	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:	**BdV** - Bund der Versicherten (German Association of the Insured)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	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	As Germany's most important NGO of consumer protection related to private insurances (with more than 50.000 members) we would like to thank EIOPA for the opportunity to publish comments on this consultation. We fully support the proclaimed objectives of these guidelines enhancing policy holder protection and cross-sectorial consistency. Product oversight and governance requirements request financial institutions to establish a set of processes and strategies aimed at designing, operating and bringing products to the market that meet the interest, objectives and characteristics of a defined group of consumers. It	

	also mandates reviewing the products once launched, in order to verify that they are performing as expected and delivering the expected outcome to consumers during the whole product cycle. Again, we strongly support these objectives which partially are new to the insurance industry, and which have nothing in common with any kind of product pre-approval capacity of former times.	
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Page 8	**Guideline 4:** Yes, we fully agree. For more details, we would like to refer to our comprehensive comments which we had sent to EIOPA consultations on conflicts of interest in July and December 2014.	
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Page 11	**Guideline 11:** Yes, we fully agree.	
Page 12	**Guideline 12:** Yes, we agree. We would like to stress that the documentation of all relevant POG actions should be made available for the distribution channels, too. Additionally we propose that if the sale of a product is stopped, this management decision should be published. This should be done not only for the general public, but also with enough details for experts making possible a transparent reconsideration of the decision. The public has to be informed about such an important decision, because there is no need for business secrets related to that product anymore.	

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Page 14	**Guideline 1:** Yes, we agree. But we would like to stress that there should be the obligation to create a unique written document, which contains all guidelines. It is not sufficient just to refer to already existing documents, which may be spread all over in the company making it difficult to find them. In the case of M&A, these wildly dispersed documents will very probably get lost, which had been so relevant before. Additionally each company has to be obliged to create the function of a product manager, who is responsible for the implementation of this document and for the information of all relevant staff members about it. Usually product managers are already responsible for the development and for the launch of new products.	
Page 15	**Guideline 3:** Yes, we agree. We stress that the review of POG has to be part of the responsibilities of the product manager whom we proposed in Guideline 1. **Guideline 5:** Yes, we fully agree. The identification of target markets not only for simple marketing reasons, but as an obligation for the distribution channels to follow, constitutes an innovation of immense importance for insurers. The obligatory identification of groups of consumers for which the product is considered *not* to meet their interests, objectives and characteristics will be a fundamental provision reducing mis-selling practices. This constitutes an essential step to a level playing field between insurers and investment companies offering their products.	
Page 16	**Guideline 6:** Yes, we fully agree. We would like to add that it should be mandatory that any staff tasked with designing a product must be a team which includes at least one actuary and one lawyer. **Guideline 7:** Yes, we fully agree. Product testing constitutes a basic element of consumer protection. We would like to attract the attention of EIOPA to the specific situation in Germany, where illness insurance does not only exist as an additional private insurance (additional to the public system of illness insurances - “Gesetzliche Krankenkassen”). As the only country in the EU, in Germany the illness insurance is offered as a “full” insurance (“Private Kranken-Vollversicherung”) to particular professional groups (entrepreneurs, employees with high income etc.), too. But these “full” illness insurance tariffs are very risky, because there are a lot of cases which proof the immense increase of premiums when policy holders are getting older.	

	These cases show a massive lack of product testing by the insurers.	
Page 17		
Page 18	**Guideline 8:** Yes, we fully agree. It should be mandatory to inform the distributors about the results of product monitoring. There has to be a constant mutual exchange of information and experiences about product monitoring between manufacturers and distributors. **Guideline 9:** Unfortunately, the notion of remedial action is not precise enough. Its consequences are not clear. Is it only a promise of information given to the consumer, or are there any juridicial consequences to be followed ("Folgenbeseitigungs-anspruch")? As a minimum criterion, it should be stipulated that all contracts, which are already concluded, will have to be subject of any "remedial action" proposed for a product.	
Page 19	**Guideline 10:** Yes, we fully agree. The appropriate knowledge on selected target markets and on relevant product information that is necessary for the distribution channels, has to be part of the responsibilities of product manager. Very often distributors are not deeply enough trained, when new products are launched (i.e. complex life insurance contracts with reduced capital guarantees). The distributors should have the right to ask for an adequate, precise and up-to-date training including all the details of new products.	
Page 20		
Page 21	**Problem definition:** As a consumer organization located in Germany, we are quite astonished that the enumeration of countries in which concrete cases of consumer detriment have occurred does not include our own country. Therefore we would like to evoke again massive cases of consumer detriment which are well known not only in the German, but in the European context. In October 2012 one of the most important German economic newspapers, the Handelsblatt, published a large report on mis-selling practices by the life insurer ERGO. It was reported that there were more than 5000 cases of mis-selling practices in only a few months. Agents of ERGO pushed customers to exchange their life insurance contracts to accident insurance contracts with much lower interest rates	

	("Umdeckungen"). 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, four 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.	
Page 22		
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Page 24	We fully agree to EIOPA's statement, that "nothing in these Guidelines, neither in the scope of product intervention powers, can be seen as a product pre-approval capacity by the competent authorities". We stress the necessity of these guidelines, and our objective is to reinforce them by the comments published here.	
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Page 36	**Policy Issue 1:** We agree to EIOPA's choice of option 3 taking Guidelines for the appropriate legal instrument. But we stress the necessity of a precise juridicial frame of these guidelines in the national context. The NCAs, in Germany the BaFin, have to publish precise proceedings, how EIOPA's Guidelines will be brought into force, and if there are any sanctions in the case of non - compliance by the insurers.	
Page 37	**Policy Issue 2:** Yes, we agree to EIOPA's choice of option 3, but we strongly underline EIOPA's own promise that "once a clear legal basis exists, to prepare similar requirements for the distribution activity of all insurance products."	
Page 38	**Policy Issue 3:** We do not agree to EIOPA's choice of option 3. Giving NCAs the discretion to adapt the definition of consumer, including e.g. SMEs and legal persons as well, will inevitably lead to different levels of supervisory activities in the EU: on the contrary there is a fundamental need for consistency of financial supervision in the EU, that is the reason why we suggest to choose option 1 (considering only natural persons acting outside their trade, profession or business as consumers). **Policy Issue 4:** We do not agree to EIOPA's choice of option 4. In order to limit bureaucratic burden and costs (especially related to insurance business classes with lower risk and/or complexity), we recommend to choose option 3. But we stress the necessity that both quantitative and qualitative scenario analysis will have to be applied not only to life insurance but to illness insurance, too. As pointed out under Guideline 7, there is the special case of "full" illness insurance in Germany. These tariffs are calculated similar to capital life insurances and therefore have to be submitted to strict scenario analysis. **Policy Issue 5:** We do not agree to EIOPA's choice of option 2. We recommend the same frequency of Solvency II (annually) adding the following differentiation: Products and tariffs which are currently sold, shall be reviewed annually. Products and tariffs, which are not sold anymore, but which are still part of the portfolio, shall be reviewed, if a significant change related to any kind of parameters is observed (i.e. increase of premiums of "closed" illness insurance tariffs).	

Page 39	**Policy Issue 6:** We do not agree to EIOPA's choice of option 3. Similar to option 1 we strongly recommend the obligatory creation of a product manager, being a key function and therefore part of the AMSB, who is entirely responsible of the establishment and of the implementation of POG (cf. our comment on Guideline 1). **Policy Issue 7:** We do not agree to EIOPA's choice of option 2. The proportionality principle is a juridicial principle of generalized validity. Any kind of administrative provision has to be reasonable, appropriate and necessary, in consequence the principle of proportionality is neither new nor precise enough. Therefore we strongly recommend option 1, including the obligation to elaborate the Guidelines further and differentiate between insurance business classes within the EIOPA Guidelines. **Policy Issue 8:** We agree to EIOPA's choice of option 1, but we deem that is sufficient to stress the ultime responsibility of the product manager for any outsourced tasks, too (being part of his functions).	
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