

<b>Comments Template on            Consultation Paper on the proposal for Guidelines under the Insurance            Distribution Directive on insurance-based investment products that            incorporate a structure which makes it difficult for the customer to            understand the risks involved</b>		<b>Deadline            28 April 2017            18:00 CET</b>
Name of Company:	<b>Bund der Versicherten (BdV – German Association of Insured)</b>	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.  Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> <li>⇒ <u>Do not change the numbering</u> in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool</li> <li>⇒ Leave the last column <u>empty</u>.</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.</li> </ul> <p><b>Please send the completed template, in Word Format, to <a href="mailto:CP-17-001@eiopa.europa.eu">CP-17-001@eiopa.europa.eu</a>.</b></p> <p><b>Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the questions refers to the Consultation Paper on the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved</p>		
Reference	Comment	
General Comments	We welcome that EIOPA has now published draft Guidelines on complex insurance-based investment products, as ESMA published Guidelines on complex debt	

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instruments and structured deposits already in February 2016. These ESMA Guidelines provide for precise criteria and examples and therefore constitute a crucial additional reference for the requirements outlined in the level-2 Delegated Regulation supplementing Directive 2014/65/EU of 25.4.2016 (article 57).

However we miss that same precision at least partly when comparing EIOPA's draft guidelines with her Technical Advice on non-complex IBIPs (as part of TA on possible Delegated Acts concerning IDD, 1 February 2017, p. 77). Some crucial provisions of the Technical Advice are only repeated and not specified more deeply by the proposed guidelines, a fact which - from our perspective - reveals a severe lack with regard to EIOPA's mandate deriving from IDD article 30 (7) and (8) (cf. our comment on Question 6).

Again we emphasize our comments already submitted in January and in October 2016 to EIOPA that, from our perspective, there are **no** non-complex insurance based investment products. Any kind of life or annuity insurances are "packaged" products, because they include an investment part of the premium (either in an unit-linked product or in a classical with-profit product) additionally to the risk coverage. The maturity of this investment part is usually not only linked to a lump sum but to ongoing long-term pay-outs as well.

Additionally the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking (like mortality tables and participation in benefits - changeable even during contract duration), the effects of which are difficult for the customer to understand. Even if the complexity of the product itself cannot be reduced, efforts must be made in order to enhance the transparency of the product.

Transparency is essential and necessary for the customer in order to enable a fully informed investment decision. More transparency can only be achieved by the mandatory disclosures of actual risk-reward relations, of realistic return probabilities and of comprehensive cost structures as foreseen by the forthcoming PRIIPs Key

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	Information Documents (cf. our comment on Q18 for EIOPA Online survey in preparation of the Call for Advice from the European Commission on the delegated acts under the Insurance Distribution Directive, January 2016; our comment on Q20 for EIOPA Consultation Paper on Technical Advice on possible Delegated Acts concerning the Insurance Distribution Directive, October 2016).	
Question 1	<p>We fully agree upon EIOPA's assessment in the baseline scenario that without these guidelines on complex/non-complex IBIPs there definitely is "the risk of an inadequate level of consumer protection and in turn risks resulting in cases of mis-selling of insurance products where consumers are sold products, the risks of which they do not properly understand" (CP, p. 11). That is why these guidelines have to be as consistent and precise as those published by ESMA.</p> <p>For consumers the development of guidelines must have the benefit of promoting a consistently high level of protection, irrespective of the type of insurance-based investment product. Consumers must be enabled to make informed decisions, as IDD article 20 (1) stipulates. That is why we strongly reject the argument against a very restrictive approach assuming that "this option would limit the customer's choice and freedom to buy insurance-based investment products as responsible adults without the need to provide information on their knowledge and investment experience" (CP, p. 14).</p> <p>This argument is very dangerous, because it may be mis-used against any kind of consumer protection provision. Even "responsible adults" who - on a theoretical level - have unlimited access to all necessary product information will surely make false decisions against their own "best" interest due to mis-leading marketing strategies and poor advice. At many occasions in her consultation papers EIOPA has outlined these negative impacts by using the results of behavioral financial economics. That is why we advocate an approach as restrictive as possible.</p>	
Question 2	We are badly astonished about this question. During EIOPA's public hearing on IDD Delegated Acts on 23 September 2016 in Frankfurt to which we assisted, it was convincingly pointed out that there is clear separation between the test of the	

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	<p>demands and needs on the one hand and the suitability and appropriateness assessment on the other hand.</p> <p>The requirement in Article 20 (1) of the IDD for the distributor to specify the demands and needs of the customer aims at the basic analysis of insurance risk coverage of the customer (health, disability, liability, home as well as death, longevity, etc.). It has nothing to do with any kind of investment options additionally included only in IBIPs which shall be analyzed by the suitability and appropriateness assessment. That is why the possibility to sell an IBIP on an execution-only basis does not have any impact on the obligation for the demands and needs test by the distributors.</p> <p>But if for a large number of IBIPs the additional suitability and appropriateness assessment will be omitted, because they may be sold via execution-only, then there will be no change at all related to the current (mis-selling) distribution practices of life insurances. Consequently the approach to non-complex IBIPs must be as restrictive as possible in order to strongly reduce the not only potentially, but definitely higher risks of the product not being suitable or appropriate for the customer (cf. our comment on Q1 above and our comments on Q15 and Q16 for EIOPA's CP on IDD possible Delegated Acts, October 2016).</p>	
<p>Question 3</p>	<p>We agree upon EIOPA's opinion that the complexity to IBIPs stem from two elements: "the nature of the exposure to market fluctuations" and "the structure or features of the contract with the customer... governing the charges" (cf. CP, p. 20, no. 2.9). That is why, with regard to the scope of Article 30(3)(a)(i), we emphasize again our comment on Q20 for EIOPA's CP on IDD possible Delegated Acts, October 2016:</p> <p>Only related to traditional capital life-insurance contracts, where the customer cannot choose the investment strategy and therefore the insurers guarantees an interest rate on the investment part of the premium, the individual knowledge and experience of the customer related to investment strategies is not directly relevant. Instead of this, the comprehensive disclosure of costs which strongly reduce the investment part of the premium is all the more necessary.</p>	

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	<p>Again we stress that from our perspective there are no "other non-complex insurance based investment products" following to Article 30(3)(a)(ii). The "execution-only"-presumption does not fit for any unit- or index linked IBIP currently offered – at least - on the German market (including those from Anglo-Saxon manufacturers), because customers have always multiple choices with regard to their investment options while and after concluding the contract.</p>	
<p>Question 4</p>	<p>Following to the examples outlined in CP, p. 21, mainly no. 2.13 and 2.14, it will nearly be impossible for any kind of IBIP <b>NOT</b> to be considered as non-complex. We definitely reject this extremely broad definition of non-complexity which may exclude only "hybrid" IBIPs where several investment exposures are simultaneously linked in one insurance contract.</p> <p>Maybe if an IBIP includes only one underlying investment product (for example only one UCITs fund), it might be considered as non-complex. But is this assumption realistic under the current market conditions? Usually life insurers make strong advertisement explicitly with reference to the possibilities of choice among several investment funds for the policyholders.</p> <p>Additionally even in the case of non-hybrid IBIPs the customers still do not know, which is the part of their premiums which will be invested and consequently exposed to the performance of the underlying investment product (with or without any guarantee mechanisms). Detrimental impact for customers results from any difference between calculated and actual costs, because the investment part of the premium (and consequently possible rewards) will inevitably be reduced. In Germany the regional court of Cologne (Oberlandesgericht Köln) recently forbade any additional costs not being disclosed in the insurance contract before. (cf. our comment on Q14 for EIOPA's CP on IDD possible Delegated Acts, October 2016).</p> <p>From our experiences guarantee mechanisms apply only for maturity values but not for surrender values. That is why we esteem the assumptions made under no. 2.14 are at least partly wrong (cf. our comment on Q3 above).</p>	

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In contrast to Guideline 1, Guideline 2 reflects the real dimension of possible consumer detriment by IBIPs: complexity of IBIPs is less linked to the underlying investment products but to the lack of transparency of various “layers” of costs. The part of the premiums paid by the policyholder which will actually be invested is strongly reduced by entry and ongoing costs of the insurers and of the investment companies as well. Additionally there are exit penalties.

That is the reason why the provision in paragraph 2(c) of this Guideline (CP, p. 22) is so important: all these different charges have definitely the effect “that, even though there are, technically, options to surrender the insurance-based investment product, doing so may cause unreasonable detriment to the customer, because the charges are disproportionate to the cost to the insurance undertaking of the surrender.” We clearly advocate that this Guideline must not be “softened”.

With regard to provision in paragraph 2(a) of this Guideline (CP, p. 22) concerning the “nature, risk or pay-out profile” which might be altered by the insurer, we stress that this provision should not only include pay-out options like lump sum, annuities, programmed withdrawal or income drawdown. It must be taken into consideration that the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking (like mortality tables and participation in benefits - changeable even during contract duration), the effects of which are difficult for the customer to understand.

Related to provision in paragraph 3(d) of this Guideline (CP, p. 22), we underline that the modification or personalization of contractual provisions with regard to the receiving benefits at the end of the contractual relationship (the “beneficiary clause”) is – at least following to the German insurance contract law – a quite usual contract option (“widerrufliches / unwiderrufliches Bezugsrecht”). So this provision should be specified in order not to prohibit this usual option, otherwise it should be excluded (cf. our comment on Q19 for EIOPA’s CP on IDD possible Delegated Acts, October 2016).

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We partly agree and partly disagree upon the interaction between the requirements in EIOPA's technical advice on 'other non-complex insurance based investments' and the requirements proposed in these Guidelines. In detail we draw the following conclusions (TA, p. 77):

**Paragraph a)** of the TA is clarified in detail by sub-paragraph 1.16 of Guideline 2, which we fully agree upon.

On the contrary the wording of sub-paragraph 1.15 (a to c) of Guideline 2 essentially only repeats paragraphs b), c) and d) of TA without any further clarification, a fact which we have already strongly criticized in our General Comment above. The three paragraphs have to be weighted very differently:

- With regard to **paragraph b)** of TA concerning the "nature, risk or pay-out profile" which might be altered by the insurer, we again stress that this provision should not only include pay-out options like lump sum, annuities, programmed withdrawal or income drawdown. It must be taken into consideration that the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking (like mortality tables and participation in benefits - changeable even during contract duration), the effects of which are difficult for the customer to understand.
- **Paragraph c)** of TA has to clarify, what does it mean that there are not options to surrender or otherwise realise the insurance-based investment product at a value that is "available to the customer". We suppose that this wording implies „prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer" (cf. Article 57 (b) of COM Delegated Regulation of 25.4.2016) like any other securities. We stress that this assessment is not valid for life insurances at all, because the surrender values of any contract are only calculated individually by the insurer and only on request of the policyholder. In consequence following to this paragraph

Question 6

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alone there can not be any non-complex IBIPs currently available on the market.

- **Paragraph d)** of TA misses any necessary clarifications by the proposed Guidelines. We underline again that usually life or annuity insurance contracts include "hidden" acquisition costs by commissions and additional exit fees ("Stornogebühren") which strongly reduce the surrender value. In case of early withdrawal the charges make an investment illiquid even though technically it may be possible to redeem. Additionally it is not clarified at all, what is "unreasonable detriment" to the customer? Which are the thresholds? That is why this feature must urgently be specified (cf. our comment on Q19, October 2016). The insurers will always try to proof that their costs are not "disproportionate" in order to circumvent this feature.

**Paragraph e)** of TA, too, is essentially only repeated in sub-paragraph 1.14 of Guideline 2 without any further clarifications. As already pointed out in our comment on Q5 above, complexity of IBIPs is less linked to the underlying investment products but to the lack of transparency of various "layers" of costs. The part of the premiums paid by the policyholder which will actually be invested is strongly reduced by entry and ongoing costs of the insurers and of the investment companies as well. Additionally there are exit penalties.

This non-transparent structure of costs and of the actually invested part of the premium is incorporated in any IBID and therefore "makes it difficult for the customer to understand the risks involved." The most important risk of consumer detriment consist in cancelling the contract before reaching maturity: no capital guarantees are valid, and additional high penalty fees heavily reduce the accumulated savings of the customer being paid out.

Question 7

BdV does not distribute any IBIPs. As already pointed in our comment on Q3 above, only related to traditional capital life-insurance contracts, where the customer cannot choose the investment strategy and therefore the insurers guarantees an interest rate

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	<p>on the investment part of the premium, the individual knowledge and experience of the customer related to investment strategies is not directly relevant. Instead of this, the comprehensive disclosure of costs which strongly reduce the investment part of the premium is all the more necessary. Additionally it must be taken into account that the maturity and surrender values and pay out upon death are dependent on variables set by the insurance undertaking (like mortality tables and participation in benefits - changeable even during contract duration), the effects of which are difficult for the customer to understand.</p>	
Question 8	<p>The decision trees outlined in the appendix of CP (pages 26 to 31) are well informed and detailed – in theory. That is why we urgently have to ask how EIOPA will effectively supervise these well-structured distribution practices knowing that usually „time is money“ especially for distributors and that commission-driven (mis-selling) practices are not prohibited - at least in principle - by IDD?</p> <p>This question has all the more to be asked reflecting the fact that EIOPA’s list of illustrative examples (CP, p. 32-34) includes many more non-complex than complex IBIPs. As already pointed out in our comment on Q2 above, the negative consequences will be inevitable: if for a large number of IBIPs the additional suitability and appropriateness assessment will be omitted, because they may be sold via execution-only, then there will be no change at all related to the current (mis-selling) distribution practices of life insurances.</p>	
Question 9	<p>Our general conclusions on these proposed Guidelines are based on three main criticisms:</p> <ul style="list-style-type: none"> <li>• The proposed features for non-complex IBIPs are - by far - not restrictive enough. The consequence is obvious: it will nearly be impossible for any kind of IBIP <b>NOT</b> to be considered as non-complex. We definitely reject this extremely broad definition of non-complexity (cf. our comment on Q4 above).</li> <li>• The Guidelines do not sufficiently provide at all for unequivocal details related to four of five provisions of the Technical Advice (cf. our comments on Q6). We stress again that point c) of the TA alone – taken seriously – would broadly and definitely reduce the quantity of possible non-complex IBIPs.</li> </ul>	

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	<ul style="list-style-type: none"> <li>• Baring in mind these criticisms – from our perspective - the negative consequences will be inevitable: if for a large number of IBIPs the additional suitability and appropriateness assessment will be omitted, because they may be sold via execution-only, then there will be no change at all related to the current (mis-selling) distribution practices of life insurances.</li> </ul> <p>This “circumvention” by the life insurers would make ineffectively one of the core objectives of the directives and regulations of PRIIPs, MIFID2 and IDD: there still would be no level-playing field with regard to the distribution procedures of packaged retail investor products and insurance-based investment products. That is why we additionally will have to examine if these proposed Guidelines – remaining unchanged – are in breach of the European Law.</p>	