



EIOPA-CP-17/001
2 February 2017

**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**

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Responding to this paper

EIOPA welcomes comments on the Consultation Paper on the proposal for Guidelines on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved.

Comments are most helpful if they:

- respond to the question stated, where applicable;
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

Please send your comments to EIOPA in the provided Template for Comments, by email to CP-17-001@eiopa.europa.eu by 18:00 CET on 28 April 2017.

Contributions not provided in the template for comments, or sent to a different email address, or after the deadline will not be processed.

Publication of responses

Contributions received will be published on EIOPA's public website unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents and EIOPA's rules on public access to documents¹.

Contributions will be made available at the end of the public consultation period.

Data protection

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. They will only be used to request clarifications if necessary on the information supplied.

EIOPA, as a European Authority, will process any personal data in line with Regulation (EC) No 45/2001 on the protection of the individuals with regards to the processing of personal data by the Community institutions and bodies and on the free movement of such data. More information on data protection can be found at <https://eiopa.europa.eu/> under the heading 'Legal notice'.

¹ [Public Access to Documents](#)

Consultation Paper Overview & Next Steps

EIOPA carries out consultations in the case of Guidelines and Recommendations in accordance with Article 16(2) of the EIOPA Regulation.

This Consultation Paper presents the draft Guidelines, including explanatory text.

The analysis of the expected impact from the proposed policy is covered under Annex I (Impact Assessment).

Next steps

EIOPA will consider the feedback received and expects to publish a Final Report on the consultation and to submit the Guidelines for adoption by its Board of Supervisors.

1. Guidelines

Introduction

- 1.1. According to Article 16 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (hereinafter "EIOPA Regulation")² and to Article 30(7) and Article 30(8) of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (hereinafter "the IDD")³, EIOPA is issuing Guidelines both on the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risk involved as referred to in Article 30(3)(a)(i) of the IDD, and for the assessment of insurance-based investment products being classified as non-complex for the purpose of Article 30(3)(a)(ii) of the IDD.
- 1.2. In accordance with paragraphs 1 and 2 of Article 30 of the IDD, an assessment of the suitability or appropriateness of an insurance-based investment product for the customer by the insurance intermediary or insurance undertaking is generally required as part of the sale of an insurance-based investment product. Article 30(3) of the IDD allows Member States to derogate from these obligations and not require either a suitability or appropriateness test to be conducted during the distribution of an insurance-based investment product, where various conditions are satisfied. This type of sale is often referred to as execution-only, however, in accordance with Article 20(1) of the IDD it is still necessary for the insurance distributor to specify the demands and needs of the customer.
- 1.3. One of the conditions specified in Article 30(3) of the IDD to determine whether an insurance-based investment product can be distributed as an execution-only sale relates to the complexity of the insurance-based investment product. This assessment is based on the nature of the financial instruments to which an insurance-based investment product provides investment exposure, as well as the structure of the contract between the insurance undertaking or insurance intermediary and the customer (Article 30(3)(a) of the IDD). In accordance with paragraphs 7 and 8 of Article 30 of the IDD, EIOPA is empowered to develop Guidelines concerning both the assessment of complexity and non-complexity.
- 1.4. The complexity of the financial instruments to which the insurance-based investment product provides investment exposure depends on the provisions given by Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (recast) (hereinafter "MiFID II")⁴. Under Article 30(3)(a) of the IDD a distinction is made between, on the one hand, those insurance-based investment products which provide investment exposure to financial instruments deemed non-complex under MiFID II, and on the other hand, other non-complex insurance-based investment products.
- 1.5. These Guidelines cover the assessment of all types of insurance-based investment products. Despite the distinction made between points (i) and (ii) of

² OJ L 331, 15.12.2010, p. 48-83.

³ OJ L 26, 2.2.2016, p. 19.

⁴ OJ L 173, 12.6.2014, p. 349.

Article 30(3)(a) of the IDD, it is important to ensure that only those insurance-based investment products for which the risks can be readily understood by the customer are able to be sold via execution-only. The Guidelines principally address the issue of the identification of contractual structures or features which can make it difficult for the customer to understand the risks involved in an insurance-based investment product. However, they also concern a number of other issues relevant to the assessment of the complexity of insurance-based investment products.

- 1.6. In view of the minimum harmonisation aim of IDD as well as the fact that for execution-only sales specifically customers do not benefit from the protection of some of the relevant conduct of business rules, national competent authorities may maintain or introduce more stringent national provisions in this area in order to protect consumers.
- 1.7. Since the assessment of whether the conditions in Article 30(3) of the IDD are satisfied is only necessary where Member States choose to exercise the derogation, and thereby allow for the execution-only sale of insurance-based investment products, these Guidelines are only applicable within those Member States which make use of the derogation.
- 1.8. During the development of the Guidelines, EIOPA has taken into account other relevant regulatory requirements in the area of conduct of business standards. Specifically, EIOPA has considered the work by ESMA⁵ on the assessment of financial instruments incorporating a structure which makes it difficult for the client to understand the risks involved. This reflects the importance, as stated in recital 56 of the IDD, of avoiding regulatory arbitrage, whilst at the same time also taking into consideration the specific nature of insurance contracts. In addition, EIOPA is aware that Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)⁶ also addresses the identification of products that are not simple and may be difficult for retail investors to understand.
- 1.9. These Guidelines are addressed to national competent authorities. Notwithstanding the fact that specific provisions describe obligations to be met by insurance undertakings and intermediaries, this document is not to be read as imposing any direct requirements upon those financial institutions. Financial institutions are required to comply with the supervisory or regulatory framework applied by their competent authority.
- 1.10. For the purpose of these Guidelines, the following definition has been developed:
 - "Execution only sale" refers to the distribution of an insurance-based investment products in accordance with Article 30(3) of IDD
- 1.11. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.
- 1.12. The Guidelines shall apply from [date].

⁵ See the empowerment in Article 25(10) of MiFID II based upon which ESMA has issued [Guidelines](#) on complex debt instruments and structured deposits.

⁶ OJ L 352, 9.12.2014, p. 1.

Guideline 1 – Investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU

- 1.13. For the purposes of Article 30(3)(a)(i) of the IDD, the insurance intermediary or insurance undertaking should ensure that the insurance-based investment product only provides investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. Such non-complex financial instruments include only the following instruments:
- (a) those identified in Article 25(4)(a) of Directive 2014/65/EU;
 - (b) those satisfying the criteria in Article 57 of COMMISSION DELEGATED REGULATION (EU) .../...of 25.4.2016 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive⁷;
 - (c) those not deemed to be complex in accordance with ESMA Guidelines on complex debt instruments and structured deposits.

Guideline 2 – Insurance-based investments products that incorporate a structure which makes it difficult for the customer to understand the risks involved

- 1.14. For the purposes of Article 30(3)(a) of the IDD, the insurance intermediary or insurance undertaking should assess whether the contract incorporates a structure which makes it difficult for the customer to understand the risks involved.
- 1.15. Where the contract contains any of the following features, the insurance undertaking or insurance intermediary should deem it as not satisfying the conditions in Article 30(3)(a)(i) of the IDD:
- (a) it incorporates a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk or pay out profile of the insurance-based investment product;
 - (b) there are not options to surrender or otherwise realise the insurance-based investment product at a value that is available to the customer;
 - (c) there are explicit or implicit charges which have 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.
- 1.16. Where the contract contains any of the following features, the insurance undertaking or insurance intermediary should deem it as not satisfying the conditions in Article 30(3)(a) of the IDD:
- (a) There are complex mechanisms that determine the maturity or surrender value or the pay out upon death. This includes contracts structured in such a way that:

⁷ <https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2398-EN-F1-1.PDF>

- (i) the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking, the effects of which are difficult for the customer to understand;
 - (ii) the maturity or surrender value or pay out upon death is based on exposure to different types of financial instruments and the combined effect of these exposures is difficult for the customer to understand;
 - (iii) the maturity or surrender value or pay out upon death may vary frequently or markedly at different points of time over the duration of the contract either because certain pre-determined threshold conditions are met or because certain time-points are reached;
- (b) There are product charges that are difficult for the customer to understand, including where the cost of managing the insurance-based investment product on an ongoing basis satisfies one or more of the following conditions:
- (i) it is based on different factors depending on the performance of the product;
 - (ii) it is neither a fixed sum for each year or other specified time period, nor a fixed percentage of the value of the investment or another amount that can be understood by the customer;
- (c) There are surrender fees that are difficult for the customer to understand, including where the cost of redeeming the insurance-based investment product before maturity does not satisfy one of the following conditions:
- (i) it is a fixed sum;
 - (ii) it is a fixed sum for each year or other specified time period remaining until the maturity of the contract;
 - (iii) it is a fixed percentage of the amount of premiums paid or another amount that can be understood by the customer;
- (d) The contractual provisions with regard to modifying the person receiving the benefits at the end of the contractual relationship (the "beneficiary clause") are difficult for the customer to understand, and may result in a pay out to a beneficiary other than that intended by the customer.

Compliance and Reporting Rules

- 1.17. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions shall make every effort to comply with guidelines and recommendations.
- 1.18. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
- 1.19. Competent authorities within a Member State that has not chosen to exercise the derogation in the first sub paragraph of Article 30(3) of the IDD should regard the Guidelines as not applicable.
- 1.20. Competent authorities shall confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, or whether they are not applicable within two months after the issuance of the translated versions.
- 1.21. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

Final Provision on Reviews

- 1.22. The present Guidelines shall be subject to a review by EIOPA.

Annex I: Impact Assessment

Section 1 - Procedural issues and consultation of interested parties

Following a request from the European Commission, EIOPA provided technical advice on possible delegated acts concerning the IDD by 1 February 2017. This included technical advice on the topic of the types of insurance-based investment products that should be classified as non-complex and which may therefore be distributed without an assessment of suitability or appropriateness, i.e. execution-only⁸. More specifically, the technical advice addressed the criteria to identify “other non-complex insurance based investments” as referred to in Article 30(3)(a)(ii) of the IDD. In this instance, “other” relates to those insurance-based investment products which do not satisfy the conditions in Article 30(3)(a)(i) of the IDD for the contract to only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU, and to not incorporate a structure which makes it difficult for the customer to understand the risks involved.

Article 30 of the IDD contains two empowerments in paragraphs 7 and 8 respectively for EIOPA to develop Guidelines on the assessment of the complexity of insurance-based investment products. These empowerments address the two types of insurance-based investment products defined in points (i) and (ii) of Article 30(3)(a) respectively.

According to Article 30(7) of the IDD EIOPA is obliged to develop Guidelines by 23 August 2017 on the assessment of insurance-based investment products referred to in point (i) of Article 30(3)(a). According to Article 30(8) of the IDD EIOPA may develop Guidelines on the assessment of insurance-based investment products referred to in point (ii) of Article 30(3)(a).

EIOPA is consulting on Guidelines addressing both of these empowerments. The empowerment in Article 30(8) of the IDD states that EIOPA should take into account the delegated acts adopted under Article 30(6). These delegated acts have not yet been adopted by the Commission, however, it is expected that they will have been adopted by 23 August 2017 following the submission of EIOPA’s technical advice, referred to above, by 1 February 2017. For the purposes of this consultation EIOPA has taken into account its technical advice, which is expected to form the basis of the delegated acts to be adopted by the Commission. Nevertheless, once the delegated acts are adopted by the Commission, EIOPA will take into account any differences between those delegated acts and EIOPA’s technical advice, prior to finalising these Guidelines.

According to Article 16(2) of the EIOPA Regulation, EIOPA conducts analysis of costs and benefits in the policy development process of Guidelines. The analysis of costs and benefits is undertaken according to an Impact Assessment methodology.

This Impact Assessment document presents the key policy questions and the associated policy options considered in developing the draft Guidelines.

The draft Guidelines and its Impact Assessment is subject to this public consultation. Stakeholders’ responses will serve as a valuable input in order to revise the Guidelines.

⁸ This is subject to a Member State derogation in Article 30(3), IDD.

Section 2 - Problem definition

Contracts for insurance-based investment products are often complicated and difficult to understand for consumers. Distributors, either insurance undertakings or insurance intermediaries, therefore play an important role in processing information for the consumer and guiding consumers in choosing suitable policies. In view of this, IDD stipulates additional conduct of business rules for the sale of insurance-based investment products.

At the same time, it is important to bear in mind that certain types of customers may be interested in receiving execution-only services and may not be willing to pay for additional services they do not consider necessary. This may be the case, for instance, for customers who have a sufficient knowledge of financial markets (a high level of financial literacy) and are able to make their own investment choices.

In the interests of striking an appropriate balance between the competing considerations described in the paragraphs above, IDD provides a differentiation between complex and non-complex insurance-based investment products. Where an insurance-based investment product is considered to be non-complex, Member States may allow insurance distributors to not undertake some of the assessments⁹ during the sales process that are normally necessary for the distribution of insurance-based investment products. Since, in these cases, the consumer does not benefit from the corresponding protection provided by these assessments, it is critical that only those products that are genuinely non-complex are sold in this way.

During the policy development process the potential substitutability of pure investment products within the scope of the MiFID II Directive and insurance-based investment products governed by IDD needed to be borne in mind, as indicated by the Commission's Impact assessment on Packaged Retail Investment Products¹⁰ and the Commission's call for evidence regarding "substitute" retail investment products, dated 26.10.2007¹¹.

The baseline scenario

Without Guidelines regarding the assessment of the complexity of insurance-based investment products, there is likely to be different approaches implemented by different Member States. In particular, this creates 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.

For the analysis of the potential related costs and benefits of the Guidelines, EIOPA has applied as a baseline scenario the effect from the application of the Directive requirements in Article 30(3)(a) of the IDD and the delegated acts to be adopted in accordance with Article 30(6) of the IDD on the criteria to assess non-complex insurance-based investment products for the purposes of Article 30(3)(a)(ii) of the IDD.

⁹ These assessments are of the suitability and appropriateness of an insurance-based investment product for the customer.

¹⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009SC0556> – Annex 1 – “what are packaged retail investment products?": “We do not consider all of the products under consideration to be perfect substitutes. Moreover, while they do compete for retail savings, it is not always accurate to treat them as being in direct competition. For example, unit-linked life policies often serve simply as a 'wrapper' for an investment in an underlying fund. In this case the 'competing product' is more accurately described as an alternative channel for the distribution of the investment fund”.

¹¹ http://ec.europa.eu/finance/finservices-retail/docs/investment_products/feedback_statement_srips_en.pdf

Section 3 - Objectives pursued

The Guidelines aim to:

- facilitate the identification of types of insurance-based investment products, or product features within insurance-based investment products, that incorporate structure which makes it difficult for the customer to understand the risks involved and which are therefore complex and not fit for distribution via execution-only;
- promote the consistent application of the IDD with respect to the identification insurance-based investment products, that incorporate a structure which makes it difficult for the customer to understand the risks involved; and
- be consistent with the line taken in the delegated acts expected to be adopted under Article 25 (8) of MiFID II.

These aims are consistent with the objectives of IDD, which has three general objectives:

- to improve insurance regulation in a manner that will facilitate market integration;
- to establish the conditions necessary for fair competition between distributors of insurance products; and
- to strengthen consumer protection, in particular with regards to insurance-based investment products.

Section 4 - Policy Options

With the intention to meet the objectives set out in the previous section, EIOPA has analysed different policy options throughout the policy development process.

A preliminary issue considered was whether EIOPA should exercise the "may" empowerment for Guidelines in Article 30(8) of the IDD, as well as the "shall" empowerment in Article 30(7) of the IDD. For this the following options were considered:

Policy Option 1.1 - Issue Guidelines on "other non-complex insurance-based investments": These would be developed alongside the Guidelines to be published in accordance with Article 30(7) of the IDD on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved.

Policy Option 1.2 - Do not issue Guidelines on "other non-complex insurance-based investments": In this case the requirements for such investments would consist of those within the delegated acts to be adopted under Article 30(6) of the IDD.

The main issue considered was the approach to assessing whether insurance-based investment products incorporate a structure which makes it difficult for the customer to understand the risks involved. For this the following options were considered:

Policy option 2.1 – Very restrictive approach according to which existing product structures would be deemed complex: In view of the fact that there are a number of different elements which affect the maturity or surrender value of insurance-based investment products, namely the

exposure to market fluctuations and the charging structure, one possible option would be to consider that all existing types of insurance-based investment products incorporate a structure which makes it difficult for the customer to understand the risks involved. This would then effectively prevent insurance undertakings and intermediaries from distributing existing insurance-based investment products via an execution-only sale.

Policy option 2.2 – Criteria using ESMA Guidelines for MiFID II as a starting point: Another possibility would be to only prevent insurance undertakings and intermediaries from distributing, via an execution-only sale, insurance-based investment products where they do not meet criteria related to the complexity of the product features or insurance contract. These criteria would take as a starting point those defined within ESMA Guidelines concerning the assessment of complex debt instruments and structured deposits under MiFID II.

Policy option 2.3 – Very general or otherwise limited criteria to assess product structures: This would be based on the perspective that significant discretion is needed on a national or product level to determine whether a product structure is difficult to understand. It would also reflect the perspective that existing provisions in IDD, such as the “demands and needs test”, already provided adequate safeguards for customers, as well as potentially the fact that additional provisions can be introduced on a Member States level, where they are judged to be necessary.

Where the Guidelines address other issues concerning the sale of insurance-based investment products via execution-only, the proposals are not expected to have a material impact compared to the baseline. In these cases, the Guidelines are proposed for the purpose of clarification and with a view to achieving a common understanding.

Section 5 - Analysis of impacts

Policy option 1.1 – Issue Guidelines on “other non-complex insurance-based investments”

EIOPA’s technical advice that is expected to form the basis of the delegated acts on IDD states that “other non-complex insurance-based investments” referred to in Article 30(3)(a)(ii) of the IDD should not incorporate a structure that makes it difficult for the customer to understand the risks involved. This provision intends to achieve consistency in approach for all non-complex insurance-based investment products within Article 30(3)(a), in view of the comparable condition in Article 30(3)(a)(i) of the IDD. The aim thus is that only insurance-based investment products which are readily understood by customers should be deemed non-complex and available for sale via execution-only. The development of Guidelines under the empowerments in both paragraphs 7 and 8 of Article 30 of the IDD therefore supports this aim of providing a consistent approach to all types of insurance-based investment products. In addition, as recognised by the empowerments in Article 30(7) and (8) of the IDD, Guidelines are considered to be an appropriate regulatory tool to address the issue of the complexity of different product structures allowing also for periodic updates to be made based on market developments.

For consumers the development of Guidelines has the benefit of promoting a consistently high level of protection, irrespective of the type of insurance-based investment product. It also has the benefit to the industry and National Competent Authorities (NCAs) of clarifying the application of the delegated acts to be adopted under Article 30(6) of the IDD.

The cost of this Option for the industry and NCAs is that it reduces the degree of flexibility regarding the assessment of product complexity on a national level. Since the Guidelines would specify the application of the requirements in the delegated acts to be adopted under Article 30(6) of the IDD, this Option is not considered to result in any additional costs to customers above the baseline, for example in terms of increased product charges.

Policy option 1.2 – Do not issue Guidelines on “other non-complex insurance-based investments”

Depending on the approach taken in the Member State, this Option could have the benefit for the industry and NCAs that there is more flexibility to determine on national level the types of structures within “other insurance-based investments” which make it difficult for the customer to understand the risks involved. This Option is not considered to provide any material benefits to customers.

The main cost of this approach would be that there may be a less consistent application of the delegated acts to be adopted under Article 30(6) of the IDD, which in turn could reduce the overall level of consumer protection across the EU.

Policy option 2.1 – Very restrictive approach

Benefits:

- **For customers:** The rationale of this Option is that customers may not be able to understand the risks involved in insurance-based investment products. Therefore, the distributor would be required to collect information from the customer to assess whether the insurance product is suitable or appropriate for them. In this way, provided the distributor properly undertakes these assessments, the risk that the customer purchases a product that is not appropriate for them, or not in their best interests, should be very small. Therefore, this Option provides the highest level of customer protection.
- **For industry:** A very restrictive approach reduces the risk that insurance products are sold which are not in the best interests of the customer. Therefore, this would reduce the risk of mis-selling products, thereby avoiding negative impacts on the reputation of the industry, or costs to compensate customers.
- **For NCAs:** Option 1 would have the benefit of higher legal certainty for NCAs. This is because they would not need to further assess whether a product’s features are complex given the very restrictive approach in the Guidelines. In turn, they should also not need to assess a distributor’s governance or sales processes relating to execution-only sales. Based on this Option, NCAs would essentially only need to verify that products were not sold via execution-only. The advantage of Option 1 is therefore that it can be relatively easily monitored and enforced.

Costs:

- **For customers:** 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.
- **For industry:** A very restrictive approach as proposed under Option 1, may lead to a negative impact on the business model of certain insurance undertakings and

intermediaries in those Member States where insurance-based investment products can currently be sold via execution-only, and thus it may act as a restraint of trade. The costs of having to conduct, at a minimum, an appropriateness assessment may render certain lower cost products as less cost-efficient, or, in the extreme case, unviable. Where a distributor predominantly or exclusively sells products via execution-only, this Option is likely to have an impact on their administration costs, since they would need to modify their sales process and associated governance framework.

- **For NCAs:** Where the existing regulatory regime allows for execution-only sales, having to restrict the existing regulatory regime in this way could increase monitoring and enforcement costs for NCAs, in particular at the implementation stage.

Policy Option 2.2 – Criteria using ESMA’s Guidelines for MiFID II as a starting point

Benefits:

- **For customers:** Option 2 aims to provide an appropriate level of customer protection, while, compared to Option 1, enabling greater flexibility regarding the means of distribution of non-complex insurance-based investment products. This Option thereby has the benefit that the overall distribution costs of non-complex insurance-based investments should be lower, and thus in turn these products ought to be less costly for customers.
- **For industry:** If the criteria proposed are effective in excluding complex products from being sold via execution-only, the benefits outlined for Option 1 should also apply for Option 2. In this way the risk of products being mis-sold would be minimised. At the same time, the benefit of Option 2 for the industry is that they should be able to continue to sell some non-complex products, or to design such products for sale via execution-only. This means that it may be more cost efficient for them to sell non-complex products. In addition, distributors may be able to sell such products to customers who would otherwise have been deterred by the need to seek advice, or provide information on their knowledge and investment experience. Therefore, this Option may have a positive impact on the sales or revenues of insurance undertakings and intermediaries.
- **For NCAs:** Option 2 will be of benefit to NCAs which do not already have rules for assessing the complexity of product structures for insurance-based investment products, by establishing common principles for evaluating them.

Costs:

- **For customers:** In contrast to Option 1, Option 2 would enable insurance distributors to offer some, but still a relatively limited range of insurance-based investment products for sale via execution-only. Depending on the current framework within the Member State, based on Option 2, customers would be able to purchase a wider or a narrower range of products via execution-only than they are currently able to. If the criteria proposed by EIOPA result in less insurance-based investment products being available for sale via execution-only then it can be expected that the costs of purchasing those products may increase. On the other hand, if the criteria proposed by EIOPA result in more insurance-based investment products being available, there is in theory a risk that customers may

not understand the features of those products, and as a result purchase products that are not in their best interests. However, provided that the criteria are effective in delineating between complex and non-complex product structures, this risk should not be increased by this Option.

- **For industry:** As with the costs for customers, the costs for the industry will depend on the current framework within the Member State. This will determine whether, as a result of the criteria proposed under Option 2, they will be able to sell a wider or a narrower range of products via execution-only than they are currently able to. If the criteria proposed by EIOPA result in less products being available for sale via execution-only, then it can be expected that the costs of distributing those products may increase. These costs would be similar to those outlined for Option 1, but would be less in their extent. On the other hand, if the criteria proposed by EIOPA result in more products being available for sale via execution-only, there is in theory a higher risk that customers are sold products that are not appropriate for them, with in turn potential negative impacts for the reputation of the industry. However, provided that the criteria are effective in delineating between complex and non-complex product structures, this risk should not be increased by this Option.
- **For NCAs:** Option 2 will result in costs for NCAs to verify that insurance distributors are appropriately applying the criteria. It may also result in costs for NCAs if the criteria are different from any existing rules in that Member State for the evaluation of the complexity of product structures of insurance-based investments.

Option 2.3 – Very general or otherwise limited criteria

Benefits:

- **For customers:** This Option depends on how Member States implement the general criteria. Where a wide range of products are deemed to not incorporate a structure which makes it difficult for the customer to understand the risks involved, and are eligible for sale via execution-only, this approach may positively impact those retail customers who are highly financially literate. These customers should therefore be able to benefit from the ability to purchase a wide range of products at a reduced cost. Where only a limited number of, or no, products are deemed to not incorporate a structure which makes it difficult for the customer to understand the risks involved, the benefits would be similar to Options 1 and 2.
- **For industry:** Option 3 is likely to provide insurance distributors with a high degree of discretion, although it would depend on the approach taken in the Member State. In this case, distributors would have greater flexibility to determine whether a particular product or product feature is understandable, for example based on customer feedback.
- **For NCAs:** Where NCAs have more developed regimes which impose more detailed requirements already (following IMD), they are likely to retain those rules and thus benefits are not envisaged. Where NCAs do not currently have rules in this area, they will have the benefit of greater flexibility to determine the appropriate framework for the particular national market.

Costs:

- **For customers:** As stated, this Option depends on how Member States implement the general criteria. In the absence of a more prescriptive approach on a national level, Option 3 entails the risk that customers are sold products which are not suited to them, or which they do not understand the risks of. This option therefore heightens the risk of products being mis-sold. This is because without reasonably precise restrictions on the types of product structures that are difficult to understand, insurance distributors may consider certain products to be non-complex, when in fact some customers are not able to understand the associated risks.
- **For industry:** In the absence of a more prescriptive approach on a national level Option 3 entails the risk of a lower level of customer protection, and thus that market participants can be expected to continue to face reputational risk due to mis-selling cases.
- **For NCAs:** In the presence of only very general or limited restrictions on what constitutes a complex product structure, it may be more difficult for NCAs to supervise and enforce the requirement that insurance undertakings or intermediaries should only distribute non-complex insurance-based investment products via an execution-only sale. However, where NCAs already have a more detailed framework these costs would not apply.

Section 6 - Comparison of options

Regarding policy Options 1.1 and 1.2 the benefits of facilitating a consistent application of the requirements on structures which make it difficult for the customer to understand the risks involved for all types of insurance-based investment products were considered to outweigh any benefits of greater flexibility on a national level in the absence of Guidelines. Guidelines were also considered to be the appropriate tool to address this issue, in view of the greater flexibility to update them compared to delegated acts. **Therefore, policy Option 1.1 was chosen.**

For policy Options 2.1-2.3 when comparing the costs and benefits of the different policy options, it became apparent that an overly strict approach would not only be disadvantageous for insurance undertakings and insurance intermediaries, but also for customers and potentially for NCAs.

As policy Option 2.1 (very restrictive approach) would contradict the principle of the customer being responsible for their decisions, and limit the customer's flexibility in how they purchase insurance-based investment products, as well as increase regulatory costs, this Option does not seem adequate. Furthermore, it is questionable whether the Directive intends for there to be such a restrictive approach at EU level.

Conversely, policy Option 2.3 (very general criteria) does not seem adequate either. This is because it does not address adequately the risk of insurance-based investment products being mis-sold, due to the customer not understanding the risks involved.

Therefore, policy Option 2.2 (criteria using ESMA's Guidelines for MiFID II as a starting point) is considered to find the appropriate balance between the interests of insurance distributors and those of their customers. It also enables an appropriate degree of flexibility at NCA level, in providing criteria for assessing product structures at EU level which are still consistent with a minimum harmonising approach. From a customer's perspective it seems reasonable to prevent insurance distributors from making products available for sale via execution-only which do not

meet the criteria, while enabling customers to execute an order for products where the criteria are met.

Q1. Do you have any comments on the Impact Assessment?

2. Explanatory text

- 2.1. It is relevant to clarify the nature of execution-only sales in the context of IDD and how it compares to distribution of insurance-based investment products more generally. For this purpose a decision tree diagram has also been included as an Appendix to these Guidelines.
- 2.2. First, it is worth mentioning that the term execution-only is also used in the context of investment products within the scope of MiFID II. However, there are both consistencies and differences between the MiFID II and IDD frameworks. MiFID II refers to "investment services which only consist of execution or reception and transmission of client orders" (Article 25(4), MiFID II). Insurance-based investment products are not "executed" in the same way, for example they are not traded on secondary markets and are more often longer-term investments. The legislative provisions in IDD, therefore, do not use this terminology of "execution". However, given the broadly similar frameworks in MiFID II and IDD, execution-only is considered to be an appropriate short-hand or term of reference, and is therefore used within these Guidelines.
- 2.3. The main difference between execution-only sales and other sales of insurance-based investment products is the nature of the information that needs to be provided by the customer and the type of assessment that needs to be conducted by the insurance distributor. In short, an execution-only sale can be seen as a more streamlined and therefore less costly process. More specifically, it is a sale where:
 - the customer does not need to provide information on their knowledge and experience in the investment field, their financial situation or their investment objectives;
 - the insurance distributor does not need to assess whether an envisaged product is appropriate for the customer or recommend a product that is suitable to them.
- 2.4. The drawback of this approach is that the customer does not benefit from the same level of consumer protection as during other types of sales. Consequently, there are restrictions on when execution-only sales can be carried out in order to minimise the possibility for consumer detriment.
- 2.5. First, Member States do not have to allow execution-only sales of insurance-based investment products. Unlike MiFID II, it is for Member States to decide whether such sales are appropriate in their market based, for example, on the types of product sold, and nature of distribution practices in that Member State. In particular, it is not possible to distribute insurance-based investment products in a Member State that does not allow for execution-only sales via the freedom to provide services.
- 2.6. Second, regarding the process of distribution several elements need to be observed. This includes that the distribution must be at the initiative of the customer or potential customer and therefore cannot be solicited by the insurance distributor. During the process, the customer also needs to be clearly informed or warned that it is an execution-only sale and the implications of this, i.e. that the distributor is not required to assess the appropriateness of the product.
- 2.7. Third, the complexity of the insurance-based investment products needs to be determined. Only non-complex insurance-based investment products are

eligible for sale via execution-only. The requirements in the Guidelines address this issue.

- 2.8. Finally, in terms of the distribution process, it is important to be aware that there are various rules that apply to the distribution of all insurance products, including insurance-based investment products sold via execution-only. This includes the requirement in Article 20(1) of the IDD for the distributor to specify the demands and needs of the customer. This is specific to insurance products and there is not a comparative requirement for investment products within the scope of MiFID II.

Q2. What role do you consider that execution-only sales will have in the distribution of insurance-based investment products in view of the restrictions in Article 30(3)(a) of the IDD, the fact that the provisions in Article 20(1) of the IDD still need to be satisfied regarding the specification of the customer's demands and needs, and the potentially higher risks of the product not being suitable or appropriate for the customer?

- 2.9. IDD indicates that complexity in relation to insurance-based investment products stems from two elements: (1) the nature of the exposure to market fluctuations or more specifically the nature of the financial instruments to which an insurance-based investment product provides exposure; (2) the structure or features of the contract with the customer, for example governing the charges to be levied by the insurance undertaking to manage the investment.

- 2.10. Two types of insurance-based investment products are identified within IDD as potentially eligible for sale via execution-only. These can be summarised as follows:

- contract which provide investment exposure to financial instruments deemed non-complex under MiFID II and which do not have a complex structure (Article 30(3)(a)(i));
- other non-complex insurance based investments (Article 30(3)(a)(ii)).

- 2.11. The legal empowerments to develop further technical rules on the assessment of the complexity of these two types of insurance-based investment products are different and therefore some of the rules are expected to be included in delegated acts and some are included in these Guidelines. In spite of this split, most of the factors which determine whether an insurance-based investment product is complex or not apply to both of these two types of products described above. As a result, most of the technical rules for the assessment of complexity proposed by EIOPA would apply to both points (i) and (ii) of Article 30(3)(a) of the IDD.

Q3. What types of insurance-based investment products do you think could fall within the scope of Article 30(3)(a)(i) and which within the scope of Article 30(3)(a)(ii) of the IDD?

Guideline 1 – Investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU

For the purposes of Article 30(3)(a)(i) of the IDD, the insurance intermediary or insurance undertaking should ensure that the insurance-based investment product only provides investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU. Such non-complex financial instruments include only the following instruments:

- (a) those identified in Article 25(4)(a) of Directive 2014/65/EU;
- (b) those satisfying the criteria in Article 57 of COMMISSION DELEGATED REGULATION (EU) .../...of 25.4.2016 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;
- (c) those not deemed to be complex in accordance with ESMA Guidelines on complex debt instruments and structured deposits.

- 2.12. Guideline 1 addresses the application of the requirement in Article 30(3)(a)(i) of the IDD for an insurance-based investment product to only provide investment exposure to financial instruments deemed non-complex under MiFID II.
- 2.13. For certain types of insurance-based investment products, the maturity or surrender value is directly linked to the performance of the underlying financial instruments. This is expected to be the case for unit-linked, index-linked or other similar insurance contracts whereby the benefits provided by a contract are directly linked to a particular reference value¹².
- 2.14. For other types of insurance-based investment products, the maturity or surrender value depends on other factors besides the exposure to financial instruments. This would include insurance-based investment products which distribute a portion of the profits of the insurance undertaking to the customer or where the insurance undertaking has discretion to modify the pay out profile of the contract in some other way. It would also include contracts where the maturity or surrender value is guaranteed by the insurance undertaking. These factors place a limitation on the extent to which the customer is exposed to the underlying financial instruments. However, in these cases, the maturity or surrender value is at least partly exposed, directly or indirectly, to these financial instruments.
- 2.15. For all types of insurance-based investment products, in order to comply with the requirement in Article 30(3)(a)(i), there can only be exposure to the financial instruments deemed non-complex under MiFID II. Anything else will not comply.
- 2.16. Where an insurance-based investment product does not fall within the scope of Article 30(3)(a)(i) of the IDD, it may still fall within the scope of 'other non-complex insurance-based investments' in accordance with Article 30(3)(a)(ii) of the IDD.

Q4. Do you have any comments on Guideline 1 and its explanatory text?

¹² See the definition of such contracts in sub paragraph 2 of Article 132(3) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 17.12.2009, p. 1.

Guideline 2 – Insurance-based investments products that incorporate a structure which makes it difficult for the customer to understand the risks involved

1. For the purposes of Article 30(3)(a) of the IDD, the insurance intermediary or insurance undertaking should assess whether the contract incorporates a structure which makes it difficult for the customer to understand the risks involved.

2. Where the contract contains any of the following features, the insurance undertaking or insurance intermediary should deem it as not satisfying the conditions in Article 30(3)(a)(i) of the IDD:

(a) it incorporates a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk or pay out profile of the insurance-based investment product;

(b) there are not options to surrender or otherwise realise the insurance-based investment product at a value that is available to the customer;

(c) there are explicit or implicit charges which have 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.

3. Where the contract contains any of the following features, the insurance undertaking or insurance intermediary should deem it as not satisfying the conditions in Article 30(3)(a) of the IDD:

(a) There are complex mechanisms that determine the maturity or surrender value or pay out upon death. This includes contracts structured in such a way that:

(i) the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking, the effects of which are difficult for the customer to understand;

(ii) the maturity or surrender value or pay out upon death is based on exposure to different types of financial instruments and the combined effect of these exposures is difficult for the customer to understand;

(iii) the maturity or surrender value or pay out upon death may vary frequently or markedly at different points of time over the duration of the contract either because certain pre-determined threshold conditions are met or because certain time-points are reached;

(b) There are product charges that are difficult for the customer to understand, including where the cost of managing the insurance-based investment product on an ongoing basis satisfies one or more of the following conditions:

(i) it is based on different factors depending on the performance of the product;

(ii) it is neither a fixed sum for each year or other specified time period, nor a fixed percentage of the value of the investment or another amount that can be understood by the customer;

(c) There are surrender fees that are difficult for the customer to understand, including where the cost of redeeming the insurance-based investment product before maturity does not satisfy one of the following conditions:

- (i) it is a fixed sum;
- (ii) it is a fixed sum for each year or other specified time period remaining until the maturity of the contract;
- (iii) it is a fixed percentage of the amount of premiums paid or another amount that can be understood by the customer;

(d) the contractual provisions with regard to modifying the person receiving the benefits at the end of the contractual relationship (the "beneficiary clause") are difficult for the customer to understand, and may result in a pay out to a beneficiary other than that intended by the customer.

- 2.17. The requirement that the contract for the insurance-based investment product does not incorporate a structure which makes it difficult for the customer to understand the risks involved is stated in Article 30(3)(a)(i) of the IDD. However, where an insurance-based investment product incorporates such a structure, this product is considered to be complex and not fit for distribution via an execution-only sale. This Guideline, therefore, covers both insurance-based investment products which fall within the scope of Article 30(3)(a)(i) of the IDD and those which fall within the scope of Article 30(3)(a)(ii) of the IDD. These provisions therefore reflect the following empowerments in IDD:
- in Article 30(7) for the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved as referred to in Article 30(3)(a)(i);
 - in Article 30(8) for the assessment of insurance-based investment products being classified as non-complex for the purpose of Article 30(3)(a)(ii).
- 2.18. Regarding 'other non-complex insurance-based investments' it also reflects the position in EIOPA's technical advice on delegated acts to be adopted under Article 30(6) of the IDD, that such investments should not incorporate a structure which makes it difficult for the customer to understand the risk involved.
- 2.19. In addition, sub paragraph two of the Guideline (points (a) to (c)), is taken from EIOPA's advice for the delegated acts to be adopted under Article 30(6) of the IDD. Those delegated acts only apply to 'other non-complex insurance-based investment products' (Article 30(3)(a)(ii) of the IDD). However, some of criteria to assess 'other non-complex insurance-based investment products' concern structures which make it difficult for the customer to understand the risks involved. These criteria are, therefore, also relevant to insurance-based investment products within the scope of Article 30(3)(a)(i) of the IDD, which provide investment exposure to financial instruments deemed non-complex under MiFID II. In particular, regarding the provision in paragraph 2(c) of this Guideline, given that exit penalties have been a feature of long-term insurance-based investment products that are considered to have led to consumer detriment, this is intended to exclude products with unreasonable exit charges, including fiscal penalties.

- 2.20. The **existence of a guarantee** regarding the maturity or surrender value can be a valuable product feature for the customer and significantly reduce the risk. However, guarantees can also add complexity if there are, for example, conditions attached to the guarantee. EIOPA notes that in ESMA's Guidelines on complex debt instruments and structured deposits 'debt instruments with complex guarantee mechanism' are deemed to be complex and not fit for execution-only sale; it is stated that 'this category includes debt instruments guaranteed by a third party'.
- 2.21. This particular issue of guarantees provided by third party is not considered to be applicable to insurance products. However, the nature of any guarantee will still need to be considered when assessing whether a product incorporates a structure which makes it difficult for the customer to understand the risks involved. In particular, "guarantee" is a term that creates certain customer expectations, and, therefore, when this term is used, customers may assume there are no conditions attached to its use. This issue will need to be considered in the context of the requirements under point (a) of sub paragraph 3 of the Guideline, concerning the complexity of the mechanisms that determine the maturity or surrender value.
- 2.22. Another feature of insurance-based investment products which can result in complexity is **the way in which the insurance undertaking is able to exercise discretion**. EIOPA notes that in ESMA's Guidelines on complex debt instruments and structured deposits 'debt instruments where the issuer enjoys discretion of modify the cash flows of the instruments' are deemed to be complex. Insurance-based investment products are considered to be different to debt instruments in this respect, since it is not unusual for the insurance undertaking to exercise some discretion when determining the maturity or surrender value of a product.
- 2.23. One example of such a product is an insurance-based investment product, where the insurance undertaking distributes a portion of its profits to the customer. The provision in point (a)(i) of paragraph 3 of the Guideline draws from the criterion in ESMA's Guidelines, however, the drafting intends to recognise that, unlike in ESMA's Guidelines, the existence of discretion on behalf of the insurance undertaking, does not automatically result in the product being deemed complex. It will need to be assessed whether the customer can understand, based on the information provided to them, how the insurance undertaking exercises discretion, the boundaries of that discretion and how it affects the maturity or surrender value of the contract.
- 2.24. Where an insurance-based investment product offers customers a range of underlying investment options, the insurance undertaking and insurance intermediary will need to ensure that the customer is only able to select an investment option, which would be deemed non-complex, if it were offered either directly as an investment, or as the only investment exposure of an insurance-based investment product.
- 2.25. In order to satisfy the requirements of Article 30(3)(a)(i) of the IDD, for example, the investment options could not include those providing any exposure to complex financial instruments as determined by MiFID II.
- 2.26. This does not necessarily mean that the customer is prevented from deciding during the duration of a contract purchased as an execution-only sale, to select an investment option with exposure to complex financial instruments or otherwise more complex. However, in this case, the insurance undertaking or insurance intermediary would need to have procedures in place to ensure that

they are involved in this decision. More specifically, the insurance undertaking or insurance intermediary would, in this case, need to ensure that the requirements in paragraph 1 or 2 of Article 30 of IDD could be satisfied, either before or when the customer selects such an investment option.

Q5. Do you have any comments on Guideline 2 and its explanatory text?

Q6. Do you have any comments on the interaction between the requirements in EIOPA's technical advice on 'other non-complex insurance based investments' and the requirements proposed in these Guidelines?

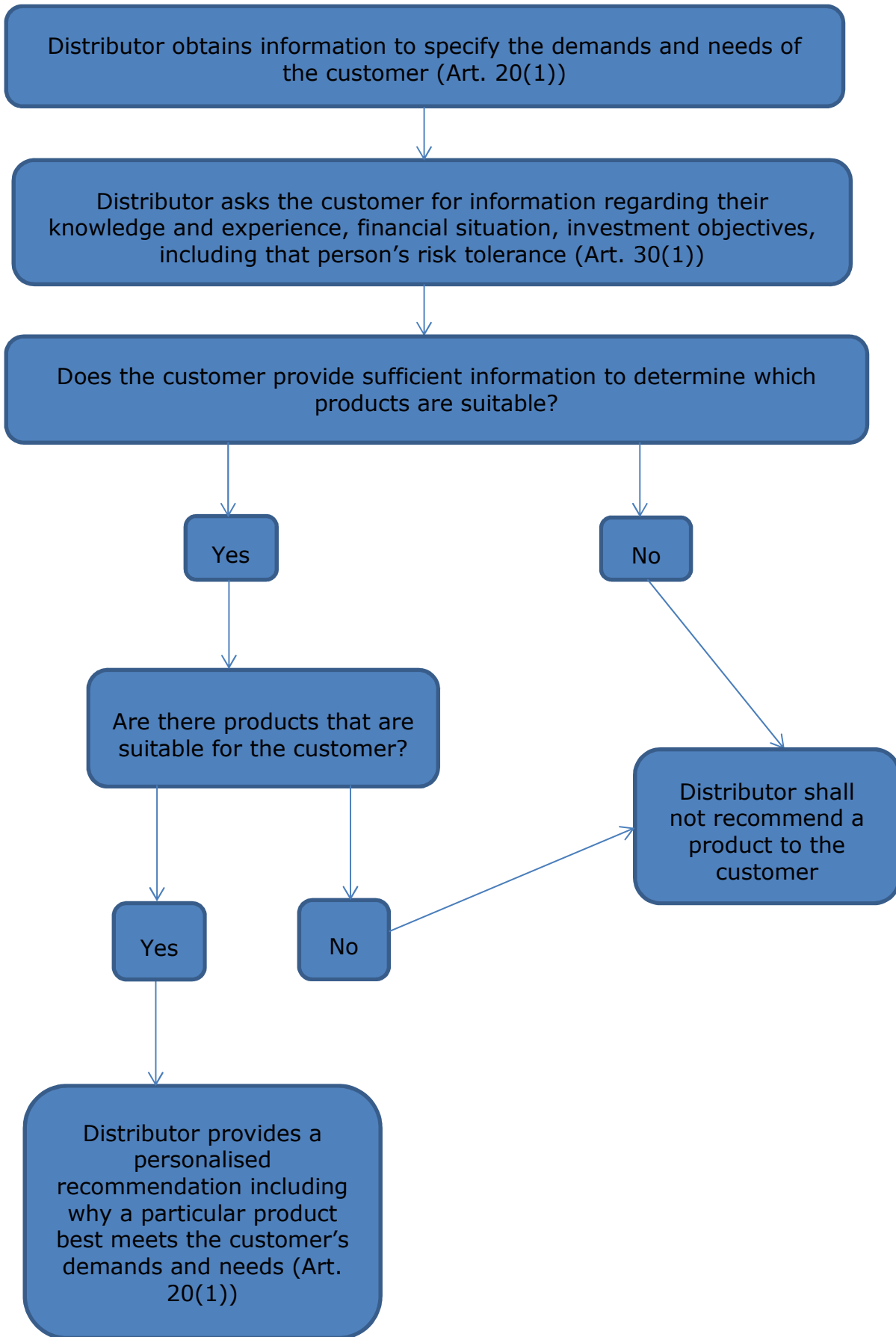
Q7. If you currently distribute insurance-based investment products via execution-only, which of the proposed criteria regarding structures which make it difficult for the customer to understand the risks involved, would exclude those products from being distributed via execution-only under IDD?

Appendix

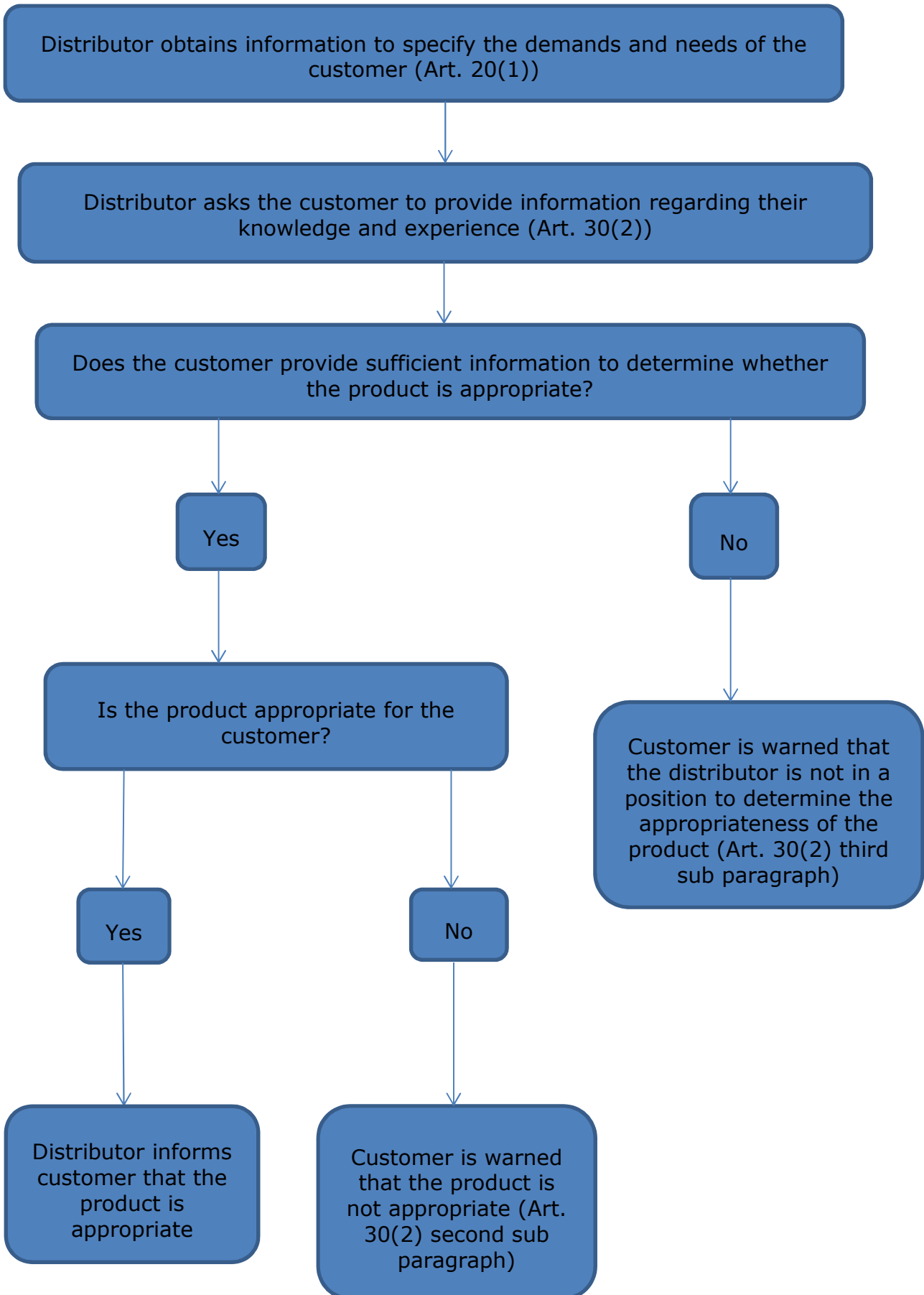
Decision tree on the sale of insurance-based investment products

- 2.27. This decision tree is intended to explain the distribution process for the sale of insurance-based investment products via execution-only, and how it compares to the sale of products not via execution-only.
- 2.28. It is important to note that, in particular for the sale of IBIPs with advice or with an appropriateness assessment, the process outlined in the decision tree may not correspond directly to the steps that will need to be taken by distributors in different Member States. This will depend on how the different provisions of the Directive are implemented in the Member State, for example the demands and needs test.
- 2.29. It should also be noted that the requirements of IDD have sometimes been paraphrased rather than using the exact text of the Directive in the interests of concise presentation. All Article references are to the IDD, unless otherwise stated.

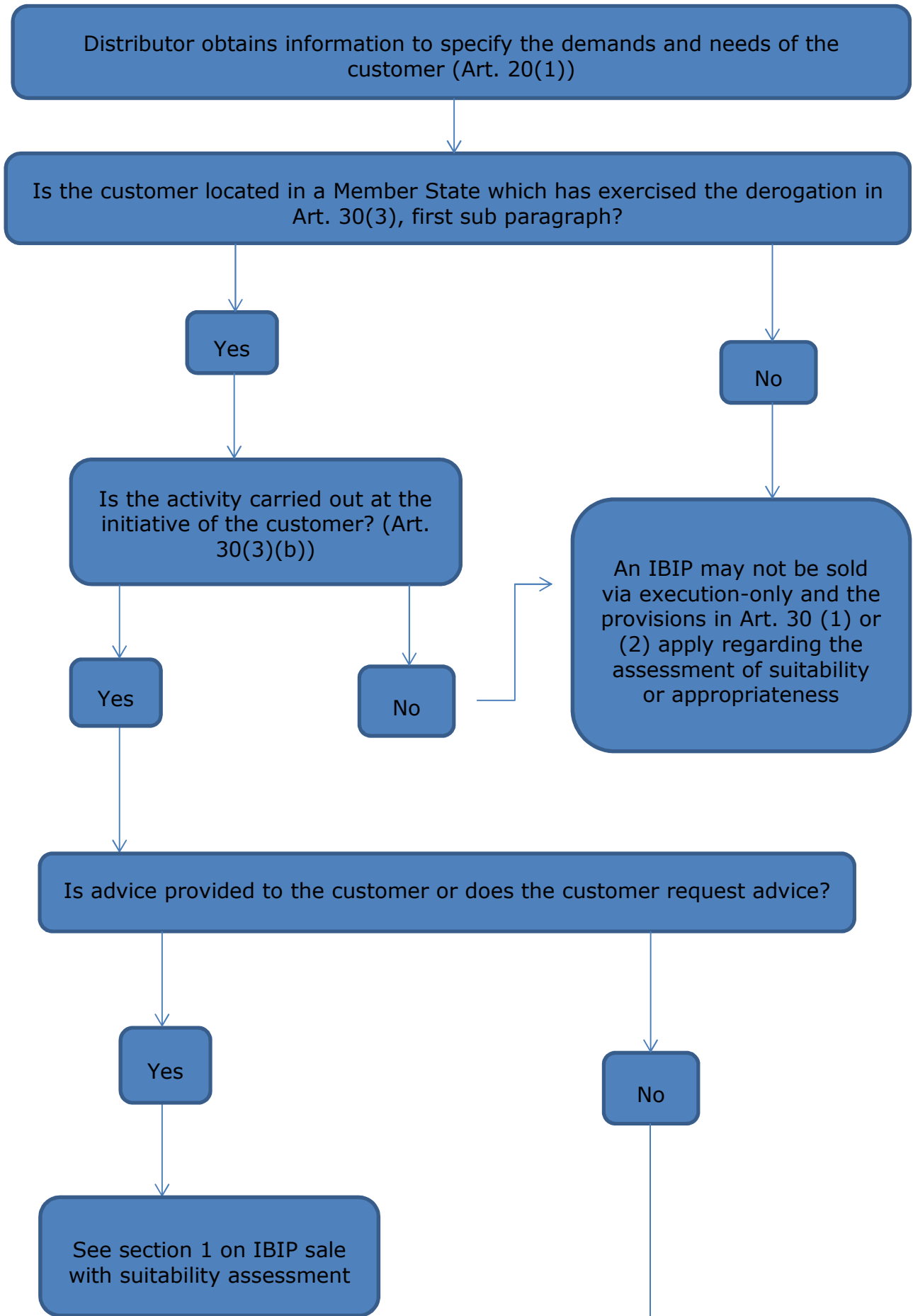
Section 1: Advised sale with a suitability assessment

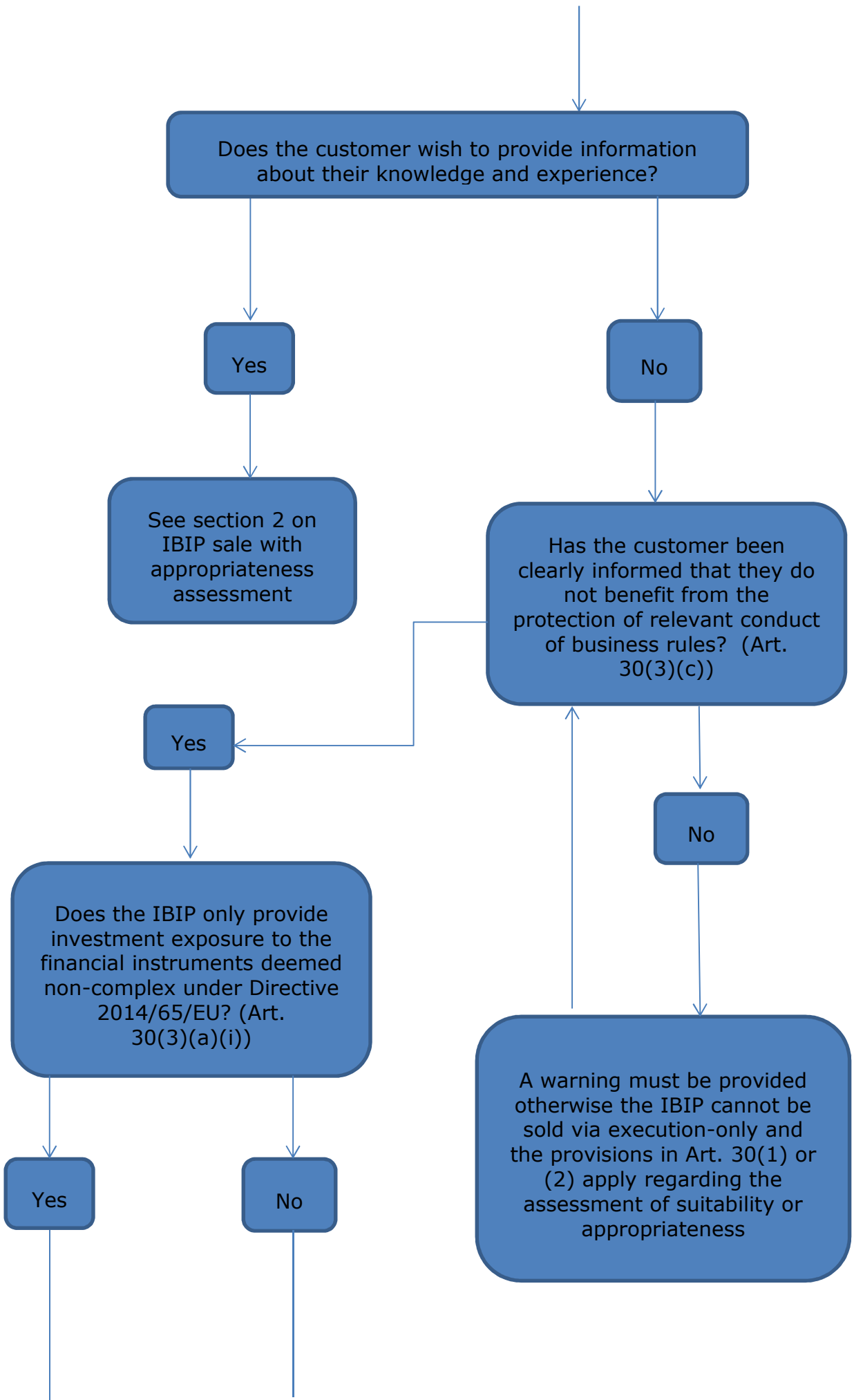


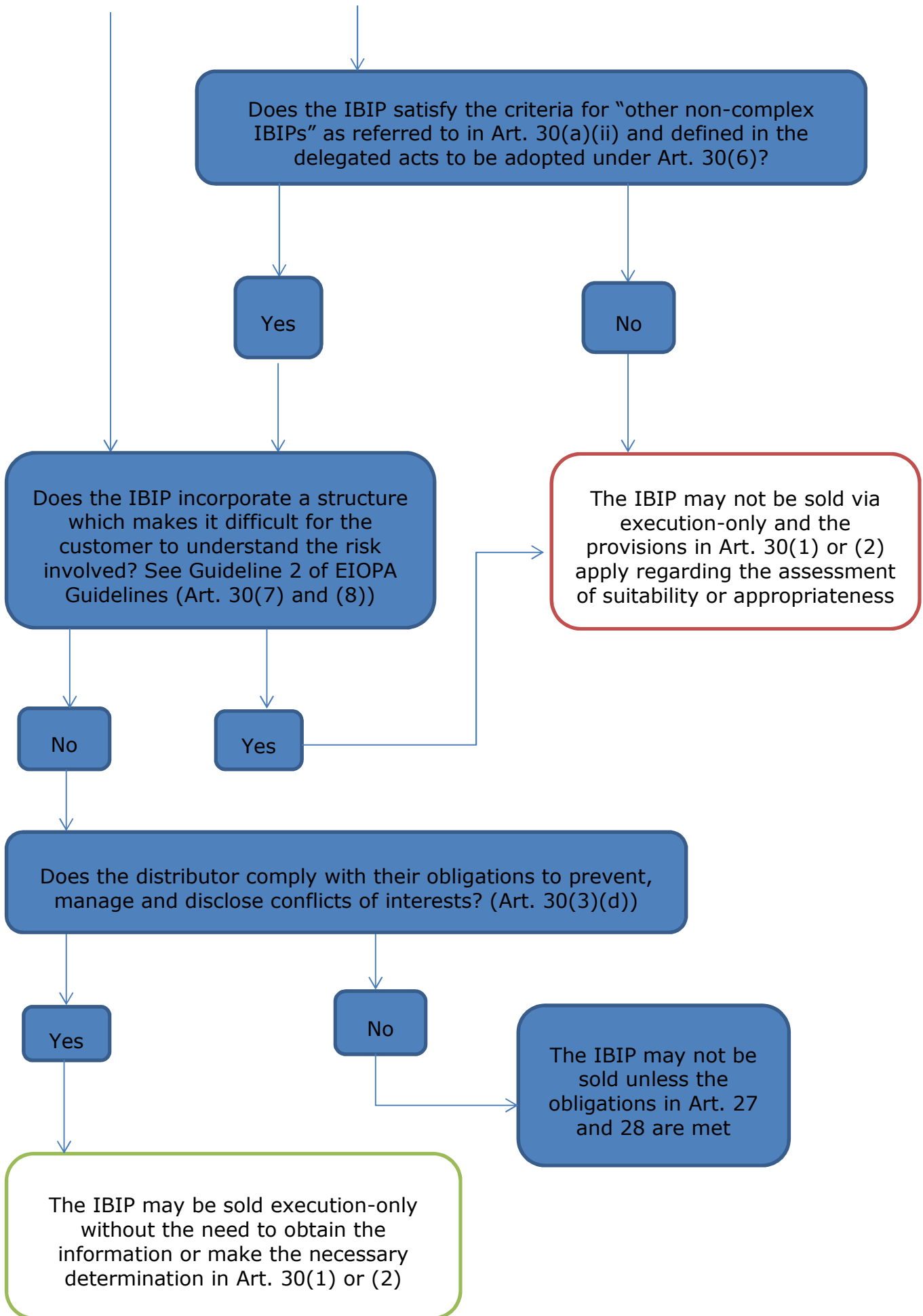
Section 2: Non-advised sale with an appropriateness assessment



Section 3: Execution-only sale (without a suitability or appropriateness assessment)







Generic illustrative examples of complex and non-complex insurance-based investment products

The examples described below are for illustrative purposes to explain the practical application of some of the criteria for the identification of complex and non-complex insurance-based investment products. Actual products will need to be assessed fully against all of the relevant criteria in the Directive, Delegated Acts and Guidelines.

1. A unit-linked product where the benefits are linked to a non-structured UCITS which does not incorporate a structure which makes it difficult for the customer to understand the risks involved.

The product is non-complex under Article 30(3)(a)(i)

2. A unit-linked product where the benefits are linked to a non-structured UCITS. There is an annual management charge of 100 euros and a surrender fee of 150 euros. The product does not have any other structures which make it difficult for the customer to understand the risks involved.

The product will be considered non-complex under Article 30(3)(a)(i), provided that the surrender fee is not disproportionate to the cost to the insurance undertaking.

3. A unit-linked product where the benefits are linked to a non-structured UCITS. The insurance undertaking guarantees that the surrender or maturity value is at least 80% of the premiums paid by the customer. The product does not have any other structures which make it difficult for the customer to understand the risks involved.

The product is non-complex under Article 30(3)(a)(i).

4. A unit-linked product where the benefits are linked to a non-structured UCITS. The annual management charge is 1%, unless the value of the investment is below 500 euros. Where the value of the investment is below 500 euros, the annual management charge for the period in which the value is below 500, is 25 euros calculated on a pro-rata basis. The product does not have any other structures which make it difficult for the customer to understand the risks involved.

The product will be deemed complex under Article 30(3)(a)(i) and (ii) as the product charges may be difficult for the customer to understand.

5. A unit / index linked product where the customer can select from different underlying investment options, including various non-structured UCITS and various shares traded on a regulated market. The product does not have any other structures which make it difficult for the customer to understand the risks involved.

The product is non-complex under Article 30(3)(a)(i).

6. A unit-linked product where the customer can select from different underlying investment options, including various non-structured UCITS and structured UCITS.

The product will be deemed complex under Article 30(3)(a)(i) and (ii), unless there are sufficient controls in place to prevent the customer from selecting a structured UCITS as an investment option.

7. An insurance-based investment product where the customer does not make an investment selection. The surrender or maturity value reflects the performance of investments managed by the insurer in bonds and shares traded on regulated markets. The product does not have any other structures which make it difficult for the customer to understand the risks involved.

The product is non-complex under Article 30(3)(a)(i).

8. An insurance-based investment product where the customer does not make an investment selection. The surrender or maturity value reflects the performance of investments managed by the insurer in bonds and shares traded on regulated markets. There is a guarantee that the customer will receive at least the amount of premiums paid if they surrender within the first five years. After five years, the guaranteed surrender or maturity value does not increase, but stays at the level it was after five years (i.e. the higher of the amount of premiums paid after 5 years or the value of the investment at that time). The product does not have any other structures which make it difficult for the customer to understand the risks involved.

This product is unlikely to be considered as non-complex under Article 30(3)(a)(i) or (ii), due to the complexity of the mechanism to calculate the surrender or maturity value.

9. An insurance-based investment product where the customer does not make an investment selection. The surrender or maturity value reflects the performance of investments managed by insurer. These investments are primarily in bonds and shares traded on regulated markets, however the insurer also invests in some

derivatives. The product does not have any other structures which make it difficult for the customer to understand the risk involved.

The product is complex under Article 30(3)(a)(i) and (ii)

10. An insurance-based investment product where the customer does not make an investment selection. The surrender or maturity value reflects the performance of investments managed by insurer but the insurer guarantees that the surrender and maturity value is at least the amount of premiums paid by the customer. These investments made by the insurer are primarily in bonds and shares traded on regulated markets, however the insurer also invests in some derivatives. The product does not have any other structures which make it difficult for the customer to understand the risks involved.

The product is non-complex under Article 30(3)(a)(ii)

11. An insurance-based investment product where the customer does not make an investment selection. The surrender or maturity value reflects the performance of investments managed by insurer, but the insurer guarantees that the surrender and maturity value is at least the premiums paid by the customer. The investments made by the insurer are primarily in bonds and shares traded on regulated markets, however the insurer also invests in some derivatives. The insurer also distributes a portion of its overall profits to the customer. The product does not have any other structures which make it difficult for the customer to understand the risks involved.

The product may qualify for sale via execution-only under Article 30(3)(a)(ii), depending on the complexity of the profit participation mechanism

Q8. Do you have any comments on the distribution processes outlined in the decision trees and the generic examples of complex and non-complex insurance based investment products?

Q9. Do you have any other comments on this Consultation Paper?

Annex II: Questions for Consultation

The questions outlined below are also included in the Template for Comments

Q1. Do you have any comments on the Impact Assessment?

Q2. What role do you consider that execution-only sales will have in the distribution of insurance-based investment products in view of the restrictions in Article 30(3)(a) of the IDD, the fact that the provisions in Article 20(1) of the IDD still need to be satisfied regarding the specification of the customer's demands and needs, and the potentially higher risks of the product not being suitable or appropriate for the customer?

Q3. What types of insurance-based investment products do you think could fall within the scope of Article 30(3)(a)(i) and which within the scope of Article 30(3)(a)(ii) of the IDD?

Q4. Do you have any comments on Guideline 1 and its explanatory text?

Q5. Do you have any comments on Guideline 2 and its explanatory text?

Q6. Do you have any comments on the interaction between the requirements in EIOPA's technical advice on 'other non-complex insurance based investments' and the requirements proposed in these Guidelines?

Q7. If you currently distribute insurance-based investment products via execution-only, which of the proposed criteria regarding structures which make it difficult for the customer to understand the risks involved, would exclude those products from being distributed via execution-only under IDD?

Q8. Do you have any comments on the distribution processes outlined in the decision trees and the generic examples of complex and non-complex insurance based investment products?

Q9. Do you have any other comments on this Consultation Paper?