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Directorate-General for Financial Stability, Financial Services and Capital Markets Union

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Mr Gabriel Bernardino  
EIOPA Chairman  
Westhavenplatz 1  
60327 Frankfurt am Main  
Germany

**Subject: Request for EIOPA Technical Advice on possible delegated acts concerning the Insurance Distribution Directive**

Dear Mr Bernardino, *Dear Gabriel,*

On 2 February, the Insurance Distribution Directive was published in the Official Journal as Directive 2016/97/EU of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast).

Certain elements of the Directive need to be further specified in delegated acts to be adopted by the Commission. These include:

- Product oversight and governance (Art. 25 (2))
- Conflicts of interest (Art. 27 and 28 (4))
- Inducements (Art. 29 (2)) and
- Assessment of suitability and appropriateness and reporting (Art. 30) (5))

After having informed the European Parliament and the Council, I am pleased to enclose the Call for Advice.

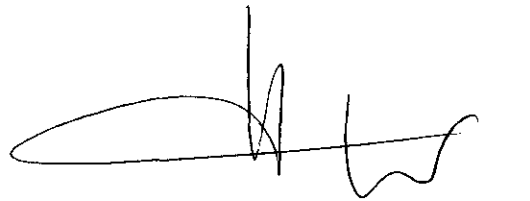
I invite EIOPA to provide its final Technical Advice, including a cost-benefit analysis, to the Commission by **1 February 2017**, in order to allow the Commission to consider the adoption of possible delegated acts.

Furthermore, given the close links to MiFID II of the topics covered under this Call for Advice, the Commission invites EIOPA to closely liaise with and consult ESMA in the

preparation of this Advice, particularly when proposing factors and criteria for the different elements of the technical advice.

I believe that close co-operation between EIOPA and the Commission on this Call for Advice should be maintained. I am confident that such cooperation will contribute to a successful outcome in the preparation and adoption of the IDD delegated acts.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, sweeping horizontal stroke followed by a vertical line and a series of loops and flourishes.

Olivier GUERSENT

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12/02/2016

REQUEST TO EIOPA FOR TECHNICAL ADVICE ON POSSIBLE DELEGATED ACTS CONCERNING  
THE INSURANCE DISTRIBUTION DIRECTIVE (Directive 2016/97/EU)

With this mandate to EIOPA, the Commission seeks EIOPA's technical advice on possible delegated acts concerning Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (hereafter "IDD" or "the Directive"). These delegated acts should be adopted in accordance with Article 290 of the Treaty of the Functioning of the European Union.

EIOPA should deliver technical advice on the following issues:

- Product oversight and governance (Art. 25 (2))
- Conflicts of interest (Art. 27 and 28 (4))
- Inducements (Art. 29 (2)) and
- Assessment of suitability and appropriateness and reporting (Art. 30 (5))

The mandate follows the Communication from the Commission to the European Parliament and the Council – Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**"), the Regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority (**the EIOPA Regulation**) and the Framework Agreement on Relations between the European Parliament and the European Commission (the "**Framework Agreement**").

Under the Directive, the Commission may adopt by means of delegated acts:

- a) the measures to ensure that an insurance intermediary or an insurance undertaking comply with the principles set out in Article 25 of the Directive (as laid down in the empowerment in Article 25 (2) of the Directive) as regards product oversight and governance obligations;
- b) the measures in respect of the conflict of interest rules laid down in Article 28(4) of the Directive:
  - the definition of the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when distributing insurance-based investment products to customers (Article 27)
  - the establishment of appropriate criteria for determining the types of conflicts of interest whose existence may damage the interests of customers or potential customers of the insurance intermediary or insurance undertaking (Article 28)
- c) the measures specifying the rules on fees, commissions or non-monetary benefits in connection with the distribution of insurance-based investment products laid down in Article 29(2) of the Directive:
  - the criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the customer
  - the criteria for assessing compliance of insurance intermediaries and insurance undertakings paying or receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer.

Those measures shall take into account:

- the nature of the services offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;
- the nature of the products being offered or considered

- d) the measures to ensure that an insurance intermediary or an insurance undertaking comply with the principles set out in Article 30 of the Directive (as laid down in the empowerment in Article 30(5) of the Directive) as regards suitability and appropriateness.

The Commission invites EIOPA to start the preparation of the technical advice as soon as possible and invites EIOPA to build on the results of previous work that has already been carried out by EIOPA and ESMA (e.g. EIOPA's previous technical advice on conflict of interests in direct and intermediated sales of insurance-based investment products ("IMD 1.5"); EIOPA's draft preliminary Guidelines on product oversight & governance arrangements by insurance undertakings and insurance distributors and, where appropriate, ESMA's technical advice delivered to the Commission on MiFID II and the delegated acts expected to be adopted by the Commission on the MiFID II provisions relevant to this mandate).

## **1. Context**

### **1.1 Scope**

On 3 July 2012, the Commission published its proposal for a Directive of the European Parliament and of the Council on insurance mediation repealing Directive 2002/92/EC. On 30 June 2015, the European Parliament and the Council reached political agreement on a compromise text of the Directive. This compromise text was endorsed by Council on 22 July 2015. The text was adopted by the European Parliament on 24 November 2015 and by the Council on 8 December 2015. Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (hereafter "IDD" or "the Directive"), was published in the Official Journal on 2 February 2016 (L26/19). It enters into force on 23 February 2016, with 24 months for Member States to transpose it into national law.

The Directive has the following main features:

- coverage of all insurance distributors through a wider scope
- provisions that increase the protection of customers
- ensuring a level playing field between insurance-based investment products and products subject to MiFID II
- clearer cross-border procedures for a deeper internal market in insurance
- increased transparency through remuneration disclosures
- standardised information provided to customers of non-life insurance products

Certain elements of the Directive need to be further specified in delegated acts to be adopted by the Commission.

### **1.2 Principles that EIOPA should take into account**

In providing its technical advice, EIOPA is invited to take account of the following principles:

- It should respect the requirements of the EIOPA Regulation.
- EIOPA should, in the process of developing its technical advice, consult ESMA on the standards necessary to achieve as much consistency as possible in the conduct of business standards for insurance-based investment products under the Directive on the one hand and financial instruments under MiFID II on the other, in particular where there is no fundamental difference in the wording of the provisions in the Directive and corresponding provisions in MiFID II.
- Internal market: the need to ensure the proper functioning of the internal market and to improve the conditions of its functioning, in particular with regards to financial markets and insurance, and a high level of consumer protection.

- The principle of proportionality: the technical advice should not go beyond what is necessary to achieve the objective of the implementing acts set out in the legislative act.
- While preparing its advice, EIOPA should be consistent with the regulatory framework of the Union, and in particular the delegated acts expected to be adopted under MiFID II, where appropriate.
- In accordance with the EIOPA Regulation, EIOPA should not feel confined in its reflection to elements that it considers should be addressed by the delegated acts but, if it finds it appropriate, it may indicate guidelines and recommendations that it believes should accompany the delegated acts to better ensure their effectiveness.
- EIOPA will determine its own working methods depending on the content of the provisions being dealt with. Nevertheless, horizontal questions should be dealt with in such a way as to ensure coherence between different standards of work being carried out by the various expert groups.
- The technical advice provided by EIOPA should contain sufficient and detailed explanations for the assessment done, and be presented in an easily understandable language respecting current legal terminology at European level.
- EIOPA should justify its advice by identifying, where relevant, a range of technical options and undertaking a qualitative, and as far as possible, quantitative assessment of the costs and benefits of each. The results of this assessment should be submitted alongside the advice to assist the Commission if it needs to prepare an impact assessment. Where administrative burdens and compliance costs on the side of the industry could be significant, EIOPA should where possible quantify these costs.
- EIOPA should provide sufficient qualitative evidence and where possible factual data backing the analyses gathered during its assessment. To meet the objectives of this mandate, it is important that the presentation of the advice produced by EIOPA makes maximum use of the qualitative evidence and data gathered and enables all stakeholders to understand the overall impact of the possible delegated act.
- EIOPA should provide comprehensive technical analysis on the subject matters described below covered by the delegated powers included in the relevant provision of the legislative act, in the corresponding recitals as well as in the relevant Commission's request included in this mandate.
- The technical advice given by EIOPA to the Commission should not take the form of a legal text. However, EIOPA should provide the Commission with an "articulated" text which means a clear and structured text, accompanied by sufficient and detailed explanations for the advice given, and which is presented in an easily understandable language respecting current terminology in the Union.
- EIOPA should address to the Commission any question they might have concerning the clarification of the text of the legislative act, which they should consider of relevance to the preparation of EIOPA's technical advice.

## **2. Procedure**

The Commission would like to request the technical advice of EIOPA in view of the preparation of possible delegated acts to be adopted pursuant to the legislative act and in particular regarding the questions referred to in section 3 of this mandate.

The Commission reserves the right to revise and/or supplement this formal mandate. The technical advice received on the basis of this mandate will not prejudice the Commission's final decision in any way.

In accordance with the established practice, the Commission may continue to consult experts appointed by the Member States in the preparation of the delegated act relating to the legislative act.

The Commission has sent a copy of this mandate to the European Parliament and the Council. As soon as the Commission adopts possible delegated acts, it will notify them simultaneously to the European Parliament and the Council.

### **3. EIOPA is invited to provide technical advice on the following issues:**

#### **3.1. Product oversight and governance: the measures to ensure that insurance distributors comply with the principles set out in Article 25 of the Directive (as laid down in the empowerment in Article 25 (2) of the Directive).**

Insurance undertakings and insurance intermediaries which manufacture any insurance product for sale to customers are required to maintain, operate and review a process for the approval of each insurance product for sale to customers. The objective of product governance policies is to avoid or reduce, from an early stage, potential risks for customers or to insurance market integrity. The Directive (Art. 25) introduces explicit product oversight and governance rules, differentiated according to the role of the product manufacturer and the insurance distributor. It is important to clarify that the product manufacturer can be both an insurance undertaking and an insurance intermediary.

The product approval process of the product manufacturer must specify, for each product, an identified target market of customers within the relevant customers; ensure that all relevant risks to such identified target market are assessed, and that the intended distribution strategy is consistent with the identified target market. Undertaking scenario analysis for their products or considering the products' charging structures should be part of the product governance process.

Product manufacturers are also required to regularly review their product approval policies. Such reviews should not solely depend on awareness of events that could materially affect customers. The review process should assess at least whether the product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate. As part of the review, product manufacturers should identify and consider critical events that would for instance affect the potential risk or return expectations of the insurance-based investment product as well as any appropriate actions.

Insurance product manufacturers should make available to insurance distributors all appropriate information about the product and the product approval process, including the identified target market of the product or the appropriate sales channels.

Having in mind the general obligation for insurance distributors to understand the insurance products they offer, advise on, or recommend, distributors must also have in place adequate arrangements to obtain the information on the insurance products and product approval process. They must understand the characteristics and intended target market of each insurance product and define the target market for the services and the range of insurance products that they intend to offer. Such information and understanding is of key importance when insurance distributors advise on and recommend insurance products to customers.

It is important that insurance distributors, similarly to manufacturers, periodically review and update their product governance arrangements, in order to ensure that they remain robust and appropriate for their purpose, as well as the insurance products they offer or market, and, where necessary, take appropriate action.

Pursuant to Article 38 of the Directive, the Commission is empowered to adopt delegated acts to specify the product oversight and governance principles taking into account in a proportional way the activities performed, the nature of the insurance product sold and the nature of the insurance distributor. This should translate into identifying the respective responsibilities of manufacturers and distributors involved in the process and the practical application of the product oversight and governance principles on both manufacturers and distributors. They should work together to prevent consumer detriment. Adequate examples could illustrate this practical application.

Future delegated measures should preserve a clear distinction between respective responsibilities set upon insurance product manufacturers and insurance distributors. They should prevent insurance product manufacturers or insurance distributors from seeking to avoid responsibility or liability. In accordance with Article 25(3) of the Directive, product oversight and governance obligations should apply without prejudice to all other requirements under this Directive including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest, and inducements.

The product oversight and governance arrangements should not apply to insurance products which consist of the insurance of large risks.

EIOPA is invited to provide technical advice on detailed product oversight and governance arrangements for insurance undertakings and insurance intermediaries manufacturing and distributing insurance products in order to avoid and reduce, from an early stage, potential risk of detriment to customers' interest. The technical advice should identify when insurance undertakings and insurance intermediaries are acting as manufacturers, distributors, or both, and establish the level of responsibility of those actors. In addition, the technical advice should take into account the different types of distribution channels and differences in the size of the insurance undertaking or insurance intermediary concerned. EIOPA should also address the question of how the nature of the insurance product could be taken into consideration in terms of the practical application of the product oversight and governance arrangements.

With regard to product manufacturers, the technical advice should in particular deal with the arrangements of designing, approving and marketing insurance products, including the manufacturers' ongoing obligations as regards the life cycle of insurance products. In identifying the target market of customers, the technical advice should detail the level of granularity expected from manufacturers as regards the complexity of the insurance product and whether it is intended for mass market distribution. The technical advice should provide examples for activities that can be considered "manufacturing an insurance product for sale to customers".

With regard to insurance distributors, the technical advice should in particular 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 in order to provide the distribution activities in accordance with the obligation to act in the best interest of the customer. EIOPA should assess whether distributors should be required to periodically inform the manufacturer about their experience with the product, or whether information on an incidental basis reflecting specific changes in the market would ensure sufficient protection of the customer's interest.

The technical advice should also specify the obligation for manufacturers and distributors of insurance products to regularly review their product governance policies as well as the products they manufacture, offer or recommend. The technical advice should refer to any appropriate actions to be taken by manufacturers and, where appropriate, distributors, to prevent and mitigate detriment to the interests of customers. Strengthening the role of management bodies and, where applicable, the compliance function, to ensure compliance with the arrangements should be duly considered.

### **3.2. Conflicts of interest: measures to define the steps required for the identification, prevention, management and disclosure of conflicts of interest and to establish criteria for determining the types of conflicts of interest that may damage the interests of customers or potential customers**

The requirements on conflicts of interest provided by the Directive (Articles 27 and 28) cover a broad range of situations that may occur in the distribution of insurance-based investment products. Insurance intermediaries and insurance undertakings distributing insurance-based investment products have to maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in Article 28 of the Directive from adversely affecting the interests of customers. The arrangements in question have to be proportionate to the activities performed, the insurance products sold and the type of distributor.

Article 28 of the Directive obliges insurance intermediaries and insurance undertakings to take all appropriate steps to identify conflicts of interest. Identification, prevention and management of conflicts of interest constitute the core requirements that insurance intermediaries or insurance undertakings must comply with while disclosure can only constitute a last resort measure to be applied where organisational and administrative arrangements put in place to manage conflicts of interest prove to be insufficient.

Pursuant to Article 28(4) of the Directive, the Commission is empowered to adopt delegated acts to (a) define the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when carrying out insurance distribution activities and (b) establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking.

EIOPA is invited to provide technical advice on

- the different steps that insurance intermediaries and insurance undertakings distributing insurance-based investment products might reasonably be expected to take within an effective organisational and administrative arrangement designed to identify, prevent, manage and disclose conflicts of interest;
- the circumstances and situations to take into account when determining which types of conflict of interest may damage the interests of the customers or potential customers of an insurance intermediary or insurance undertaking.

The technical advice should specify the different steps to be taken within an effective organisational and administrative arrangement designed to identify, prevent, manage and disclose conflicts of interest. This should include, in particular, the requirements for periodical review of conflicts of interest policies and clarifications with respect to the last resort nature of disclosure which should not be over-relied on by insurance intermediaries and insurance undertakings nor used as a measure to manage conflicts of interest. Particular attention should be given to the practical implementation of the proportionality requirement.

In order to ensure regulatory consistency, the technical advice should build on existing conflict of interest rules, as laid down in Commission Directive 2006/73/EC, particularly with regard to establishing appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of customers or potential customers. It should also be consistent with the line taken in the delegated acts expected to be adopted under Article 23(4) of MiFID II.

### **3.3. Inducements: measures to ensure that insurance distributors and insurance undertakings comply with the principles set out in Article 29 of the Directive (as laid down in the empowerment in Article 29 (4) of the Directive).**



Third-party payments and benefits such as fees, commissions or non-monetary benefits may influence insurance intermediaries and insurance undertakings negatively when it comes to acting with the customer's best interests in mind, by incentivising them to recommend or sell a particular insurance-based investment product when another product may better meet the customer's needs. The Directive restricts the possibility for insurance undertakings and insurance intermediaries to receive third-party payments or benefits in connection with the distribution of insurance-based investment products in order to strengthen the protection of customers and increase clarity as to the service they receive.

Under Article 29(2), the payment of fees or commissions or the provision of non-monetary benefits by or to insurance intermediaries or insurance undertakings in connection with the distribution of insurance-based investment products or an ancillary service are only permitted under the condition that the payments or benefits in question (a) do not have a detrimental impact on the quality of the relevant service to the customer and (b) do not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers.

Recital 57 further explains that "in order to ensure that any fee or commission or any non-monetary benefit in connection with the distribution of an insurance-based investment product paid to or paid by any party except the customer or a person on behalf of the customer does not have a detrimental impact on the quality of the relevant service to the customer, the insurance distributor should put in place appropriate and proportionate structural arrangements in order to avoid such detrimental impact. To that end, the insurance distributor should develop, adopt and regularly review policies and procedures relating to conflicts of interests with the aim of avoiding any detrimental impact on the quality of the relevant service to the customer and of ensuring that the customer is adequately informed about fees, commissions or benefits".

Since insurance-based investment products are often marketed as potential alternatives or substitutes to investment products subject to MiFID II, it is important to ensure that the interpretation and application of the Directive is consistent with the relevant standards set out in MiFID II and the delegated acts expected to be adopted under MiFID II. However, it should be noted, at the same time, that the wording "does not have a detrimental impact on the quality of the relevant service" in Article 29(2)(a) of the Directive is different from that in Article 24(9)(a) of MiFID II, which requires that the investment service is "designed to enhance the quality of the relevant service to the client". The requirement to disclose inducements under IDD results from Article 29 (1) (c) which lays down a general obligation to disclose all costs and related charges, including the cost of advice and also encompassing any third party payments.

According to Article 29(4) and (5), the Commission is empowered to adopt delegated acts "to specify (a) the criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the consumer and (b) the criteria for assessing compliance of insurance intermediaries and insurance undertakings paying or receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer". The delegated acts shall take into account the nature of the services offered or provided to the customer, taking into account the type, object, size and frequency of the transactions

EIOPA is invited to provide technical advice on

- the conditions under which payments and non-monetary benefits paid or received by insurance intermediaries or insurance undertakings in connection with the distribution of an insurance-based investment product may have a detrimental impact on the quality of the relevant service to the customer;
- the circumstances and situations to take into account when determining whether an insurance distributor or an insurance undertaking paying or receiving inducements complies with its obligation

to act honestly, fairly and professionally in accordance with the best interests of the customer.

The technical advice should specify the methodology to be applied in determining a possible detrimental impact of inducements on the quality of the service and testing compliance with the insurance intermediaries' and insurance undertakings' duty to act in the best interests of its customers. Further clarification should be given with respect to the factual and legal elements and circumstances to take into account in determining whether the conditions set in Article 29(2) are met.

To achieve greater convergence in the application of the detrimental impact criteria, the technical advice should indicate examples of circumstances where a fee, commission or non-monetary benefit may generally be regarded as having a detrimental effect on the quality of the relevant service to the customer. This could be complemented by an exemplary enumeration of circumstances where third-party payments and benefits are generally considered acceptable. In the same way, it should identify circumstances indicating that an insurance intermediary or an insurance undertaking does not comply with the obligation to act honestly, fairly and in accordance with the best interests of the customer.

The technical advice should be consistent with the line taken in the delegated acts expected to be adopted under Article 24(13) of MiFID II, while recognising the difference in terminology between Article 29(2)(a) of the Directive and Article 24(9)(a) of MiFID II.

### **3.4. Assessment of suitability and appropriateness of insurance-based investment products: measures to ensure that insurance distributors comply with the principles set out in Article 30 of the Directive (as laid down in the empowerment in Article 30 (5) of the Directive).**

Pursuant to Article 20(1), the insurance distributor shall, prior to the conclusion of an insurance contract, specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision. Any contract proposed shall be consistent with the customer's demands and needs for the insurance product. Where advice is provided prior to the conclusion of any specific contract, the insurance distributor shall provide the customer with a personalised recommendation explaining why a particular product would best meet the customer's demands and needs.

In case of an insurance-based investment product, the demands and needs test is complemented by a suitability and appropriateness test to be carried out by the insurance intermediary or insurance undertaking that sells those products. The information needed for this test differs depending on whether advice is provided or not.

#### **3.4.1. With advice: is the product suitable for the customer?**

According to Article 30 of the Directive, when providing advice on an insurance-based investment product, the insurance intermediary or insurance undertaking have to obtain the necessary information regarding the customer's or potential customer's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including the ability to bear losses, and that person's investment objectives, including that person's risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer or potential customer the insurance-based investment products that are suitable for that person and that, in particular, are in accordance with that person's risk tolerance and ability to bear losses.

Member States shall ensure that where an insurance intermediary and insurance undertaking provides investment advice recommending a package of services or products bundled pursuant to Article 24, the overall bundled package is suitable.

When providing advice on the insurance-based investment product, the insurance intermediary or the insurance undertaking shall, prior to the conclusion of the contract, provide the customer with a suitability statement on a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the customer.

#### **3.4.2 No advice: is the product appropriate?**

Experienced customers who are familiar with the risks and rewards of various types of investment would normally not need any advice about whether a particular investment product is suitable to them. In those cases, the transactions can be carried out without advice relating to the merits of the transaction, i.e. on the basis of execution-only. The execution-only services are predominantly internet-based or telephone-based. Once the customer has registered an account with an execution-only service, an order to trade a financial instrument can either be made by phone or online.

When selling insurance-based investment products without providing advice, the insurance intermediary or insurance undertaking shall ask the customer or potential customer to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or the insurance undertaking to assess whether the insurance service or product envisaged is appropriate for the customer. Where a bundle of services or products is envisaged pursuant to Article 24, the assessment shall consider whether the overall bundled package is appropriate.

Where the insurance intermediary or insurance undertaking considers, on the basis of the information received, that the product is not appropriate to the customer or potential customer, the insurance intermediary or insurance undertaking shall warn the customer or potential customer. This warning may be provided in a standardised format.

Where customers or potential customers do not provide the information, or where they provide insufficient information regarding their knowledge and experience, the insurance intermediary or insurance undertaking shall warn them that it is not in a position to determine whether the product envisaged is appropriate for them. This warning may be provided in a standardised format.

Where no advice is given in relation to insurance-based investment products, Member States may derogate from the obligations referred to in Article 30 (2), allowing insurance intermediaries or insurance undertakings to carry out insurance distribution activities within their territories without the need to obtain the information or make the determination provided for in Article (2) where all the following conditions are met:

- (a) the activities refer to either of the following insurance-based investment products:
  - (i) contracts which only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU and do not incorporate a structure which makes it difficult for the customer to understand the risks involved; or
  - (ii) other non-complex insurance-based investments for the purpose of this paragraph;
- (b) the insurance distribution activity is carried out at the initiative of the customer or potential customer;
- (c) the customer or potential customer has been clearly informed that, in the provision of this insurance distribution activity, the insurance intermediary or the insurance undertaking is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered and that the customer or potential customer does not benefit from the corresponding protection of the relevant conduct of business rules. Such a warning may be provided in a standardised format;

- (d) the insurance intermediary or insurance undertaking complies with its obligations under Articles 27 and 28.

The insurance intermediary or insurance undertaking shall establish a record that includes the document or documents agreed between the insurance intermediary or insurance undertaking and the customer that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

The insurance intermediary or insurance undertaking shall provide the customer with adequate reports on the service provided on a durable medium. Those reports shall include periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.

Where an insurance intermediary or an insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics of the customer.

EIOPA is invited to provide technical advice on:

1. the information to obtain when assessing the suitability or appropriateness of insurance-based investment products for their customers, whereby a distinction has to be made between the situation when advice is provided and the situation when no advice is provided,
2. the criteria to assess non-complex insurance-based investment products for the purposes of point (ii) of point (a) of paragraph 3 of Article 30,
3. the content and format of records and agreements for the provision of services to customers, and
4. the content and format of periodic reports to customers on the services provided.

The advice should take into account: (i) the nature of the services offered or provided to the customer, taking into account the type, object, size and frequency of the transaction, (ii) the nature of the products being offered or considered including different types of insurance-based investment products and (iii) the retail and professional nature of the customer or potential customer.

In order to ensure regulatory consistency, the technical advice should be consistent with the line taken in the delegated acts expected to be adopted under Article 25 (8) of MiFID II.