

**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:	Zurich Insurance Group	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Please insert a name in the box next to "Name of Company"; ⇒ <u>Do not change the numbering</u> in the column "reference"; ⇒ 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-14-064@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>Q1: Do you agree with the criteria and factors proposed?</p> <p>Q2: Are there any additional criteria and/or factors that you would suggest adding?</p> <p>Q3: Is there evidence that certain criteria do not apply under any circumstances to insurance-based investment products? Please elaborate.</p> <p>Q4: What would you estimate as the costs and benefits of the possible changes outlined in this Consultation?</p> <p>The questions listed here are those in the Consultation Paper on Product Intervention Powers under the Regulation on Key Information Documents for PRIIPs.</p>		

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Reference	Comment	
General Comment	<p>The draft Technical Advice makes a number of foundational assumptions that should be carefully reconsidered.</p> <p>Potential Overstatement of Risk to Financial Markets and Systems</p> <p>The draft Technical Advice appears to converge the four distinct purposes of EIPOA or an NCA’s authority to temporary prohibit or restrict (a) the marketing, distribution or sale of an insurance-based investment product; or (b) a type of financial activity or practice of an insurance or reinsurance undertaking.</p> <p>Those four distinct purposes for extraordinary intervention arise where a PRIIP presents a:</p> <ul style="list-style-type: none"> • Significant investor protection concern • Threat to the orderly functioning and integrity of financial markets • Threat to the stability of the whole or part of the financial system of the Union • Threat to the stability of the financial system within at least one Member State <p>See Article 16, Para. 2(a); Article 17, Para. 2(a).</p> <p>The draft Technical Advice appears to assume that the criteria and factors set out in the draft are equally applicable and should be similarly applied with respect to each of the four distinct purposes that may justify extraordinary intervention.</p>	

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It would certainly appear highly unlikely that the same criteria and factors that would trigger an investor protection concern related to a PRIIPs could be applied to an analysis whether a PRIIPs has placed the stability of the Union's financial system is in jeopardy.

While EIOPA has clearly sought to preserve flexibility, in this case such flexibility results in a missed opportunity to explore what – if any – factors and criteria relating to a PRIIPs can trigger an immediate threat to the functioning of financial markets or to the stability of a national or the European financial system that would justify the exercise of extraordinary powers of product intervention.

We respectfully submit that such a review would find scant evidence of realistic factors or criteria that suggest a PRIIPs is or could be threatening to the financial markets or the financial stability of either a Member State or the EU as a whole.

Accordingly, we would welcome EIOPA's promulgation of a discussion paper on whether and under what circumstances a PRIIPs might present such a threat. We believe that such an exercise would provide valuable insights that would permit EIOPA to differentiate the criteria and factors as they relate – or do not relate – to the four separate purposes of extraordinary intervention.

Blending of Banking and Insurance Concepts

EIOPA considered it appropriate to base its Technical Advice on the proposals of the EBA and ESMA (Para. 1.9). While EIOPA has made efforts to remove patently inapplicable material from those other documents, EIOPA's draft

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Technical Advice risks obscuring the relevance of the document to insurance. For example, policyholders are referred to in the draft Technical Advice as “investors” (Para. 1.15). More substantively, the technical Advice refers to “notional value” and other concepts which have not been domesticated within the insurance industry.

While there is no doubt value in alignment and coordination with the banking and securities industries, the indisputable fact is that insurance is an equally important but different industry with its own risks, attributes, business model and role in society. For whatever reason, bankers and securities dealers do not face the re-designation of their customers as “policyholders.” Insurance should be afforded that same respect as a separate financial service. Our customers are policyholders and it would be appreciated if the Technical Advice were to address them as such.

While use of appropriate terms would send a strong signal that insurance and other financial sectors are materially different, the Technical Advice should also take this opportunity to make clear how – in the context of the purposes of extraordinary intervention – insurance and other financial sectors do, indeed, differ.

For example, the draft Technical Advice makes the observation that PRIIPs are “based on a contractual relationship between the [policyholder] and the insurance undertaking.” EIOPA recognizes that this contractual relationship determines the ease and cost of customer switching – as compared to the securities markets where unwinding of an investment depends on the accessibility and stability of the secondary market (Para. 1.14).

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However, the clear stabilizing influence of this contractual underpinning – unavailable in the banking or securities context - is not accounted for as a mitigating criteria in considering whether a PRIIPs could threaten financial markets or financial stability. Such is the missed opportunity for discussion where one begins the analysis by asking how insurer’s differ from banks and securities dealers. A more full and productive dialogue could be had if one were to first examine insurance and then compare those findings to conclusions that the respective regulators have drawn concerning banks and securities dealers.

Potential Ambiguity of Scope

As a general observation the Technical Advice should be very clear and often repeat that it applies only in the context of PRIIPs. While that is obvious from the PRIIPs regulation itself and from the origin of the request for advice, taken alone the document may be mistaken as applying in some manner beyond the realm of PRIIPs. The Technical Advice becomes particularly confusing where the reference to “activity”, “practice” or “service” is not clearly linked by referenced and subordination to a PRIIPs. Of course, if the intention is to consider factors or criteria outside of the scope of a PRIIPs or to expand into services, then the Technical Advice exceeds the mandate of the Regulations and must be conformed.

Q1

We respectfully suggest that the criteria are challenging to test against practical hypotheticals. As a result, we are concerned that the value of the Technical Advice is unnecessarily weakened.

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Unclear Connection between Objectives of Intervention and the Factors

For example, Para. 1.16.1(e) provides as a suggested element of complexity to consider whether the PRIIPs is bundled with other another product or service. It is not clear how a bundled product could threaten the stability of a national financial system or the functioning of a financial markets. Perhaps bundling could lead to a complexity relevant to investor protection (generally, though, bundling simplifies the number of interactions required, the decision-making processes and the need to independently determine coordination of the elements) but bundling of insurance products seems far out of place in the context the remaining objectives relating to the functioning of financial markets and stability of the financial system.

Opportunity for Concrete Examples

As another example that is difficult to understand in practical application, Para. 1.16.2(a) refers to the “notational value” of the PRIIPs as a indicator of the size of the “problem or detriment.” While unclear from the context, it would appear that notional value references the face value or death benefit of the contract. If that is the case, then it would be helpful if the guidance offered examples how the level of death benefit drives the degree of concern relating to the function of financial markets and national (or EU-wide) financial stability.

Para. 1.16.12(d) asks that EIOPA or an NCA consider whether a PRIIPs would lead to a “significant or artificial disparity between prices of a derivative and those in the underlying market.” An illustration of such a circumstances does not easily come to mind such that the provision of an example would be informative to the

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reader. Likewise, Para. 1.16.12(f) suggests the consideration how a PRIIPs threatens the “payment systems infrastructure, including clearing and settlement and trading systems.” It would be helpful to demonstrate in concrete terms how this criteria might be observed in practice in the context of a PRIIPs.

Variable and Impractical Reference Points

Para. 1.16.3 suggests that EIOPA or an NCA consider the “type of [policyholders] involved” with respect to a sale. This factor appears impractical to apply as described. Specifically, the detailed elements appear variably positioned as those of (a) a single involved policyholder; or (b) the entirety of the group of actual policyholders.

It is likely impossible for either EIOPA or a NCA to understand the skills and abilities, the economic situation or financial objectives of any one or all of the actually involved policyholders. It would be far more practical if the criteria set forth in subparagraphs (a)-(d) were applied to the “target market” policyholder. That is, the criteria should be applied to the assumed attributes of the defined policyholder base to which the product is intended to be sold. Subparagraph (e) would then capture the consideration that the sales were directed outside of that target market.

Importation of Non-Insurance Terminology

Para. 1.16.4(f) appears to refer to insurance customers as “market participants.” The term “policyholder” would be a more appropriate description. Para. 1.16.4(c) appears to refer to the insurance policy as an “instrument.” It would be more

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appropriate to describe the policy as a “PRIIPs” than an “instrument.”

The draft Technical Advice incorporates other non-insurance nomenclature resulting in confused meanings. For example, Para. 1.16.12(a) asks that EIOPA and NCAs consider whether a PRIIPs poses “a high risk to the performance of transactions entered into by participants or investors in the market or product in question.” In the context of a policyholder purchasing an insurance policy with an investment component, it is rather difficult to confidently understand:

- What “transactions” refers to
- Who market participants are
- What market is being referred to

Undefined References to Services

The Technical Advice makes various references that imply that EIOPA or an NCA could apply its extraordinary intervention powers to “services.” Such an expansion does not appear to be supported by the Regulation.

As an example, Para. 1.16.4(c) refers to the suitability or quality of a “service” provided by the undertaking. Likewise, Para. 1.16.3(e) refers to the sale of “services.” Similarly, Para. 1.16.8(b) suggest an analysis of the pricing of the product as an indication whether the services provided do not support the product’s pricing.

The Regulation itself only extends to products and no other provision suggests that EIOPA or an NCA may rely upon that Regulation for intervention with respect to “services” - however it may be that this term is understood. Accordingly,

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references to the evaluation of services should be removed or justified based on the Regulation.

Blending of Aggravating and Mitigating Factors

Because the Technical Advice does not attempt to apply the criteria or factors through explanation or illustration, it is likely that the user of the Technical Advice will have some difficulty in understanding whether a particular element is an aggravating or mitigating factor. For example, Para. 1.16.7 explains that an element to consider is whether early withdrawals from the PRIIPs are prohibited or there are other barriers to exit. In the context of financial stability, such barriers to exit prevent or at least slow a “run” on the insurance company through early redemptions. In that respect, the existence of such a barrier or penalty to exit is strongly mitigatory in terms of a stabilizing factor for financial markets and the financial system.

It may be that the draft Technical Advice is suggesting a contrary view in the context of investor protection. Because the draft Technical Advice does not illustrate or apply any of the criteria it is difficult to discern how the element is to be construed. For example, the fact that the policyholder is not reliant on a viable secondary market to unwind a PRIIPs may be a strong consumer protection as implied in Para. 1.14.

Opportunity to Better Manage the “Innovation” Dilemma

While noting that it is constrained to include “innovation” as a risk factor because of the Regulation, EIOPA demonstrates an understandable ambivalence or

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caution in doing so. Indeed, innovation more often than not improves customer outcomes and reduces risk. For example, in the context of other consultations EIOPA is suggesting that insurance companies should innovate with respect to product governance procedures.

Should EIOPA find the flexibility, it would be of great service to insurance customers, insurance companies and the financial system if the negative connotations the Regulation seems to impose upon “innovation” could be merged into the more appropriate criteria of complexity. In other words, we suggest that it would be a far better approach to merge the relevant substance of Para. 1.16.9 into Para. 1.16.1 (and, if appropriate, into other sections such as Para. 1.16.4).

Uncertain Scope of Extraordinary Intervention

The scope of the extraordinary intervention powers under PRIIPs appear to overlap or blend with other intervention powers. For example, Para. 1.16.11 appears to indicate that the financial condition of the insurance company issuing a PRIIPs would permit intervention. Of course, other laws and regulations designate the powers of a NCA to intervene in the event an insurance company has become or may become impaired. There is some concern that by including this factor, the Technical Advice may send conflicting signals over the law and procedures through which financially impaired insurers are regulated.

Unsupported Assessment of Financial Crime Risk

Para. 1.16.12(b) is rather surprising and appears ungrounded in fact. According to the draft Technical Advice, PRIIPs are “particularly susceptible to be used for

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	<p>purposes of financial crime.” In fact, most commentators regard insurance as lower risk for use in most financial crime as compared to other types of financial products. It would be useful for EIOPA to explain its risk assessment methodology in greater detail or adjust its characterization of these products.</p>	
Q2	<p>No additional criteria or factors are suggested. Instead, it would be beneficial to sharpen, reduce and illustrate the existing criteria and factors.</p>	
Q3	<p>As reflected in response to Q1, the Technical Advice would benefit from the use of insurance terminology and illustrations in the context of the PRIIPs. In doing so, it is likely to become obvious that some factors are not appropriate or could be expressed in a more practical manner.</p>	
Q4	<p>We respectfully submit that a careful consideration of the specific comments and principles submitted herewith provide an opportunity ensure an appropriate level of alignment with analogous provisions in the banking and securities sectors while reducing the risk that EIOPA, NCAs, insurance companies, policyholders and other stakeholders develop an impractical or variable understanding of the Technical Advice.</p> <p>Moreover, without an independent analysis and discussion of the factors and criteria relevant to insurance, there is considerable risk that these stakeholders may perceive that the threats posed by insurance companies to the financial system and financial markets are the same as those presented by banks and securities dealers. In such a case, those stakeholders may come to expect identical solutions and approaches in determining whether and how to apply extraordinary intervention powers – an approach that could lead to imprecise, misdirected, ineffective and/or less than credible intervention decisions and</p>	

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actions.

We would welcome the opportunity to clearly distinguish in these stakeholders' understanding the very real and demonstrable differences in risk to the financial markets, financial systems and to consumers presented by insurance as compared to other financial products. We would strongly urge that EIOPA take this opportunity to focus the dialogue about insurance on insurance. While we should welcome the opportunity to extract perspectives and learnings from other financial sectors, we find ourselves reluctant to subject the insurance industry to approaches, solutions and thinking engrafted from industries that present wholly different risks, attributes and roles in society.