

Gabriel Bernardino  
Chairman

Mr Olivier Guersent  
Director General  
European Commission  
Directorate General for Financial Stability,  
Financial Services and Capital Markets Union  
SPA2 05/010  
10 rue de la Loi  
B - 1049 Brussels



EIOPA-17/033  
1 February 2017

## **Technical Advice on possible delegated acts concerning the Insurance Distribution Directive (IDD)**

Dear Mr Guersent, *Dear Olivier,*

I am pleased to submit to you EIOPA's Technical Advice and accompanying cost-benefit analysis, on possible delegated acts concerning the Insurance Distribution Directive (IDD), which is provided in response to the Commission's Request for Advice to EIOPA of 24 February 2016.

We are providing our final Technical Advice and cost-benefit analysis by your requested deadline of 1 February 2017, which fully supports the Commission's objective of allowing for sufficient time to adopt delegated acts and for market participants to comply with those delegated acts by the transposition deadline of 23 February 2018.

The Technical Advice facilitates the proper functioning of the internal market and promotes a high level of consumer protection, through proposals that support cross-sectoral consistency. At the same time, it adequately takes into account the legal framework of the IDD and the specificities of the insurance sector. In doing so, EIOPA strongly believes that the Technical Advice is in line with IDD and the Request for Advice from the Commission. In this respect, I would also like to express appreciation for the close co-operation with Commission staff in developing this Technical Advice.

The final Technical Advice has benefitted from, and reflects, the input received from different stakeholders. It is based on considerable public consultation, both in the form of an initial online survey carried out in January 2016, a written public consultation from July-October 2016 and a public hearing held in September 2016. EIOPA's Insurance and Reinsurance Stakeholder Group was also closely consulted in the process of developing this technical advice.

As per your request, the Technical Advice entails recommendations on the following issues in the IDD:

- Product oversight and governance (Article 25(2))
- Conflicts of interest (Articles 27 and 28(4))
- Inducements (Article 29(2)) and
- Assessment of suitability and appropriateness and reporting to customers (Article 30(5)).

For further details, please see enclosed Annex.

We will be shortly launching a public consultation on draft Guidelines under Articles 30(7) and (8), IDD on insurance-based investment products (IBIPs) that incorporate a structure which makes it difficult for the customer to understand the risks involved in order to issue these by 23 August 2017.

Given the close relationship between these Guidelines and our Technical Advice on "other non-complex products", it may be helpful to further consider our Technical Advice on this issue at a later date in the light of the feedback to this public consultation. One option for the Commission would be to issue a separate delegated act pertaining only to Article 30(3)(a)(ii), IDD, taking into account that it may have a more limited impact on national implementation of the IDD, as it is linked to a Member State derogation.

Enclosed you will find:

- the Technical Advice itself (with policy recommendations)
- the Impact Assessment (cost-benefit analysis)

In addition, the final report and consultation feedback can be found on EIOPA's website under the heading publications: <https://eiopa.europa.eu/publications>

In the meantime, if you require any further information on our Technical Advice and cost-benefit analysis, I and my colleagues remain at your disposal. For your information, I have also sent a copy of this letter and EIOPA's technical advice to the European Parliament and the Council of the EU.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Christine' followed by a long horizontal flourish.

## Annex - Summary of EIOPA's technical advice on possible delegated acts

- As regards *Product Oversight and Governance*, we have based our Technical Advice on our Preparatory Guidelines on product oversight and governance arrangements for the insurance sector. In addition, we have provided specific additional input on:
  - the criteria for when an insurance intermediary is considered to be manufacturing insurance products and the roles and responsibilities of the insurer and intermediary in this context;
  - the level of granularity expected from manufacturers in defining the target market; and
  - the mechanisms for information exchange between the manufacturer and distributor and for regular review of products and product governance policies.
- As regards *Conflicts of Interest*, we have defined in our Technical Advice, the potential situations in which conflicts of interests may arise between distributors and their customers in the course of distribution of insurance-based investment products (IBIPs) requiring distributors to take appropriate measures to prevent, manage and, as a measure of last resort, to disclose conflicts of interest to avoid any harm to customers.

Based on national supervisory experience, the interconnectedness of the rules on conflicts of interest and inducements and the need to promote a high level of consumer protection, we consider it important to include the receipt or payment of third-party payments in the list of potential situations where conflicts of interest may arise.

- As regards *Inducements*, we have provided advice on the criteria to assess whether inducements have a detrimental impact on the quality of services to the customers. We have clarified that detrimental impact has to be assessed by taking into account all factors which may increase or decrease the risk of customer detriment.

These criteria are based on supervisory experience and we consider them important from a perspective of enhancing consumer protection. We consider the criteria to be in line with both the Commission's request for advice and the empowerment for delegated acts. Our advice is not creating a *de facto* prohibition on the payment or receipt of inducements, as the criteria are simply intended to provide guidance to the market on where detrimental impact may occur.

- As regards *Suitability, Appropriateness and Reporting to customers*, we have provided advice on the types of information which insurance undertakings or insurance intermediaries should obtain from their customers in order to be in a position to assess the suitability or appropriateness of IBIPs.

We have also specified the criteria to identify non-complex insurance-based investment products, which may be sold on an execution-only basis, without a suitability or appropriateness assessment which strikes, in our view, an effective balance between promoting consistency with equivalent provisions in MiFID II and at the same time, taking into account the specificities of the insurance sector.