine whether inducements have a possible detrimental impact on the quality of the service and whether insurance distributors comply with the duty to act in the best interest of the customer seems to contain contradictions: on the one hand, EIOPA states that inducements should be judged by means of an overall assessment. According to §17 page 52, this assessment could take into consideration risk-reducing factors. We support an overall assessment which takes into account risk-reducing factors. On the other hand §18 on page 53 states that risk-reducing practices cannot be used to legitimate practices which are considered to be detrimental from the outset. As §18 than refers to the inducements listed in §4 of the draft technical advice ('blacklist'), Assuralia understands this could mean that none of the inducements listed in §4 can be countered with risk-reducing factors. Furthermore, the blacklist in §4 seems to be extensive and broadly formulated. Due to its broad formulation and general nature (e.g. no distinction between different types of commissions such as a basic commission / management commission…) the blacklist encompasses a wide range of inducements paid in the insurance industry. This combination of a vast blacklist with no proper possibility to take into account risk-reducing factors seems to stand in direct opposition to the idea of an overall assessment.

Finally, we feel that the draft advice does not sufficiently take into account the whole legal framework. It should be acknowledged that distributors are obliged to analyse the customer's demands and needs and to test the suitability / appropriateness of IBIPs. Consequently, the offering of unsuitable products is not solely tackled by the rules on inducements. A correct application of the basic rule to act honestly, fairly and professionally in the best interest of the customer and the conflict of interest rules would make an extensive blacklist superfluous.

Blacklist (§4 draft advice)

As it seems that the inducements listed in §4 of the draft technical advice can never

	be legitimated by risk-reducing factors (cf. §18 page 53), the list is a de facto blacklist. Furthermore, we find that blacklist to be overly broad and simplified as it speaks of inducements in general, whilst in practice different types of inducements are being paid in different stages of the distribution process. Some examples: - a basic commission is paid shortly after the insurance contract is closed, as a compensation for the conclusion of the contract and referral of the customer; - a management commission on the other hand compensates the distributor involved for managing the contract (claims management, duty of care,..) and is therefore paid throughout the term of the contract. These nuances are not reflected in the draft advice, resulting in an overly simplified categorization of inducements. This can be illustrated by the following: in Belgium the national supervisor (FSMA) considers reasonable basic commissions and management commissions that conform to the market norm to be generally acceptable (circular FSMA_2015_14 from 01/09/2015, page 49). The reason behind this approach is that such remunerations would not incentive a distributor to put his own interests ahead of the customer. Take the following situation as an example: an insurance distributor has analysed the demands and needs of a customer who is seeking fire insurance. Two products, one from company X and one from company Y, fit the customer's demands and needs. When both companies are offering the distributor reasonable basic commissions that conform to the market norm, this commissions won't encourage him to pick one contract over the other. The blacklist however considers upfront commissions (so including basic commissions) as such to be very risky (technical advice §4 (d)). Due to this lack of nuance, the list will in practice unfairly label a large amount of inducements as a high risk. Furthermore, we would like some clarification on the reasons why EIOPA considers the types of inducements listed in the blacklist and on top of p. 52 to have a detrimental impact on the quality of the service. According to the advice the blacklist is based on supervisory work of the national supervisors. However, the examples raised in the footnote seem to refer to rather exceptional cases (a commission of 86% is certainly	

not common in the EU) that do not justify the qualification of all commissions in the blacklist as 'high risk'. Furthermore, MiFID 2 does not seem to contain such an extensive blacklist.

It seems that the characteristics of the insurance sector were not properly taken into account in the blacklist. Upon request of the European Commission, EIOPA took into consideration ESMA's advice for MiFID 2. Inspired by this banking regulation, the technical advice considers inducements that are predominantly based on quantitative commercial criteria and do not take into account appropriate qualitative criteria to be detrimental (technical advice §4 (b)). The distribution landscape in the banking sector however differs substantially from the insurance sector, where independent intermediaries and brokers play an important role. It is difficult for insurance companies to include qualitative criteria in their inducement agreements with independent intermediaries, as they cannot examine if these criteria are being met in practice. Such kind of 'quality monitoring' by an insurer would conflict with the independent status of the intermediary involved (cf. our comments on POG). Furthermore, quantitative commercial criteria can be used in inducement schemes, if applied with care (see our answer to Q12).

We however agree with §4 (a) of the technical advice: "*the inducement encourages the insurance intermediary or insurance undertaking carrying out distribution activities to offer or recommend a product or service to a customer when from the outset a different product or service exists which would better meet the customer's needs"*. This principle should actually be the main criterion for the overall assessment of inducements. For this reason, Assuralia calls on EIOPA to acknowledge that reasonable basic commissions and management commissions that conform to the market norm are generally acceptable (see above).

With regard to §4 (c) *('the value of the inducement is disproportionate or excessive when considered against the value of the product and the services provided in relation to the product'*), it is unclear who will determine if an inducement is disproportionate

	and on the basis of which criteria. And what is to be understood under 'the value of the product'? Both European and national information requirements, such as the PRIIPs KID, already ensure that the customer receives information on the characteristics of the product, premium, costs and type of remuneration, so he can decide for himself if the product is of added value or not. Paragraph 4 (e) needs clarification and nuance. We agree that a refund (from the intermediary who has received the commission to the insurer) has to be foreseen in case a management commission was paid upfront and the product is surrendered early. It would however not be logic to also foresee a refund for the basic commission, as this is a compensation for closing the contract. A refund of the basic commission is only justified in case, for example, the distributor involved does not fulfill its duty of care to the detriment of the customer. It is also unclear what is meant exactly with 'if the product lapses' (different from 'surrendered'). ***De facto ban*** In its current form, the draft advice could introduce a de facto prohibition on the receipt/payment of inducements due to a lack of risk-reducing factors that can be used to counterbalance the extensive blacklist and the oversimplified presentation of inducements. This is not in line with the IDD, where the European legislators deliberately choose not to introduce a ban on inducements and the introduction of further restrictions or prohibitions is a member state option (IDD art.29, 3). A ban on inducements would not benefit customers. In markets where such a ban was introduced, the negative effects of the alternative fee-based system are starting to emerge. In the UK an 'advice gap' is forming, since not all customers can afford to pay high fees to intermediaries. A fee-based system could also encourage distributors to focus their efforts on high-end customers only. ***Need for an overall assessment*** If the advice is not supposed to result in a de facto prohibition, as stated by EIOPA,	

	inducements should be considered in a proper overall assessment which looks at both the risks and the risk-reducing factors involved. In order to achieve such a balanced approach, EIOPA has to (i) ensure that risk-reducing factors can be taken into account properly in the overall assessment; and (ii) make the blacklist more nuanced and more precise. To ensure that risk-reducing factors can be taken into account properly, Assuralia suggests to rephrase §18 as follows: *"This list is non-exhaustive and is not intended to create a legal "safe harbour" and should be understood as criteria to be applied in an overall analysis, only. They are deemed to promote more customer-centric behaviour by distributors. It should be noted that insurance undertakings and insurance intermediaries are in any case not relieved from a thorough assessment whether an inducement has a detrimental impact. ~~and that these practices cannot be used to legitimate practices which are detrimental from the outset (e.g. combination with inducements listed in paragraph 4 of the draft Technical Advice below~~)".* This rephrasing would allow for a proper overall assessment of inducements, which takes into account both the risks and the risk-reducing factors. Risk-reducing factors thus should be able to legitimate inducements that, according to EIOPA, <u>may</u> entail a high risk of leading to a detrimental impact (e.g. overall assessment of all factors involved) but not in all circumstances (it won't be able to justify, for example, very excessive inducements). This principle of an overall assessment should be introduced explicitely into the final technical advice. It is key that the risk-reducing factors to be taken into account are applicable in practice and appropriate for the insurance sector. The criteria proposed by EIOPA (p. 52-53) are not always easily applicable in the insurance sector, taking into account the role independent intermediaries play. However, the fourth bullet on p.53 (adequate training) is a good example of a risk-reducing factor that is applicaple in practice. Assuralia does not see any risk of detrimental impact on the quality of the service when a distributor is offered a training class or a reduction in training fees. Another example of a risk-reducing factor could be the use of reasonable sales targets.	

	Assuralia also supports the approach taken by the Belgian supervisor (FSMA) in this matter. FSMA considers reasonable basic and management commissions to be generally acceptable, provided they conform to the market norm (circular FSMA_2015_14 dated 1 September 2015, p.49). The reasoning behind this approach is that these commissions do not encourage distributors to put their own interests ahead of the customer (cf. §3 of EIOPA's draft advice and example above). Furthermore, national supervisors can ensure that those remunerations remain at an acceptable level and meet both requirements in art. 29, 2 IDD. With regard to the need to nuance the blacklist, we refer to our comments and examples made under the section 'blacklist'.	
Question 12	The basic criterion for the overall assessment of inducements should be the obligation to always act in the best interest of the customer. The main focus is to ensure that remunerations do not provide an incentive to recommend a particular insurance product to a customer based on self-interest (for instance a higher commission), while another product could be offered that from the outset would better fit the customer's needs. Rewarding the sales of so-called 'products of the month' with higher commissions than other products is, for example, incompatible with this basic rule. Other appropriate criteria for the assessment of inducements are the targets used for awarding variable remunerations. If these targets are set very high, there is more chance that the interests of customers will be harmed. It is therefore recommendable to apply reasonable sales targets; too large leaps between the different thresholds for incentives should be avoided. This means that quantitative commercial criteria can be used in inducement schemes, if applied with care.	
Question 13	In its current form, the draft advice could introduce a de facto prohibition on the receipt/payment of inducements due to a lack of risk-reducing factors that can be used to counterbalance the extensive blacklist and oversimplified presentation of inducements. This is not in line with the IDD, where the European legislators deliberately choose not to introduce a ban on inducements and the introduction of further restrictions or prohibitions is a member state option (IDD art.29, 3).	

	A ban on inducements would not benefit customers. In markets where such a ban was introduced, the negative effects of the alternative fee-based system are starting to emerge. In the UK an 'advice gap' is forming, since not all customers can afford to pay high fees to intermediaries. A fee-based system could also encourage distributors to focus their efforts on high-end customers only. See also our response to Q11.	
Question 14	We do not consider any further organizational or procedural measures to be relevant. The basic criterion for the overall assessment of inducements should be the obligation to always act in the best interest of the customer. The main focus is to ensure that remunerations do not provide an incentive to recommend a particular insurance product to a customer based on self-interest (for instance a higher commission), while from the outset another product could be offered that would better fit the customer's needs. See also our response to Q11.	
Question 15	Assuralia agrees in general with the criteria proposed by EIOPA to specify the assessment of suitability and appropriateness and did not identify criteria that should be excluded. We also welcome the high level nature of the policy proposals. The Belgian insurance industry is already subject to requirements that are very similar to the proposed criteria. In order to avoid that existing legal frameworks would need to be adapted for the sake of formality only, the principles should remain sufficiently high level. In particular, we support paragraph 3 of the draft advice (page 64 CP) which recognizes that it is possible that the information to obtain for the suitability assessment is already covered by other requirements in chapter V of the IDD. We agree that retrieving the same information from the customer through several procedures (for example demands and needs, suitability analysis…) should be avoided as much as possible in order to limit the burden on both the industry and the	

	customer. A customer would only be confused if he had to provide the same information multiple times. This principle should not only apply in the subscription phase, but also in the contractual phase. When an appropriateness or a suitability test has been undertaken at subscription, the distributor should be able to rely on this analysis for subsequent transactions in that contract, provided that the transactions in question are compatible with that initial analysis. For example: a customer has subscribed a unit-linked life insurance with three different underlying funds and the insurer adds a new, fourth fund in which the customer can invest. If the new fund does not fundamentally differ from the others, the customer should be able to switch on an execution only basis (see also Q17). It should be acknowledged that not all transactions require an additional suitability or appropriateness assessment as this would hamper the correct execution of the contract (e.g. execution of contractually agreed options). Furthermore, additional assessments are not always to the benefit of the customer: for example, when a customer requests an early exit any delays in the execution could have a possible negative impact on the redemption value. On the other hand, paragraph 3 of the draft advice should not result in putting the demands and needs test at the same level as the suitability assessment. The determination of the customer's demands and needs is required before the conclusion of any contract and aims at avoiding mis-selling (cf. recital 44 IDD), while the suitability assessment is only required when IBIPS are sold with advice and involves a much broader analysis (knowledge, experience, financial situation and investment objectives). The analysis of the demands and needs is thus much narrower and less extensive than the suitability assessment. Because of this comprehensive nature of the suitability assessment, the Belgian supervisory authority (FSMA) acknowledges that distributors who have thoroughly checked a product against the knowledge, experience, financial situation and investment objectives of a customer can presume that the product covers the demands and needs of that customer (circular FSMA_2015_14 dated 1 September 2015, page 40). Assuralia therefore calls on EIOPA to recognize that the general obligation to analyse the demands and needs can be fulfilled by the suitability assessment. Assuralia considers an additional, separate demands and needs analysis also unnecessary in case of an appropriateness test. As	

	MiFID 2 does not require an additional, separate demands and needs test on top of the suitability or appropriateness assessment, we consider that the demands and needs test can be covered by the assessment of suitability or appropriateness (level playing field). For the sake of clarity, we suggest the following small adjustment in paragraph 5 of the draft advice (p.64): *"When advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system, the responsibility to undertake the suitability assessment shall lie with the insurance intermediary or insurance undertaking providing the service and* ***that responsibility*** *shall not be reduced by the use of an electronic system in making the personal recommendation."* We agree that the distributor is responsible for the suitability assessment, but it should remain possible to have the assessment conducted by means of, for example, a roboadvicer. Paragraph 12 of the draft advice (p.65) states that, in case of switching embedded investments, the benefits of switching should be greater than the costs. We feel this paragraph puts too much emphasis on costs. There are other reasons why it could be better for a customer to switch his embedded investments. For example: given the recent Brexit some risk-adverse customers might prefer not to invest anymore in British shares, as they don't feel comfortable with potential fluctuations. This shows that not all benefits are monetary and can be easily set off against costs. We therefore suggest the following rephrasing: *"When providing advice that involves switching embedded investments, either by selling an embedded element and buying another or by exercising a right to make a change in regard to an existing embedded element, the insurance intermediary or insurance undertaking shall collect the necessary information on the customer's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch.* ~~*such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs."*~~ With regard to paragraph 13 (c) on p.66, it is important to leave some room for	

	nuance by the distributor involved. Not having a higher degree should, for example, not automatically lead to the conclusion that the customer does not understand more complex products. Under Q17 Assuralia further elaborates on the relationship between demands and needs, suitability and appropriateness, also taking into account the member state option for an execution only.	
Question 16	Assuralia considers that the paragraphs 5, 12 and 13(c) need some rephrasing (see our concrete suggestions under Q15). The assessment of suitability or appropriateness should only concern the investment part of an IBIP. We therefore do not see any need for further insurance specificities. Furthermore, the requirements should not go further than the MiFID 2 requirements.	
Question 17	With regard to the sale of IBIPs, Assuralia sees the following relation between the assessment of suitability, appropriateness and demands and needs: <u>Advised sales</u> In case of advised sales, the distributor should assess the customer's knowledge, experience, financial situation and investment objectives (cf. IDD). As already stated under Q15, Assuralia calls on EIOPA to recognize that the general obligation to analyse the demands and needs is fulfilled by the suitability assessment. Because of the comprehensive nature of the suitability assessment, the Belgian supervisory authority (FSMA) acknowledges that distributors who have thoroughly checked a product against the knowledge, experience, financial situation and investment objectives of a customer can presume that the product covers the demands and needs of that customer (circular FSMA_2015_14 dated 1 September 2015, page 40). <u>Non-advised sales: not execution-only</u> The distributor has to assess the customer's knowledge and experience ('appropriateness assessment'). Assuralia considers an additional, separate demands	

	and needs analysis unnecessary in case of an appropriateness test. The demands and needs would in practice consist of checking whether the product that the customer wants to subscribe (cf. sales without advice) is in line with his knowledge and experience. This should not result in two separate procedures/analyses, as the demands and needs test can be included in the overall assessment of appropriateness. Non-advised sales: execution only The IDD foresees a member state option to allow for the sale of non-complex IBIPs under an execution only regime (cf. chapter 7.2. of the consultation paper). However, such execution only sales have to be accompanied by an analysis of the customer's demands and needs. In order to respect the principle of an "execution only", Assuralia suggests the following approach: In the underwriting phase, the execution only could be applicable when a customer requests the distributor to subscribe to a specific insurance contract. This means that the customer himself would clearly indicate his demands and needs. In such cases, the distributor only has to check if the requested product is in fact a non-complex product. If that is the case, the distributor can execute the demand of the customer and close the contract without further obligations (= he only executes the customer's demand). Further obligations on the distributor would blur the line between execution only and appropriateness / suitability, which could mislead customers. The situation is different in the contractual phase. IBIPs can contain contractually agreed options with regard to additional premium payments/top-ups, switching, early redemption… It is in the interest of customers to allow for a swift and smooth execution of such non-complex transactions, even in products that are themselves not regarded as non-complex. A good balance between consumer protection and the execution only of their contractual rights could be the following approach: • in case of *surrender* an execution only should be allowed, provided that the customer receives information on the costs and conditions related to the	

	transaction; • *switching* should be handled on a case by case basis. Example: a customer has subscribed a unit-linked life insurance with three different underlying funds and the insurer adds a new, fourth fund in which the customer can invest. If the new fund does not fundamentally differ from the others, the customer should be able to switch on an execution only basis. However, if the new investment option differs significantly from the previous options an execution only would not be appropriate; • *additional premium payments / top-ups* should always be possible under execution only, as this action is the mere execution of the contract. As the execution only principle is important in light of a swift and smooth execution of the customer's requests and could become more important in light of online sales and services (e.g. more and more customers want to be able to manage their contracts themselves and execute simple transactions online), Assuralia wanted to provide EIOPA with the above stated proposals. The draft advice (cf. the Commission's mandate) does, in our opinion, not pay enough attention to the possible benefits of the execution only regime and its practical application.	
Question 18	Assuralia does not consider any further guidance on the relationship between demands and needs and appropriateness/suitability to be useful or necessary. In our opinion the suitability or appropriateness assessment does not require an additional, separate demands and needs analysis (see our answer to Q15 and Q17).	
Question 19	We do not agree with the cumulative list of high-level criteria in the draft advice. This exhaustive list will result in a de facto ban on execution only, as all products are deemed complex besides products with a unit-linked investment element (cf. §5 and 6 page 68-69). Such an approach would seriously undermine the explicit member state option in the IDD to allow for the execution only sale of non-complex IBIPs. Furthermore, in light of a level playing field, we call on EIOPA not to introduce criteria under the IDD that are more stringent than MiFID 2.	

	The MiFID 2 requirements are not adapted to the insurance context and do not fit a considerable part of the life insurance products (see comments to the list of criteria below). Furthermore, we wonder why EIOPA refers to the ESMA final guidelines on complex debt securities and structured products for further guidance, as these guidelines (i) seem hard to reconcile with the proposed criteria and (ii) are level 3 guidance for banking regulation and therefore not adapted to the insurance sector. With regard to the criteria listed in the draft technical advice, Assuralia has the following remarks: - the proposed criteria do not fit guaranteed life insurance products and capital redemption operations. As these products (i) are not captured by the criteria, (ii) do not pose an elevated risk to customers and (iii) do not have a complex structure, Assuralia considers them to be non-complex and suitable for sales on an execution only basis; - we agree with EIOPA that unit-linked life products investing in open funds are non-complex and therefore eligible for execution only sales (cf. MiFID 2), while structured unit-linked products are complex; - for unit-linked products the criteria should be assessed at the level of the underlying funds; - criterion B does not take into account the long-term nature of life insurance products and does not fit guaranteed life insurance products and capital redemption operations. Publically available market prices or independent valuation systems are not relevant for products which contain a guaranteed interest rate; - the formulation of criterion C is very vague and not adapted to the terminology used in the insurance sector. The scope and exact meaning of this criterion is therefore unclear; - we consider criterion D to be fulfilled by the obligation to provide a KID to	

customers, as this European standardised information document includes key information on the characteristics of the product, costs, performance,… ;

- criterion E is overly broad compared to the corresponding MiFID 2 criterion (point D on page 68). MiFID 2 reads as follows: *"it does not incorporate a clause, condition or trigger that could fundamentally alter the nature or risk of the investment or pay out profile, such as investments that incorporate a right to convert the instrument into a different investment".* Criterion E has expanded the scope considerably, by falsely putting switching clauses on the same level as converting rights. This is inaccurate, as switching takes place in the contractual sphere, while converting does not;

- criterion F fails to take into account (i) the existing national and European legal framework and (ii) the long-term nature of life insurance products. In Belgium, for example, exit costs are already capped by law. Furthermore, the European KID will already provide the customer with information on the costs related to the product. It should also be acknowledged that exit costs are being applied to protect the customers who stay in the products, which are often long-term in case of insurance;

- with regard to criterion G, Assuralia wishes to highlight that in the Belgian market criteria have been introduced that determine which structured products for the retail market are to be considered as particularly complex (see Communication FSMA 2011_02 of 20/06/2011, moratorium on the distribution of particularly complex structured products, available on http://www.fsma.be/en/Sitemap/Article/nipic/nipic_tsspersonen.aspx).

These criteria are based on the same principles that are mentioned in Recital 18 of the PRIIPs Regulation and can be resumed as follows:

- the underlying of the derivative component is not sufficiently accessible, because the relevant market data or the specific characteristics of the (combination of) underlyings cannot be observed by means of the customary channels (internet, printed press). A customized selection of individual shares

	or a customized index can be considered accessible where a number of cumulative conditions are being met; • the derivative component's strategy is considered overly complex on account of the difficulty in determining the value offered by the product (such as where a teaser is being used for the distribution of the product, the investor may incur capital loss without being able to participate to at least the same degree in the increase of the underlying, a minimal change in de performance of the underlying can have a disproportionate impact on the payment of a return); • the calculation formula for the return is overly complex, i.e. when the formula comprises more than three mechanisms (with the exception both of mechanisms that provide for a minimum return or that limit the volatility of the underlying, such as a floor or a "cliquet", …); • there is insufficient transparency regarding the costs, credit risk and market value. Belgian legislation also determines that certain financial products are not suitable to be sold to retail investors, such as life settlements, or products that invest in so-called 'unconventional assets' that are not correlated with the traditional financial market and are speculative and complex in their nature. Assuralia considers that products that correspond to the criteria could be useful for the identification of structures which make it difficult for the customer to understand the risk involved (criterion G of the draft technical advice). Furthermore, we call on EIOPA to take a consistent approach in the IDD (execution only) and the PRIIPs Regulation (comprehension alert). - we find criterion H to be unjustified as beneficiary clauses do not influence the performance or return of the product. Criterion H even undermines the right of a	

	customer to alter a product to his particular needs and ignores the fact that modefiable beneficiary clauses are in the interest of the customers as they enable them to keep control over the beneficiary to their investments.	
Question 20	The list of criteria in the draft advice is already very extensive, so further criteria would not be necessary nor appropriate. A thorough revision of the criteria in the draft advice however is in order (see our remarks in Q19).	
Question 21	Assuralia does not see any gaps. In fact, criterion E is overly broad compared to the corresponding MiFID 2 requirement (see Q 19). IDD should not go further than MiFID 2. Assuralia considers unit-linked life products investing in open funds, guaranteed life insurance products and capital redemption operations to be non-complex and elegible for execution-only sales (see also Q19). For the sake of clarity, this should be explicitely acknowledged by EIOPA in the final technical advice.	
Question 22	Assuralia agrees in general with the proposed high level criteria, with the exception of paragraphs 16b and 17b of the draft technical advice (p. 77). In our understanding, paragraph 16(b) aims at ensuring that insurance intermediaries or undertakings keep the relevant records at the disposal of the competent authorities in order to enable them to detect failures regarding the suitability assessment. Those records should allow the competent authorities to examine if the necessary assessments took place and if the advice given was in line with the outcome of those assessments. We call on EIOPA to clarify this in the technical advice, as the current paragraph is too vague. Paragraph 17(b) refers to a customer's risk profile. In insurance, there is no automatic link between a customer's profile and certain products. These practices are more common in the banking sector, but not in the insurance sector. Furthermore, the IDD does not require distributors to draw up investment risk profiles. We therefore suggest to rephrase paragraph 17(b) as follows: ~~*the types of insurance-based investment product that fit that profile and*~~ *The rationale for such an assessment, as well as any*	

	changes and the reasons for them.	
Question 23		
Question 24	Assuralia agrees with the proposed high level criteria, with the exception of paragraph 9 (p.87), paragraph 2 (p.85) and paragraph 8 (p.86). According to paragraph 9, distributors have to provide customers with a periodic statement on the services provided and transactions undertaken. This statement can be provided by means of an online platform. We support that digital platforms are considered by EIOPA, but regret that distributors need to have evidence that the customer has actually accessed the information at least once during the relevant reporting period. This is not required under the IDD, as the Directive only contains an information obligation for the distributors and does not oblige them to check if their customers read / access the information. Distributors can provide customers with information, but can't force them to read it. When a distributor provides his customers with the statement in the form of a letter, there is no way of checking if the customer has actually taken the letter out of his letter box and opened the letter. Why impose more stringent conditions on online platforms? We also wonder what the consequences would be in case the customer does not access the information in the relevant reporting period. As an alternative, we suggest that the distributor should inform the customer (for example by means of an email-alert) that the periodic statement is available on the platform. Paragraph 2 page 85 states that "*the insurance intermediary or insurance undertaking shall draw the customer's attention to, and shall include in the suitability statement, information on whether the recommendation is likely to require the customer to seek a periodic review of their arrangements*". We call on EIOPA to clarify in the final advice that the distributor involved can decide himself if he provides periodic assessments of suitability or not (cf. IDD art.30,5). In case the distributor does provide such ongoing advice, then he himself should determine the triggers for such periodic assessments and not the customer.	

	With regard to paragraph 8 (p.86) of the technical advice, we suggest the following modifications: - point J should read as follows: "*Value of each investment element embedded in the insurance-based investment product, ~~global trend since subscription and significant changes affecting the investments embedded in the insurance-based investment product.~~"* By providing a customer with periodic statements at least annually, distributors already give the customer the necessary information to get insight in the global trend of the investment. Furthermore, significant changes affecting the investment need to be communicated on an ad-hoc basis; - point k should be deleted entirely, as this information is already contained in the European standardised key information document (KID) and the terms and conditions of the insurance contract. As the PRIIPs regulation already contains rules on the revision of the KID and changes to the general terms need to be communicated ad hoc, there is no need to retain this duplicative requirement; - we find point h to be disproportionate, as the customer already has all necessary information available in order to get insight in the annual rate of return and request EIOPA to delete this phrase.	
Question 25		
Question 26	EIOPA should not further specify criteria with regard to the periodic communication for online systems. With regard to the division of responsibility, Assuralia prefers a practical implementation at national level, taking into account the existing frameworks.	