

**Comments Template on
Consultation Paper on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings**

**Deadline
23 January 2015
23:59 CET**

Name of Company: IRSG	
Disclosure of comments:	Please indicate if your comments should be treated as confidential: <input type="checkbox"/> Public <input type="checkbox"/>
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Please insert the name of your NCA in the box next to "Name of Company"; ⇒ <u>Do not change the page numbering</u> in the column "reference" ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row, giving reference to the paragraph number where given. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-14-039@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The page numbering refers to the Consultation Paper on the proposal for Guidelines on product oversight & governance arrangements by insurance undertakings.</p>	
Reference	Comment
General Comment	<p>The Insurance and Reinsurance Stakeholder Group (IRSG) welcomes the opportunity provided by EIOPA to comment on EIOPA consultation paper on the proposal for guidelines on product oversight and governance arrangements by insurance undertakings.</p> <p>EIOPA is developing these guidelines according to Article 16 of the Regulation establishing a European Supervisory Authority and taking into account Recital 16 and articles 40 and 41 of the Solvency II Directive.</p>

**Comments Template on
Consultation Paper on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings**

**Deadline
23 January 2015
23:59 CET**

Following these statements, EIOPA is considering that it is its responsibility to develop these guidelines addressed to the Member States competent authorities to ensure that adequate product oversight and governance arrangements be put in place in financial institutions.

The IRSG recognizes the importance of product oversight and governance (POG) arrangements. POG requirements will enhance consumer protection by strengthening the controls before a product is launched at the producer level and then minimize the risk of products and services being proposed to the public that could lead to consumer detriment. However, EIOPA should be careful to avoid laying down too prescriptive requirements on POG without paying due attention to the resulting additional costs that could ultimately get passed on to consumers.

Insurance products are mostly sold by financial institutions other than insurance companies themselves, therefore the design of the product might not be the most important cause of mis-selling. Hence it would be very important to include intermediaries in the scope of these guidelines. In any case it should be made clear that the ultimate responsibility to ensure proper advice and needs-based selling rests with the distributor. The product oversight and governance by insurance undertakings is able to support these efforts by the distributors but can neither substitute for them nor should it be made fully responsible for any distributor (mis-)conduct. Such conduct is beyond the scope of POG rules but is adequately dealt with in IMD2/IDD.

Therefore the IRSG welcomes EIOPA's initiative but regrets that it is limited to the undertakings, contrary to the joint position of the ESAs on Manufacturers' Product Oversight and Governance Processes which also covers the distributors. However, systematically, those aspects need to be dealt with in the context of IMD2/IDD.

The IRSG is not convinced, however, that EIOPA Guidelines are the right instruments at the right time to achieve these goals:

- the EIOPA Regulation and Solvency II do not provide a sufficiently clear mandate for the specific far-reaching proposals;
- the form of EIOPA Guidelines will not ensure pan-European rules, since any

**Comments Template on
Consultation Paper on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings**

**Deadline
23 January 2015
23:59 CET**

	<p>actions taken by national competent authorities is by necessity limited by applicable local rules, which in consequence may lead to complex, incomplete and possibly ultimately misguided implementation attempts.</p> <p>In any case, the IRSG also wants to warn against a too rapid adoption of a text that could be partially undermined by European legislation: in the last version of IMD2 transmitted by the Council, a new article 21a has been introduced that may provide provisions relative to POG requirements for insurance undertakings and intermediaries and empowered the Commission to adopt delegated acts. EIOPA guidelines should not pre-empt the outcome of the decisions currently being taken by the European co-legislators as apart of the trialogue negotiations on IMD2.</p> <p>EBA states in its approach that product oversight and governance arrangements should be proportionate to the level of complexity of the product as well as the nature, scale and complexity of the relevant business of the manufacturer. For example, EIOPA should acknowledge the difference between simple non-life products (eg motor, home) or certain life insurance products (eg risk life insurance) on the other hand and insurance-based investment products on the other hand when proposing POG requirements.</p>	
Guideline 1	We generally agree with this definition of the role of POG arrangements but we would prefer to say that they should be designed to avoid potential consumer detriment and not only to minimise it. In any case, it needs to be made clear that the use of undefined legal terms (such as "proper management of conflicts of interests" and "interests of the customers") should not be construed as general entry points for further rule making.	
Guideline 2	Agreed	
Guideline 3	Agreed	
Guideline 4	We wonder whether it is the place to deal with conflict of interests while this matter is already addressed by other general rules (e.g. in IMD1.5 and IMD2/IDD) addressed in another consultation. This does not seem necessary, especially given that IMD1.5	

**Comments Template on
Consultation Paper on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings**

**Deadline
23 January 2015
23:59 CET**

(general conflict of interest rules) have already been implemented in the IMD via Art. 92 of MiFID II.

Guideline 5

The focus of this guideline is on identifying the target market for a product. It is difficult therefore to understand the requirement to additionally identify the groups of consumers for which the product is likely not to meet their interests, objectives and characteristics, particularly as the EBA approach allows distributors to sell products outside of the target market defined by the manufacturer provided they are able to justify doing so.

Generally agreed, but it should be made clear that

- There must be common standards on criteria for target group definition, which are non-discriminatory (so age, sex, income, nationality/place of residence etc. might usually not be criteria in line with Human rights and diversity requirements).
- Target group definition in insurance will have an impact on actuarial assumption, the possibility of risk selection for the insurer and the ability of people outside typical target groups to acquire insurance protection (e.g. artists or people with infrequent income).
- it is acceptable that many insurance products are adequately targeted at very broad market segments / target markets
- the ultimate responsibility for needs-based advice and sales has to rest with the distributor at the point-of-sale
- the use of claims ratio for customer benefit testing in most cases does not adequately reflect the full benefit received by the insured: It does not take account of the value to the customer beyond the price (so-called "consumer surplus") and any beneficial service components accounted for outside the claims ratio. Therefore more and broader tests for consumer benefits should be permissible.
- insurance specificities should be taken into account, e.g.
 - not every minor overlap in insurance cover with pre-existing covers would constitute a mis-selling, since often standard covers include some components that may already be included in another product or package

**Comments Template on
Consultation Paper on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings**

**Deadline
23 January 2015
23:59 CET**

	<p>(see also comments to Guideline 7 / section 1.30.3)</p> <ul style="list-style-type: none"> o not every "gap" in cover should be construed as mis-selling, since some expensive carve-outs often make the insurance cover accessible or at least affordable o a too high granularity of the target market especially in combination with a limit on the permissible claims ratio may lead to a breakdown of the insurance principle. 	
Guideline 6	Agreed but these persons need not to comply with the same level of fit and proper requirements that are imposed to the persons running the company as could be suggested by the explanatory text.	
Guideline 7	Agreed. There is concern, however, that a too long product testing period would have a detrimental effect on competition in the marketplace, hinder innovation and work against the interests of consumers.	
Guideline 8	Agreed	
Guideline 9	Agreed but it should be ensured, that a redress mechanism is in place consistent with the ADR directive of 21 May 2013.	
Guideline 10	Agreed but this guideline should be careful not to prevent consumers from having the freedom to choose the distribution channel they deem most appropriate for their needs, which is particularly important given the wide variety of distribution models across Europe. Also the manufacturer typically has neither the information rights nor any policing power to enforce such obligation. This is particularly relevant for independent distributors.	
Guideline 11	Agreed	

**Comments Template on
Consultation Paper on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings**

**Deadline
23 January 2015
23:59 CET**

Guideline 12	Agreed	
--------------	--------	--