EIOPA-16/608

Summary of responses to EIOPA's Online survey on the empowerment to develop Guidelines in Article 30(7) of the Insurance Distribution Directive (IDD)		
EIOPA would like to thank German Association of Actuaries, ANASF (national association representing financial advisors in Italy), Insurance Europe, European Federation of Financial Advisers and Financial Intermediaries (FECIF), German Insurance Association (GDV), Allianz SE, Association of British Insurers (ABI), Association of International Life Offices, European Federation of Insurance Intermediaries (BIPAR), EIOPA Insurance and Reinsurance Stakeholder Group (IRSG).		
Question number	**Name of respondent**	**Response**
Q1. What types of IBIPs are you aware of which are currently sold via execution-only transactions? If possible, please specify the Member State(s) in which these IBIPs are sold, or whether they are sold on a cross-border basis.		
1.	ANASF	No IBIPs are currently sold via execution-only transactions in Italy because relevant regulation excludes this possibility for financial products issued by insurance companies: cf. Consob Regulation no. 16190/2007, whereby Article 87 does not apply the provisions on execution-only (Articles 43 and 44) to financial insurance products. I.e., for these products the assessment of appropriateness or suitability (cf. MiFID) is always required, thereby providing for an effective standard of investor protection. Besides, Italian distributors typically apply IT tools which aim at preventing inappropriate/unsuitable sales, particularly in the aftermath of the financial crisis of 2008.

1.	Insurance Europe	Although there is a market across member states where IBIPs are sold on an execution-only basis, we do not have details to provide EIOPA with at this stage. However, Insurance Europe would like to highlight that in light of the increased online sales and services, more and more consumers would want to manage their contracts themselves online. Therefore, Insurance Europe would like to underline that EIOPA should take these digital trends into consideration when drafting guidelines for IBIPs.
1.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	We are not aware that IBIPs are currently sold via execution-only transactions in Europe. Some member states in their relevant regulation even exclude this possibility for financial products issued by insurance companies. An example is the Italian regulation by Consob no. 16190/2007, whereby Article 87 does not apply provisions on execution-only (Articles 43 and 44) to financial insurance products. For these products the assessment of appropriateness or suitability (cf. MiFID) is always required, thereby providing for an effective standard of investor protection. Besides, European distributors typically apply IT tools which aim at preventing inappropriate/unsuitable sales, particularly in the aftermath of the financial crisis of 2008.
1.	Association of British Insurers	We are aware of products that may be IBIPs including investment bonds, self-invested personal pensions, and potentially other closed book products, which are sold on an execution only basis in the UK market. We are aware that products which may be IBIPs are also sold on this basis in other EU member states.
1.	BIPAR	National supervisory authorities may have readily available answers to this question. Considering that for IBIPs there always is a demands and needs test, we wonder what the real definition of "execution-only" is in the IBIP context. We note that there may be an issue of level playing field with "execution-only" under MiFID. Furthermore, considering that PRIIPs nor IDD are currently implemented at national level, we wonder if "IBIPs" is defined or interpreted the same way in every Member State.
1.	EIOPA IRSG	There are markets where IBIPs are currently sold via execution-only. For these transactions no advice (no personalized recommendation) is given and an assessment of appropriateness is not required. In any case, it is an informed sale because the client receives the pre-contractual information provided by Article 185 of Solvency II Directive (and in the future the KID for PRIIPs). This is coherent with MIFID II where it is possible (not subject to Member State option) to sell an investment fund via execution-only (neither a suitability nor an appropriateness test is requiered, only to provide the client with the KII) if the distribution activity is carried out at the initiative of the customer and the investment fund only provides exposure to

		financial instruments deemed non-complex (e.g. plain vanilla listed equities, plain vanilla Government and corporate bonds, many types of investment funds, etc) . A level-playing field should be guaranteed regarding the possibility of selling comparable products via execution-only.
Q2. If you have access to relevant data, please provide an indication of the volumes of these execution only sales compared to other types of sales of IBIPs?		
2.	ANASF	Cf. our answer to Q1: in Italy execution-only sales of financial products issued by insurance companies are not admitted pursuant to relevant regulation, thereby their sales volume is zero. Non-life products are sold online, but this case is not relevant for the scope of this survey.
2.	Insurance Europe	As already stated in the previous answer, there is a market across member states where IBIPs are sold on an execution-only basis, but we are unable to provide further details to EIOPA at this stage. However, Insurance Europe would like to highlight that in light of the increased online sales and services, more and more consumers could want to manage their contracts themselves online. Therefore, Insurance Europe would like to underline that EIOPA should acknowledge these digital trends and future developments when drafting guidelines for IBIPs.
2.	Association of British Insurers	The ABI collects data regarding distribution of investment and savings products. Please note these are not all likely to be IBIPs as we do not segment our data based on whether an investment product has an insurance feature. ABI data for 2015, which covers ABI members and not the whole of market, shows that 56,788 single premium investment products were distributed on a non-advised basis. These are largely made up of new business endowment products, unit linked bonds and guaranteed and with-profits bonds. This is a significant volume for the providers which distribute these products. This compares to 54,778 of the same type of products sold with a form of advice for the year 2015. We would highlight that in the UK, and increasingly other European markets, consumers are looking to digital channels to purchase goods and services. Eurostat shows that 11% of financial services products such as shares and insurance were purchased online, against a background of some 65% of EU internet users shopping online in 2015 (http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals#Clothes_and_sports_goods_predominate_in_online_purchases). In the UK market, in 2016, more than three quarters (77%) of adults reported buying goods or services online in the last 12 months. Since 2007, the use of internet banking has nearly doubled, from 30% of adults, to

		56% in 2015. More than three quarters (76%) of those aged 25 to 34 carried out internet banking in 2015 (http://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccesshouseholdsandindividuals/2015-08-06#e-commerce-event-on-the-changing-shape-of-business). Given this growing trend toward digital channels, including on a non-advised basis, we urge EIOPA to ensure that it regulates in a proportionate way mirroring growing consumer demands.
2.	EIOPA IRSG	We are unable to provide an indication of the volumes of the execution only sales compared to other types of sales at this moment.
Q3. What types of IBIPs are within the scope of the Guidelines, for example certain types of unit-linked contracts?		
3.	ANASF	For the sake of investor protection, we believe that for all types of IBIPs at least the assessment of appropriateness should be required (this is also the position of the Italian regulator, cf. our answer to Q1). Generally speaking, some insurance products may be easier for the customer to understand the risks involved: particularly, this is the case of life insurance policies with no exposition to market fluctuations, although these products are not within the scope of these Guidelines.
3.	Insurance Europe	Article 30(3)(a)(i) focuses on pure unit-linked insurance products. However, it is important that wrong conclusions are avoided such as considering that primarily unit-linked contracts are non-complex. Article 30(3)(a)(i) should only be seen as one example for non-complexity of IBIPs. Article 30 refers to such contracts explicitly only since they can be classified easily according to existing MiFID rules which, however, do not apply to majority of insurance products. Therefore, it is important that meaningful criteria are developed for products that fall under 30(3)(a)(ii) (other non-complex IBIPs). When drafting the guidelines, it is especially important to consider the specific properties of insurance-based investment products and whether the product is complex from the point of view of the customer, including whether the customer bears the risk. If the same approach that was used under MiFID is applied to insurance products (ie. MiFID makes a distinction based on whether a product is structured or not), this would mean that unit-linked products linked to structured funds are to be considered complex, whereas unit-linked products linked to open funds as well as guaranteed insurance and capital redemption insurance products are to be considered as non-complex.

3.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	For the sake of investor protection, we believe that the assessment of appropriateness should be required for all types of IBIPs. In particular for: - Contracts enabling the client to choose from two or more underlying funds/assets, which are within the MiFID definition of non-complex financial instruments. - Contracts linked solely to the performance of other assets deemed non-complex by MiFID such as some structured products/notes.
3.	German Insurance Association (GDV)	Article 30(3)(a)(i) focuses on purely unit-linked insurance products. However, we wish to highlight that the draft technical advice, which is currently consulted by EIOPA on criteria to assess "other non-complex products" within the meaning of Art. 30 (3) (a) (ii) IDD (EIOPA-CP-16-006), also addresses the question whether the structure of the product makes it difficult for the customer to understand the risks involved. Notwithstanding potential guidelines on the basis of Art. 30 (8) IDD, the Guidelines might, therefore, actually be decisive for all insurance-based investment products. When drafting the Guidelines, it is, therefore, especially important to consider the specific properties of all insurance-based investment products as opposed to financial instruments under MiFID. In Germany, for example, the vast majority of insurance products have some kind of guarantees, which reduce the risk for consumers and, therefore, do not incorporate unexpected loss for consumers. Thus, wrong conclusions should be avoided, such as the assumption that primarily unit-linked contracts are non-complex as it ignores the variety of insurance products. 30(3)(a)(i) should only be seen as one example for non-complexity of IBIPs. Article 30 only refers explicitly to such contracts since they can be easily classified according to existing MiFID rules which, however, do not apply to the majority of insurance products. Therefore, it is important that meaningful criteria are developed for all insurance-based investment products. The German insurers are worried that due to the differences of the products in different markets, the extensive cumulative list of criteria developed by EIOPA in its consultation paper on 30(3)(a)(ii) IDD plus the criteria from the Guidelines under Art. 30 (7) IDD, could wrongly exclude many non-complex insurance products.
3.	Allianz SE	The scope of the Guidelines is limited to Article 30(3)(a)(i) i.e. contracts which only provide investment exposure to the financial instruments identified in MiFID II. This paragraph focuses on pure unit-linked IBIPs and does not apply to the majority of IBIPs. We note that the legal technique of Article 30(3)(a)(i) determines the sequential analysis of several

		regulatory pieces, including MiFID II and ESMA Guidelines on complex debt instruments and structured deposits. The interpretation of the delimitation proposed is complex and prone to legal uncertainty.
3.	Association of International Life Offices	Contracts enabling the client to choose from two or more underlying funds/assets which are within the MiFID definition of non-complex financial instruments. Contracts linked solely to the performance of other assets deemed non-complex by MiFID such as some structured products/notes
3.	EIOPA IRSG	IBIPs that include a guarantee at maturity should be considered as non-complex. Annuities where annuity payments are not dependent on fluctuating market values should also be considered as non-complex. In the same way, Unit-Linked products that only provide exposure to equities, fixed income or other plain vanilla assets or to UCITS funds should be considered as non-complex. Only certain types of Unit-Linked contracts that provide exposure to non-hedging derivatives, structured funds or hedge funds might be considered as complex, but a case-by-case analysis should be made. Only a very limited number of IBIPs should be considered products that incorporate a structure which makes it difficult for the customer to understand the risks involved.
Q4. Do you agree that where the investment return for an IBIP is dependent on other factors besides the performance of financial instruments deemed non-complex under Directive 2014/65/EU, they would not be within the scope of the Guidelines? If no, please explain your answer.		
4.	ANASF	Yes, we do (i.e., execution-only sales should not be admitted).
4.	Insurance Europe	Insurance Europe calls for EIOPA to provide further clarifications regarding the reasoning and the scope of this question in the future guidelines. Based on the current wording of the question, we are unable to provide an answer at this stage.
4.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Yes, we do and are of the opinion that only distribution by qualified intermediaries offers a sufficient level of consumer protection.
4.	German Insurance Association (GDV)	See Question 5.
4.	Allianz SE	Yes, they would not be within the scope of the Guidelines. The criteria of Article 30(3)(a)(i) is only explicitly

		referred because it is directly derived from MiFID II. The directive makes the investment exposure depend exclusively on the financial instruments identified in MiFID II.
4.	Association of International Life Offices	Yes
4.	BIPAR	Yes, but even if the underlying investments are non-complex, the product may not be easy to understand. In general, and for many customers, we believe that some insurance-based investment products are more or less difficult products. In any event, the consumer is always complex and his or her situation is always unique. Therefore, we are pleased that for IBIPs, there will always be at least a demands and needs test. This test does however not exist for execution-only products under MiFID II, which leads to the issue of level playing field.
4.	EIOPA IRSG	The wording of the question is very unclear. If it is referred to with-profits IBIPs, the IRSG agrees that they should be considered non-complex, and therefore out of the scope of the Guidelines.
Q5. Specifically, do you agree that the below mentioned product types would not be within the scope of the Guidelines? If no, please explain your answer. a) Profit participation or with-profits contracts where the return may be dependent on other factors than the investment exposure, such as the overall financial performance of the insurer b) Contracts which provide exposure to non-financial instruments, such as commodities		
5.	ANASF	Yes, we do (i.e., execution-only sales should not be admitted).
5.	Insurance Europe	Again, the criterion in 30(3)(a)(i) is only named explicitly because it is directly deduced from MiFID. When drafting the guidelines, it is especially important to consider the specific properties of insurance-based investment products and whether the product is complex from the point of view of the customer, including whether the customer bears the risk. Products that do not incorporate unexpected loss for consumers and which are governed by a solid prudential framework(such as the Solvency II framework) should be considered as non-complex. In this context, not only with-profits contracts but also other products with guarantees such as hybrid products and unit-linked insurance products with guarantee, that do not fall under the scope of 30(3)(a)(i), should still be considered as non-complex. Therefore, it is important that criteria that adequately take into account features of insurance products are developed in 30(3)(a)(ii) (other non-complex IBIPs). If the same approach that was used under MiFID is applied to insurance products (ie MiFID makes a

		distinction based on whether a product is structured or not), this would mean that unit-linked products linked to structured funds are to be considered complex, whereas unit-linked products linked to open funds as well as guaranteed insurance and capital redemption insurance products are to be considered as non-complex.
5.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Yes, we do and are of the opinion that only distribution by qualified intermediaries offers a sufficient level of consumer protection.
5.	German Insurance Association (GDV)	Again, the criterion in 30(3)(a)(i) is only explicitly mentioned because it is directly deduced from MiFID. In fact, it is indeed not relevant for most German IBIPs. Not only with-profits contracts and contracts with profit participation but also other products with guarantees such as hybrid products and even unit-linked insurance products with guarantees do not fall under the scope of 30(3)(a)(i). These products should be considered as non-complex because they do not incorporate unexpected loss for consumers (+ governed by a solid prudential framework – Solvency II). Therefore, it is important that criteria that take adequate account of the specific features of insurance products are developed in 30(3)(a)(ii) (other non-complex IBIPs).
5.	Association of British Insurers	We do not view with-profits products as complex. Some of the mechanics which are associated with with-profits, such as the smoothing mechanism, may be perceived as complex. But, it has to be taken into account that customers may choose these type of product for fairly simple and straightforward reasons, notably that they want a de-risked investment with a level of guarantee.
5.	Association of International Life Offices	Yes
5.	EIOPA IRSG	Products that do not incorporate an unexpected loss for consumers and which are governed by a solid prudential framework (such as the Solvency II framework) should be considered as non-complex. In this context, not only with-profits contracts but also other products with guarantees, including hybrid products and unit-linked products with guarantees should be considered as non-complex.
Q6. a) Regarding multi-option products (MOPs) or products where the customer has the ability to change the underlying investment exposure of the IBIP, in order to fall within Article 30(3)(a)(i), IDD, do you agree that the choice of investment exposure would need to be limited to financial instruments deemed non-complex under Directive 2014/65/EU. If no, please explain your answer. b) Are there any reasons why this restriction referred to in Q6.a) would be problematic in terms of existing products sold? If yes, please explain your answer.		

6.	ANASF	As explained, for all types of IBIPs at least the assessment of appropriateness should be required, especially in the case of products with underlying investment exposures.
6.	Insurance Europe	A variety of products fall within the scope of MOPs. For instance, there are also products with guarantees where consumers can choose some funds components. These products will not be captured by Article 30(3)(a)(i) but should still be considered as non-complex. As already stated, Article 30(3)(a)(i) should only be seen as one of many criteria for non-complexity. If the same approach that was used under MiFID is applied to insurance products (ie. MiFID makes a distinction based on whether a product is structured or not), this would mean that unit-linked products linked to structured funds are to be considered complex, whereas unit-linked products linked to open funds as well as guaranteed insurance and capital redemption insurance products are to be considered as non-complex. In addition, if one MOP has 9 underlying options that are non-complex but one option that is complex, it is absolutely key to differentiate and avoid characterising the whole product as complex. Insurers are concerned that due to the differences of the products in different markets, the extensive cumulative list of criteria developed by EIOPA in its consultation paper on 30(3)(a)(ii) IBIPs, could wrongly include many non-complex insurance products.
6.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Some products, sold currently, might enable choice of assets outside those within the MiFID definitions, and so either they could require amendment or not be available for execution only sale.
6.	German Insurance Association (GDV)	In Germany, there is a variety of products which fall within the scope of MOPs. There are also products with guarantees where consumers can choose some funds components. These products would not be captured by Article 30(3)(a)(i). For example, IBIPs that invest in index options should not be regarded as complex per se. An insurance product should be classified as non-complex if for example the value of the complex component is small or if the product includes guarantees. Therefore, Article 30(3)(a)(i) should not be seen as the main indicator for non-complexity. It is essential that the extensive cumulative list of criteria developed by EIOPA with regard to the present Guidelines as well as in its consultation paper on 30(3)(a)(ii) IBIPs does not wrongly exclude many non-complex

		insurance products.
6.	Association of International Life Offices	a) Yes b) It is possible that some products sold currently might enable choice of assets outside those within the MiFID definitions and so either require amendment or not be available for execution only sale.
6.	EIOPA IRSG	There is a variety of products falling within the scope of MOPs. For instance, there are also products with guarantees where consumers can choose some funds components. These products are not captured by Article 30(3)(a)(i) but should still be considered as non-complex. Article 30(3)(a)(i) should only be seen as one of many criterions for non-complexity.
Q7. What types of guarantee mechanisms are you aware of which are currently used in IBIPs?		
7.	ANASF	Guarantee mechanisms typically apply to the principal amount or minimum returns. Insurance undertakings may use derivatives for hedging purposes (in this case, such a technique makes it difficult for the customer to understand the mechanisms). European and national regulators should give specific heed to financial engineering, whereby it can lead to complex guarantee mechanisms.
7.	Insurance Europe	IBIPs with guarantees are constructed to protect consumers against market volatility and ensure a predictable amount or a steady income, usually at retirement. The guarantee is provided at specific dates, often at maturity which is transparently disclosed to consumers. Article 185(3) of Solvency II provides that an indication of surrender and paid-up values and the extent to which they are guaranteed has to be communicated to the customer before the contract is concluded. Therefore, it is easy for the investor to accurately assess how the guarantee mechanism affects the risk exposure of the investment. Invested capital guarantee, minimum yield guarantee. 1) guaranteed products have a guarantee on the invested amount and / or return or guaranteed annuity/ a guaranteed annuity factor. This guarantee is provided by the insurer, who is subject to solid prudential requirements (SII); and 2) in unit-linked products guarantees provided by a third party occur (cf. PRIIPs RTS) Both types of guarantee mechanisms differ from capital protection mechanisms in structured products.
7.	European Federation of Financial	Usually any guarantee in IBIPs is provided by a third party bank or fund house, depending on the linked

	Advisers and Financial Intermediaries (FECIF)	asset selected incorporating such a guarantee. In unit-linked contract IBIPs, it is rare to find any other guarantee other than the amount of life cover in the event of death (normally in percentage terms rather than fixed amounts), or an asset related guarantee provided by the managing bank or fund house of the linked fund.
7.	German Insurance Association (GDV)	IBIPs with guarantees are constructed to protect consumers against market volatility and ensure a predictable payout amount. The guarantee is provided at specific dates, often at maturity which is transparently disclosed to consumers. Art. 185 (3) lit. f Solvency II provides that an indication of surrender and paid-up values and the extent to which they are guaranteed has to be communicated to the customer before the contract is concluded. The calculation of the surrender value is furthermore highly regulated in Germany. Therefore, it is easy for the consumer to assess exactly how the guarantee mechanism affects the risk exposure of the investment. Following guarantee mechanisms in IBIPs are common in the German market: a (full or partial) guarantee on the invested amount and / or return, guaranteed annuity/guaranteed annuity factor. These guarantees are provided by the insurer, who is subject to solid prudential requirements (Solvency II). In unit-linked products guarantees provided by a third party occur. It should be noted that the landscape of products evolves according to demands and needs of consumers. Therefore, it is of utmost importance that criteria developed by EIOPA are sufficiently high level in order to capture different guarantee features that incorporate a transparent understandable risk structure for consumers.
7.	Association of British Insurers	Guarantees can include mechanisms which safeguard investment growth at specific times, for example after a set number of years as elapsed, and the product is matured. These are designed principally to give customers predictability and protection against potential market volatility. Guarantee mechanisms are highlighted and explained guarantee within the relevant products disclosure documents, such as Key Features Documents.
7.	Association of International Life Offices	Usually any guarantee in IBIPs is provided by a third party bank or fund house depending on the linked asset selected incorporating such a guarantee. In unit-linked contract IBIPs, it is rare to find any other guarantee other than the amount of life cover in the event of death (normally in percentage terms rather than fixed amounts), or an asset related guarantee provided by the managing bank or fund house of the linked fund.
7.	EIOPA IRSG	IBIPs with guarantees are constructed to protect consumers against market volatility and ensure a predictable amount or a steady income. The guarantee is provided at specific dates, often at maturity, which is transparently disclosed to consumers. Article 185(3) of Solvency II provides that an indication of

		surrender and paid-up values and the extent to which they are guaranteed has to be communicated to the customer before the contract is concluded. Therefore, it is easy for the investor to assess accurately how the guarantee mechanism affects the risk exposure of the investment. In any case, if a guarantee at maturity is provided by the insurer, who is subject to solid prudential requirements (Solvency II), the product should be considered as non-complex. If the IBIP transfers all the investment risks to the client (certain types of Unit-Linked products) a guarantee can be provided by a third party (e.g. a credit institution) or through a structured asset. A case-by-case analysis should be made regarding these products, in order to assess if the guarantee mechanism is difficult or not for the customer to understand.
Q8. Are there IBIPs where there is not a guarantee of the principal amount or the amount invested, but the customer can still understand the risks involved? Please justify your answer.		
8.	ANASF	Yes, for example there are unit-linked contracts whereby there is not a guarantee on the amount invested, but the customer can still understand the risks involved inasmuch as the investment (in terms of risks, horizon) is consistent with the customer's profile: anyhow, such a result may be achieved if and only if the assessment of appropriateness is provided.
8.	Insurance Europe	We understand that this criterion is taken from ESMA's guidelines on debt instruments incorporating a structure making it difficult for the client to understand the risk. This is the case when a debt instrument incorporates mechanisms which, in certain circumstances, trigger a partial repayment (or no repayment) of the principal. However, this does not apply to the vast majority of IBIPs with guarantees: The level of guarantees is transparently presented to consumers and is supported by the risk indicator. Therefore, complexity and risks of IBIPs that consumers understand and are willing to take in order to have a greater chance of reward should not be mixed up. Otherwise, any IBIP that involves some risk would fall under this category.
	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	In Unit-linked IBIPs there are rarely any guarantees given by insurers, however the customer can still understand the risks involved by looking at the detail of the selected linked assets available from the underlying fund houses. Other risks are also elaborated in the terms and conditions e.g. currency risks.

		Illustrations / simulations can also be provided, to give an idea of the likely outcome based on varying growth assumptions. If an illustration is given at zero growth (e.g. over, say, 10 years) the impact of the insurance product charging structure can be seen.
8.	German Insurance Association (GDV)	We understand that this criterion is taken from ESMA's guidelines on debt instruments incorporating a structure making it difficult for the client to understand the risk. When a debt instrument incorporates mechanisms which, in certain circumstances, trigger a partial repayment (or no repayment) of the principal, then it is regarded as complex. However, this criterion is irrelevant for the vast majority of IBIPs with guarantees: The level of guarantees is transparently presented to consumers and is supported by the risk indicator. EIOPA should not mix up complexity and risks of IBIPs that the consumer understands and is willing to take in order to have a greater chance of reward, since any IBIP that involves some risk would fall under this category.
8.	Association of British Insurers	We believe an IBIP without a guarantee would qualify as a PRIIP and therefore involve a PRIIPs KID. This would include a summary risk indicator
8.	Association of International Life Offices	In Unit-linked IBIPs there are rarely any guarantees given by insurers, however the customer can still understand the risks involved by looking at the detail of the selected linked assets available from the underlying fund houses. Other risks are also elaborated in the terms and conditions e.g. currency risks. Illustrations / simulations can also be provided, to give an idea of the likely out turn based on varying growth assumptions. If an illustration is given at zero growth (e.g. over say 10 years) the impact of the insurance product charging structure can be seen.
8.	EIOPA IRSG	Yes. The customer can still understand the risks involved in a Unit-Linked product that only provides exposure to equities, fixed income or other plain vanilla assets or to UCITS funds or in a guaranteed product in which the insurer only provides a guarantee at maturity of a percentage (e.g. 85%) of the principal amount or the amount invested or in a guaranteed products that provides a guarantee at maturity but in which in case of surrender the client receives the market value of the assets (e.g. plain vanilla government and corporate bonds) backing the liabilities.
Q9. Where the guarantee is conditional or has time limitations can the customer still understand the risks involved? Please justify your answer.		
9.	ANASF	The general reasoning espoused in our answer to Q1 applies: IBIPs should not be distributed in execution-only contexts. Specifically, also in the case of products with conditional or limited guarantee,

		proper investor understanding and information make it evident the need for the assessment of appropriateness, in order to assess the customer's knowledge and experience with regard to the specific type of product. Financial advisors play a pivotal role in this sense, as they convey added value to paper-based information (e.g., prospects, KIDs) by providing investment advice.
9.	Insurance Europe	Conditional or temporary guarantees do not seem to exist in all European markets. In those markets that do have such a product, the conditions and/or time limitations are very clearly explained to consumers.
9.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	The general reasoning espoused in our answer to Q1 applies; IBIPs should be distributed by qualified intermediaries. Also in the case of products with conditional or limited guarantees, proper investor understanding and information requires the need for an assessment of appropriateness, in order to assess the customer's knowledge and experience with regard to the specific type of product. Financial advisors play a pivotal role in this sense, as they convey added value to paper-based information (e.g., prospects, KIDs) by providing investment advice.
9.	German Insurance Association (GDV)	To our knowledge, IBIPs on the German market do not contain guarantees of this kind. IBIPs with guarantees are constructed to protect consumers against market volatility and ensure a predictable payout amount. The guarantee is provided at specific dates, often at maturity which is transparently disclosed to consumers. There are no threshold conditions or time limitations that result in unexpected losses for consumers.
9.	EIOPA IRSG	Of course the customer can still understand the risk involved where the guarantee is conditional o has time limitations if these characteristics are appropriately explained to the client. There are markets where these kind of products have been marketed for many years without claims.
Q10. ESMA's Guidelines include criteria to identify structured deposits incorporating a structure making it difficult for the client to understand the cost of exiting before term. These criteria are that the exit cost is: a) neither a fixed sum; b) nor a fixed sum for each month (or part thereof) remaining until the end of the agreed term; c) nor a fixed percentage of the amount deposited. Which of these concepts are applicable to surrender fees for IBIPs in terms of whether the customer can understand the risks involved? Please justify your answer.		
10.	ANASF	Theoretically, an "illustrative" fixed sum is easy to understand, but it is not the right criterion because it is a mere example (i.e., it is not the cost that the investor will actually pay). Option c) is thus preferable, because it enables the customer to assess the cost he/she will pay on the basis of the amount invested.
10.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Theoretically, an "illustrative" fixed sum is easy to understand, but it is not the right criterion because it is a mere example (i.e., it is not the cost that the investor will actually pay). Option c) is thus preferable, because it enables the customer to assess the cost he/she will pay on the basis of the amount invested.

10.	German Insurance Association (GDV)	According to Article 185 (3) lit. f Solvency II, the policyholder has to be informed of the surrender values (calculated for different points of time during the term of the contract) and the extent to which they are guaranteed before he submits his contractual acceptance. Therefore, these criteria are not relevant with regard to surrender values of IBIPs.
10.	Association of British Insurers	We are not aware of any evidence that suggests mechanisms such as exit charges and surrender fees on the products in question have led to customers misunderstanding the risks associated with these products. These are long-term savings products and designed in a way to encourage investment over often specified periods of time. Mechanisms where withdrawals before a product matures, or before a specified time period elapse, resulting in an exit charge or surrender fee will clearly be communicated in the relevant products disclosure documentation.
10.	Association of International Life Offices	a) b) and/or c) – In unit-linked IBIPs products early exit may incur insurance product related charges (explained in the product terms and conditions), along with basis of calculation as costs already incurred by the insurer are recovered. These are usually understood by the policyholders. Underlying linked assets selected by the policyholder may also have early exit penalties. Such penalties are usually described in the asset/fund literature available from the fund houses. It's not always clear that a policyholder understands the fund related early exit penalties especially things like market value adjusters (MVAs) used to smooth out impacts on investors remaining in the fund.
10.	EIOPA IRSG	These concepts are not applicable to surrender fees for IBIPs in terms of whether the customer can understand the risks involved and only make sense for structured deposits (in order to differentiate them from traditional deposits). A guaranteed product at maturity that provides exposure to non-complex assets (e.g. listed equities or plain vanilla government or corporate bonds) in case of surrender should be considered as non-complex
Q11. Are you aware of any IBIPs in which a derivative is embedded in the IBIP contract itself rather than in the underlying fund or exposure?		
11.	Insurance Europe	Only in one country, the state aided retirement provision which is a 3rd pillar product provided by insurance companies, is a product where a derivative is embedded due to taxation provisions. There has to be a capital guarantee for the amount invested at the end of contract period.
11.	European Federation of Financial	No, we are not.

	Advisers and Financial Intermediaries (FECIF)	
11.	German Insurance Association (GDV)	The content and intention of the question is unclear to us.
11,	Association of British Insurers	We are not aware of any IBIPs in which a derivative is directly embedded in the IBIP contract itself.
11.	Association of International Life Offices	No
11.	EIOPA IRSG	The IRSG is not aware of the existence of such a product.
Q12. Are there ongoing management charging structures (i.e. excluding surrender fees), which can make it difficult for the customer to understand the risks involved? For example charging structures which are not a fixed amount or percentage, or which have a non-linear relationship with the investment return. Please explain your answer.		
12.	ANASF	Yes, there are. For example, this is the case of performance fees. The general reasoning espoused in our answer to Q1 applies: IBIPs should not be distributed in execution-only contexts and the assessment of appropriateness should be required.
12.	Insurance Europe	In most cases the charges are either fixed or a fixed percentage amount is given. They are disclosed to consumers before the signing of the contract. Consumers get extensive information on all costs and charges. In addition, it should be duly considered that these charges do not influence the risk involved in the product.
12.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	In some underlying fund structures ‘smoothing mechanisms’ and/or ‘performance participation’ by the fund manager can be involved, which are explained in fund literature but can be difficult to understand without assisting diagrams etc. Similarly the use of variable market value adjusters (MVAs) are difficult concepts for clients to understand, e.g. in with profits funds. In some products, charges are based on the higher of: value of the linked units, or premium remaining invested. Where linked assets get into difficulty the charge mechanism flips to being based on premium remaining invested. This erodes residual value of the policy quickly and it is not always understood until it

		happens, and then complaints arise. This risk needs to be clearly explained at outset for such products.
12.	German Insurance Association (GDV)	In Germany, the charges are either fixed or a fixed percentage amount. They are disclosed to consumers before signing of the contract. In addition, a cost indicator (RIY) must be specified, which makes it possible to compare different cost systems.
12.	Association of British Insurers	We are not aware of any management charging structures beyond the examples given on the products in question. The existence of charges and the nature of charging structures are clearly disclosed, for example in the relevant products Key Features Documentation. These may also include illustrations of what charge deductions look like and what a customer may get back after charges after the elapse of certain time periods. This helps the customer understand what the impact of a charging structure is when considering investing over the long-term.
12.	Association of International Life Offices	In some underlying fund structures 'smoothing mechanisms' and/or 'performance participation' by the fund manager can be involved that are explained in fund literature but can be difficult to understand without assisting diagrams etc. Similarly the use of variable market value adjusters (MVAs) are difficult concepts for clients to understand e.g. in with profits funds. In some products, charges are based on the higher of: value of the linked units, or premium remaining invested. Where linked assets get into difficulty the charge mechanism flips to being based on premium remaining invested. This erodes residual value of the policy quickly and is not always understood until it happens, and then complaints arise. This risk needs to be explained at outset for such products
12.	EIOPA IRSG	No
Q13. Can the insurance coverage and its relationship to the investment return make it difficult for the customer to understand the risks involved? For example, policies where the amount of premiums may change over time. Please explain your answer.		
13.	ANASF	Yes, they can. As explained in our previous answers, all these elements account for the exclusion of execution-only sales for IBIPs.
13.	Insurance Europe	Since in case of insurance protection risk has a different meaning (e.g. risk of dying or being not able to work), it should be clarified that Article 30(3)(a)(i) refers to investment risk. The total commitment (i.e. insurance premium and the investment) is fixed and does not vary over time. The actuarial premium varies over time (it has to, since the biometric risk of people varies over time), but the exact amount each year is

		known and fixed. Due to prudent calculation methods, however, the total investment remains the same and the risk surpluses are shared with the consumers. Therefore, if the total commitment remains the same, there is no risk involved which is difficult to understand for consumers. In the example referred to in this question, the premium as such does not alter the risk involved for the customer. The fluctuation in the premium follows the amount of the investment, in order to guarantee that the beneficiaries receive the invested amount when the insured person dies.
13.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Yes, historically regular premium contracts with reviewable premiums/benefits have been a cause of misunderstanding and complaint. Even with improved disclosures, it is difficult to consider that these contracts can be sold without the benefit of advice.
13.	German Insurance Association (GDV)	Since in case of insurance protection the term “risk” has a different meaning (e.g. risk of dying or being not able to work), it should be clarified that Article 30(3)(a)(i) refers to investment risk. In Germany, the total commitment (i.e. insurance premium and the investment) is fixed and normally does not vary over time (there are few products with a fixed increase of premiums). Actuarial premium varies over time (it has to, since the biometric risk of people varies over time), but the exact amount each year is known and fixed. Due to prudent calculation methods, however, the total investment remains the same and the risk surpluses are shared with the consumers. Therefore, if the total commitment remains the same, there is no risk involved which could be difficult for consumers to understand.
13.	Association of British Insurers	We are not aware of any evidence that suggests that the insurance coverage and its relationship to the investment return lead to customer confusion or detriment.
13.	Association of International Life Offices	Yes, historically regular premium contracts with reviewable premiums/benefits have been cause of misunderstanding and complaint. Even with improved disclosures it is difficult to consider these can be sold without the benefit of advice.
13.	EIOPA IRSG	No. When Article 30(7) refers to products that incorporate a structure which makes it difficult for the customer to understand the risks involved it is only referring to investment risk but not to biometric risk.
Q14. Can the relationship between the IBIP and tax regulations mean that the IBIP incorporates a structure which makes it difficult for the customer to		

understand the risks involved? Please explain your answer.		
14.	ANASF	Yes, it can, especially if tax regulations are subject to frequent changes which make it difficult, particularly in the case of long term investments, to monitor the impact of taxation on investment returns. This is the case of Italy, where tax rates for financial income have been reformed and increased twice (in 2011 and 2014) in a short time span.
14.	Insurance Europe	This criterion is not relevant. Firstly, only gains are taxed, thus, no risks are involved. Secondly, in case of losses there are no additional taxes that worsen the losses.
14.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Yes, it can, especially if tax regulations are subject to frequent changes which make it difficult, particularly in the case of long term investments, to monitor the impact of taxation on investment returns. This is the case in Italy, where tax rates for financial income have been reformed and increased twice (2011 and 2014) within a short time span.
14.	German Insurance Association (GDV)	This criterion is not relevant for German products.
14.	Association of British Insurers	In the UK market, customers will be made aware in the relevant products disclosure documents, such as Key Features Documents, that there may be tax implications associated with the product. Some IBIPs may also be tax exempt. A key consideration is where a customer is a higher rate tax payer, or could be moved into the higher rate of tax, upon withdrawing their investment. This risk would be explained in relevant disclosures and is a common place consideration for consumers in the UK market when dealing with a range of investment and savings vehicles.
14.	Association of International Life Offices	No. Adopting this reasoning would mean that no form of saving for income or wealth could ever be considered easy for the customer to understand. Governments can and have amended taxes and tax savings and have introduced new tax burdens. Many examples exist in the UK such as abolition of life assurance premiums relief; chargeable events legislation and changes to corporation taxes. Elsewhere imposition of insurance premium taxes and taxes on life policy proceeds. Insurers provide information on tax treatment of their products for both intermediaries and clients specifically including the fact that taxation may change. It would also be iniquitous for a policy offering link to a UCIT being considered difficult to understand whilst direct investment into the UCIT would not!

14.	BIPAR	Sometimes tax incentives may have to be taken into consideration (for example tax penalties if the consumer takes too much too soon). Since there may be inconsistency in the way taxes are applied to these products - a hazard that cannot be easily controlled - there is a risk for the consumer that is hard to assess.
14.	EIOPA IRSG	No. The tax regulation applicable to the IBIP should never be considered as an element to classify a product as a complex product.
Q15. Can the assignment of the beneficiaries of an IBIP lead to complexities which the customer may not understand? Please explain your answer.		
15.	ANASF	Pursuant to Article 1920 of the Italian Civil Code, the beneficiaries of life insurance policies may be designated by contract or will, or by means of a subsequent written statement (in this sense, relevant legislation seems to be clear). At any rate, the customer should always carefully read and understand relevant provisions in the contract.
15.	Insurance Europe	The existence of beneficiary clauses does not make a product difficult to understand or more complex. Beneficiary clauses do not influence the performance or return of the product. Since IBIPs often have a term of more than 30 years, it is not uncommon for the customer to change the beneficiary for payments. The ramifications of such a change are not difficult to understand and in the interest of customers as it enables them to keep control over the beneficiary of their investment.
15.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	In principle we would suggest the answer has to be “No”. We see no correlation between the risks envisaged in Article 30.3(a)(i) and “beneficiaries”. The former is concerned with performance and investment risks and the latter with successions. At any rate, the customer should always carefully read and understand relevant provisions in the contract.
15.	German Insurance Association (GDV)	Since IBIPs often have a term of more than 30 years, it is not uncommon for the consumer to change the beneficiary for payments (e.g. after divorce). The ramifications of such a change are not difficult to understand. In fact under German insurance contract law, the possibility of the consumer to change the beneficiary of his life insurance is the legal rule from which the contract can only deviate by explicit determination (§ 159 of the Insurance Contract Act (VVG)). In our view, the product would rather qualify as complex if the consumer were not allowed to change the beneficiary.
15.	Association of British Insurers	We are not aware of any evidence that suggests that assignment of beneficiaries has led to customer confusion or detriment. Assigning beneficiary rights is commonplace on a range of UK financial products,

		from pensions to life insurance.
15.	Association of International Life Offices	We find that this expression is meaningless at least so far as Anglo Saxon products are concerned, so we would require elucidation as to precisely what is envisaged to enable a concise answer. However, in principle we would suggest the answer has to be "No". We see no correlation between the risks envisaged in Article 30.3(a)(i) and "beneficiaries". The former is concerned with performance and investment risks and the latter with successions.
15.	EIOPA IRSG	No. The assignment of the beneficiaries of an IBIP should never be considered as an element to classify a product as a complex product.
Q16. Can the relationship between the IBIP and national insurance compensation schemes mean that the IBIP incorporates a structure which makes it difficult for the customer to understand the risks involved? Please explain your answer.		
	Insurance Europe	Whether or not customers of an insurance product are also protected by a national insurance compensation scheme does not make the product itself more difficult to understand, nor does it increase its risk exposure. It should be noted that simple bank deposits are also covered by these schemes. An insurance compensation scheme is an additional protection for the insured.
16.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	Not all Member States have a compensation scheme and those that exist take different forms. Where they do exist insurers explain that they apply solely to the insolvency of the insurer. In any case, in the absence of EU wide schemes it would not seem to be reasonable to apply this additional factor to products from countries having a scheme while those from other countries would not, all other facts being equal, be considered difficult to understand. The existence of such schemes can lead to a false sense of security and may lead to imprudent investment choices. Schemes need to be properly explained as recourse of last resort. Not all schemes can and will pay out and they can also change.
16.	German Insurance Association (GDV)	No, an insurance compensation scheme is an additional protection for the insured and it minimises the risk for the consumer. The relationship between IBIP and national insurance compensation scheme does not make it difficult for the customer to understand the risks involved.
16.	Association of British Insurers	We are not aware of any evidence that suggests that the relationship between the IBIP and national insurance compensation schemes has led to customer confusion or detriment. In the UK, insurance and investment firms (and all regulated financial services product providers) are covered by the Financial Services Compensation Scheme (FSCS). Where a regulated firm defaults, customers may claim compensation from the scheme for lost investments. All ABI members are regulated entities, and the products they sell will be covered by the FSCS.

16.	Association of International Life Offices	Not all Member States have a compensation scheme and those that exist take different forms. Where they do exist insurers explain that they apply solely to the insolvency of the insurer. In any case, in the absence of EU wide schemes it would not seem to be reasonable to apply this additional factor to products from countries having a scheme while those from other countries would not, all other facts being equal, be considered difficult to understand. The existence of such schemes can lead to a false sense of security and may lead to imprudent investment choices. Schemes need to be properly explained as a recourse of last resort. Not all schemes can and will pay out. For execution only sales where schemes exist they should be mentioned but with cautious caveats. Schemes can also change.
16.	EIOPA IRSG	No. The relationship between the IBIP and national insurance compensation schemes should never be considered as an element to classify a product as a complex product.
Q17. Are there other IBIP contractual or product structures that can make it difficult for the customer to understand the risks involved? Please explain your answer.		
17.	ANASF	All types of products exposed to market fluctuations should not be sold via execution-only transactions for their innate variability which makes it necessary to provide the investor at least with the assessment of appropriateness, so as to evaluates her/his needs and expectations.
17.	Insurance Europe	No, there are not.
17.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	All IBIP products exposed to market fluctuations should be sold by qualified intermediaries which makes it necessary to at the very least provide the investor with the assessment of appropriateness, so as to evaluate her/his needs and expectations.
17.	Association of British Insurers	We are not aware of any evidence of other IBIP contractual or product structures that has led to customer confusion or detriment.
17.	Association of International Life Offices	No
17.	BIPAR	A distinction should be made between products where the capital (or paid premiums) are at risk or where “only” opportunity risk is applicable. This also illustrates why we believe that for IBIPs, the intervention of an intermediary and the demands

		and needs test can be an important added value.
17.	EIOPA IRSG	No
Q18. Do you have any other comments on the proposed Guidelines		
18.	Deutsche Aktuarvereinigung (German Association of Actuaries)	The German Association of Actuaries (Deutsche Aktuarvereinigung, DAV) highly appreciates the opportunity to get involved in this process via the questionnaire at this early stage. However, after evaluating the respective 18 questions, DAV could not develop a sufficient level of comfort which enables it to answer to the questions in detail. DAV is under the impression that the listed questions do not reflect the German product landscape in an appropriate manner as it does believe that the rather "MiFiD-style criteria" do not identify the "real" (from a consumer perspective) complex products - thus it has decided to develop an independent "criteria filter" which shall be able to identify "complex products". The process of development has started already. DAV will be able to forward the "criteria filter" to the respective bodies in due course.
18.	Insurance Europe	Insurance Europe welcomes the opportunity to respond to this consultation. Insurance Europe wishes to note, despite this, that the short consultation period made it difficult to provide in-depth and comprehensive feedback. Insurance Europe is looking forward further opportunities to discuss EIOPA's Guidelines on this topic.
18.	European Federation of Financial Advisers and Financial Intermediaries (FECIF)	We are living in disruptive times. Firstly, digitalisation means that the younger generation in particular is increasingly seeking to make their own decisions using remote means. Secondly, regulatory activity is leading to situations where in some countries advice is only available on a fee-paying basis, which is often beyond the means of the mass market. Additionally, of course, there are those clients who are experienced and do not need or wish to take advice. It is critical that EIOPA and the NCAs take account of these facts and do not over react because this would have the consequence of further restricting access to products. In particular, note should be taken of the detailed literature provided for the benefit of intended policyholders of IBIPs, including documents explaining the product and taxation and in addition a comprehensive PRIIPs KID. Confirmation that these have been read to enable understanding should be provided. The focus should be on clear disclosure to enable informed choices.
18.	German Insurance Association (GDV)	The German Insurance Association welcomes the opportunity to respond to this consultation. However, we would like to point out that the short consultation period made it difficult to provide in-depth and comprehensive feedback. We are looking forward to further opportunities to discuss EIOPA's Guidelines

		on this topic.
18.	Allianz SE	We recommend EIOPA to develop meaningful criteria for products that fall in the scope of Article 30(3)(a)(ii). Generally complexity should be defined from the customer's perspective and not according to the product design. For example, several (life) insurance products that include guarantee elements which add protection by clearly reducing risk exposure for the customer and making the product more predictable. We further reiterate that the IDD is a minimum harmonization Directive. In other words, Member States play a key role in Level 1, as they transpose the Directive into national law. They must attain the threshold required but may also impose further measures if they deem it necessary to ensure the protection of consumers in their market. This is aimed to recognize the diversity of insurance distribution markets across the EU arising from consumers' different demands and needs. The Directive accommodates that diversity by means, inter alia, of the proportionality principle. In the spirit of minimum harmonization, the diversity of supervisory practices should be considered and duly taken into account in Level 2 and in particular Level 3 regulation. Retention of discretion at local level is advised in order to ensure that principle. We also note that IBIPs are succinctly defined in Article 2(17) IDD from the perspective of the requirements in relation to the distribution carried out in connection to their sale. No harmonized regulation is currently available on IBIPs. Any product regulation should not consider one single aspect without having a comprehensive and balanced approach in which it forms part. We believe that the proposed approach to define certain (features of) products as being complex may fail to offer a clear basis for assessment. As a result, the legal certainty as to the precise scope of "non-complex" IBIPs could be jeopardized.
18.	Association of British Insurers	We would urge EIOPA to take on board consumer trends around use of digital channels and take a proportionate approach, avoiding the unintended consequence of excluding consumers from these types of long-term savings products.
18.	Association of International Life Offices	We are living in disruptive times – digitisation means that the younger generations in particular are more and more seeking to make their own decisions using remote means; Regulatory activity has and is leading to situations where in some countries advice is only available on a fee paying basis which is beyond the means of the mass consumers – as borne out by the expanding advice gap in the UK. Additionally, of course there are those clients who are clearly experienced and do not need or wish to take advice. It is

		critical that EIOPA and NCAs take account of these facts and so do not continue to over react with the unintended consequence of further restricting access to products. In particular note should be taken of the detailed literature provided for the benefit of intended policyholders of IBIPs including documents explaining the product and taxation and in addition shortly, a PRIIPs KID. Confirmation that these have been read to enable understanding should be provided. The focus should be on clear disclosure to enable informed choices.