	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**
Name of Company:	Austrian Insurance Association VVO	
Disclosure of comments:	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.	Public
	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 ⇨ 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-17-001@eiopa.europa.eu.** **Our IT tool does not allow processing of any other formats.** 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	
Reference	**Comment**	
General Comments	The VVO welcomes the possibility to comment on the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that	

	incorporate a structure which make it difficult to understand the risks involved. It is of importance, that policyholders are well informed of product features of life insurance contracts and that they understand well the risks to which they are exposed. However, the Austrian insurance industry is very much concerned that the proposed Guidelines would lead to the fact that insurance products which are well established since decades, which are very popular and very well accepted by customers and where the policyholder is not exposed to an investment risk are considered artificially as complex products. This is especially the fact when it comes to traditional life insurance contracts with profit participation. The traditional life insurance is a collective life insurance vehicle which makes it possible that the investment risk is borne by the insurance company which is subject to strict regulation within the prudent person principle of Solvency II. In addition to guarantees, within the legal framework (Austrian supervisory act, FMA-regulation on profit distribution) the insurance company may use tools such as profit distribution which allows for balancing profits collectively over the time to the benefit of the policyholder. The actuarial complexity of a traditional life insurance product is not relevant for customers in terms of a structure which makes it difficult to understand the risks involved. On the contrary, the business modell of traditional life insurance serves as a tool for minimizing and eliminating unforeseen risks for the policyholders. In Austria, profit participation only may increase contractually agreed guarantees and therefore, it does not expose the policy holder to any investment risk. Precontractual information for traditional life insurance in Austria includes tables with annual guaranteed surrender values and guaranteed insurance benefits at the end of the contract which may only be increased by profit participation. The policyholder knows every year the guaranteed part of the insurance contract which is the savings part of his premium (premium minus insurance tax, minus biometric risk premium for covering the death risk, minus letigimate costs).	

	Therefore, we would not understand if this insurance product which represents the majority of life insurance products in Austria would be considered as complex and put in an unlevel-playing field in comparison to products which are not-complex under the regulation of MiFID II. The Austrian insurance industry sees the danger that the majority of insurance based investment products would be considered as complex if the proposed Guidelines are not further refined. In particular the proposed Guideline 2 needs to be further verified in order to avoid that traditional life insurance products which are well-known for customers and where the policyholder ist not exposed to investment risks are wrongly considered as complex. We are concerned that if life insurance products with collective invesments through the insurance company and with profit participation would be considered as complex this limits the policyholders' access to traditional life and pension insurance products where the policyholder is not exposed to an investment risk in future. The Austrian insurance industry calls for a level-playing field for competing products on the retail market. The proposed Guidelines would not achieve a level playing field. E.g. UCITs funds which are governed under MiFID II would get a preferential treatment compared to insurance products und IDD, although the investment risk to which the customer is exposed is much higher than for e.g. a traditional life insurance products where the insurance company bears the investment risk.	
Question 1	The VVO does not share EIOPA's assessment that IBIPs are "often complicated and difficult to understand for consumers". Most IBIPs invest either in a collective pool with profit participation (tradtional life insurance) or in units of funds. Especially traditional life insuance products have been common for a long time and are well-known to policyholders. Also other features of an insurance contract like maturity payment, surrender value or death benefits have been used for decades and are usually common and familiar to consumers since they get detailed precontractual information	

	about the values. The VVO calls for a consistent approach across all different financial sectors in order to achieve a level playing field. However, through the proposed Guidelines this would not be achieved. We do not unterstand why an investment in non-structured UCITS funds which invest in shares or derivatives and where the customer is exposed to a rather high investment risk should be deemed non-complex and a tradtional life insurance where the investment risk is borne by a professional investor who is subject to strict regulation and where the profit participation only increases the contractually agreed values would be automatically considered as complex (see example 9). To ensure a proper level playing field, it is necessary that investments made and managed by insurers are not deemed complex per se. Currently, this is only provided for products that guarantee the sum of paid in contributions minus legitimate costs at all times, as in EIOPA-17/048, page 77 criterion (a)). Due to the business modell of traditional life insurance this is always the case at the end of the contract. However, guaranteed surrender values may be lower, especially at the beginning of the contract. Although the possibly lower level of surrender values we are not of the opinion that this leads to a complexity which makes it difficult to understand the risks involved since the policyholder is informed in a table about the guaranteed surrender values at the end of each year of the contract before concluding the contract.	
Question 2	-	
Question 3	In principle, Article 30(3)(a) of the IDD excludes only a part of the IBIPs market from ‘execution only’ sales by labelling them as complex, unless level 2 (delegated acts) and level 3 (guidelines) impose a very restrictive interpretation of this article. It is important that a level playing field is maintained with distributors of MiFID-products, by sticking as much as possible to the MiFID-interpretation of complex and non-complex products. The VVO is of the opinion that ideally *only underlying structured funds of a unit-linked life insurance product* should be regarded as complex.	

	This seems to be the most coherent approach with regard to the treatment of other comparable financial instruments under MiFID 2. We believe that products where the customer does not make an investment selection with regard to individual financial instruments, but where the investment is done by the insurer who is subject to a very strong prudent person principle should fall into the scope of Article 30(3)(a)(i).	
Question 4	Taking into account our answer to question 3 the statement in number 2.14 of the explanatory text should be restricted to those cases where the provider is not subject to the prudent person principle under Solvency II. Otherwise investment products covered by MiFID would receive a preferential treatment compared to insurance products which are not covered in the MiFID II.	
Question 5	With regard to **Guideline 2. (a)** it should be clear that a contractual clause that offers a customer the possibility to switch between underlying funds is not covered by Guideline 2.(a), as it does not allow the insurer to materially alter the nature of the IBIP, but only gives the customer the possibility to invest in another underlying fund of the same IBIP. With regard to **Guideline 2. (b)** it should be clarified that life insurance products where the policyholder gets a table with guaranteed annual minimum surrender values for the whole contract periode is not covered by Guidelines 2. (b). With regard to **Guideline 2.(c)** it should be clarified that where national laws allow for surrender fees which are suitable and which are agreed in the insurance contract they should not be taken into account for the complexity assessment of a product. Focussing on the provisions of “complex mechanismes that determine the maturity or surrender value on death”, or “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”, could be interpreted as implying that all traditional life insurance products with profit participation would be deemed complex.	

	We believe that the focus should be on the outcome for the customer and the actual risks involved, and not on the mechanisms which insurers use. We therefore suggest that if the policyholder gets precontractual information about yearly guaranteed minimum surrender values and the guaranteed benefits at the end of the contract and if the guaranteed benefits at the end of the contract are at least the amount of the premiums paid minus legitimate costs levid these products should not fall under the scope of Guideline 2 3. (a). The policyholder is aware at any time of the contract's minimum guaranteed surrender values which may only be increased by profit participation.	
Question 6	The VVO wishes to highlight that it is difficult to understand the interaction between the two sets of criteria at two different legislative levels, and that it would have been preferable to have only one set of criteria in one legislative document. In addition we would like to draw the attention to the fact that IDD is based on minimum harmonization. Therefore and also to consider national particularities regarding product features and national information requirements there should be only high-level principles at European level which lead to a level playing field betwenn products which are deemed non-complex under MiFID and IBIPs which are subject to IDD and Solvency II.	
Question 7	-	
Question 8	The *generic examples* in the appendix are helpful as they clarify how the criteria should be understood in practice. However, as we have stated several times in this answer to the consultation we do not understand why an investment in non-structured UCITS funds which invest in shares or derivatives and where the customer is exposed to a rather high insvestment risks should be deemed non-complex and a tradtional life insurance where the investment risk is borne by a professional investor who is subject to strict regulation and where the profit participations only increases the contractually agreed values would be automatically considered as complex (see example 9). In addition, we do not understand why a product which includes a guarantee without any profit participation would be considered as non-complex , while the same product	

	with profit participation (which grants consumers higher returns) might be seen as complex.	
Question 9	-	