	Comments Template on Consultation Paper on Conflicts of Interest in direct and intermediated sales of insurance-based investment products	**Deadline 1st December 2014 18:00 CET**
Name of Company:		
Disclosure of comments:	Please indicate if your comments should be treated as 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-102-IMD@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 Conflicts of Interest in direct and intermediated sales of insurance-based investment products.	
Reference	**Comment**	
General Comment	Insurance Europe welcomes the opportunity to comment on EIOPA's consultation paper on conflicts of interest in direct and intermediated sales of insurance-based investment products. We would like to stress, however, that discussions are still ongoing on IMD 2 and trialogue negotiations have yet to take place, which will have a significant impact on the rules applicable to insurance-based investment products. EIOPA should therefore avoid tackling issues that are neither within the remit of the IMD 1.5 provisions, nor are certain to be included in the final IMD 2 text, such as a quality enhancement criterion or a disclosure of inducements criterion. To do so would be to seriously undermine the political decisions taken by the European co-legislators. We would support a recognition of the need to take into account the principle of proportionality. Many distributors of insurance products are small and medium sized enterprises and in some cases are run by one self-employed individual, where a separation of functions would simply not	

	be possible, so any measures developed should not give rise to an onerous regulatory burden for SMEs. National regulators are best placed to assess proportionality, as they will already be closely monitoring the risk management approach in the firms they supervise. They will also be better placed to take account of the extensive variation in legal forms and in corporate governance regimes and practices. In many Member States, SMEs are involved in the distribution of complex products, many of which are managed by one person. A separation of functions requirement, as introduced in asset management in order to manage conflicts of interest, would put a heavy burden on the market and force SMEs to cooperate with other SMEs or just stop their business. Insurance Europe also wishes to express its concerns at the number of instances where EIOPA is seeking to elaborate on the MiFID implementing measures by means of guidelines or opinions. There should be an important role for national supervisors when it comes to tailoring these general rules to the particular circumstances of local consumers. We do not agree, however, that there should be further specification of these principles in the form of EIOPA guidelines. It is crucial to find an appropriate and suitable wording in the text of the Level 2 measures that enshrines clarity and precision, and does not require further interpretation at a later date.	
Question 1	Insurance Europe believes that when analyzing the costs associated with the changes outlined in this consultation, consideration must be given to the fact that the costs will depend on the market player concerned – the costs faced by sole traders and SMEs, for example, would be more significant and burdensome in relative terms than for large companies. This may lead to a reduction in the number of sole traders and SMEs offering insurance-based investment products, and thus the number of points of sale, to the detriment of consumers who will have reduced choice of providers. This may also run contrary to the European Commission's aim to "improve the business environment for SMEs, to allow them to realise their full potential" as "a key driver for economic growth, innovation, employment and social integration"[1]. With regard to the overall costs, there will be significant costs involved in transforming existing IT systems, additional training costs (eg of agents), and adapting contracts and business models. The cumulative effect of these costs should also be taken into account, as there will be further changes introduced under IMD 2 that will bring with them their own associated costs. As these	

[1] http://ec.europa.eu/enterprise/policies/sme/index_en.htm

	two initiatives are working to different timelines, this will therefore create a situation where companies potentially have to make significant changes to their systems twice within the space of a year, which will give rise to additional cost that will be passed on to policyholders.	
Question 2	Insurance Europe agrees that general principles similar to those set out in Article 21 of the MiFID implementing directive can be applied to insurance distribution activities. This article is high-level enough to capture any potential conflicts of interest related to insurance-based investment products. We do not agree, however, that there should be further specification of these principles in the form of EIOPA guidelines. It is crucial to find an appropriate and suitable wording in the text of the Level 2 measures that enshrines clarity and precision, and does not require further interpretation at a later date.	
Question 3	We fail to see how point (d) would be applicable in an insurance context and believe that this requirement should either be removed or EIOPA needs to be much clearer about its intention here, so as to avoid any risk of this being misinterpreted in the future. We are also not sure of the exact meaning that should be applied to a "linked person" and would request that EIOPA remove this reference or make appropriate clarification this in the text. Similarly, we are unsure how the terms financial loss or gain in point (a) are relevant in an insurance context, as these are concepts more relevant to trading on financial markets. We do not support the adjustment that has been made by EIOPA to adapt point (e) of Article and would support the original wording of the MiFID implementing directive.	
Question 4	As indicated in the response to Question 3, we would support the application of the original wording of the MiFID implementing directive for point (e). However, we would propose to change the wording of point (e) where it refers to a "person other than the customer" and to replace it with "third party" in order to maintain consistent wording within the rest of the text.	
Question 5	We believe that the wording of paragraphs 1 and 2 of Article 22 seem appropriate to be used in the insurance context. However, while point (d) of paragraph 3 may also be appropriate, it is unclear how points (a), (b), (c) and (e) is expected to be applied to insurance. We would therefore request EIOPA to demonstrate in the Level 2 measures how these provisions are intended to apply to insurance, rather than to introduce further specification through guidelines,	

	and if the provisions are not applicable they should be removed.	
Question 6	We do not share EIOPA's view that the situations addressed by the organisational requirements in Article 22(3) are relevant in the insurance context. It is unclear how paragraph 3 (a) to (e) is expected to be applied to insurance. We would therefore request EIOPA to demonstrate in the Level 2 measures how these provisions are intended to apply to insurance, rather than to introduce further specification through guidelines, and if the provisions are not applicable thye should be removed.	
Question 7	We do not believe that the amendments proposed in ESMA's consultation paper regarding periodic reviews of the conflicts of interest policy and disclosure should apply to insurance undertaking and intermediaries. It would be without any benefit or added value to require companies to review their conflicts of interest policy at least annually. We would propose instead to used wording such as 'when necessary' or 'where appropriate' rather than annually. This would better reflect the principle of proportionality and would help to take into account the higher proportion of SMEs operating within the insurance sector than other financial sectors (eg in Austria approximately 50% of independent insurance distributors are one-man businesses, while in the German insurance market 80% of its 240,000 intermediaries consist of only one or a maximum of two employees). In addition, we do not see the value in requiring companies to provide information about the steps undertaken to mitigate the risk of conflicts of interest when at the same time the conflict of interest has been disclosed to the customer.	
Question 8	We do not share EIOPA's view that questions arising on the practical application of the proportionality principle should be addressed through guidelines or opinions. It is imperative that proportionality should be addressed directly in the text of the Level 2 measures. We believe that there needs to be legal clarity in the implementing measures themselves as regards which rules exactly should apply to sole traders and SMEs, and not to leave such a crucial issue to be addressed through further guidelines or opinions which, as EIOPA often emphasises, do not have any binding effect. Many distributors of insurance products are small and medium sized enterprises and in some cases are run by one self-employed individual, where a separation of functions would simply not be possible, so the text should be clear that the measures developed should not give rise to an	

	onerous regulatory burden for SMEs.	
Question 9	We would wonder about the legal basis for the introduction of a quality enhancement criterion, particularly as the delegated acts for IMD 1.5 make no mention of any such criterion. Moreover, while trialogue negotiations still have to take place on IMD 2, none of the positions of the European Commission, the Parliament or the Council introduce a quality enhancement criterion under IMD 2. EIOPA is clearly going beyond any mandate or competence it may have in attempting to introduce such a provision in the insurance context where none of the European co-legislators have sought to do so. In addition, a ban on commissions was clearly left as a Member State option in IMD 1.5, as a result of the trialogue agreement reached under MiFID 2. This is also the approach that was adopted in the European Parliament after much deliberations on this issue. We are concerned that the direction being taken by EIOPA with regard to inducements will effectively bypass the political decisions that have already been reached.	
Question 10	We would wonder about the legal basis for the introduction of a quality enhancement criterion, particularly as the delegated acts for IMD 1.5 make no mention of any such criterion. Moreover, while trialogue negotiations still have to take place on IMD 2, none of the positions of the European Commission, the Parliament or the Council introduce a quality enhancement criterion under IMD 2. EIOPA is clearly going beyond any mandate or competence it may have in attempting to introduce such a provision in the insurance context where none of the European co-legislators have sought to do so.	
Question 11	We would wonder about the legal basis for the introduction of a quality enhancement criterion, particularly as the delegated acts for IMD 1.5 make no mention of any such criterion. Moreover, while trialogue negotiations still have to take place on IMD 2, none of the positions of the European Commission, the Parliament or the Council introduce a quality enhancement criterion under IMD 2. EIOPA is clearly going beyond any mandate or competence it may have in attempting to introduce such a provision in the insurance context where none of the European co-legislators have sought to do so.	
Question 12	We would wonder about the legal basis for the introduction of a quality enhancement criterion, particularly as the delegated acts for IMD 1.5 make no mention of any such criterion. Moreover, while trialogue negotiations still have to take place on IMD 2, none of the positions of the European Commission, the Parliament or the Council introduce a quality enhancement criterion	

	under IMD 2. EIOPA is clearly going beyond any mandate or competence it may have in attempting to introduce such a provision in the insurance context where none of the European co-legislators have sought to do so.	
Question 13	With regard to the production and dissemination of investment resarch, we share the view of EIOPA that this is not relevant or applicable for the insurance sector.	