

**Comments Template on Consultation Paper
on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings and insurance distributors**

**Deadline
29 January 2016**

Name of Company:	Bund der Versicherten (BdV – German Association of the Insured)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential: public	Confidential/Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ 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 <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, <u>in Word Format</u>, to CP-15-008@eiopa.europa.eu . 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 on product oversight & governance arrangements by insurance undertakings and insurance distributors.</p>		
Reference	Comment	
General Comment	As Germany’s most important NGO of consumer protection related to private insurances (with about 50.000 members) we would like to thank EIOPA for the opportunity to publish comments on this consultation.	
	From the customer’s perspective POG Guidelines for distributors are as important as	

**Comments Template on Consultation Paper
on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings and insurance distributors**

**Deadline
29 January 2016**

those for manufacturers. That is why we fully support the establishment of these guidelines at all. They will enhance policyholder protection and encourage cross-sectoral consistency. We stress that the guidelines in the revised Chapter 1 of this consultation paper should be as comprehensive and obligatory as those in Chapter 2 of this consultation paper. There must not be any difference of the level of consumer protection related to the status of the distributor (belonging to the product manufacturer or not, tied or independent etc.).

Most important are the management rules of conflicts of interest, the assessment of target markets, product testings and monitorings, provision of product and sale information by the manufacturers and the regular review of distribution strategies or arrangements. At least for the German insurance market, we confirm that these provisions are completely new and innovative, and therefore we fully agree upon them in order to minimize consumer detriment. More details of our critical view on current distribution practices you will find in our comments below.

Question 1

From the customer's perspective the benefits and positive impacts of the new POG Guidelines for distributors strongly outweigh any possible costs or negative impacts. A set of requirements applicable to manufacturers as well as to distributors would be more beneficial, since the requirements would cover all relevant entities involved in the manufacturing and distributing of insurance products.

By issuing these guidelines the risks of mis-selling and of customer detriment will be minimized, - of course - under the condition that the NCAs will severely control the implementation of these guidelines by the insurers. Consequently, the earlier the application date is set, the better from the perspective of customer protection. Out of all options compared, product testing will provide the highest certainty that any insurance product (incl. non-life) will fulfil the identified need of the target market at all times. The maintenance/rebuild of trust in undertakings and their products will benefit both undertakings and the customers.

Given the fact that distributors not always get all relevant information which is necessary to fully understand the products, it is necessary that the position of the

**Comments Template on Consultation Paper
on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings and insurance distributors**

**Deadline
29 January 2016**

	<p>distributors – tied as well as independent ones – is strengthened to ask for and get the information by the manufacturer necessary to fulfil the distributor's duties towards the customers.</p>	
<p>Question 2</p>	<p>We agree fully upon EIOPA's assessment that nothing in these Guidelines, neither in the scope of product intervention powers, can be seen as a product pre-approval capacity by the competent authorities.</p> <p>Generally spoken it is correct that costs associated with the new requirements are likely to be passed on to the customers, so prices could go up. But we stress that reasonable undertakings should not have any additional costs, because they should already have implemented equivalent requirements in order to prevent from customer detriment. If not, the industry will always find any kind of justifications for an increase of prices, so this is not a specific argument against the POG Guidelines.</p> <p>Additional product testings, ongoing products monitorings and enhanced exchange of information between manufacturers and distributors may actually increase product costs. The real detriment of consumers does not consist in an increase of prices due to these necessary procedures by manufacturers and distributors, but on the contrary by the absence of these provisions which have already entailed and will continue to entail severe mis-selling practices. Consumer protection does not mean to offer and buy the cheapest product, but to be able to make an actually best informed decision.</p>	
<p>Question 3</p>	<p>Yes, we fully agree that the additional guidelines on product distribution arrangements for distributors should be as comprehensive and mandatory as those applicable to manufacturers. There must not be any difference of consumer protection related to the status of the distributor (belonging to the product manufacturer or not, tied or independent etc.).</p> <p>Already at this stage distributors need to consider to which extent the product choice gives rise to the risk of conflicts of interest and if so, which measures should be taken in order to ensure that the distribution activities are carried out in accordance with the best interest of the customers. We mainly see four reasons:</p>	

**Comments Template on Consultation Paper
on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings and insurance distributors**

Deadline
29 January 2016

	<p>First, at least in Germany there are only few big brokers who are able to offer insurance products which are different from those offered by the manufacturers. Following to the official registration of all insurance intermediaries (DIHK – chamber of industry and commerce) there are more than 46.000 brokers and nearly 190.000 other categories of intermediaries (by date of 6.1.2016; cf. Website DIHK: http://www.dihk.de/themenfelder/recht-steuern/oeffentliches-wirtschaftsrecht/versicherungsvermittlung-anlageberatung/zahlen-und-fakten). These statistics show that the additional POG Guidelines for distributors concern more than 230.000 distributors for Germany alone (among them about 153.000 tied agents). Unfortunately we do not have any figures of other EU members states.</p> <p>Second, in Germany there exist several codes of conducts for distributors by various professional associations of the insurance industry and of brokers. But they all only work on a voluntary basis. So via the POG Guidelines these codes of conducts will have to acquire a mandatory and binding power.</p> <p>Third the fact that, especially by guideline 2, management rules of conflicts of interest will be established (like in MiFID II), is – again at least for the German insurance market - a completely new and innovative provision which therefore we fully support in order to reduce consumer detriment.</p> <p>Fourth, we would like to stress that there should be the obligation to create a unique written document, which contains all guidelines. It is not sufficient just to refer to already existing documents, which may be spread all over in the company making it difficult to find them.</p>	
Question 4	<p>We propose that each company has to be obliged to create the function of a distribution manager, who is responsible for the implementation of the unique written document and for the information of all relevant staff members about it. These distribution managers would have the same tasks as product managers, who are already responsible for the development and for the launch of new products by the manufacturers (cf. our comments on POG Guidelines 1 and 3 for manufacturers, January 2015).</p>	

**Comments Template on Consultation Paper
on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings and insurance distributors**

**Deadline
29 January 2016**

Question 5	<p>Unfortunately very often distributors are not deeply enough informed and trained by the manufacturer, when new products are launched (i.e. complex life insurance contracts with reduced capital guarantees). That is why the identification of target markets not only for simple marketing reasons, but as an obligation for the distribution channels to follow, constitutes an innovation of immense importance for insurers. The obligatory identification of groups of consumers for which the product is considered <i>not</i> to meet their interests, objectives and characteristics will be a fundamental provision reducing mis-selling practices. This constitutes an essential step to a level playing field between insurers and investment companies offering their products (cf. our comment on POG Guideline 5 for manufacturers).</p> <p>Related to all other necessary information on the products we refer to the fundamental importance of the new PRIIPs regulation (mainly article 8) and the recently adopted IDD (especially in Chapter VI, articles 27 to 29). The product information given by the manufacturers must strictly be aligned with mandatory disclosures of ongoing risks, probable rewards and actual costs in the forthcoming Key Information Documents (for life and non-life insurances). The disclosure of conflicts of interest is particularly important for all life insurance contracts (unit-linked with profits) as it is foreseen in MiFID II, article 91.</p> <p>We would like to stress that we already sent comments to EIOPA's consultations on conflicts of interest in July and December 2014 as well to ESAs consultations on KIDs for PRIIPs in February and August 2015. Therefore we fully agree upon the general principles outlined in the EIOPA Technical Advice on Conflicts of Interest in direct and intermediated sales of insurance-based investment products published in January 2015.</p>	
Question 6	<p>We fully agree upon the fundamental objective of this guideline. This means that the distribution strategy does not allow that the insurance products are distributed to customers which are not part of target market identified by the manufacturer of the respective insurance product. We do not see any necessity to outline any additional circumstances under which the distribution of insurance products to customers outside of the target market is permitted exceptionally.</p>	

**Comments Template on Consultation Paper
on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings and insurance distributors**

**Deadline
29 January 2016**

	<p>The consequence of such an additional provision for “exceptions” would only be the creation of a “safe harbor” for any new mis-selling practices which we have already pointed out in our comments to former EIOPA consultations (cf. BdV comments on POG Guidelines, January 2015, for p. 16 and 21; on Conflicts of Interests, Dec. 2014, Q1 and July 2014, Q 4).</p> <p>The new IDD, especially chapter V, article 19 (conflicts of interest and transparency) and article 20 (advice, and standards for sales where no advice is given), will already provide sufficient possibilities for distributors to give “advice on the basis of a fair and personal analysis”.</p>	
Question 7	<p>As pointed out in our comment for Guideline 8 for the manufacturers (product monitoring), it should be mandatory to inform the distributors about the results of product monitoring continuously. The ongoing results of the product monitoring must be an essential part of the constant mutual exchange of information and experiences between manufacturers and distributors and therefore be an essential part of the regular review of the product distribution strategy. The distribution manager should clearly be responsible for this mutual exchange of information (cf. our comment on Q4 of this consultation).</p>	
Question 8	<p>We fully agree upon the fundamental objective of this guideline. This includes the obligation to provide necessary information in order to enable the manufacturer to monitor the product and to check that the product remains consistent with the needs, characteristics and objectives of the target market as defined by the manufacturer itself.</p> <p>But the information provided by the distributor should go beyond the purpose to enable the manufacturer for better product monitoring. In order to prevent consumer detriment distributors must provide the information, if the product sold are aligned to the interests, objectives and characteristics of the target market <i>at all</i>.</p> <p>In our comment on POG guideline 7 for manufacturers we already gave the example of “full” private health insurance tariffs in Germany, which suffer from a huge increase of premiums when policy holder get older. Another example are the permanent disability insurances caused by illness (“Berufsunfähigkeitsversicherungen”). The</p>	

**Comments Template on Consultation Paper
on the proposal for Guidelines
on product oversight & governance arrangements by
insurance undertakings and insurance distributors**

**Deadline
29 January 2016**

	<p>premiums are far too high for those who need them the most (“blue collar” professions like craftsmen), but who earn much less than “white collar” professions (like architects or lawyers). These private insurances are very important because there is no appropriate coverage by state insurances, and private insurers fail to offer affordable coverages because of a severe lack of product testing and product monitoring.</p>	
<p>Question 9</p>	<p>We fully agree, but for small and sole distributors the principles of proportionality should be respected related to documentation and reporting duties as well.</p> <p>Additionally we propose that if the sale of a product is stopped, this management decision of the product manufacturer should be published by those distributors who have sold these products. This should be done not only for the general public, but also with enough details for experts making possible a transparent reconsideration of the decision. The public has to be informed about such an important decision, because there is no need for business secrets related to that product anymore (cf. our comment on POG Guideline 12 for manufacturers).</p>	