	Comments Template on Consultation Paper on the proposal for Guidelines on product oversight & governance arrangements by insurance undertakings	**Deadline 23 January 2015 23:59 CET**
Name of Company:	Insurance Europe	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
	Please follow the following instructions for filling in the template: ⇨ Please insert the name of your NCA in the box next to "Name of Company"; ⇨ Do **not** change the page numbering in the column "reference" ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row, giving reference to the paragraph number where given. 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-14-039@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.** The page numbering refers to the Consultation Paper on the proposal for Guidelines on product oversight & governance arrangements by insurance undertakings.	
Reference	**Comment**	
General Comment	We agree that insurance undertakings are responsible for the design of their products and bringing to market products that are appealing for consumers. Insurance undertakings have an inherent commercial interest in achieving consumer satisfaction and as a result, consumer needs are already an essential factor in the insurance undertaking's internal product design process. Moreover, it should be stressed that it is already possible for supervisory authorities to intervene if a product poses a threat to consumers.	

	At a general level, therefore, basic principles on product oversight and governance (POG) are acceptable, but the risks and the level of administrative burden lie in the prescriptiveness of such guidelines. Too many prescriptive and overly-formal POG processes would significantly increase the administrative workload and therefore have a detrimental effect on market competitiveness, restricting undertakings' freedom to conduct a business. The introduction of such processes will give rise to administrative costs, which will ultimately have to be borne by consumers. However, most insurance companies already have a process of designing and testing products before they reach the market. Moreover, regulators will apply financial sanctions on firms that do not have a process in place for each of their products. We believe that the focus should therefore be on the products for which having mandatory POG requirements would be necessary and reasonable. An impact assessment, which is required for such a consideration, has yet to be produced by the European Commission or EIOPA. We agree with EIOPA that any principles on POG should focus on consumer risks and consumers as defined in section 1.11. EIOPA is also right to point out the diversity of insurance products. There are clear differences between simple non-life and risk life insurance products on the one hand, and insurance-based investment products on the other hand. These differences need to be respected, in order to avoid introducing requirements for all insurance products that are more suited to the investment world. Product risk is minor for simple insurance policies sold on a mass-market basis. For example, many of these products have proven their added-value in the market for years, without giving rise to any of the criticisms put forward by EIOPA. A cost-benefit analysis would show that making the development and documentation of POG procedures compulsory for these products would not add any value. A motor insurance is only suitable for owners of motor vehicles and further analysis of the target market would be pointless. ESMA's recently published Technical Advice to the European Commission on MiFID II notes that simple products can be considered to be compatible with the mass retail market, but that for more sophisticated, less-mainstream investment products, the target market would need to be specified in more detail. In this context, ESMA states,	

	"the criteria used to define the target market and determine the appropriate distribution strategy must be relevant for the product". On this basis, the majority of simple products (including non-life products such as home and motor insurance) are developed for the purpose of covering a particular risk. The persons affected by the risk thus form the natural target group. A more comprehensive target group analysis can be omitted in this context, which puts into question the value of applying these guidelines to most simple products. Therefore, the focus of any proposed POG provisions should be on more demanding, sophisticated insurance products, which is also consistent with the approach that has been taken in the European Parliament on IMD2 in the context of insurance-based investment products. Furthermore, POG provisions should only apply to newly designed products that are put on the market, and insurers should be given flexibility in their product governance to applying them to existing products as companies would be overstrained if they were obliged to develop new POG systems for each of these products. It should be noted that examining existing products under the target market criteria would be particularly burdensome in jurisdictions where advice is compulsory; compulsory advice aims to ensure that consumers are provided with the most suitable products, even when the consumer is outside the target market for the concerned product. It should also be pointed out that insurers are often constrained in terms of scope of control they have over product governance for insurance products and/or guarantees that are required by law, or are based on agreements between the social partners, and this should be considered in these guidelines. Imposing excessive requirements on those products would raise unnecessarily the administrative burden and the costs, which would ultimately be passed on to consumers, and risk making these products less accessible to consumers. Insurance Europe also has concerns that the guidelines could hinder product innovation and customer-centricity. Consumers should be able to choose from several product options. This choice should not be narrowed excessively by regulatory intervention. In the insurance context, in particular, there are numerous possibilities to tailor insurance cover according to the needs of consumers via terms and	

	conditions, sub-limits, risk exclusions or inclusions etc. These conditions are not detrimental to consumers, but are essential in order to be able to provide affordable insurance cover which matches the needs of as many consumers as possible. Recital 41a of the Council text on IMD2 states that any rules on POG should not affect product innovation; however, there is a danger that these guidelines might do exactly that. **Potential IMD2 delegated acts** If, and how, provisions on POG are necessary for insurance products will be discussed in more detail during the trialogue negotiations on IMD2. EIOPA guidelines should not pre-empt the outcome of decisions taken by the European co-legislators. We are concerned about the risk of contradictions between the proposed guidelines and the potential empowerment for delegated acts on POG that would be included in IMD2. It is unclear whether such delegated acts will be identical to the proposed guidelines, if they would replace the guidelines, or if they would be intended to be separate and additional to the guidelines. **Responsibility for distributors** In relation to POG arrangements, we are concerned that the guidelines may impose requirements on insurance undertakings to supervise intermediaries who are involved in the design and manufacture of a product, and thus are "de facto" manufacturers. This would result in undertakings being held responsible for aspects that should properly be the responsibility of the intermediary. We believe that a simple way to resolve this issue would be for the guidelines to be applied to those intermediaries who are "de facto" acting as manufacturers, as EBA has done in its approach to POG provisions. In such a situation, insurance undertakings should not be required to perform the POG. As for the distribution of the product to the target market, the guidelines should not	

	impose on insurance undertakings to supervise and be held responsible for the actions of independent intermediaries that are acting in the interest of the consumer and on which insurance undertakings do not have any influence. The control measures proposed by EIOPA are not feasible in those cases. **Legal basis** The proposed guidelines are based upon Article 40 and Article 41(1) of the Solvency II Directive 2009/138/EC, which requires insurance undertakings to have in place an effective system of governance. This does not provide for an adequate legal basis for the proposed guidelines. The elements of governance system in accordance with Solvency II have been clearly defined in the Framework Directive and do not cover POG arrangements. Extensive requirements are provided for in Solvency II to guarantee the long-term stability of undertakings (solvency). The Directive mainly includes capital requirements and regulations on own funds, qualitative requirements with respect to business organisation such as undertakings' obligation to report to the supervisory authority and to the public. The POG guidelines have a different objective.	
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Page 7	We agree with EIOPA that any principles on POG should focus on consumer risks and consumers as defined in section 1.11.	

Page 8	We believe that the proposed wording in **Guideline 1** is too negative in nature as it refers to minimising potential detriment. The principal overarching aim should be to ensure that the interests, objectives and characteristics of consumers are taken into account, rather than minimising consumer detriment. **Guideline 2** states that the manufacturer's administrative, management or supervisory body should be ultimately responsible for the establishment, implementation, subsequent reviews and continued internal compliance with the POG arrangements. We agree with this principle, but believe that some flexibility should be allowed to manufacturers as regards the attribution of relevant functions under the POG arrangements. We therefore support Option 3 on page 28, which does not provide any rule specifying the role of the key functions. **Guideline 3:** We agree that where consistent problems arise, POG arrangements should be reviewed and adjusted where necessary. However, we do not believe that this needs to be done on a periodic basis for each product on the market, but rather as set out in the *Joint Position of the European Supervisory Authorities on Manufacturers' Product Oversight & Governance Processes*, which states that the monitoring of the functioning and operation of the product should be done periodically, and only "where appropriate" reviewed to ensure compliance. We agree that conflicts of interest should be managed. However, we are concerned at the content of **Guideline 4** and see a danger of discussing the same issue in numerous different contexts, particularly in light of EIOPA's recent consultation on conflicts of interest. It would be more appropriate to defer to existing legislation that tackles this issue.	

Page 9	**Guideline 5:** The term 'target market', which has arisen in the context of discussions on IMD2 and PRIIPs, is a very vague and unclear concept. It is uncertain how general/detailed any specification of these target groups should be. A crucial part of the existing sales process is evaluating which products suit which consumers and this will continue to be the case under IMD2. It is difficult to understand the requirement of a negative market definition in this guideline to identify groups of consumers for which the product is likely not to meet their interests, objectives and characteristics. Such a requirement could prove too exhaustive or even impossible to fulfil in practice. A rigid determination of a target market at the level of product design would lead to the exclusion of numerous consumers from suitable insurance coverage, if – for different reasons – they do not form part of the target group. This could even lead to problems of discrimination and refusal to sell. The distributor has to be able to deviate from the pre-set target group if this is reasonable in a particular case. The approach taken by the EBA is to allow distributors to sell products outside of the target market defined by the manufacturer provided they are able to justify doing so. Moreover, in ESMA's recently published Technical Advice to the European Commission on MiFID II (ESMA /2014/1569), it acknowledges that "some products may be distributed to clients outside the manufacturer's target market. Distributors remain responsible for meeting the required standards for distribution and it may be that such sales remain suitable/ appropriate". We believe that this approach should be applicable to these guidelines. We also have more general concerns that this guideline could hinder product innovation and customer-centricity. Consumers should be able to choose from several product options. This choice should not be narrowed excessively by regulatory intervention. In the insurance context, in particular, there are numerous possibilities to tailor insurance cover according to the needs of consumers via terms and conditions, sub-limits, risk exclusions or inclusions etc. These conditions are not detrimental to consumers, but are essential in order to be able to provide affordable insurance cover which matches the needs of as many consumers as possible. Recital	

	41a of the Council text on IMD2 states that any rules on POG should not affect product innovation; however, there is a danger that these guidelines might do exactly that. **Guideline 6:** We agree that staff should be appropriately trained in order to understand the product's main features and characteristics, where they are involved in the design of products, ie insurance undertakings and intermediaries involved in the manufacture of products. However, we do not see the need for the inclusion of such a guideline. We do not support the reference to the Solvency II fit and proper requirements in para. 1.28 on page 16. The requirement to be fit, in the context of financial services legislation is aimed at those who effectively run an undertaking, a bar which is inappropriate and far too high for insurance underwriters and distribution staff. Furthermore, this guideline should take into account existing national professional requirements for certain professional groups that are involved in the process of product design, such as actuaries. Any guideline on knowledge and ability should not interfere with these specific requirements. **Guideline 7:** We agree that in particular investment products scenarios should be tested. However, we are unsure of the overlap of this guideline with the consumer testing that is being carried out in the context of the development of Level 2 measures for the PRIIPs Regulation. These rules also run the risk of becoming too detailed, as there are already many processes that need to be met before taking a product to market. This would particularly be the case if there would be a long testing period, hindering innovation and work against the interests of consumers. It would also have a detrimental effect on competition in the marketplace, as the fulfilment of a lengthy product testing requirement would hinder competitors from putting a similar product on the market.	

	The principle of proportionality should not only apply as to the differentiation between products with respect to the scope of POG, but also as to how POG is implemented in a particular case. Undertakings should only need to apply POG criteria that are relevant in the case of a specific product. We are also unsure as to what is understood by "consumer benefit", and whether it could mean something other than the yield or benefits of the product, particularly in the event of an economic downturn. We are concerned with EIOPA comments in relation to the calculation of costs within the POG process. EIOPA requires undertakings to assess, based on the claims ratio, whether a product is of benefit to consumers before this product is brought to the market (Guideline 7, section 1.30.3 of the explanatory text). It must be clear that the design and the pricing of products are falling out of supervisory authorities' tasks. **Guideline 8:** We believe that manufacturers should have a strategy in place for responding to any signals they receive from the market that the product may no longer meet the interests, objectives and characteristics of the identified target market. However, we are concerned over the on-going basis of the monitoring requirement as laid out in this guideline. Instead, it would be better phrased as a requirement for the manufacturer to have in place a strategy for responding appropriately to feedback from the target market.	
Page 10	Regarding **Guideline 9**, we agree that where a problem with a product becomes apparent after it is issued, the manufacturer should take remedial action. However, we understand that this is meant as a preventative measure and thus there should not be any retroactive application which could jeopardise the existing contractual relationship between the consumer and the distributor. It should not be understood as guideline imposing product recalls. Furthermore, we support the approach taken by ESMA in its Technical Advice to the	

	Commission on MiFID II, where it states that "firms should take 'appropriate action' where they become aware of an event that could potentially affect the risk of the identified target market but that there should be no pre-determined action to be taken in all cases".	
Page 11	**Guideline 10:** We agree that manufacturers should provide their distributors with all the information necessary about the product. However, this guideline may not always easily apply in the case of independent intermediaries, where manufacturers have less or no control over how or to whom their products are sold. The reference in Guideline 10 to guiding towards target markets would therefore be a problem in many markets as it is generally not possible for manufacturers to interfere in the business of independent intermediaries, and no distinction between independent and tied intermediaries is provided for in the guideline. The guideline should be careful not to prevent consumers from having the freedom to choose the distribution channel they deem most appropriate for their needs, which is particularly important given the wide variety of distribution models across Europe. Manufacturers do not necessarily know at the time of designing the product which distribution channel will ultimately be selected by consumers, a fact that is increasingly evident by the growing number of distribution channels and models across the EU. This guideline should therefore be careful not to prevent consumers from having the freedom to choose the distribution channel they deem most appropriate for their needs, which is particularly important given the wide variety of distribution models across Europe. In order to provide unlimited access to insurance, distribution channels should not be limited to certain products or consumer groups. **Guideline 11:** There is no need to introduce specific guidelines on the outsourcing of product design, as outsourcing is already determined under Article 49 of the Solvency II Directive.	

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Page 14	We believe that the proposed wording in **Guideline 1** is too negative in nature as it refers to minimising potential detriment. The principal overarching aim should be to ensure that the interests, objectives and characteristics of consumers are taken into account, rather than minimising consumer detriment. **Guideline 2** states that the manufacturer's administrative, management or supervisory body should be ultimately responsible for the establishment, implementation, subsequent reviews and continued internal compliance with the POG arrangements. We agree with this principle, but believe that some flexibility should be allowed to manufacturers as regards the attribution of relevant functions under the POG arrangements. We therefore support Option 3 on page 28, which does not provide any rule specifying the role of the key functions.	
Page 15	**Guideline 3:** We agree that where consistent problems arise, POG arrangements should be reviewed and adjusted where necessary. However, we do not believe that this needs to be done on a periodic basis for each product on the market, but rather as set out in the *Joint Position of the European Supervisory Authorities on Manufacturers' Product Oversight & Governance Processes*, which states that the monitoring of the functioning and operation of the product should be done periodically, and only "where appropriate" reviewed to ensure compliance. **Guideline 5:** The term **'target market'**, which has arisen in the context of discussions on IMD2 and PRIIPs, is a very vague and unclear concept. It is uncertain how general/detailed any specification of these target groups should be. A crucial part of the existing sales process is evaluating which products suit which consumers and this will continue to be the case under IMD2.	

	It is difficult to understand the requirement of a negative market definition in this guideline to identify groups of consumers for which the product is likely not to meet their interests, objectives and characteristics. Such a requirement could prove too exhaustive or even impossible to fulfil in practice. A rigid determination of a target market at the level of product design would lead to the exclusion of numerous consumers from suitable insurance coverage, if – for different reasons – they do not form part of the target group. This could even lead to problems of discrimination and refusal to sell. The distributor has to be able to deviate from the pre-set target group if this is reasonable in a particular case. The approach taken by the EBA is to allow distributors to sell products outside of the target market defined by the manufacturer provided they are able to justify doing so. Moreover, in ESMA's recently published Technical Advice to the European Commission on MiFID II (ESMA /2014/1569), it acknowledges that "some products may be distributed to clients outside the manufacturer's target market. Distributors remain responsible for meeting the required standards for distribution and it may be that such sales remain suitable/ appropriate". We believe that this approach should be applicable to these guidelines. We also have more general concerns that this guideline could hinder product innovation and customer-centricity. Consumers should be able to choose from several product options. This choice should not be narrowed excessively by regulatory intervention. In the insurance context, in particular, there are numerous possibilities to tailor insurance cover according to the needs of consumers via terms and conditions, sub-limits, risk exclusions or inclusions etc. These conditions are not detrimental to consumers, but are essential in order to be able to provide affordable insurance cover which matches the needs of as many consumers as possible. Recital 41a of the Council text on IMD2 states that any rules on POG should not affect product innovation; however, there is a danger that these guidelines might do exactly that.	

Page 16	**Guideline 6:** We agree that staff should be appropriately trained in order to understand the product's main features and characteristics, where they are involved in the design of products, ie insurance undertakings and intermediaries involved in the manufacture of products. However, we do not see the need for the inclusion of such a guideline. We do not support the reference to the Solvency II fit and proper requirements in para. 1.28 on page 16 that is associated with this guideline. The requirement to be fit, in the context of financial services legislation is aimed at those who effectively run an undertaking, a bar which is inappropriate and far too high for insurance underwriters and distribution staff. Furthermore, this guideline should take into account existing national professional requirements for certain professional groups that are involved in the process of product design, such as actuaries. Any guideline on knowledge and ability should not interfere with these specific requirements. **Guideline 7:** We agree that in particular investment products scenarios should be tested. However, these rules also run the risk of becoming too detailed, as there are already many processes that need to be met before taking a product to market. This would particularly be the case if there would be a long testing period, hindering innovation and work against the interests of consumers. It would also have a detrimental effect on competition in the marketplace, as the fulfilment of a lengthy product testing requirement would hinder competitors from putting a similar product on the market. The principle of proportionality should not only apply as to the differentiation between products with respect to the scope of POG, but also as to how POG is implemented in a particular case. Undertakings should only need to apply POG criteria that are relevant in the case of a specific product. We are also unsure as to what is understood by "consumer benefit", and whether it	

	could mean something other than the yield or benefits of the product, particularly in the event of an economic downturn. We are concerned with EIOPA comments in relation to the calculation of costs within the POG process. EIOPA requires undertakings to assess, based on the claims ratio, whether a product is of benefit to consumers before this product is brought to the market (Guideline 7, section 1.30.3 of the explanatory text). It must be clear that the design and the pricing of products are falling out of supervisory authorities' tasks.	
Page 17	We agree that in particular investment products scenarios should be tested. However, these rules also run the risk of becoming too detailed, as there are already many processes that need to be met before taking a product to market. This would particularly be the case if there would be a long testing period, hindering innovation and work against the interests of consumers. It would also have a detrimental effect on competition in the marketplace, as the fulfilment of a lengthy product testing requirement would hinder competitors from putting a similar product on the market. The principle of proportionality should not only apply as to the differentiation between products with respect to the scope of POG, but also as to how POG is implemented in a particular case. Undertakings should only need to apply POG criteria that are relevant in the case of a specific product. We are also unsure as to what is understood by "consumer benefit", and whether it could mean something other than the yield or benefits of the product, particularly in the event of an economic downturn. We are concerned with EIOPA comments in relation to the calculation of costs within the POG process. EIOPA requires undertakings to assess, based on the claims ratio, whether a product is of benefit to consumers before this product is brought to the market (Guideline 7, section 1.30.3 of the explanatory text). It must be clear that the design and the pricing of products are falling out of supervisory authorities' tasks.	

Page 18	We believe that manufacturers should have a strategy in place for responding to any signals they receive from the market that the product may no longer meet the interests, objectives and characteristics of the identified target market. However, we are concerned over the on-going basis of the monitoring requirement as laid out in **Guideline 8**. Instead, it would be better phrased as a requirement for the manufacturer to have in place a strategy for responding appropriately to feedback from the target market. Regarding **Guideline 9**, we agree that where a problem with a product becomes apparent after it is issued, the manufacturer should take remedial action. However, we understand that this is meant as a preventative measure and thus there should not be any retroactive application which could jeopardise the existing contractual relationship between the consumer and the distributor. It should not be understood as guideline imposing product recalls. Furthermore, we support the approach taken by ESMA in its Technical Advice to the Commission on MiFID II, where it states that "firms should take 'appropriate action' where they become aware of an event that could potentially affect the risk of the identified target market but that there should be no pre-determined action to be taken in all cases".	
Page 19	**Guideline 10:** We agree that manufacturers should provide their distributors with all the information necessary about the product. However, this guideline may not always easily apply in the case of independent intermediaries, where manufacturers have less or no control over how or to whom their products are sold. The reference in Guideline 10 to guiding towards target markets would therefore be a problem in many markets as it is generally not possible for manufacturers to interfere in the business of independent intermediaries, and no distinction between independent and tied intermediaries is provided for in the guideline.	

	Manufacturers do not necessarily know at the time of designing the product which distribution channel will ultimately be selected by consumers, a fact that is increasingly evident by the growing number of distribution channels and models across the EU. This guideline should therefore be careful not to prevent consumers from having the freedom to choose the distribution channel they deem most appropriate for their needs, which is particularly important given the wide variety of distribution models across Europe. In order to provide unlimited access to insurance, distribution channels should not be limited to certain products or consumer groups. Regarding the proposal in paragraph 1.36, we are unsure of the overlap of this consumer testing with the consumer testing that is being carried out in the context of the development of Level 2 measures for the PRIIPs Regulation.	
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Page 28	**Guideline 2** states that the manufacturer's administrative, management or supervisory body should be ultimately responsible for the establishment, implementation, subsequent reviews and continued internal compliance with the POG arrangements. We agree with this principle, but believe that some flexibility should be allowed to manufacturers as regards the attribution of relevant functions under the	

	POG arrangements. We therefore support Option 3 on page 28 for Policy Issue 6, which does not provide any rule specifying the role of the key functions. **Policy Issue 8:** There is no need to introduce specific guidelines on the outsourcing of product design, as outsourcing is already determined under Article 49 of the Solvency II Directive.	
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