	Comments Template on Consultation Paper on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive	Deadline 3 October 2016 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.	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-16-006@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 Technical Advice on possible delegated acts concerning the Insurance Distribution Directive	
Reference	**Comment**	
General Comment	BIPAR welcomes the opportunity provided by EIOPA to comment on *EIOPA consultation paper on technical advice on possible delegated acts concerning the insurance distribution directive.* As referred to by EIOPA in its consultation paper, the IDD aims to establish the conditions necessary for fair competition between distributors of insurance products	

	and to create more opportunities for cross-border business. We believe however that the excessive nature of some of the proposals will act as a deterrent to these key objectives. BIPAR believes that the IDD delegated acts should take the form of directives. This would give some flexibility to the Member States to apply the level 2 rules taking into consideration their national specificities. BIPAR welcomes the principle of proportionality that is introduced in EIOPA policy proposals. However it fails to understand how the so many detail requirements proposed by EIOPA will be complied with by small or micro enterprises intermediaries. For the sake of legal clarity, BIPAR believes that it should be made clearer in EIOPA proposals that bespoke insurance contracts are not covered by EIOPA policy proposals on POG. BIPAR believes that it is crucial that EIOPA policy proposals on POG do not lead to a loss of entrepreneurial autonomy for insurance intermediaries. BIPAR is the European Federation of Insurance and Financial Intermediaries. It 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.	
Question 1	Economic entities active in sectors which are regulated face a number of on-going or recurring costs as a result of such regulations. Although it is difficult or impossible to calculate the exact amounts, it is clear that, considering the many changes that the IDD will bring, the costs for the sector (and afterwards for the consumer and the economy) will be high. Also the costs for the governments and the supervisors will increase drastically because of the imposed (sometimes purely administrative) checks and controls.	

	Recurring indirect regulatory costs Recurring indirect regulatory costs are to a great extent part and parcel of doing business. These costs are a very significant and mostly necessary burden. They comprise the costs of internal and external resources dedicated by an insurance intermediary to comply with the relevant legislative and regulatory framework. They represent a very significant burden in terms of cost. Those costs are ultimately borne by consumers. Because of the hugely significant and growing cost of ensuring compliance which is driven in part by the increasingly draconian consequences of being found in breach of regulations, special attention must be given to NOT further increasing costs, in particular in respect of products where no such problems exist or where they do, their significance in terms of the scale of the market is so negligible, that no additional burden being placed on the rest of the market is justified. Unfortunately the POG regulations in part risk doing just that! BIPAR supports good quality legislation. Legislation is costly in particular for SMEs. It is therefore important to make sure that only necessary, useful legislation is introduced. As we will explain within our responses to the other questions below, the proposals contained within the EIOPA proposed technical advice in respect of obligations on intermediaries that do not manufacture products will result in costs to the sector that will far outweigh any potential benefit to customers. BIPAR would like to remind EIOPA of the Regulatory Fitness and Performance ("REFIT") Programme, which aims to make EU law simpler and to reduce regulatory costs. The excessive weight of proposals put forward within this consultation will achieve the exact opposite and are likely to force a reduction in options for the consumer.	
Question 2	In an innovative industry like insurance, entrepreneurial spirit needs to be incentivised. If rules on product oversight and governance are taken too far, it has a potential to stifle innovation. BIPAR believes that EIOPA's policy proposals based on EIOPA's policy work on	

	preparatory Guidelines go well beyond Article 25 of the IDD and that EIOPA technical advice should not be built entirely upon it, in particular regarding the requirements for non-manufacturing insurance distributors. Although the European Commission requests that EIOPA's technical advice, with regard to insurance distributors, should deal "*with the arrangements for selecting insurance products for distribution to customers as well as for obtaining all the relevant information on the insurance product from the manufacturer",* it is important to recall that IDD Article 25 rightly places product governance and oversight requirements on "insurance undertakings, as well as intermediaries which **manufacture** any insurance product" -and not on intermediaries that do not manufacture products. **Regarding product testing** (page 18, point 34), EIOPA explains that in the case of non-life insurance, the assessment could imply considering what the expected claims ratio and the claims payment policy is, what if it is higher or lower than expected, whether the expected claims ratio and claims payment policy suggest that the product is of benefit to customers. In this context it is interesting to note for example that the UK FCA believes that it is not a good measure – e.g. legal expenses insurance – claims ratio does not pick up customers' use of helplines that come as part of the product (https://www.fca.org.uk/news/fs16-01-general-insurance-value-measures and https://www.fca.org.uk/static/fca/documents/feedback-statements/fs16-01.pdf). **Regarding product monitoring** (point 40, page 19), EIOPA explains that as a general principle, and, in accordance with national legal framework, the manufacturer can only make changes to the product that are consistent with the interests, objectives and characteristics of the already existing target market and these changes do not have an adverse impact on the customer to which the product has been sold already. BIPAR wonders whether this means that an insurer can never amend a policy's term to offset a loss ratio of 150% for example? **Regarding documentation** (point 44, page 19), for SME's this can represent an important administrative burden and a disproportionate compliance requirements.	

Regarding obtaining all necessary information from the manufacturer (point 50, page20), EIOPA explains that an important prerequisite to setting up a distribution strategy is that the insurance distributor has detailed knowledge about the approval process of the manufacturer, in particular the target market of the individual insurance product, as well as about all other necessary information on the product from the manufacturer in order to fulfil its regulatory obligations towards the customer. This information helps the insurance distributor to select the insurance products the insurance distributor intends to distribute and to assess to which customers the insurance distributor may advertise and promote the individual insurance products.

BIPAR wonders what value to intermediary or customer does knowing that an insurer takes new products to a committee before they launch them, have. Does that mean that any insurance intermediary – wishing to operate on a whole of market basis - will have to have detailed knowledge of the product approval process of every single insurer with whom they could possible place a customer's insurance risk?

Besides, setting the obligation on intermediaries to obtain '*all other necessary information'* on the product from the manufacturer is not workable. How is an intermediary ever going to be really sure that they have obtained it all?

Specific comments on EIOPA draft technical advice re policy proposals for insurance undertakings and insurance intermediaries which manufacture insurance products for sale to customer

- Regarding the policy proposal on "***Objectives of the product oversight and governance arrangements***", BIPAR wonders what positive outcomes for customers these regulations will deliver that the market would not have managed without this level of intervention.

- Regarding the policy proposal on "***remedial action***", BIPAR wonders how this proposal will be or can be put into practice. It is not the function of a manufacturer to act as a regulator and as such the use of the word 'remedial' is not appropriate. The

manufacturer typically has neither the information rights nor any policing power to enforce such obligation.
The title should read *"Appropriate action*" and the last line of point17 should therefore be amended to read *`the manufacturer should notify any relevant appropriate action (…) ".*

- Regarding the policy proposal on "***distribution channels***", **BIPAR is worried that this could be read as manufacturers having the right to oversee what a distributor does** (including access to records on which other insurers the intermediary is placing what business with). **Placing business with a number of insurers could result in the intermediary being audited constantly and so would be a real deterrent to any intermediary from offering their customers a wide choice of products and providers.**
BIPAR wonders whether these requirements are appropriate and justified. This is an unnecessary and disproportionate intervention in contractual relationships between commercial parties which imposes costs on all products where no problem currently exists.
Points 22, 23 and 24 should therefore be deleted.

Should point 24 remain, and for reasons explained above, the last line of point 24 should be amended to read "*the manufacturer shall take **appropriate** action towards the distribution channel".*

Specific comments on EIOPA draft technical advice re policy proposals for insurance distributors which advise on or propose insurance products which they do <u>not</u> manufacture

- Regarding the policy proposals on **"Objectives of the product distribution arrangements",** BIPAR does not understand the point of having this proposal included in the technical advice and later on in a Level 2 text.

The objectives of POG arrangements are clearly stated in the IDD. Therefore BIPAR

suggests to delete that proposal.

- Regarding the policy proposals on *"**Obtaining all necessary information on the target market from the manufacturer**"*, BIPAR believes that this section must make specific reference back to the information requirements placed on the manufacturer in paragraph 21. The distributor cannot be expected to source any information that the manufacturer is not obliged to produce and make available.
It is essential that distributors receive complete information on the product to be sold and on the target market that the product has been designed for. In this respect EIOPA policy proposals that apply to product manufacturers- require manufacturers to provide **sufficient** information to distributors. BIPAR does not understand why EIOPA mirrored this obligation in its policy proposals that apply to non-manufacturing distributors. EIOPA even set a more onerous requirement: non-manufacturing distributors must obtain **all necessary** information from manufacturers. How could a distributor be able to be absolutely sure that they have obtained all the necessary information?
This adds an extra layer of administrative burden to the process - on all products where no problem currently exists - and creates confusion in terms of responsibility of the different parties in the process.

The value in providing information on the insurance undertaking's product approval process is highly questionable. That process will no doubt include a challenge mechanism, such as taking all products before a committee to demonstrate their value to customers. It is highly questionable that the distributor knowing this fact about the manufacturer's product approval process, will add any value to distributor's or their customers' understanding of how the product is suitable for their demands and needs).

There is a danger in providing useless information to distributors who will receive already a lot of information on all the products they distribute. Useless information can divert distributors' attention from useful information.

	The policy proposal (Point 32) should be deleted or redrafted as follows: *"Obtaining* ***~~all necessary~~ sufficient*** *information on the target market from the manufacturer* *The product distribution arrangements shall aim to ensure that the insurance distributor obtains* ***~~all necessary~~ sufficient information from the manufacturer on the insurance product, ~~the product approval process~~,*** *the target market in order to understand the customers for which the product is designed for, as well as the groups(s) of customers for which the product is not designed for".* The policy proposal (Point 33) deals with information **on insurance products**. It is redundant with point 32 and should be deleted. In any case the wording "***all necessary information***" should be deleted. - Regarding the policy proposal on "***distribution strategy***", BIPAR wonders what if an intermediary - using his specific skills - identifies an alternative suitable market that the manufacturer had not considered or understood. Distributors should be given the possibility to sell products outside of the target market defined by the manufacturer provided they are able to justify doing so. This would leave flexibility to the distributor and insurer where the product is suitable or appropriate for the customer. This principle was recognised by ESMA in its technical advice to the EC on MiFID 2. In order to ensure a consistent and coherent approach, the same principle should apply here. **This possibility is referred to on page 21, point 53 of EIOPA consultation paper but is not reflected in EIOPA draft technical advice.** **- Regarding the policy proposal on "*Provision of sale information to the manufacturer*", this places a legal responsibility on the distributor that is not appropriate. The manufacturer is responsible for his products and not the distributor.**	
Question 3	- BIPAR believes that **more clarity could be introduced on the scope** of EIOPA policy proposals on POG arrangements. It should be clearly stated that bespoke insurance contracts are excluded from the scope of the proposals. Besides, regarding for example multi risks insurance product or for packaged	

	products, it is not clear whether POG arrangements would have to be complied with for each of the products included in the package or only for the packaged product. **-** As rightly explained in EIOPA consultation paper on page 14 point 14, EIOPA policy proposals **do not apply to insurance products which consist of the insurance of large risks** as stated in IDD Article 25(4). However, BIPAR believes that as the market evolves, it is more and more unclear that this will exempt for example the totality of business written as **bespoke negotiated contract**s in the subscription market. BIPAR believes that: • It is EIOPA intention not to cover bespoke negotiated open market subscription risk - that fell outside the definition of large risk. If it had to follow the very linear process set out in EIOPA policy proposal, BIPAR believes that this will be unworkable. • The process of negotiating any contract may well involve meetings including intermediary, underwriter, the client, sometime the underwriter's reinsurer. Many of the elements of the EIOPA proposals could be covered in such a meeting. For instance, identification of the target market could be achieved by pointing at the client and saying "it's him"; • Each contract will be separately negotiated and form a different product in its own right. So the idea of overarching principles around the design etc will be unduly onerous especially given the very close role the client and the intermediary will play in the design; - There is a huge irony that products that have caused significant problems for consumers over the last years, are excluded from the POG arrangements: It is regrettable that some products such as non-life insurance add-ons (mobile phone insurance linked to the sale of mobile phones, travel insurance sold together with airline tickets - see EIOPA fourth Consumer trend report) are not in the scope of the IDD Delegated Act on POG (due the fact that they are exluded from the IDD scope).	
Question 4	It is worth noting that no study or impact assessment has indicated a particular need for detailed POG requirements for non-life insurance products (e.g. motor, home) or	

	certain pure risk life insurance products. The cost question should have been part of the level I impact assessment. The costs – also for the European economy as an exporter of insurance knowhow- are potentially enormous if one considers the above mentioned legal uncertainty that is created for the entire market.	
Question 5	**Specific comments on EIOPA draft technical advice regarding "acting as manufacturer"** **Points 1 and 2 will lead to too much legal uncertainty. They are too broad and general.** **BIPAR also believes that it is crucial that EIOPA policy proposals are clear enough to avoid situations where an intermediary would unwillingly or unknowingly be considered as a manufacturer.** **Points 1 and 2 should be deleted and building on proposed point 4, points 1, 2 and 4 could be redrafted as follows:** ***In principle the insurance undertaking is the manufacturer of insurance products.*** ***In situations where the insurance intermediary is de facto involved in the design and development of an insurance product, the insurance intermediary and the insurance undertaking issuing the insurance product, shall, through a necessary and proportionate collaboration, define their respective roles in a written agreement. The insurance undertaking remains fully responsible to the customer for the coverage provided.*** **Point 3** **-** BIPAR believes that the use of the wording "to individual customer" would seem to specifically and rightly rule out bespoke negotiated contracts but this could be more clearly stated for legal clarity sake. - BIPAR believes that it would be worth adding to point 3, as an example of not manufacturing, examples such as intermediaries bringing together a number of	

	existing products into a package to meet a customer's needs. Point 3 should be redrafted as follows: *-Activities which relate to the personalisation and adaptation of existing insurance products in the course of insurance distribution activities to the individual customer* ***(bespoke negotiated contracts)*** *shall not be considered as activities of manufacturing, in particular cases such as* ***bringing together a number of existing products into a package to meet a customer's needs,*** *the mere opportunity to choose between different lines of products, contractual causes and options, individual premium discounts, recommendation of asset, with regard to a product already designed by the insurance undertaking.*	
Question 6	(See question 3) BIPAR believes that it is EIOPA intention not to cover bespoke negotiated open market subscription risk - that fell outside the definition of large risk. If it had to follow the very linear process set out in EIOPA policy proposal, BIPAR believes that this will be unworkable. BIPAR welcomes the clarification that the insurance undertaking providing the coverage remains fully responsible to the customer for the contractual obligations resulting from the insurance product. BIPAR would like to remind EIOPA that in practice, whenever an insurance intermediary has a proposal for a product which it puts to an insurance undertaking for consideration, the design work will (subject to any amendments agreed between the parties) have already been completed, so any written (contractual) agreement will logically cover the activities post product design.	
Question 7	BIPAR welcomes the principle of proportionality that is introduced in EIOPA policy proposal based on previous EIOPA preparatory work that states that POG distribution arrangements shall "*be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the regulated entity".* However, BIPAR believes that EIOPA should have gone further	

	and differentiate between insurance classes within its policy proposals. Because of the significant differences that exist between life with investment element products (IBIPs) and non-life/ pure life products, it is pertinent in EIOPA technical advice to differentiate the activities of IBIPs manufacturers from the ones of non-life/life manufacturers. Strict product oversight and governance provisions for non-life insurance products will be burdensome with no added value for consumer protection. Most product governance rules should be limited to products which target the private consumer IBIPs market (excluding all kind of business clients). Regarding third bullet of point 9 on page 32 on examples for IBIPs, BIPAR believes that the level of risk tolerance will be personal to an individual, it is not homogenous to a group of people with similar characteristics (such as age, occupation or socio economic group). BIPAR would also suggest that point 4 of the draft technical guidance on granularity negates the need for the text in point 3 from: 'avoiding groups of customers/consumers…". Additionally, using the term 'avoiding' would add confusion to the intent of the requirement.	
Question 8	It is important to recall that IDD Article 25 rightly places product governance and oversight requirements on "insurance undertakings, as well as intermediaries which **manufacture** any insurance product" -and not on intermediaries that do not manufacture products. Non-manufacturing intermediaries are very clearly and very specifically required to obtain information that is made available by manufacturers to them and to understand that information - nothing more. BIPAR therefore believes that the review obligations for distributors who are not manufacturing are beyond the mandate. This being said, it is common sense that a distributor can assist an insurer or manufacturer in doing the activities as described in point 8 and 9 (p39). All other points – for distributors who are not manufacturing the product are useless and pure adminsitrative burden as it is the task and responsibility of the manufacturer and/ or insurer to do that work and take sole responsibility for it.	

These requirements do not meet the proportionality requirement and are not in line with the Commission mandate given to EIOPA. We propose to delete most of the chapter on review obligations for distributors

Regarding point 7 on page 37, and in particular the bullet 7 re *"contacting the distributor to discuss a modification of the distribution process"*, BIPAR believes that the drafting used seems to give a manufacturer an implicit right to tell a distributor how to distribute the products. The language used is critical to its interpretation.

Specific comments on EIOPA draft technical advice regarding review obligations for insurance undertakings and insurance intermediaries which manufacture insurance products for sale to consumers

- Regarding point 2, BIPAR suggests that the text is amended so that coordinating of reviews only applies where the insurer and intermediary are deemed co-manufacturers.

- regarding points 6, 7, 10, 11 and 12, BIPAR believe that the proposed requirements are too far-reaching and need to be deleted.

- Regarding point 9, BIPAR believes the way it is worded does not align with what EIOPA is saying in point 53 on page 21, that is to say that on exceptional basis, an intermediary is permitted to distribute the products to customer outside the target market.

Obtaining appropriate information on the product
EIOPA draft technical advice: Information to obtain and written agreement

If EIOPA proposes that "the manufacturer shall conclude written agreements with the distributor to specify the relevant information details as outlined in paragraph 1", BIPAR wonders whether information requirements should be imposed on the distributors at all. This could create legal uncertainty.

Question 9	**General comments** - We believe that EIOPA draft advice already goes in too much detail as it stands. - It should be clearly mentioned that the Delegated Acts based on IDD articles 27, 28, 29 and 30 (chapter VI) only apply to **IBIPs**. **Specific comments on EIOPA draft technical advice re the identification of conflicts of interests** - BIPAR stronlgy questions the wording of paragraph 2 (page 45) that states that "*conflicts of interest shall at least be assumed*" in four specific situations. The four situations are presented as **a priori conflicts of interest**, without the necessity for their existence to be proven. This goes beyond the mandate given to EIOPA by the European Commission. BIPAR believes that this first sentence of paragraph 1 should be deleted and that the following wording for paragraph 1 and 2 would be more appropriate (inspired by MiFID II Commission delegated regulation): "***For the purposes of identifying the types of conflict of interest potentially detrimental to a client, insurance intermediaries and insurance undertakings shall take into account whether they are in any of the following situations:"*** - Under **point 2a)**, it is stated that a conflict of interest **shall at least be assumed in situations** where "*the intermediary (…) is likely to make a financial gain, or avoid a financial loss at the expense of the customer".* BIPAR believes that point 2a is too broad a description: even charging the customer a fee – which the customer may/will have agreed in advance – could come under such a broad description. BIPAR believes that it would be wrong to characterize an intermediary's remuneration as being a financial gain, as the term "gain" can suggest that the intermediary is taking advantage of the customer when in fact he is simply remunerated for the services rendered. In a market economy, any insurance intermediary, like any other economic operator,	

needs to be remunerated for the services provided to a client for her/his businesses to be viable. Obviously, it is in the interest of the intermediary to be remunerated for services rendered. The use of the words "financial gain" is "pejorative" as it can be interpreted as the intermediary always benefiting at the expense of a client when earning a commission or a fee from a third party.
In the investment world this means that you may not bet against your customer. We want to stress that this does not have anything to do with the remuneration of the intermediary. The MiFID intent was to prohibit advice that (by buying or selling a stock) would gain the firm – in addition to the remuneration- an extended advantage or disadvantage in its own shares value.

BIPAR would therefore ask to either delete point 2a), or to **rephrase it, making clear that this is intended for situations where insurance-based investment products are meant in a way that there is a likelihood of the intermediary being able to "bet" against his customer.**

- Under point 2.c, the draft technical advice states that conflicts of interest **shall at least be assumed** in situations including the following "*the insurance intermediary, insurance undertaking or linked person receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer*;"

BIPAR strongly questions the wording of paragraph 2.c) and requests it to be deleted.
It is fundamentally inconsistent with economic theory to assume that any insurance intermediary, insurance undertaking or linked person who receives or will receive from a person other than the customer a monetary or non-monetary benefit in relation to the insurance distribution activities provided to the customer has always a conflict of interest. From a legal point of view, assuming that a conflict of interest exists in a given situation reverses the burden of proof and this is not in line with IDD level 1 that has been adopted by the European legislators.

	- Under **point 2d),** the draft advice also assumes the involvement in the management or development of the IBIPs to be a conflict of interest. In its technical advice on IMD 1.5 , EIOPA explained that entities involved in the development or management of IBIPs should assess if their involvement gives rise to COI with customers, and if so, how to address it. **We believe this should be reflected in the IDD technical advice** **Specific comments on EIOPA draft technical advice re conflicts of interests policy** - **Point 4(b):** It must be noted that in the practice, procedures documents are normally separate from the policy, with the policy being more high level. - As was the case for IMD 1.5, we still believe that the list of procedures under point 5 is not necessarily suitable for IBIPs (e.g. point 5.a) - Point 9a): Regarding the yearly review of the conflicts of interest policy, we want to stress that this should definitely not be more than once per year since small and medium firms would struggle to do more. - Point 9b): In general, we fear that the prescribed separations of functions and responsibilities and recording duties will lead to practical issues when translated to the mainly SME size of intermediaries that we represent. We fail to understand how in the case of ongoing service or activity, records of situations in which a conflict of interest may arise can be provided.	
Question 10	- The principle of proportionality should be an overall concept applicable to all measures. This is the approach chosen by most of the EU Member States in their policy on conflicts of interest for insurance intermediaries. At this stage, BIPAR is not convinced about the usefulness regarding further specification and guidance in a separate policy instrument. - In order to ensure the required proportionality BIPAR proposes to postpone the application date of some of the planned level 2 rules.	

	BIPAR is fully supportive of the IDD objectives of consumer protection, more open markets and level playing field. We acknowledge the challenges faced by EIOPA but also by the European Commission in defining the details of the 4 Delegated Acts, notably in light of the variety of market players the IDD covers. However, we are extremely concerned that, in the best case scenario, the final Delegated Acts will only be officially published in the first half of 2017, leaving only more or less half a year for distributors and intermediaries (but also regulators and supervisors) to meet the deadline. This timeline is simply unrealistic considering the structural changes it will trigger. Using the format of a Regulation rather than a Directive for level 2 (in order to shorten the implementation timetable) would not solve the problem- on the contrary it would make it worse since this would not allow for the necessary national fine-tuning to reflect national markets' specificities. We cannot stress enough the considerable operational challenges which need to be overcome by the sector in order to comply with the new rules which will be imposed by the 4 Delegated Acts, and in particular, considering the level of detail in the draft advice that is currently under consultation. More specifically, the changes will require the development of all necessary processes to ensure that the IT and other systems and procedures are accurate. These changes come at the same time as a whole series of other effects caused by new rules (PRIIPs KID, Solvency II, Mortgage Credit Directive, Data Protection Regulation to name but a few). We would also like to point to the fact that MiFID firms had 5 years to adapt gradually to a system whereas IBIP providers and distributors will have only (more or less) 6 months. It is also worrying that a number of highly complex and structural matters feature in the draft advice on the Delegated Acts but have never been subject of an impact assessment (or consultation) under level I (black list, commission as a priori conflict of interest, definition of manufacturer, … these are issues which we believe should not be introduced by a level 2 text but should have been dealt with at level 1 or be left to the Member States).	
Question 11	- It should be clearly mentioned that the Delegated Acts based on IDD articles 27, 28, 29 and 30 (chapter VI) only apply to **IBIPs**.	

	- BIPAR is in principle not in agreement that in a highly competitive market, remuneration is supervised and regulated at such a level of detail. Under the IDD, insurance distributors have the duty to act honestly, fairly and professionally in accordance with the best interests of their customers (art 17) and the intermediary will take this into account before accepting any benefit. The fact that an intermediary receives fees, commissions, benefits from third parties may mean that an intermediary is able to charge less for the service that they provide to that customer. This is of significant benefit in that it makes insurance markets accessible to as wide a cross section of the public as possible. BIPAR is of the opinion that every intermediary has the right to be fairly remunerated for his or her services. This is also to the benefit of the consumer. A pure fee-based market, for example, would exclude many people from access to any level of advice or assistance in their search for an appropriate insurance product, as has been the practical experience in Member States that have prohibited commission payment approaches. The prohibition of payment and remuneration by insurers would be an obstacle to free market principles of fair remuneration for services rendered. Indeed, it would become impossible for intermediaries to require insurers to pay intermediaries for the work they do on their behalf (and which is work that is done also in the interest of the customer). It is interesting to note that in the UK, since the introduction of the RDR which included a commission ban, there is a clear fall in the numbers of advisers This means less access to advice and advice gap. http://www.apfa.net/documents/publications/financial-adviser-market/apfa-the-financial-adviser-market-in-numbers-v4.0.pdf (Page 4, Fig 4, based on FCA figures, shows numbers of advisers in UK :26000 in 2011 to 22000 in 2013). The remuneration of intermediaries being in principle commission-based with the possibility to agree fees has been and continues to be a major contributing factor in the successful development of insurance markets all over the world. Any other situation would ignore the fact that the insurance intermediary typically renders	

services to both sides of the contract, the customer and the insurance company: as with any commercial relationship both kinds of services have to be remunerated by the beneficiary. It would also deprive consumers of the choice between business models.

It is always in the best interest of consumers to be provided with adequate information so that they can make an informed decision. This is the "raison d'être" of insurance intermediaries. This goes to the very heart of the intermediaries' role. The market for insurance products, like many other markets, is characterised by imperfect information by each party to the transaction, significant search costs to find the "best" deal, and asymmetric bargaining power. Insurance intermediaries play a key role in the marketplace by contributing to identify the risk faced by clients, reduce insurance distribution costs, search costs, uncertainty and asymmetric bargaining power.
Insurance intermediaries are mostly SME-style operations, employing many thousands of people locally. It is important to ensure that any future European policy on conflict of interests for intermediaries mediating IBIPs does not have any unintended side effects, does not result in less choice for consumers and does not jeopardize intermediaries' activities and business models.

In the IDD, the EU legislators made the unambiguous democratic choice to leave freedom of models for remuneration and not to introduce any bans on any forms of remuneration. The concept of independent advice and a linked ban on commission for IBIPs was rejected. Member States have been given the possibility to go beyond in art 29.3: "3. *Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may additionally prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice (…)".* This illustrates that the decision to judge on these remuneration matters lies with the Member States and level 2 rules should not directly or indirectly circumvent this democratic decision.

Also, one has to look at the overall services that intermediaries offer. Indeed, the quality of an intermediary's services is intrinsically linked with the quality of a specific

service provided to a particular customer. In fact, without a high overall level of quality, it is not possible to provide a high quality individual service.
A comprehensive, proportional approach has to be taken by EIOPA in its advice. The total effects of the compensation provided should be assessed in a comprehensive manner.

EIOPA explains on page 51 (point 15) that the list is not meant to introduce a presumption of detrimental impact or de facto ban on the payment. However, BIPAR wonders whether the NCAs will make that presumption as a result of it being on the list.

Specific comments on EIOPA draft technical advice re inducement, inducement scheme and detrimental impact

Inducement and inducement scheme
- Regarding the definition of "**inducement and inducement scheme"**, BIPAR does not believe it is up to level 2 of a Directive to provide such definitions. Moreover, contrary to the definition of "inducement", the definition of "inducement scheme" fails to indicate that it is limited to IBIPs. As mentioned above, it should not be forgotten that for many intermediaries, **commissions are THE remuneration that they receive for their professional activities.** Defining the remuneration that they receive for their professional activities, with the (pejorative) terminology of "inducements" and connecting strict rules to the reception of these, is a far-going interference in their professional activity.

Detrimental impact"
- BIPAR welcomes the high level principle introduced in point 3. However it proposes to slightly redraft point 3 as follows in order to avoid introducing factual statements or a non-necessary assumption:
*3. Detriment**~~al impact occurs~~** **may occur** when an inducement or structure of an inducement schemes (…)".*

New (digital or not) distribution systems with specific -until today- unknown business

models may appear. Therefore, and in order to guarantee a level playing field, high level principles are more suitable than a detailed list. **Circumstances always need to be considered.**

As indicated by EIOPA in point 16, p 52, BIPAR wishes to stress the importance of an « overall assessment ». We believe the assessment of detrimental impact always has to be made on a case by case basis. There is need for proportionality and we believe one has to look at the specific situation.

- Regarding the **examples under point 4 of the draft technical advice**, BIPAR has the following remarks:
1/We would also like to point out that apart from looking at whether benefits / remuneration are having a detrimental impact, one should keep in mind that benefits / remuneration should not be so low as to drive intermediaries out of the market, to the detriment of consumers. These issues also should not only be looked at from a supervisory perspective but also from a liability perspective. How will a court in future read and interpret such lists?

2/ BIPAR suggests to slightly amend the first sentence of paragraph 4 as follows:
"The following types of inducements are considered to have a ~~high~~ risk of leading to a detrimental impact on the quality of the relevant service to the customer":

3/ **Type of "inducement" under a)** It will have to be made very clear that the judgment of whether a "*different product or service exists which would better meet the customer's needs"* has to be made at the moment of the provision of the service by the intermediary (or distributor) and that this is not judged a posteriori.
Also the question has to be raised what if the consumer demands a specific other product?

4/ **Type of "inducement" under b)** BIPAR believe that if this may be a point of attention, the remuneration of personnel of direct writers should then be looked at (which EIOPA has however excluded from its advice). And what about Internet or

social media players where different remuneration systems exist?

5/ **Type of "inducement" under** c) The description of the type of "inducement" under c) is too vague and subjective. BIPAR suggests to delete c).

6/ Type of "inducement" under d) In its current wording, this would cover too many cases where there is no detrimental impact at all and it would lead to a *de facto* ban on commissions. This would against IDD level 1 that has been adopted by the EU legislators.
The problem arises for example in the case of life insurance- multi-annual contracts where 100% of the premium is paid upfront as commission. The wording should be changed so it is clear that multi-annual contracts are intended.

7/ Type of "inducement" under e) - BIPAR believes that e) has to be redrafted as the unclear wording could lead to legal uncertainty.

Organisational requirements
(p 55), point 7 does not fit the situation of general agents as they exist in France. The draft wording jeopardises the independence of agents and, by referring to "approval", EIOPA seems to imply a hierarchical link between an insurance company and an agent.

There should also be no white list or practices that *"may be considered to reduce the risk that inducements have a detrimental impact on the quality of the service to the customer"* as mentioned in point 17, since there is no legal basis for such a form of "white list" in the level 1 Directive.
In this respect, we also do not support point 9 of the "organisational requirements" on p 55, which stipulates "*intermediaries and insurance undertakings should set up a gifts and benefits policy that stipulates what benefits are acceptable and what should happen where limits are breached*".

Question 12	See above	
Question 13	As explained under Q 11 - pont 6, most commissions are paid upfront. Unless the example is rephrased, this leads to a de facto ban on commission. This would go against IDD level 1 that has been adopted by the EU legislators.	
Question 14	No, we believe it is much too early in the process to start discussing monitoring or taking any further organizational measures or procedural arrangements.	
Question 15	**General comments** -We believe that Article 30 is clear as it already lists the criteria that need to be considered and we believe that the demands and needs test in the general part of the Directive, which has been very efficient so far, should be used as a basis (but there should not be a cumul of both tests). **Specific comments on EIOPA draft technical advice regarding the assessment of suitability or appropriateness** -We stress the need of a level playing field between distributors for these requirements and support in this respect the reference in point 5 (p 64) for (semi-) automated systems to follow the same rules regarding the suitability assessment. We believe that also in the part of requirements for the appropriateness assessment, for non-advised sales, this level playing field should be explicitly reflected. -Regarding point 7 of the suitability assessment, we wonder if this is not too much copy paste of MiFID. Point 7 looks at the investment objectives from a strictly investment angle. It should be remembered that the purpose for taking out an IBIP is not solely the investment element (otherwise an investment-only product would be purchased) but that some form of insurance cover is required. This suggests that the insurance element may actually be more dominant in the customer's thinking when making the decision to seek out an IBIP. The name/reputation of the insurance undertaking for meeting claims under the insurance/assurance element of the product	

	e.g. is therefore equally as important as the investment performance of the contracts available.	
Question 16	See above	
Question 17	Article 30(1) is clear as it already lists the criteria that need to be considered and we believe that the demands and needs test in the general part of the Directive, which has been very efficient so far, should be used as a basis (but there should not be a cumul of both tests).	
Question 18	As mentioned above, we believe that the demands and needs test should be used as a basis for appropriateness and suitability tests and that there should not be a cumul of the demands and needs vs. appropriateness/suitability tests. BIPAR does not believe that the IDD and the Commission mandate for EIOPA technical advice require or mention the need for specification and/or guidance on the relationship between the demands and needs test and the suitability/appropriateness assessment. Besides, EIOPA notes in paragraph 12 on page 63 that its technical advice should be limited to the information to obtain under the suitability/appropriateness assessment only, and not the demands and needs test.	
Question 19	BIPAR wishes to point out that in general, and for many customers, we believe that some 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. This test does however not exist for execution-only products under MiFID II, which leads to the issue of level playing field.	
Question 20		
Question 21		

Question 22	- We wish to recall that intermediaries are mainly micro to small entrepreneurs and that reporting requirements have to be proportionate. The proportionality also has to apply with regard to the type of product and type of customer. All these reporting and record-keeping requirements have to be seen in the context of in how far the product is already documented. It is important that the customer receives relevant information (which may depend on the type of product / situation). One should avoid the duplication of information/ provision of unnecessary information as this leads to confusion of the customer and legal uncertainty. - EIOPA recognizes that contrary to MiFID II, in IDD there is no concept of a **written basic agreement** with the customer for the provision of services. However, EIOPA states that it could be interpreted as the contractual terms and conditions and that the content of the written basic agreement does not appear inconsistent with the IDD framework (p 75, point 5-7): BIPAR believes that the concept of a written agreement should not be introduced at level 2 of IDD. It also is to be noted that the MiFID II delegated Regulation (art 58) specifies re. written agreement: "*Investment firms providing investment advice shall comply with this obligation only where a periodic assessment of the suitability of the financial instruments or services recommended is performed*. Member States may consider using such a concept but it should not be introduced at level 2 of IDD.	
Question 23	The EIOPA technical advice is largely a copy-paste of the MiFID wording (2012 Guidelines and the draft MiFID II delegated Regulation). EIOPA has deleted some of the references and specificities of MiFID, but this can hardly be interpreted as "reflecting insurance specificities".	
Question 24	- With regard to the **periodic suitability assessment/report**, BIPAR believes that the draft advice is not sufficiently clear that this is a **voluntary extra service to** the customer, to be decided between the parties (intermediary or undertaking and the	

	customer). For instance, in point 2, EIOPA states that "*The insurance intermediary or insurance undertaking shall draw the customer's attention to,* ***and shall include in the suitability statement, information on whether the recommendation is likely to require the customer to seek a periodic review of their arrangements."*** Also point 3 states "*Where an insurance intermediary or insurance undertaking* ***has informed the customer that it will carry out a periodic assessment*** *of suitability, the subsequent reports after the initial service is established, may only cover changes in the services or investments embedded in the insurance-based investment product and/or the circumstances of the customer and may not need to repeat all the details of the first report."* The additional service of providing periodic suitability assessments is not to be decided unilaterally by the intermediary / undertaking as could be understood from point 3, but is something to be agreed between the parties.	
Question 25		
Question 26		