

**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:	BdV (Bund der Versicherten - German Association of Insured)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	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, <u>in Word Format</u>, 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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General Comment	<p>The Bund der Versicherten (BdV - German Association of Insured) would like to thank EIOPA for consulting stakeholders on Product Intervention Powers (related to KIDs for PRIIPs). Find below our comments.</p> <p>The language used in this consultation paper is - in our opinion - strongly influenced by a terminology deriving from banking and securities markets. Customers are described as "investors", who buy "financial instruments". For insurances such a vocabulary is unusual, terms like clients or customers or contracts are commonly used instead. Same observation is made for the possibility "to switch an instrument" (cf. 1.16.7, p. 10), we propose calling it "converted contracts". These terms are used by EIOPA in its own publications, so we recommend using these terms typical for insurances if referring actually to an insurance product.</p>	
Q1	<p>Yes, we fully agree upon the criteria and factors proposed in the Consultation Paper under "Draft Technical Advice". We confirm that they have to be non-exhaustive, general and dynamic without specific quantitative thresholds for intervention. Supervisory authorities (ESAs and NCAs) must be able to react effectively despite the high degree of innovation of PRIIPs.</p>	
Q2	<p>There are two additional factors we would like to stress: mortality tables, which are used by life insurers calculating life expectancy and life annuities, and subsequent capital assets / reservations related to the existing portfolios. The actual monthly amounts of life annuities are often strongly reduced by the hyper-prudential calculation of life expectancy which entails inevitably harsh detriment of policy holders. Therefore we propose that standardized mortality tables shall be used by life insurers, which are published by the NCA before. If a life insurer uses a different mortality table, a mandatory explanation should be published why doing so (following to the principle: comply or explain).</p> <p>There are more than 80 million contracts of capital life insurances (and life annuities) only in Germany, as the biggest national insurance market in the EU. That is the reason why we strongly recommend taking into account the following factors, which</p>	

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	<p>are particular for the German life insurance market:</p> <ul style="list-style-type: none"> • zillmerisation method (method of calculation of entry or acquisition costs). • promise of guarantees (guaranteed interests on investment part of premium). • mandatory transparency requirement of contract clauses, which stipulate the participation of benefits ("Transparenzgebot für Klauseln der Gewinnbeteiligung"; cf. further details in comment 4 on judgments of Federal High Court of Justice (BGH) in 2012). <p>Comparison table in CP, p. 18, paragraph e: Intervention powers are proposed by EBA and ESMA, "whether the instrument or service is being sold to clients outside the intended target markets". EIOPA changes this proposal adding "significantly" being sold to investors outside the intended target markets. We cannot perceive any reason for this change, why - related to insurances - there should be a lower threshold for intervention powers by the supervisory authorities. Clearly defined target markets are a fundamental part of guidelines for product oversight and governance arrangements, and we do not see any contradiction to this (cf. our comments for EIOPA consultation paper on POG in January).</p>	
Q3	<p>We deem that leverage (1.16.5.) is not very relevant as a particular feature of insurance-based products. Therefore it should not be added as one of the main features for intervention powers related to insurance contracts.</p>	
Q4	<p>The BdV is a NGO and not a manufacturer of any financial products. That is the reason, why we are not able to provide any estimates of single and ongoing costs of change related to product interventions.</p> <p>But we stress the importance of these regulations by giving the following example. In Germany, contract clauses used by life insurers relating to cancellation fees and loading acquisition costs onto initial premium payments were ruled ineffective by the Federal High Court of Justice, since these clauses put the consumer at an inappropriate disadvantage or lacked transparency (Bundesgerichtshof - BGH, four</p>	

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judgements in 2012; cf. Consumer Protection Aspects of Financial Service, Study by London Economics, February 2014, presented at European Parliament Committee IMCO in October 2014). Following to the claiming consumer organisation, Verbraucherzentrale Hamburg, the compensation scheme will possibly amount to Euro 1bn.

The new compliance provisions have to be as precise as possible in order to prevent mis-allocation by life insurers (like AXA TwinStar or Allianz Variable Annuities in 2008/2009). The costs of capital guarantees related to these products were so high, that their distribution had to be stopped because of volatility of financial markets. There was a strong detriment of consumer interests, because a huge amount of capital was necessary securing these volatile products instead of increasing the participation of benefits for policy holders. It is possible to foresee such developments, and they ought to be prevented by efficient product intervention in time.