

**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:	BIPAR	
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
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ <u>Do not change the numbering</u> in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-17-001@eiopa.europa.eu.</p> <p>Our IT tool does not allow processing of any other formats.</p> <p>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</p>		
Reference	Comment	
General Comments	BIPAR is the European Federation of Insurance and Financial Intermediaries. It	

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groups 53 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance intermediaries (agents and brokers) and financial intermediaries in Europe. More information on BIPAR and on the important role of intermediaries can be found on: www.bipar.eu

BIPAR welcomes the opportunity provided by EIOPA to comment on the EIOPA consultation paper on the proposal for Guidelines under the IDD on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved.

Regarding the classification of IBIPs as complex / non-complex products for the purpose of execution-only, BIPAR is of the view that in general, and for many customers, insurance-based investment products are more or less difficult products. In any event, the consumer is always complex and his or her situation is always unique. We therefore believe that the scope of "execution-only" for IBIPs should be narrow and that in most cases, consumers will benefit from receiving at least an appropriateness test.

In our response to EIOPA's "Survey on the empowerment for EIOPA to develop Guidelines in Article 30(7) of the IDD" (September 2016), we had questioned what the "real definition" of "execution only" was, considering that for IBIPs there is always a demands and needs test in the IBIP context.

We note that on p 6, EIOPA defines "execution-only sale" as: "refers to the distribution of an insurance-based investments products in accordance with Article 30(3) of IDD" and that EIOPA gives further explanation to the use of this term in its explanatory text on p 19, point 2.2. However, we still believe

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	<p>that there may be a level playing field issue with "execution-only" under MiFID where - for products that may be similar to IBIPs - no demands and needs test is required.</p> <p>We also wonder, as PRIIPs and IDD are currently being implemented at national level, if "IBIPs" is defined or interpreted the same way in every Member State.</p>	
Question 1	<p>BIPAR notes that in the Impact Assessment, p 10, EIOPA points out that it will take into account any differences between the Delegated Acts and EIOPA's technical advice, prior to finalising the Guidelines. BIPAR believes that it is important that the final Delegated Acts and the EIOPA guidelines with regard to "complex IBIPs" are not in contradiction with one another.</p> <p>Regarding the different policy options described in the Impact Assessment, BIPAR is not in favour of a broad scope of "execution-only".</p>	

Question 2	<p>As stated in our general comments, we believe that for many customers, insurance-based investment products are more or less difficult products. In any event, the consumer is always complex and his or her situation is always unique. Therefore, we are pleased that for IBIPs, there will always be at least a demands and needs test. We believe that the scope of execution-only for IBIPs should be narrow.</p> <p>We believe that in most cases, consumers will benefit from receiving at least an appropriateness test.</p>	
Question 3	<p>As stated in the previous EIOPA survey on this subject (September 2016), we believe that national supervisory authorities may be better placed and have readily available answers to this question.</p>	
Question 4		
Question 5	<p>BIPAR notes that there seems to be a difference in wording between MiFID (see the ESMA Guidelines concerning the assessment of complex debt instruments and structured deposits) and the suggested EIOPA wording for the IDD guidelines.</p> <p>As an example, whereas ESMA lists examples of products with a structure that makes it difficult for the client to understand the risk, the draft EIOPA Guideline 2 adds an extra assessment from the undertaking or intermediary: Draft Guideline 2 states: <i>“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”</i> “ 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”.</p>	

	The EIOPA draft Guideline seems to put more responsibility on the intermediary/ undertaking regarding the categorisation than the MiFID Guideline does. We are not in favour of this drafting that goes beyond level 1 text (IDD).	
Question 6		
Question 7		
Question 8		
Question 9		