Comments Template on the Consultation Paper on Product Intervention Powers under the Regulation on Key Information Documents for Packaged Retail and Insurance-Based Investment Products (PRIIPs)		**Deadline 27 February 2015 17:00 CET**
Name of Company:	Insurance Europe	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public

Please follow the following instructions for filling in the template:

- ⇨ Please insert a name in the box next to "Name of Company";
- ⇨ Do **not** change the numbering in the column "reference";
- ⇨ Leave the last column empty;
- ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty;
- ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.

Please send the completed template, in Word Format, to CP-14-064@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.

Q1: Do you agree with the criteria and factors proposed?

Q2: Are there any additional criteria and/or factors that you would suggest adding?

Q3: Is there evidence that certain criteria do not apply under any circumstances to insurance-based investment products? Please elaborate.

Q4: What would you estimate as the costs and benefits of the possible changes outlined in this

Comments Template on the Consultation Paper on Product Intervention Powers under the Regulation on Key Information Documents for Packaged Retail and Insurance-Based Investment Products (PRIIPs)		Deadline 27 February 2015 17:00 CET
	Consultation? The questions listed here are those in the Consultation Paper on Product Intervention Powers under the Regulation on Key Information Documents for PRIIPs.	
Reference	**Comment**	
General Comment	The basic idea of European Insurance supervision (ESFS) is that the European Supervisory Authorities (ESAs) ensure a **consistent application of common supervisory provisions** and coordinate supervisory action while the national competent authorities (**NCAs) execute the direct supervision (day-to-day business)** over their respective markets. The intervention powers in Art. 16 and Art. 17 PRIIPs Regulation reflect this distribution of roles between the European Insurance and Occupational Pensions Authority (EIOPA) and the NCAs: the European legislator in Art. 16(2) and Art. 16(3) PRIIPs Regulation sets out conditions that are to be read cumulatively and must be met before EIOPA can adopt the specific measures set out in Art. 16(1). The legal conditions in Art. 16 strictly limit EIOPA's powers in practice. This particularly applies to legal requirements in Art. 16(2)(a) PRIIPS Regulation ("significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the Union)". Furthermore, recital 25 of the PRIIPs Regulation clarifies that there must be "serious concerns" and that the intervention requires a "public interest", i.e. a collective effect in order to evidence a "significant investor protection concern". This said the technical advice should be very clear about the fact that the **specific criteria and factors serve only as a tool for assessment** ("to be taken into account"). Moreover, they can neither replace careful examination by EIOPA nor define or replace the legal requirements in Art. 16 (2) PRIIPs Regulation. It should be a common understanding and clarified in the Delegated Acts that even if certain criteria or factors in the delegated acts apply, there is no automatic right for EIOPA to intervene and, in any event, only in exceptional circumstances. The legal threshold to be met before EIOPA can intervene under Art. 16 is, rightly, very high. Supervisors	

may only intervene under the PRIIPs Regulation in exceptional cases.

The request by the legislator to specify criteria and factors to be taken into account by EIOPA before taking action under Art. 16 must not be understood as a general invitation to anticipate new legislation. There already are legislative acts that refer to specific criteria. Other legislation is currently discussed. For example, the PRIIPs Regulation sets standards for the transparency of cost, risk and reward with its key information document. It would not be acceptable if EIOPA and the Commission were to establish new standards without regard to the political discussion and its results on Level 1. Product design and pricing should always remain within the responsibility of the manufacturers. The intervention powers should also not anticipate the implementation of the review of the Insurance Mediation Directive (IMD2), which is still under discussion. Areas which the EU legislator deliberately leaves to Member States' discretion at level 1 must be respected. The criteria should not, therefore, pre-empt or interfere in any way with the way Member States will implement the future IMD 2 provisions.

A number of criteria or factors quoted fail to give evidence justifying a need for a prohibition or restriction of a product. Examples include the criteria falling under the "degree of innovation" or "communication or distribution channels" or "selling practices associated with insurance-based investment products". It is more a list of areas where intervention could take place than criteria or factors to be taken into account in determining when there is a problem or a threat justifying intervention.

In Insurance Europe's view, EIOPA should be cautious when adopting regulation developed by the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) for the financial sector, as these do not always suit the specificities of insurance-based investment products.

The limits of the intervention powers, which stem from the scope of the PRIIPs Regulation,

	Comments Template on the Consultation Paper on Product Intervention Powers under the Regulation on Key Information Documents for Packaged Retail and Insurance-Based Investment Products (PRIIPs)	Deadline 27 February 2015 17:00 CET
	must be taken into account when determining the criteria. Art. 2(2) PRIIPs Regulation lists products to which the Regulation and, therefore, the intervention powers are not applicable. In particular, the rules currently discussed for pension products should not be prejudged. Any product intervention by the ESAs or NCAs must not deter investment and innovation and will only cause investor access problems and ultimately reduce choice. It is therefore important that compelling evidence must be available to justify any radical intervention, particularly at pan-EU level. Finally, there must be clarity as to the process of appeal to be followed by manufacturers where EIOPA has taken a decision to intervene.	
Q1	**Q1: Do you agree with the criteria and factors proposed?** **It is important that the clarifications mentioned in the general comments are made in the Delegated Acts. Due to the number of criteria/factors, a detailed assessment is not possible. Insurance Europe would, however, like to address at least these points (in order of importance):** **1.16.1. Degree of complexity** The criterion "complexity" is not, per se, detrimental nor does it imply products are inappropriate for the retail investors. Many insurance-based investment products require a certain degree of complexity in order to reduce the investor's risk, for example by providing certain guarantees, which offer a greater level of protection to retail investors, cushioning them from the volatility of the market. These guarantees are one of the main reasons retail investors buy insurance-based investment products: they want additional protection against risks. However, the concrete construction of these features is neither detrimental nor does it correlate with a higher risk for the investor. EIOPA should therefore clarify those products that require a certain degree of complexity in order to e.g. produce certain guaranteed benefits to the retail investors are not captured by the	

	criteria mentioned in 1.16.1. As regards 1.16.1(d), it is questionable whether the criterion "nature and scale of any risks" is meaningful in the assessment of a need for possible product intervention. Different retail investors have different risk preferences. It is, therefore, important that the different risk and the corresponding reward profiles of insurance-based investment products are transparent and understandable for retail investors and enable comparison between different products. The risk indicator and the corresponding performance scenarios (which were introduced in the PRIIPs Regulation) are currently being developed at Level 2. Therefore, sufficient information requirements, that ensures that the retail investors buy insurance-based investment products that suit their risk appetite, will be safeguarded through the PRIIPs key information document (KID). As regards 1.16.1(b), the transparency of costs is also achieved through the PRIIPs Regulation: the cost indicator and the corresponding performance scenarios, which are also currently being developed at Level 2, should ensure the transparency of costs and represent these in a comparable and transparent manner. It is therefore unclear why EIOPA should be concerned about a possible lack of transparency of costs. As regards (e), it should be taken into account that the provisions on bundling of products with other services or products are currently being discussed in the context of IMD2. The revision and the implementation of this Directive should not therefore be pre-empted. For these reasons, Insurance Europe would propose that the proposed factors set out in sections 1.16.1(b), (d) and (e) be abandoned and not included in any future technical advice. **1.16.9 The degree of innovation of an insurance-based investment product, an activity or practice**	

Comments Template on the Consultation Paper on Product Intervention Powers under the Regulation on Key Information Documents for Packaged Retail and Insurance-Based Investment Products (PRIIPs)		Deadline 27 February 2015 17:00 CET
	Insurance Europe welcomes the fact that EIOPA emphasises that the concept of innovation should not be a sole, stand-alone reason for making use of product intervention powers. Indeed, innovation is a driving force and indispensable for a continuous development of new products that increasingly reflect the changing needs of retail investors. In Insurance Europe's view, innovation must never be considered as detrimental to retail investors nor to financial stability. This is because innovation drives developments to better meet retail investors' needs, demands and expectations. In Insurance Europe's view, the Solvency II provisions could reduce potential detriment since the risks that arise from the sale of a new product are appropriately taken into account in order to ensure the financial soundness of an insurance undertaking. Innovations do not represent a threat to the orderly functioning and integrity of financial markets or to the stability of the financial system. For these reasons, Insurance Europe would propose an explicit mention in any further technical advice on this criterion that underlines: (i) the very low likelihood that innovation should be a cause for EIOPA to take action under Art. 16.2, in addition to (ii) the care EIOPA should take in relying on this criterion due to its possible unforeseen consequences on manufacturers. **1.16.2. The size of the potential problem or detriment** It should be clarified that the criteria "size and notional value of the insurance-based investment product" relates to the orderly functioning and integrity of financial markets and not investor protection. Insurance Europe assumes that this is an editorial error, that unlike Art. 17.7(d), it is not explicitly mentioned in Art. 16.8(b) of the PRIIPs Regulation. Further, point 1.16.2(f) (the volume of the issuance) is not relevant.	

	Comments Template on the Consultation Paper on Product Intervention Powers under the Regulation on Key Information Documents for Packaged Retail and Insurance-Based Investment Products (PRIIPs)	Deadline 27 February 2015 17:00 CET
	1.16.3. The type of investors involved in an activity or practice or to whom an insurance-based investment product is marketed and sold Under the heading of intervention powers, EIOPA proposes to introduce various criteria for product design. It should, however, be clarified that product design is first and foremost the responsibility of the manufacturers. Regulation on product design should not be introduced on the basis of intervention powers but requires a decision in principle by the legislator. For general concerns regarding product oversight and governance, please see Insurance Europe's position paper on EIOPA's draft guidelines on product oversight and governance. Insofar, sales outside the identified target market or its insufficient identification are not appropriate criteria for intervention powers. The PRIIPs Regulation does not mention the term "target market", therefore it should be avoided also on Level 2. The term used in the PRIIPs Regulation is "type of retail investor to whom the PRIIP is intended to be marketed". Its relevant characteristics are already contained in EIOPA's criteria (b) and (c). In contrast, the term "target market" is currently being discussed in the context of possible rules on product governance. The introduction of this term on the basis of the PRIIPs Regulation could result in obligations for manufacturers which are not foreseen at Level 1. Insurance Europe would emphasise that individual needs must be identified when adequate advice is provided. Banning the distribution of products to particular investors seriously interferes with retail investors' freedom of choice. The only example in (d) is "pension saving". This should be deleted since national recognised pension products and occupational pensions are excluded from the scope of the PRIIPs Regulation (Art. 2 e and (f). Point (e) should be deleted due to the reasons mentioned above. **1.16.6. The degree of disparity between expected return or benefit for investors and risk of**	

	loss in relation to insurance-based investment product, activity or practice / 1.16.8 The pricing and associated costs Again, according to the PRIIPs Regulation, retail investors will be thoroughly informed about the risks and the corresponding rewards of a product through the KID. A sufficient comparability being ensured, the retail investors will be able to choose a product that meets their needs. 1.16.6. and 1.16.8 are misleading. It should be noted that the calculation of costs and premiums is primarily the task of the manufacturers and not of the supervisory authorities. It should be clarified explicitly that no general control by supervisory authorities over the pricing and the premium structure is intended. With respect to 1.16.8(b), it should be borne in mind that there is no legal basis for EIOPA to regulate the design of products (see also the comments on No. 1.16.3). The criterion should therefore be deleted. **1.16.4. The degree of transparency of insurance-based investment product or type of activity or practice** Transparency is ensured through the KID required by the PRIIPs Regulation. Therefore, the political choice made by the legislator about the specific content and the presentation of it should be respected; any shortcomings must be addressed in the ordinary legislative procedure. The KID for PRIIPs has been developed to provide retail investors with understandable, reliable, robust, stable and comparable information. Regarding 1.16.4(b): the transparency of costs in the PRIIPs Regulation and the extensive Level 2 provisions ensure that the investor is informed about the costs and charges. This applies also to 1.16.8(a). Regarding 1.16.4(c): the format and the structure of the information in the KID will ensure that the insurance-based investment product is adequate for the retail investor. Regarding 1.16.4(d): the risk indicator is developed in a way that retail investors	

	clearly understand the risk exposure connected to the insurance-based investment product. It is therefore superfluous to consider the degree of transparency as a possible criterion for product intervention, since possible detriment to retail investors should be avoided through the provision of the KID. **1.16.10 The selling practices associated with the insurance based investment product** The intervention powers should not anticipate the currently discussed review of the insurance mediation directive.	
Q2	**Q2: Are there any additional criteria and/or factors that you would suggest adding?**	
Q3	**Q3: Is there evidence that certain criteria do not apply under any circumstances to insurance-based investment products? Please elaborate.** 1.16.3(d) refers to "pension savings". This reference must be deleted since occupational and private pensions that are recognised under the national law do not fall within the scope of the PRIIPs Regulation. As mentioned in Insurance Europe's reply to question 1, it is questionable whether the criteria/factors in the context of the degree of complexity/innovation are applicable to insurance-based investment products. A sufficient degree of transparency is already ensured within the KID for PRIIPs.	
Q4	**Q4: What would you estimate as the costs and benefits of the possible changes outlined in this Consultation? Where possible, please provide estimates of one-off and ongoing costs of change, in Euros and relative to your turnover as relevant. If you have evidence on potential benefits of the possible changes, please consider both the short and longer term. As far as possible, please link the costs and benefits you identify to the possible changes that would drive these.**	

	Comments Template on the Consultation Paper on Product Intervention Powers under the Regulation on Key Information Documents for Packaged Retail and Insurance-Based Investment Products (PRIIPs)	Deadline 27 February 2015 17:00 CET
	The costs will largely depend on whether it is made sufficiently clear in the Delegated Acts that the intervention of the supervisory authorities only applies in exceptional situations – as is made clear by the cumulative application of Art. 16(2)(a), (b), (c) as well as Art. 16(3). Another important factor for cost implications is the responsible handling of the powers by the supervisory authorities.	