

**European Commission Draft Delegated Acts  
supplementing Insurance Distribution Directive, 20 July 2017  
*BdV Feedback (deadline: 17 August 2017)***

**I. Draft Delegated Act on Product Oversight and Governance requirements (POG) for insurance undertakings and insurance distributors**

**BdV feedback:**

As Germany's most important NGO of consumer protection related to private insurances (with more than 50.000 members) we would like to thank the European Commission for the opportunity to give a feedback for this draft.

We would like to stress our strong support that this draft DA establishes the core obligations for insurance manufacturers and insurance distributors with regard to the product approval process, to target markets, to product testing, monitoring and review and to information obligations between manufacturers and distributors. These are crucial innovations for the enhancement of the protection of consumers and retail investors on the insurance markets.

But there is one indispensable issue where this draft is even contradictory to the main objective of prevention from consumer detriment (comparison of EC Draft DA on POG, Article 5 (2) with EIOPA's Technical Advice (1 February 2017), p. 28, no. 15): Following to EIOPA, the manufacturers "shall" identify groups of customers for whom the product is generally not compatible, but the EC Draft DA only stipulates that manufacturers "may" identify groups of customers for whose needs, characteristics and objectives the insurance product is generally not compatible.

The consequence of this amendment is that the obligation to identify a negative target market has been replaced by the right to identify a negative target market if the manufacturers consider this appropriate. We consider this amendment as a severe step backward facilitating possible consumer detriment. That is the reason why we urgently ask the EC to adopt the wording of EIOPA's original proposal in the Draft DA.

If this amendment is not remedied, we are strongly concerned that these changes not only lower the level of consumer protection, but will also hinder a convergent application by market participants.

## **II. Draft Delegated Act on conduct of business rules for the distribution of Insurance-Based Investment Products (IBIPs)**

### **BdV feedback:**

We fully agree with the assessment of the Commission that insurance-based investment products are often sold as potential alternatives or substitutes to retail investment products.

However, just because this fact is clearly recognized by the Commission we are deeply concerned by the deviations of this Draft DA from EIOPA's Technical Advice of 1 February 2017 on IDD possible delegated acts as exposed in the Explanatory Memorandum of the Draft DA.

We clearly reject that the reference to monetary benefits (such as inducements) has been removed from the list of minimum criteria to assess whether a conflict of interest arises (comparison of Draft DA, Article 3 (2) with EIOPA's TA of 1 February 2017, p. 37, no. 2c which has been removed completely as well as TA, p. 38, no. 7). The reasons given for these omissions are not convincing at all. Even if there are differences in the treatment of inducements in IDD and MiFID II, these differences do not legitimate the total omission of this criteria from the list. In a huge national insurance market like in Germany, where commissions are still the main basis for distribution activities, the omission of this criteria will have the consequences that distribution practices will not change at all and mis-selling cases will continue. We have outlined these mis-selling practices in our comments on EIOPA's IDD consultations in 2015 and 2016.

In addition, the non-exhaustive list of criteria to assess the detrimental impact of inducements has been revised now conceding a broad discretion to market participants (comparison of Draft DA, Article 8 (2) with EIOPA's Technical Advice of 1 February 2017, p. 48, no. 5). In letter c) of this subparagraph EIOPA's proposal explicitly stresses the "disproportionate" value of inducement when considered against the value of the product and the services as a crucial criteria for this list, but the Draft DA omits this meaningful adjective what implies a strong softening of this criteria.

EIOPA clearly emphasizes that this list of criteria for assessing detrimental impact on the quality of service to the customer is "non-exhaustive" (TA, p. 48, no. 6), but Draft DA simply omits this provision (cf. Article 8 (2)). Consequently new possible detrimental impacts and ongoing clarifying examples will be excluded from this delegated act and possible future guidelines if adopted in this version. That is the reason why we urgently ask the EC to include EIOPA's original proposals in the Draft DA.

There is another deviation related to the criteria of non-complex insurance-based investment products (comparison of EC Draft DA, Article 16 (a) with EIOPA's TA, page 77, letter (a)): the criteria of guaranteed minimum surrender value for the classification as non-complex IBIP has been excluded (only guaranteed minimum maturity value is maintained), although “legitimate costs” could be deduced in EIOPA’s proposal for both minimum values.

However, the deliberate exclusion of guaranteed minimum surrender value makes it obviously much easier for insurers to classify an IBIP as non-complex, because there are a lot of IBIPs which concede a guarantee of return of gross premiums only if maturity is reached. But this guarantee does not prevent from poor advice and mis-selling practices, and therefore massive customer detriment will occur in the case of early withdrawal. That is why the guaranteed minimum surrender value is unconditionally necessary.

Consequently we urge the Commission either to include the guaranteed minimum surrender value as necessary criteria for non-complex insurance-based products, or paragraph (a) of Article 16 as well as recital 13 should entirely be omitted from the Draft DA. An IBIP contract including only a guaranteed minimum maturity value is definitely mis-leading for customers, because of poor advice many contracts do not reach maturity. We acknowledge that letter e of Article 8 (2) of this Draft DA should prevent from this kind of consumer detriment, but still there is no evidence that this provision is actually effective.

We are strongly concerned that these changes do not only lower the level of consumer protection, but will also hinder a convergent application by market participants.