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<tr><td colspan="2">Comments Template on
Consultation Paper on the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved</td><td>Deadline
28 April 2017
18:00 CET</td></tr>
<tr><td>Name of Company:</td><td colspan="2">Better Finance (The European Federation for Investors and Financial Services Users)</td></tr>
<tr><td>Disclosure of comments:</td><td>EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.

Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.</td><td>Public</td></tr>
<tr><td></td><td colspan="2">Please follow the following instructions for filling in the template:

⇨ Do not change the numbering in the column “reference”; if you change numbering, your comment cannot be processed by our IT tool

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The numbering of the questions refers to the Consultation Paper on the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved</td></tr>
<tr><td>Reference</td><td colspan="2">Comment</td></tr>
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	Comments Template on Consultation Paper on the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved	Deadline 28 April 2017 18:00 CET
General Comments	**Better Finance, the European Federation of Investors and Financial Services Users,** is the public interest non-governmental organisation solely dedicated to the protection of European citizens as financial services users at European level. Our Federation acts as an independent financial expertise and advocacy centre to the direct benefit of European financial services users, promoting research, information and training on investments, savings and personal finances. Since the Better Finance constituency is made of the organisations representing individual and small shareholders, fund and retail investors, savers, pension fund participants, life insurance policy holders, borrowers, and other financial services users, it has the interests of all European citizens at heart. We welcome EIOPA's draft guidelines on complex insurance-based investment products. Nevertheless, we find that there is a lack of precision comparing them with its Technical Advice on non-complex IBIPs. Better Finance also believes that any type of annuity or life insurances should be considered as insurance-based investment products (IBIPs) because they include an investment part of the premium and risk coverage. Also, the maturity is not often linked to a lump-sum but to long-term pays-out. Furthermore, the maturity or pay-out upon death is dependent on variables established by the insurance undertaking. Thus, consumers find it very complicated to understand the effects and in most of the cases they do not fully comprehend them. Although the complexity of the products cannot be reduced, some improvements should be made to increase transparency.	

	Transparency is crucial for consumer protection. To accomplish a higher degree of transparency it is necessary to make the disclosure of actual risk-reward relations based on historical returns and/or realistic return <u>probabilities</u> mandatory and a cost structure which should be easy to comprehend.	
Question 1	Better Finance agrees with EIOPA that "*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*". **<u>These guidelines need to be consistent with those published by ESMA</u>**. Indeed, in particular unit-linked insurance products are often composed of fund "units" and those are governed by MiFID rules and ESMA guidelines. Besides many IBIPs are "substitutable" to other retail investment products that are governend by MifID rules and ESMA guidelines. This is why the PRIIPs Regulation scope encompasses both investment funds, banking structured products and IBIPs. Our organization shares the objectives pursued by the guidelines stated on page 12 of the consultation. However, it is very important for consumers that these aims are really implemented. We believe that the improvement of consumer protection should be at the heart of the guidelines. In this respect, the guidelines must provide some benefits and promote a high-level of protection, irrespective of the kind of insurance-	

	based investment product. Article 20 (1) of the IDD stresses that that consumers must be enabled to make informed decisions. That is the reason why we disagree with the argument (stated in page 14) against a restrictive approach assuming that "*this option would limit the customer's choice and freedom to buy insurance-based investment produtcs as responsible adults without the need to provide information on their knowledge and investment experience*". Taking into account the low level of financial education among EU citizens and the complexity of most IBIPs, this statement is very dangerous and can lead to a mis-use of consumer protection provision. Even "responsible adults" - who possess more financial education than the average of the EU population – could take the wrong decisions (or at least not their "best" choice) due to mis-leading marketing strategies and poor technical advice. EIOPA repeatedly outlines the negative impacts by using the results of behavioural financial economics. Therefore, Better Finance advocates for a restrictive approach in this matter.	
Question 2	Our organization thought that, during EIOPA's public hearing on IDD Delegated Acts in September 2016 in Frankfurt, it had been clearly stated that there is a clear separation of, on the one hand, the tests of the demands and the needs and, on the other hand, the suitability and appropriateness assessment. The requirement in Article 20 (1) of the IDD for the distribution to specify the demands and needs of the customer aims at the basic analysis of insurance risk coverage of the customer (health, disability, longevity, etc). This has not much to do with the investment options included in IBIPs, which should be analyzed by the	

	suitability and appropriateness assessment. That is the reason why the possibility to sell an IBIP on an execution-only basis does not have any impact on the obligation for the demands and needs test by the distributors. However, in numerous IBIPs the additional suitability and appropriateness assessment will be omitted due to the fact that they may be sold via execution-only. Therefore, there will be no changes on what refers to the current mis-selling distribution practices of life-insurances[1]. Consequently, the non-complex IBIPs approach must be as restrictive as possible. Like that a decrease of the risks of the product not being appropriate or suitable for a customer will be achieved.	
Question 3	Better Finance agrees with EIOPA's statement on the fact that "*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*". Our association, as EIOPA, believes that the complexity to IBIP stem from those two elements. Traditional capital life-insurance contracts are the only contracts where the customer cannot select the investment strategy and the insurers assures an interest rate on the investment part of the premium. In this respect, the individual knowledge and experience is not directly important. On the contrary, the comprehensive disclosure	

[1] For further information on mis-selling of financial products please click the following link

	of costs which strongly reduce the investment part of the premium is all the more necessary. Our organization would like to stress that we believe there are very few “other non-complex insurance-based investment products” following to Article 30 (3, a, ii). The “execution-only” presumption does not fit for any unit – or index linked IBIP currently offered.	
Question 4	Based on the examples given on page 21, we find it will be very complicated for any type of IBIP not to be considered a non-complex. Therefore, we strongly disagree with this greatly broad definition for non-complexity, which may exclude “hybrid” IBIPs where several investment exposures are simultaneously linked in one insurance contract. On another note, although in the non-hybrid IBIPs the customers do not know which part of the premiums it is going to be invested to the performance of the underlying investment product, with or without guarantee mechanisms. Therefore, the detriment is clear and can be measured by making the difference between calculated and actual costs, because the investment part of the premium (and consequently possible rewards) will be inevitably be reduced. Based on our experiences guarantee mechanisms apply only for maturity calues but not for surrender values. That is why we steem the assumptions made under 2.14 are at least partly wrong.	
Question 5	Contrary to the first guideline wrote for this matter, Guideline 2 represents the real dimension of possible consumer detriment by IBIPs: complexity of IBIPs is less linked	

	to the underlying investment products but to the lack of transparency of various "layers" of costs. The part of the premiums paid by the policyholder which will actually be invested is strongly reduced by entry and ongoing costs of the insurers and of the investment companies as well. Moreover, there are exit penalties. This is why the provision in page 22 (paragraph 2 (c)) is so relevant: "*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*". And we believe that this Guideline should be strong in this matter. Furthermore, the provision mentioned in page 22 (paragraph 2 (a)) should not include pay-out options like lump-sum, annuitites, programmed withdrawal or income dranwdown: "*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*". At this point, it is important to remember that the maturity or surrender value or pay-out upon death in dependent on variables set by the insurance undertaking, the effects of which are difficult for the customer to understand.	
Question 6	We partly agree and partly disagree upon the interaction between the requirements in EIOPA's technical advice on 'other non-complex insurance based investments' and the requirements proposed in these Guidelines. In detail we draw the following conclusions (TA, p. 77): **Paragraph a)** of the TA is clarified in detail by sub-paragraph 1.16 of Guideline 2,	

	which we fully agree upon. On the contrary the wording of sub-paragraph 1.15 (a to c) of Guideline 2 essentially only repeat paragraphs b), c) and d) of TA without any further clarification, a fact which we have already strongly criticized in our General Comment above. The three paragraphs have to be weighted very differently: • With regard to **paragraph b)** of TA concerning the "nature, risk or pay-out profile" which might be altered by the insurer, we again stress that this provision should not only include pay-out options like lump sum, annuities, programmed withdrawal or income drawdown. It must be taken into consideration that the maturity or surrender value or pay out upon death is dependent on variables set by the insurance undertaking (like mortality tables and participation in benefits - changeable even during contract duration), the effects of which are difficult for the customer to understand. • **Paragraph c)** of TA has to clarify, what does it mean that there are not options to surrender or otherwise realise the insurance-based investment product at a value that is "available to the customer". We suppose that this wording implies „prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer (cf. Article 57 (b) of COM Delegated Regulation of 25.4.2016) like any other securities. We stress that this assessment is not valid for life insurances at all, because the surrender values of any contract are only calculated individually by the insurer and only on request of the policyholder. In consequence following to this paragraph alone there can not be any non-complex IBIPs currently available on the market.	

	• **Paragraph d)** of TA misses any necessary clarifications by the proposed Guidelines. We underline again that usually life or annuity insurance contracts include "hidden" acquisition costs by commissions and additional exit fees ("Stornogebühren") which strongly reduce the surrender value. In case of early withdrawal the charges make an investment illiquid even though technically it may be possible to redeem. Additionally it is not clearified at all, what is "unreasonable detriment" to the customer? Which are the thresholds? That is why this feature must urgently be specified (cf. our comment on Q19, October 2016). The insurers will always try to proof that their costs are not "disproportionate" in order to circumvent this feature. **Paragraph e)** of TA, too, is essentially only repeated in sub-paragraph 1.14 of Guideline 2 without any further clarifications. As already pointed out in our comment on Q5 above, complexity of IBIPs is less linked to the underlying investment products but to the lack of transparency of various "layers" of costs. The part of the premiums paid by the policyholder which will actually be invested is strongly reduced by entry and ongoing costs of the insurers and of the investment companies as well. Additionally there are exit penalities. This non-transparent structure of costs and of the actually invested part of the premium is incorporated in any IBID and therefore "makes it difficult for the customer to understand the risks involved." The most important risk of consumer detriment consist in cancelling the contract before reaching maturity: no capital guarantees are valid, and additional high penality fees heavily reduce the accumulated savings of the customer being paid out.	
Question 7		

	Better Finance does not distribute any IBIPs. As it has been pointed out in Q3, Traditional capital life-insurance contracts are the only contracts where the customer cannot select the investment strategy and the insurers assures an interest rate on the investment part of the premium. In this respect, the individual knowledge and experience is not directly important. On the contrary, the comprehensive disclosure of costs which strongly reduce the investment part of the premium is all the more necessary.	
Question 8	Our organization believes that the decision trees shown from page 26 to 31 look adequate in principle. However, in order to be fully supportive of them we would like to know how would EIOPA effectively supervise these well-structured distribution practices, and more precisely for distributors that are commission-driven and for who the mis-selling practices are not forbidden by IDD?	
Question 9	No comments	